

June 19, 2023

BY E-MAIL

Members of the Tribunal  
c/o Sara Marzal Yetano  
International Centre for Settlement of Investment Disputes  
1818 H Street NW  
Washington, DC 20433

---

White & Case LLP  
701 Thirteenth Street, NW  
Washington, DC 20005-3807  
T +1 202 626 3600

[whitecase.com](http://whitecase.com)

**Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd. v. Romania  
(ICSID Case No. ARB/15/31)**

Dear Members of the Tribunal:

In accordance with the Tribunal's instructions by email of June 14, 2023, Claimants briefly respond below to Respondent's observations of June 13, 2023 on the admissibility of the Amici Reply.

Claimants demonstrated in their letter of June 13, 2023 that the Amici Reply is inadmissible for three separate reasons. These reasons remain valid and are not repeated here.

Respondent lists the criteria for non-disputing party submissions contained in Annex C Section III of the Canada BIT and asserts that the Amici Reply meets them. Respondent's assertion is purely conclusory and is devoid of any analysis. Respondent does not provide any explanation of how or why it considers the criteria are met in this instance.<sup>1</sup>

Respondent acknowledges "the late stage of the proceedings," but favors admitting the Amici Reply to promote "transparency."<sup>2</sup> Claimants are also in favor of ensuring a transparent approach to the proceedings, however, transparency already is ensured through the publication of the submissions and decisions in this case together with open hearings (limited only to protect confidential information). Permitting the Amici Reply is not relevant to transparency.

Annex C Section III of the Canada BIT in addition provides limited rights to NDPs to participate, by providing the opportunity for NDPs to share their perspectives, and this also has been ensured by the Tribunal's procedural orders. The right provided to NDPs to participate, however, is expressly limited so as not to include further replies both in the BIT and in the Tribunal's orders. This ensures such interventions do not undermine the fairness and orderly nature of the proceedings, and it avoids unduly burdening or disadvantaging either Party.

---

<sup>1</sup> Letter from Respondent to the Tribunal dated June 13, 2023 at 2.

<sup>2</sup> Letter from Respondent to the Tribunal dated June 13, 2023 at 2.

Members of the Tribunal  
June 19, 2023

Nothing in Annex C Section III of the Canada BIT supports the conclusion that the Tribunal should unwind the safeguard expressly contemplated by the BIT and earlier accepted by the Tribunal to limit NDP submissions by excluding the possibility of further reply submissions.

Indeed, permitting the Amici Reply would unfairly burden and prejudice Claimants, including as to costs, in a manner not supported by the Canada BIT or the Tribunal's procedural orders.

For these reasons, and for the reasons already explained in their letter of June 13, 2023, Claimants urge the Tribunal to reject the Amici Reply as inadmissible.

Finally, the Parties agreed to – and the Tribunal approved – one round of simultaneous observations on admissibility. As Respondent elected to make a brief statement without any analysis in support of admissibility, by requesting replies, the Tribunal in effect decided to invite Respondent to comment on Claimants' observations, whereas Claimants have not yet seen Respondent's analysis of these issues. Claimants object to what is essentially a one-sided reply procedure and reserve the right to respond further as warranted to any new arguments presented by Respondent in its reply.

Respectfully submitted,



**Abby Cohen Smutny**

[asmutny@whitecase.com](mailto:asmutny@whitecase.com)  
+1 202 626 3608



**Darryl S. Lew**

[dlew@whitecase.com](mailto:dlew@whitecase.com)  
+1 202 626 3674