

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER ARTICLE 8(2)(A) OF THE
AGREEMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND
THE GOVERNMENT OF THE CZECH AND SLOVAK FEDERAL REPUBLIC FOR THE PROMOTION
AND PROTECTION OF INVESTMENTS AND THE UNCITRAL ARBITRATION RULES (1976)**

A11Y LTD.

v.

CZECH REPUBLIC

(ICSID Case No. UNCT/15/1)

PROCEDURAL ORDER NO. 9 – Organization of the Hearing

Tribunal

Yves Fortier, PC, CC, OQ, QC, Presiding Arbitrator
Stanimir Alexandrov, Arbitrator
Anna Joubin-Bret, Arbitrator

Secretary to the Tribunal

Jara Mínguez Almeida

Assistant to the Tribunal

Annie Lespérance

2 November 2017

I. PROCEDURAL HISTORY

1. Pursuant to Section 17.6 of Procedural Order No. 1, a pre-hearing organizational call between the Parties and the President of the Tribunal was held by telephone conference on 1 November 2017, in preparation for the Hearing on the Merits and the remaining jurisdictional objection (the “Hearing”) in this case.

2. Participating in the telephone conference were:

Members of the Tribunal:

The Hon. L. Yves Fortier, QC, President of the Tribunal

ICSID Secretariat:

Ms. Jara Mínguez Almeida, Secretary of the Tribunal

Assistant to the Tribunal:

Ms. Annie Lespérance, Assistant to the Tribunal

On behalf of the Claimant:

Mr. Hussein Haeri, Withers LLP

Mr. Lucas Bastin, Essex Court Chambers

Mr. David Walker, Withers LLP

On behalf of the Respondent:

Mr. Alfred Siwy, zeiler.partners

Mr. Nicolas Zenz, zeiler.partners

Ms. Marie Talašová, Czech Ministry of Finance

Ms. Anna Bilanová, Czech Ministry of Finance

Mr. Martin Nováček, Czech Ministry of Finance

3. The President of the Tribunal and the Parties considered: (i) the draft Agenda circulated by the Secretary of the Tribunal on 26 September 2017, and (ii) the Parties’ observations on the items in the draft Agenda submitted by the Claimant on behalf of both Parties on 20 October 2017.

4. An audio recording of the telephone conference was made and deposited in the archives of ICSID. The recording was made available to the Members of the Tribunal and the Parties the same day the telephone conference took place.

5. Following the session, the Tribunal now issues the present order.

II. ORGANIZATION OF THE HEARING

6. The Tribunal has taken note of the areas of agreement between the Parties, and of the Parties' respective positions in the areas of disagreement, included both in their comments on the draft Agenda for the pre-hearing organizational call and discussed during the call.
7. Having considered the Parties' positions, the Tribunal issues this Procedural Order setting out the Procedural Rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Hearing.

A. Date and Venue

8. The Hearing will take place from 13 to 17 November 2017.
9. The Hearing will take place at Room A at the World Bank Paris Conference Center located at 66, Avenue d'Iéna, 75116 in Paris, as previously informed in ICSID's communication of 11 October 2017.

B. Daily Schedule

10. The daily schedule during the Hearing will be from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. until 5:00 p.m. (approximately) with a short break of 15 minutes in each of the morning and afternoon sessions.

C. Order of Proceedings

11. Having listened to the Parties' positions, the Tribunal has determined that the Claimant's witnesses will be presented to the Tribunal first, followed by the Respondent's witnesses. The Claimant's technical experts will be followed by the Respondent's technical experts. Lastly, the Tribunal will listen to the oral evidence of the quantum experts.
12. The Tribunal has invited the Parties to discuss the daily schedule, including the length of opening and closing statements and revert to the Tribunal with an agreed daily schedule **by c.o.b. Tuesday, 7 November 2017.**

D. Time Allocation

13. The principle of equal time as between the Parties shall be observed in the conduct of the hearing. The Secretary of the Tribunal shall act as the timekeeper and use a chess clock approach.
14. The Tribunal may take time for its own questions during the Parties' presentations or during witness examination. In this event, the time incurred by the Tribunal's questions shall be included within the time allocated to the Party currently using the time.
15. A total of approximately 30 hours are reserved for the Hearing, with 14 hours reserved for each Party and two hours reserved for administrative and logistical matters that may arise during the hearing.

E. Documents for Use at the Hearing

16. The Parties shall provide each Member of the Tribunal, as well as the Tribunal's Assistant, the Tribunal's Secretary, the court reporter, and the interpreters where applicable, with:
- i. At the commencement of the Hearing, the Claimant will provide an agreed core bundle of contemporaneous documents (or extracts) in chronological order, cross-referenced to where these documents are exhibited in the arbitration file; and,
 - ii. In advance of the Hearing, the Respondent will send to the Tribunal unified USB sticks (PC and Mac compatible) of all pleadings, witness statements, expert reports, exhibits, legal authorities, and orders in the arbitration file, with a unified hyper-linked index. The Respondent will provide copies of the USB sticks to the Tribunal's Secretary and the court reporter at the commencement of the Hearing.
 - iii. Each Party will prepare a hard copy of Examination Bundles for each witness/expert it wishes to cross-examine.
17. The provisions of Procedural Order No. 1, Section 15.7 concerning Demonstrative Exhibits remain applicable.
18. In addition, promptly after the conclusion of the Hearing day in which the corresponding Demonstrative Exhibit is used, the Parties shall upload the Demonstrative Exhibit to the case folder in the electronic file sharing system ("BOX"), assigning it a consecutive exhibit number.

F. Witnesses and Experts Examination

19. As a general principle, the procedure for hearing oral witnesses at the Hearing will be as follows:
- i. The Parties may conduct a brief (5 to 10 minutes) direct examination when introducing each witness.
 - ii. The examination of quantum experts shall start with a brief opening presentation by the expert (of up to 20 minutes each).
 - iii. The scope of the re-examination will be limited to matters that have arisen in the cross-examination.
 - iv. The Tribunal will have the right to examine the witness or expert at any time and to interject questions during the examinations by counsel for the Parties. Nonetheless, the Tribunal will endeavour to save its principal questions to a time following that witness's or expert's re-examination; and in that event, the Tribunal would seek to ensure that each Party shall have an opportunity to examine a witness or expert on matters arising from questions by the Tribunal.

- v. The Tribunal shall have at all times complete control over the procedure in relation to any witness or expert giving oral evidence, including the right to recall a witness or expert and the right to limit or deny, on its own motion or at the request of a Party, the right of a Party to conduct any examination-in-chief, cross-examination or re-examination if it appears to the Tribunal that such examination or evidence is unlikely to serve any relevant purpose.
 - vi. The Tribunal will consider during the hearing, upon application from a Party, the possibility of witness conferencing of the technical experts following their cross-examination.
 - vii. Only the fact witnesses will be sequestered, with the exception of Mr Jan Buchal, the Claimant's party representative. To be clear, the technical experts shall not be sequestered.
20. The Tribunal notes that, in view of the Respondent's statement that Mgr. Martin Ludma "is not an expert in this arbitration" and that "it is not relying on Exhibit R-0019 as an expert opinion", the Claimant is not calling Mgr. Martin Ludma to testify as an expert witness.
21. In respect of the Respondent's application to cross-examine all three experts who have drafted the Claimants' quantum experts reports, the Tribunal, notes the following:
- the Claimant's first expert report on quantum submitted on 30 May 2015 is labelled (on the cover page) as a "joint report provided by Prof. Robert C. Lind, Pavel Urban and Dr. Pavel Vacek";
 - in para. 1.1 of the first report, it is stated "this expert report has been submitted as a joint report of three experts";
 - throughout their first report, the experts use the "we" to preface every sentence;
 - the three experts signed the first report on page 44;
 - Claimant's counsel, Mr. Haeri, in his oral submission, stated that this was so with respect to the experts' first report which was filed before his firm became counsel of record for the Claimant;
 - Mr. Haeri added that the second expert report on quantum submitted on 2 July 2017 had "clarified the situation as it was the expert report of CRS Economics s.r.o.";
 - However, the second report is also labelled (on the cover page) as having been "jointly prepared by Prof. C. Lind, Pavel Urban and Dr. Pavel Vacek";
 - throughout their second report, the experts use the "we" to preface every sentence;
 - the three experts each signed the second report on page 37; and

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- there is no reference to CRS Economics either in the body of the second report or on the signature page.

22. Consequently, having deliberated, the Tribunal decides that, in the event that the Respondent wishes to cross-examine the Claimant's quantum experts, it will do so by examining the three authors of the joint report, Prof. Robert C. Lind, Pavel Urban and Dr. Pavel Vacek, together.

G. Interpretation

23. The provision of Procedural Order No. 1, Section 11.3 applies.

24. The World Bank's Interpretation Division identified two qualified interpreters and provided the candidates' *curriculum vitae* to the Parties on 11 October 2017.

H. Audio Recording and Hearing Transcripts

25. The provision of Procedural Order No. 1, Section 18.1 on audio recording applies.

26. The provisions of Procedural Order No. 1, Section 18.2 and 18.3 on transcripts apply.

I. Post-Hearing Briefs

27. The question of the Post-Hearing Briefs will be considered at the conclusion of the Hearing.

J. Statement on Costs

28. As agreed by the Parties, they shall file Statements on Costs of not more than three pages. The deadline for filing such Statements shall be discussed at the conclusion of the Hearing.

K. Closed Hearing

29. The provision of Procedural Order No. 1, Section 17.5 applies.

L. Logistical Items

30. The logistical details (e.g., confirmation of room number assignments, list of Hearing participants, set up details, details on court reporting and interpretation services, internet access, audio-visual equipment and catering orders) will be handled through correspondence directly by the ICSID Hearing Organization Team.

31. The set up for the Hearing is currently scheduled for Friday, **10 November 2017 between 4:00 p.m. and 6:00 p.m.**

III. SKELETON ARGUMENTS

32. The parties shall file skeleton arguments (maximum 20 pages in length) by **c.o.b. 3 November 2017**.

Paris, this 2nd day of November 2017

Signed on behalf of the Arbitral Tribunal

[signed]

The Hon. L. Yves Fortier, QC
President