INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Access Business Group LLC
Claimant

v.

United Mexican States
Respondent

(ICSID Case No. ARB/23/15)

PROCEDURAL ORDER NO. 3
BIFURCATION

Members of the Tribunal
Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Prof. Franco Ferrari, Arbitrator
Ms. Loretta Malintoppi, Arbitrator

Secretary of the Tribunal
Mr. Francisco Abriani

Assistant to the Tribunal
Ms. Laura Zinnerman

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29 August 2024

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I. PROCEDURAL BACKGROUND

1. On 8 December 2023, the Tribunal issued Procedural Order No. 1 ("PO1") along with the Procedural Timetable appended as Annex B thereto.

2. On 12 July 2024, on the date provided in the Procedural Timetable as last amended on 21 May 2024, the United Mexican States ("Mexico" or the "Respondent") filed its Request for Bifurcation (the "Bifurcation Request" or "Request"), accompanied by factual exhibits nos. R-0001 to R-0003 and legal authorities nos. RL-0001 to RL-0015.

3. On 9 August 2024, Access Business Group LLC ("Access" or the "Claimant" and, together with Mexico, the "Parties") filed its Response to the Bifurcation Request (the "Bifurcation Response"), accompanied by factual exhibits nos. C-0108 to C-0112 and legal authorities nos. CL-0141 to CL-0172.

4. On 15 August 2024, in light of the Claimant's offer in the Bifurcation Response to withdraw without prejudice its alternative claims under Annex 14-D of the Agreement between the United States of America, Mexico, and Canada (the "USMCA"), the Tribunal requested the Claimant to confirm whether it wished to maintain its Annex 14-D claim.

5. Also on 15 August 2024, the Claimant informed the Tribunal that it "freely and voluntarily withdraws its pleading in the alternative pursuant to Annex 14-D", in line with its offer to do so contained in the Bifurcation Response (the "Claim Withdrawal").

6. On 21 August 2024, the Respondent submitted its comments on the Claim Withdrawal, asserting that such withdrawal rendered without effect certain preliminary objections set out in the Bifurcation Request. The Respondent also requested to introduce new evidence into the record in support of its Request.

7. On 23 August 2024, as scheduled in the Procedural Timetable, the Tribunal issued the following order on bifurcation:

> Having considered the Respondent's Request for Bifurcation of 12 July 2024, the Claimant's Answer to the Request for Bifurcation of 9 August, the Claimant's communication of 15 August 2024 withdrawing its Annex 14-D claims, the Respondent's communication of 21 August 2024 in which it specified that such withdrawal rendered its first, fourth and part of its third objections without effect, the Tribunal decides to bifurcate the remaining objections, namely the second objection and the third objection to the extent it relates to the Annex 14-C claims. Accordingly, the arbitration will continue in accordance with scenario 3 set out in Annex B to PO1, as revised.
>
> The reasons for the decision to bifurcate will follow in due course, a possibility which was envisaged in PO1 and of which the Tribunal makes use

> due to the little time available following the latest communications of the Parties. […]

In the same decision, the Tribunal also addressed the Respondent's request to file additional documents, which will thus not be dealt with further here.

8. This Procedural Order supplements the order granting bifurcation which was rendered without reasons on 23 August 2024 and provides the reasons for that order.

II. THE PARTIES' POSITIONS

A. THE RESPONDENT'S POSITION

1. Objections

9. The Respondent originally submitted four preliminary objections according to which the Tribunal lacked jurisdiction:

(i) *ratione voluntatis* over claims arising out of the same measures brought alternatively under two different USMCA annexes, i.e. Annex 14-C and Annex 14-D (the "First Objection");[1]

(ii) *ratione temporis* and *ratione voluntatis* under Annex 14-C of the USMCA over alleged breaches of the North American Free Trade Agreement ("NAFTA", together with the USMCA, the "Treaties", and each a "Treaty") arising from measures adopted after the termination of the NAFTA became effective on 1 July 2020 (the "Second Objection");[2]

(iii) *ratione voluntatis* since the waivers submitted by the Claimant do not fulfil the requirements of the NAFTA and the USMCA and, with respect to the waiver of Nutrilite S. de R. L. de C.V. ("Nutrilite"), it was also submitted extemporaneously (the "Third Objection");[3] and

(iv) *ratione voluntatis* because the Claimant had failed to exhaust local remedies or to wait 30 months after initiating local proceedings before submitting its claim to arbitration, contrary to the requirements of the USMCA (the "Fourth Objection").[4]

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1 Request, para. 16.
2 Request, paras. 22, 30, 33.
3 Request, para. 40.
4 Request, paras. 61-62.

10. Following the Claimant's withdrawal of the claims brought under Annex 14-D of the USMCA, the Respondent stated that the Claim Withdrawal "elimina la base de las Objeciones Primera y Cuarta de la Demandada, así como del último apartado de la Tercera Objeción, por su relación directa con las reclamaciones en la alternativa conforme al Anexo 14-D".[5] Therefore, the objections that remain to substantiate the Bifurcation Request are the Second Objection and the part of the Third Objection pertaining to the Annex 14-C claim (the Second Objection and the Third Objection, as narrowed down, the "Objections").

11. According to the Respondent, the Objections should be dealt with in a separate jurisdictional phase, while the proceedings on the merits are suspended.[6]

2. Legal Standard

12. The Respondent submits that the Tribunal is empowered to order the bifurcation of the proceedings pursuant to ICSID Arbitration Rules 42 and 44 in force as of 1 July 2022.[7]

13. Mexico also contends that its Request complies with the bifurcation criteria set out in Rules 42 and 44, which require tribunals to consider if: (i) the preliminary objections are substantial; (ii) bifurcation would reduce the proceeding's time and cost; and (iii) the objections would require the tribunal to assess and make determinations linked with the facts or the merits of the dispute.[8]

3. Bifurcation is warranted

14. Mexico substantiates its Request for Bifurcation of each of the two Objections with the following reasons.

a. The Second Objection

15. The Respondent submits that the Tribunal lacks jurisdiction *ratione temporis* and *ratione voluntatis* under Annex 14-C of the USMCA over alleged breaches of the NAFTA occurred after its termination on 1 July 2020.[9]

16. Mexico observes that paragraph 1 of the Protocol replacing the NAFTA by the USMCA indicates that the USMCA "*sustituirá* el TLCAN" upon the entry into force of the Protocol.[10] Interpreting this provision in accordance with its ordinary meaning and with Article 59(1)(a) of

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5 Respondent's Letter to the Tribunal of 21 August 2024, p. 1.
6 Request, para. 1.
7 Request, paras. 1, 6, 66.
8 Request, para. 6.
9 Request, paras. 23, 30.
10 Request, para. 24, *citing* **Exh. R-0003-SPA**, Decreto Promulgatorio del Protocolo por el que se Sustituye el Tratado de Libre Comercio de América del Norte por el Tratado entre los Estados Unidos Mexicanos, los Estados Unidos de América y Canadá, p. 2 (emphasis in the original).

the Vienna Convention on the Law of Treaties, the Respondent posits that the USMCA treaty parties agreed to put in place a more limited investment dispute settlement regime upon termination of the NAFTA, without extending the validity of NAFTA's substantive obligations.[11] The fact that the NAFTA does not include a survival clause reinforces this conclusion.[12] Indeed, the sole rationale underlying Annex 14-C was to extend the NAFTA parties' consent to arbitrate disputes involving alleged breaches of substantive obligations of the NAFTA that occurred before, not after, the expiration of this Treaty.[13]

17. Since the NAFTA parties thus ceased to be bound by the substantive obligations of the treaty upon its termination on 1 July 2020 and Mexico adopted the challenged measures in July 2022, the Tribunal lacks jurisdiction over claims for the alleged violation of NAFTA obligations no longer in force at the time of the disputed measures.[14]

18. For the Respondent, the Second Objection meets the bifurcation test because, as the tribunal in *TC Energy v. United States* held regarding an analogous objection, it is not *prima facie* frivolous, and, if successful, it would end the arbitration.[15]

b. The Third Objection in respect of Annex 14-C USMCA

19. It is the Respondent's submission that the Tribunal lacks jurisdiction *ratione voluntatis* since the waivers presented by Access for itself and Nutrilite do not comply with the requirements of the NAFTA.[16]

20. Mexico argues that Article 1121 of the NAFTA requires both Access and Nutrilite to waive their right to initiate or continue any other local or international legal proceeding based on the same measures. The Claimant had to submit these waivers when filing its Request for Arbitration.[17]

21. While the Claimant submitted waivers on its own behalf through paragraph 8(b) of the Request for Arbitration and on behalf of Nutrilite through Exhibit C-0078-ENG filed with the Memorial

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11 Request, paras. 25-29, *referring to* **Exh. RL-0008-SPA**, Convención de Viena sobre el Derecho de los Tratados, Article 59.
12 Request, para. 27, *referring to* **Exh. RL-0008-SPA**, Convención de Viena sobre el Derecho de los Tratados, Article 70(1)(a).
13 Request, paras. 33, 35.
14 Request, paras. 22-23, 30.
15 Request, para. 74, *citing* **Exh. RL-0015-ENG**, *TC Energy Corporation and TransCanada Pipelines Limited v. United States of America*, ICSID Case No. ARB/21/63, Procedural Order No. 2, 13 April 2023, para. 26.
16 Request, para. 40.
17 Request, para. 44.

on the Merits, the Respondent contends that these waivers were deficient and, in Nutrilite's case, belated:[18]

(i) Access' waiver is deficient because it excludes from its scope "arbitration under the Treaties".[19] Thus, nothing would prevent the Claimant from initiating another parallel or subsequent investment treaty arbitration based on the same measures;[20]

(ii) Nutrilite's waiver is deficient because the company undertook not to exercise its right to file an action instead of waiving it.[21] Relying on *Waste Management I*, Mexico explains that a waiver entails the forfeiture of a right, and is not equivalent to an undertaking not to exercise that right.[22] Further, Nutrilite's waiver refers only to the right to file an action before administrative or domestic tribunals. Thus, it does not cover the continuation of existing proceedings and the initiation or continuation of other dispute settlement procedures.[23] Lastly, the waiver was submitted late, namely with the Memorial on the Merits, rather than with the Request for Arbitration.[24]

22. Mexico underscores that it is not admissible that the Claimant remedy these defects in the course of the arbitration without the Respondent's consent.[25] As a result, the Tribunal lacks jurisdiction over the claim.

23. For the Respondent, this Objection also justifies bifurcation because, if it succeeds, it will put an end to the arbitration.[26]

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18 Request, para. 45.
19 Request, paras. 46-47, *referring to* Request for Arbitration, para. 8(b).
20 Request, para. 47.
21 Request, paras. 48, 50, *referring to* **Exh. C-0078-ENG**, p. 2.
22 Request, para. 49, *citing* **Exh. RL-0011-ENG**, *Waste Management Inc. v. United Mexican States (I)*, ICSID Case No. ARB(AF)/98/2, Award, 2 June 2000, para. 18.
23 Request, para. 51.
24 Request, para. 52.
25 Request, paras. 40, 56, *referring to* **Exh. RL-0010-ENG**, *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Decision on Objection to Jurisdiction CAFTA Article 10.20.5, 17 November 2008, para. 61; **Exh. RL-0012-SPA**, *KBR, Inc. v. United Mexican States*, ICSID Case No. UNCT/14/1, Laudo Definitivo, 30 April 2015, paras. 146-148.
26 Request, para. 75.

B. THE CLAIMANT'S POSITION

1. Introduction

24. The Claimant submits that the Bifurcation Request should be denied, because granting it would frustrate the overarching principle of efficiency.[27] With respect to the Third Objection, it asserts that it does not satisfy the legal standard for bifurcation.[28] Whereas the Second Objection is "colorable", it lacks merit and, in any case, the procedural circumstances of the arbitration and the principle of efficiency justify that it be considered together with the merits.[29]

2. Legal Standard

25. The Claimant submits that Article 41(2) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention") and ICSID Arbitration Rules 43 and 44 govern the Tribunal's power to order bifurcation of the proceedings.[30]

26. The Claimant further notes that the Tribunal enjoys ample discretion in applying these provisions to determine whether to hear jurisdictional objections separately or together with the merits.[31] A useful benchmark to guide this discretion is found in *Glamis Gold v. United States*, which refers to a factor not explicitly contemplated in the ICSID Arbitration Rules namely that the objection be substantial.[32] The Claimant relies on *Eco Oro v. Colombia* to assert that the threshold to assess if an objection is "serious and substantial" is higher "than merely requiring that the objection is not frivolous or vexatious".[33]

27. Additionally, the Claimant argues that there is no presumption in favour of bifurcation, either in the ICSID Arbitration Rules or in general.[34]

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27 Bifurcation Response, para. 9.

28 Bifurcation Response, paras. 1, 41.

29 Bifurcation Response, paras. 8, 42, 132: "Three of Respondent's core arguments demonstrably are not serious and substantial. Only Respondent's Second Objection is colorable."

30 Bifurcation Response, paras. 46-47. The Claimant observes that Rule 42 applies only to bifurcations that do not relate to preliminary objections (see Bifurcation Response, fn. 45).

31 Bifurcation Response, paras. 46-47.

32 Bifurcation Response, para. 48, *citing* **Exh. CL-0142-ENG**, *Glamis Gold, Ltd. v. The United States of America*, UNCITRAL, Procedural Order No. 2 (Revised), 31 May 2005, para. 12(c).

33 Bifurcation Response, para. 66, *citing* **Exh. CL-0150-ENG**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 2, 28 June 2018, para. 51.

34 Bifurcation Response, para. 50, *referring to* **Exh. CL-0150-ENG**, *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Procedural Order No. 2, 28 June 2018, para. 47; **Exh. CL-0155-ENG**, *Hela Schwarz GmbH v. People's Republic of China*, ICSID Case No. ARB/17/19, Procedural Order No. 3, 17 December 2018, para. 73; **Exh. CL-0156-ENG**, *Red Eagle Exploration Limited v. Republic of Colombia*, ICSID Case No. ARB/18/12, Decision on Bifurcation, 13 August 2020, para. 40; **Exh. CL-0157-ENG**, *Mainstream Renewable Power Ltd and others v. Federal Republic of Germany*, ICSID Case No. ARB/21/26, Procedural Order No. 3, 7 June 2022, para. 40.

3. The Bifurcation Request Should Be Denied

28. Access asks the Tribunal to reject the Bifurcation Request in respect of each of the Objections on the following grounds.

a. The Second Objection

29. The Claimant disputes the Respondent's position on the Second Objection. It does not consider that both the investment and the adoption of the disputed measure must fall within the term of validity of the NAFTA.[35] It also asserts that its claims are not brought under a terminated treaty, and that it relies on the provisions of Section A of Chapter 11 of the NAFTA for purposes of the application of the substantive protections, which application has no temporal restriction.[36] Therefore, "the only issue related to NAFTA […] is one of choice of law under the applicable treaty, USMCA".[37] In any event, in respect of bifurcation, Access focuses mainly on whether the relevant criteria are met.

30. In this respect, the Claimant concedes that this Objection is "colorable".[38] Nonetheless, it argues that, in line with Procedural Order No. 2, the Claimant has already partially briefed the issue underlying this Objection in its Memorial on the Merits.[39] In addition, the resolution of this Objection may require that evidence be taken,[40] which would better be done in conjunction with the merits. As a result, bifurcation of the Second Objection would not contribute to the efficiency of the proceedings nor "simplify the processing of this discrete legal question".[41]

b. The Third Objection

31. The Claimant asserts that the Third Objection is not serious and substantial and does not justify bifurcation.[42] Essentially, Access argues that the waivers which it submitted fulfill the NAFTA requirements:

(i) The wording of Access' waiver included in paragraph 8(b) of the Request for Arbitration conforms to Article 1121.1(b) of the NAFTA and the definition endorsed in *Waste Management (I)*, which Mexico cites.[43]

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35 Bifurcation Response, para. 42.
36 Bifurcation Response, paras. 37-38.
37 Bifurcation Response, para. 40.
38 Bifurcation Response, paras. 8, 42.
39 Bifurcation Response, paras. 42-43.
40 Bifurcation Response, para. 72.
41 Bifurcation Response, para. 70.
42 Bifurcation Response, para. 122.
43 Bifurcation Response, paras. 84-88, *referring to* **Exh. CL-0161-ENG**, *Waste Management, Inc. (I) v. United Mexican States*, ICSID Case No. ARB(AF)/98/2, Arbitral Award, 2 June 2000, s. 18.

(ii) The "clarifying" language "other than arbitration under the Treaties" used in Access' waiver "is of no functional moment", because it would not be possible for the Claimant to file any treaty claims beyond those invoked in this arbitration;[44]

(iii) The affidavit of Ms. Rainey Repins submitted by the Claimant with its Memorial on the Merits as Exhibit C-0078-ENG was filed to reinforce the waiver in paragraph 8(b) of the Request of Arbitration, but there was no "legal compulsion or imperative to do so", with the result that such document does not change the import of the waiver.[45]

III. ANALYSIS

A. INTRODUCTION

32. For the avoidance of doubt, this decision is made on the basis of the Tribunal's understanding of the record as it presently stands and shall not preempt any later finding of fact or conclusion of law. The purpose of this Order is to decide the Bifurcation Request and not the merit or lack of merit of the Objections. The Order starts by setting out the legal framework and standards (B), before applying the standards to the objections (C).

B. LEGAL FRAMEWORK

33. This arbitration is governed by the ICSID Convention and the ICSID Arbitration Rules (Section 1.1, PO1). The Tribunal's power to rule on the Bifurcation Request arises from Article 41(2) of the ICSID Convention, which reads as follows:

> **Article 41**
>
> […]
>
> (2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

[44] Bifurcation Response, paras. 90-93.
[45] Bifurcation Response, para. 94.

34. The requirements for bifurcation are set in ICSID Arbitration Rule 44, which in relevant part reads as follows:

> **Rule 44**
>
> **Preliminary Objections with a Request for Bifurcation**
>
> […]
>
> (2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
>
> (a) bifurcation would materially reduce the time and cost of the proceeding;
>
> (b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and
>
> (c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.

35. It is evident from the provisions just quoted that there is no presumption for or against bifurcation. Bifurcation is subject to a test that focuses in essence on whether the bifurcation would bring gains in terms of efficiency. More specifically, the test hinges on: (i) whether bifurcation would reduce time and cost of the arbitration; (ii) whether, if successful, the bifurcated objection would resolve the entirety or a significant part of the dispute; and (iii) whether the preliminary objection is closely linked to the merits, in which case bifurcation would not promote efficiency.

36. The Claimant further relies on the widely used test of *Glamis Gold*, which focuses on efficiency and substantiality, and partially overlaps with the test in the ICSID Arbitration Rules. In an arbitration governed by the ICSID Arbitration Rules, the Tribunal must apply the requirements as they are framed in those rules. However, in doing so, it may take guidance from the principles underlying these rules. Indeed, if an objection is not serious and substantial, bifurcating its consideration would be counterproductive in terms of efficiency, as the arbitration is likely to continue after the preliminary phase.

C. THE OBJECTIONS

37. In accordance with Rule 44(2), the Tribunal has taken all the relevant circumstances into account to decide whether to bifurcate the proceedings. It has also reviewed all of the Parties' arguments, even where it does not expressly refer to them. In the following discussion, it will emphasize those aspects that are decisive for the two Objections at issue.

1. The Second Objection

38. It is common ground between the Parties that the Second Objection raises an issue that is serious or at least "colorable", namely whether Annex 14-C of the USMCA extended the effectiveness of the substantive protections of the NAFTA for three years after that Treaty's termination, or whether it merely intended to facilitate the resolution of legacy investment claims based on breaches that occurred before the NAFTA's termination. The Parties disagree, however, as to whether bifurcation of the Second Objection would serve the interests of procedural efficiency.

39. In essence, the Respondent argues that bifurcating this Objection would reduce the time and costs of the proceedings since, if successful, the Objection would bring the arbitration to an end, thus avoiding the examination of the merits of claims over which the Tribunal lacks jurisdiction.

40. By contrast, Access submits that bifurcation would not "facilitate or simplify" the treatment of the Second Objection mainly because the Claimant has already briefed the matters on which the Objection is based in its Memorial on the Merits, and this Objection may require the taking of evidence, with the result that it may be dealt with more efficiently with the merits.

41. Applying the rules and considerations identified earlier, the Tribunal starts by noting that both Parties acknowledge that, at least on a *prima facie* basis, the Second Objection is a serious one, or, to more precisely reflect the Claimant's position, that it presents a "colorable" case. In the Tribunal's view, this Objection indeed raises a serious question which goes to the validity of the substantive investment protections providing the basis for the claims put forward in this arbitration.

42. Further, if the Objection is upheld, it would put an end to the proceedings as the claims before the Tribunal would lack any treaty foundation providing for substantive obligations and potential responsibility of the Respondent.

43. Additionally, the Second Objection concerns a discrete legal issue that can be determined without an inquiry into the merits of the dispute. At least at first sight, the review of the relevant legal issue, i.e. whether the substantive NAFTA protections remained in effect during the three-year period following the Treaty's termination, does not appear to call for the assessment of facts. In any event, even if it did, as the Claimant contends, the facts to be established would necessarily be more limited than in a full assessment of the merits.

44. In brief, the Tribunal finds that the Objection raises a serious question; that it is not intertwined with the merits so as to make bifurcation impractical; and that, if this Objection were upheld, its resolution would end the arbitration and bifurcation would reduce time and costs.

45. Obviously, whether bifurcation would ultimately result in a material reduction of time and/or cost would depend on the fate of the Objection. Nonetheless, in this case, the possibility of the arbitration ending altogether if the Objection is upheld, coupled with the serious nature of the question raised by the Objection, outweighs a potential efficiency loss in case the Objection is dismissed, and militates in favour of bifurcation.

46. It is true that, as the Claimant argues, it has initially briefed the issue involved in this Objection in its Memorial on the Merits. However, the Tribunal does not regard this fact to weigh either in favour of or against bifurcation. Similarly, the fact that the Respondent did not brief the Second Objection in its Bifurcation Request is also inconsequential, as parties are not expected to delve into the merits of the objections at the level of a bifurcation request, other than for the purposes of briefing bifurcation.

47. For these reasons, the Tribunal finds that it is justified to bifurcate the Second Objection.

2. The Third Objection

48. Mexico argues that the requirement for investors to file waivers provided in Article 1121.1(b) of the NAFTA is at the core of a host state's consent to arbitration. In the absence of waivers compliant with the specifications of Article 1121, the Tribunal would lack jurisdiction over the dispute and the arbitration would fall away in its entirety.

49. In response, Access stresses that the Third Objection is manifestly and demonstrably not serious and substantial. It states that the waiver at issue satisfies the requirements of Article 1121.1(b) of the NAFTA in every respect and that it would be unprecedented for the Tribunal to deny jurisdiction based on a waiver worded as this one.

50. In the Tribunal's current understanding, this Objection appears to raise an issue that looks less serious *prima facie* than the Second Objection. Hence, one might debate about the potential efficiency gains of bifurcating this issue if it were put forward in isolation. However, it is not put in isolation, but it is raised together with the Second Objection. If a separate jurisdictional phase takes place in any event to address the Second Objection, it seems expedient that the preliminary phase also encompass the Third Objection. Otherwise, assuming for the sake of discussion a situation in which the Second Objection would be denied, the arbitration would proceed on the merits of the dispute and in respect of the Third Objection and there would be no certainty about the Tribunal's jurisdiction in this regard until the completion of the merits phase.

51. A possible reason against including the Third Objection in the preliminary phase together with the Second Objection could be that the Third Objection is closely linked to the substance of the

dispute. However, this is not the case with the Third Objection. To the contrary, the issues involved in that Objection appear distinct and legal in nature. They are thus unlikely to lead to a duplication of arguments and evidence in the jurisdictional and merits phases, if there is a merits phase.

52. Finally, the Tribunal is mindful of the Claimant's submission that the Third Objection revolves around a formal or formalistic issue. Be this as it may, it does not alter the preceding considerations.

53. Accordingly, the Tribunal considers that the Third Objection warrants bifurcation.

IV. ORDER

54. On the basis of the foregoing reasons, the Tribunal restates the order which it rendered without reasons on 23 August 2024 as follows:

(i) the Respondent's Request to bifurcate the Second and Third Objections is granted;

(ii) the proceedings shall continue under Scenario 3 of the Procedural Timetable;

(iii) the decision on costs related to bifurcation is reserved for a later stage of these proceedings.

On behalf of the Tribunal,

[Signed]

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Prof. Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 29 August 2024