

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Burimi S.R.L. and Eagle Games SH.A.

Claimants

v.

Republic of Albania

Respondent

ICSID Case No. ARB/11/18

Procedural Order No. 3

Rendered by an Arbitral Tribunal composed of:

Mr. Daniel M. Price, President

Prof. Bernardo M. Cremades, Arbitrator

Prof. Ibrahim Fadlallah, Arbitrator

Secretary of the Tribunal:

Marco Tulio Montañés-Rumayor

Date: January 9, 2013

On January 8, 2013, the President of the Tribunal, on behalf of the Tribunal, convened a telephone conference (“Conference Call”) with the Parties to discuss (1) outstanding procedural matters, (2) issues relating to the hearing originally scheduled for January 21-23, 2013, and (3) financial matters.

After consideration of the Parties’ written and oral submissions, the Tribunal issues this Procedural Order which records the Parties’ agreements and resolves the outstanding matters.

1. Procedural Matters

On December 18, 2012, the Claimants requested that the Tribunal (a) reconsider its Decision of December 12, 2012 not to allow oral testimony at the hearing of witnesses who had not submitted written witness statements and (b) exclude the Respondent’s expert reports submitted with its Rejoinder. On December 20, 2012, the Respondent objected to both requests.

In addition, during the Conference Call, the Claimants renewed their request (first stated in their Reply of October 17, 2012) for an in-person Pre-Hearing Conference under Arbitration Rule 21(2) during which the Claimants proposed to seek an amicable settlement of the dispute. The Respondent objected to this request both in its Rejoinder of November 28, 2012 and during the Conference Call, stating that it had no interest in pursuing settlement discussions through a Pre-Hearing Conference and, accordingly, did not join in the request.

After deliberating among its Members, the Tribunal decided as follows.

a. Regarding the request for reconsideration

In accordance with Procedural Order No. 1, paragraph 14(a), the Tribunal finds that written submissions were to include “all of the evidence on which they [the Parties] intend to rely in support of the legal arguments advanced therein, including written witness statements, expert witness reports, documents, and all other evidence in whatever form.” The Claimants did not submit any witness statements with their memorials. Therefore, there are no witnesses tendered by the Claimants to be heard.

In light of the above, the Tribunal confirms its Decision of December 12, 2012 that it will not permit the Claimants to present and examine witnesses at the hearing who have not previously submitted written statements as required by Procedural Order No. 1.

b. Regarding the request for exclusion of the Respondent’s expert reports

Pursuant to Procedural Order No. 1, paragraph 14(b), the Tribunal concludes that the expert reports submitted by the Respondent with its Rejoinder are admissible because they are responsive to arguments made by the Claimants in their Reply of October 17, 2012. Therefore, the Tribunal denies the Claimants’ request to exclude such reports.

c. Regarding the Claimants' request for a Pre-Hearing Conference under Arbitration Rule 21(2)

ICSID Arbitration Rule 21(2) states as follows:

“At the request of the parties, a pre-hearing conference between the Tribunal and the parties, duly represented by their authorized representatives, may be held to consider the issues in dispute with a view to reaching an amicable settlement.”

Given that the Respondent does not join the request, there is no “request of the parties” as called for by Rule 21(2). Accordingly, the Claimants’ request is denied.

2. Hearing-Relate Issues

a. Hearing days

Noting that hearings are typically used for the examination of witnesses and that no witness testimony will be heard, the Tribunal suggested during the Conference Call that the Parties consider foregoing the hearing in the interests of efficiency and economy. While the Respondent agreed to this proposal, the Claimants did not.

In light of this, the Tribunal proposed and now so orders a one-day hearing to be held on Monday, January 21, 2013 in Paris, France, unless the Claimants notify the Tribunal on or before Monday January 14, 2013 that they wish to forego the hearing.

If the hearing will be held, it will be conducted in accordance with the following schedule.

b. Schedule

The Tribunal has proposed, and the Parties have agreed to the following schedule:

8.45 – 9.00 am.	Introductions
9.00 – 10.30 am.	Statement by Claimants
10.30 – 11.00 am.	Coffee Break
11.00 – 12.30 pm.	Statement by Respondent
12.30 – 1.45 pm.	Lunch Break
1.45 – 2.45 pm.	Closing/Rebuttal by Claimants
2.45 – 3.00 pm.	Coffee Break
3.00 – 4.00 pm.	Closing/Rebuttal by Respondent
4.00 – 4.15 pm.	Tribunal Comments/Close

The above are maximum times and the Tribunal indicated that neither Party should feel compelled to use all of its allotted time. The Tribunal may interrupt the presentations with questions at any time. Time taken for the Tribunal’s questions will not count against the Party responding to the questions.

c. Subject matter of the hearing

In accordance with Procedural Order No. 1, the hearing will cover issues of jurisdiction and merits only (see paragraph 13.2).

The Tribunal noted during the Conference Call and hereby confirms that the hearing is limited to argument by counsel and that no witnesses will be heard.

3. Financial Matters

On December 21, 2012, ICSID requested that each Party pay \$50,000 to cover the costs to be incurred in the next three to six months, including the January 2013 hearing.

During the conference call, the Claimants assured the Tribunal that they would make the payment by the deadline of January 20, 2013.

The Tribunal notes that the hearing is being held at the request of the Claimants. Therefore, if payment is not received from the Claimants on or before January 20, 2013, the hearing will be cancelled and the Claimants will bear the cancellation costs.

On behalf of the Tribunal

[signed]

Daniel M. Price
President