

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Global Telecom Holding S.A.E.

v.

Canada

(ICSID Case No. ARB/16/16)

PROCEDURAL ORDER NO. 7
HEARING ORGANIZATION

Members of the Tribunal

Prof. Georges Affaki, President of the Tribunal

Prof. Gary Born, Arbitrator

Prof. Vaughan Lowe, Arbitrator

Secretary of the Tribunal

Ms. Lindsay Gastrell

14 March 2019

I. INTRODUCTION

1. In accordance with paragraph 19.1 of Procedural Order No. 1 (“PO1”), on 1 March 2019, the President of the Tribunal held a pre-hearing conference call with the Parties in order to discuss the organization of the oral hearing on jurisdiction, merits and quantum (the “Hearing”). The following persons joined the teleconference:

On behalf of the Tribunal

Professor Georges Affaki, President of the Tribunal

ICSID Secretariat

Ms. Lindsay Gastrell

Ms. Jara Miguez Almeida

Claimant

Ms. Penny Madden QC Gibson, Dunn & Crutcher LLP

Mr. Rahim Mooloo Gibson, Dunn & Crutcher LLP

Ms. Charline Yim Gibson, Dunn & Crutcher LLP

Mr. Piers Plumpton Gibson, Dunn & Crutcher LLP

Respondent

Ms. Sylvie Tabet, General Counsel Trade Law Bureau, Government of Canada

Mr. Jean-Francois Hebert, Senior Counsel Trade Law Bureau, Government of Canada

Mr. Scott Little, Senior Counsel Trade Law Bureau, Government of Canada

Mr. Mark Klaver, Counsel Trade Law Bureau, Government of Canada

Ms. Johannie Dallaire, Counsel Trade Law Bureau, Government of Canada

Ms. Darian Bakelaar, Paralegal Trade Law Bureau, Government of Canada

Mr. Benjamin Tait, Paralegal Trade Law Bureau, Government of Canada

Ms. Natacha Guilbault, Senior Counsel Innovation, Science and Economic
Development, Government of Canada

Mr. Cezary Fudali, Counsel Innovation, Science and Economic
Development, Government of Canada

Ms. Jennifer Mulligan, Paralegal

Innovation, Science and Economic
Development, Government of Canada

Ms. Shamali Gupta, Officer

Investment Trade Policy, Government of
Canada

2. During the teleconference, the President of the Tribunal and the Parties addressed the items set out in a draft of this Order, as well as other matters raised by the Parties. Taking into account the Parties' views and the provisions of PO1, the Tribunal issues the present Order.

II. LOGISTICAL ARRANGEMENTS

A. Venue

3. The Hearing will be held in Room A of the World Bank Office in Paris, located at 66 Avenue d'Iéna, 75116.

B. Other Arrangements

4. The ICSID Secretariat, in consultation with the Parties and the Tribunal, will make the necessary logistical arrangements, including the designation of the Parties' breakout rooms, set-up details, list of participants, transcription, recording, other technology, catering, security clearance to access the building on the eve of and during the Hearing, etc.
5. Each Party provided a list of hearing attendees to ICSID on 11 March 2019.

III. HEARING SCHEDULE AND ALLOCATION OF TIME

6. The Hearing will be held on 1 to 12 April 2019, unless the schedule permits an earlier completion of the proceedings. The Tribunal will not sit on 6, 7 or 11 April, but will hold those days in reserve for hearing days in case it is required.

A. Daily Schedule

7. On Monday, 1 April 2019, the Hearing will begin at 10:30 am and conclude at 6:30 pm, to allow the Members of the Tribunal to meet before the Hearing commences. The Lead

Counsel for each Party will be invited to meet privately with the Members of the Tribunal at 10:00 am.

8. On all other Hearing days, the following schedule will apply:

- Start: 9:00 a.m.
- Breaks: one morning, one afternoon, 20 minutes each
- Lunch: 1 hour, around 12.30 p.m.
- End: 5:00 p.m.

9. The Tribunal may amend this schedule if necessary.

B. Allocation of Time

10. The Parties shall be allocated an equal amount of Hearing time.

11. The time allotted to the Parties does not include breaks (40 minutes per day), lunch (1 hour per day), and Tribunal time. Each Party shall have a total of 27 hours, including opening and closing statements.

12. Each Party shall be allocated no more than four hours to make its opening statement, and no more than three hours to make its closing statement. Each Party may at its discretion reserve time out of that time for rebuttal statements, it being understood however that such rebuttal statements shall be strictly limited to responding to points made in the other Party's opening or closing statement.

13. The time taken for opening and closing statements, including any rebuttal statement, shall be counted towards the overall time allocation of each side. Time spent on direct or re-direct examination of witnesses and experts, including expert presentations, shall be counted toward the time allocated to the Party presenting the witness or expert. Time spent by a Party on cross-examination shall be counted toward the time allocated to the Party cross-examining that witness. Time spent on housekeeping matters or responding to Tribunal questions shall not be counted toward either Party's time allocation unless the Tribunal decides, in particular circumstances, to count a reply to the responding Party's allotted time.

14. The Secretary of the Tribunal will maintain Hearing time using the chess-clock method, and report the time used and remaining to the Parties and the Tribunal after each day of the Hearing or whenever so requested. Any disagreement between the Parties concerning Hearing time shall be dealt with outside sitting hours whenever possible and referred to the Tribunal only as a last resort.

C. Hearing Timetable

15. The estimated timetable for the Hearing is included as Annex A to this Order.
16. Respondent shall amend the order of witnesses and experts based on any new fact or expert witnesses that Claimant submits with its Rejoinder on Jurisdiction and Admissibility, and shall do so by 15 March 2019.

IV. WITNESSES AND EXPERTS

A. Appearance of Witnesses and Experts

17. On 18 February 2019, each Party notified the other Party, with a copy to the Tribunal, which of the witnesses and experts of the opposing Party it wishes to cross-examine at the Hearing. As contemplated in paragraph 16, Canada may amend its list of witnesses and experts by 15 March 2019.
18. A decision by a Party not to call a fact witness to appear for testimony at a hearing shall not be considered to reflect an agreement as to the correctness of the content of the fact witness statement.
19. Only witnesses and experts that are called to be cross-examined by the opposing Party, or who are directed to appear by the Tribunal, shall testify at the Hearing. However, at the request of a Party (not received later than one week after the Tribunal's identification of witnesses and experts), the Tribunal may allow a witness or expert offered by that Party but not called to be cross-examined by the other Party, or directed by the Tribunal to appear, to testify at the Hearing. In this event, the Parties shall be entitled to subsequent examinations

of the witness or expert, in accordance with the procedure outlined in paragraphs 26-27 below.

20. Each Party shall be responsible for the appearance of its own witnesses and experts at the Hearing, except when the other Party has waived cross-examination of a witness or expert and the Tribunal does not direct his or her appearance. The Parties shall use best efforts to make each witness available for examination half a day before and after the time at which their examination is scheduled.
21. Each Party shall cover the costs of appearance of its own witnesses and experts. The Tribunal will decide upon the appropriate allocation of such costs in the award or at the time the arbitration is concluded.
22. If a witness or expert cannot appear during the scheduled dates or without notice fails to appear at the Hearing, the Tribunal may, at its discretion, summon the witness to appear a second time, if it is satisfied that: (1) there was a compelling reason for the witness' or experts' first failure to appear; (2) the testimony of the witness or expert is relevant to the adjudication of the dispute; and (3) providing a second opportunity for the witness or expert to appear will not unduly delay the proceeding.
23. The Tribunal may consider the witness statement of a witness or the expert report of an expert who provides a valid reason for failing to appear at the Hearing, having regard to all the surrounding circumstances, including the fact that the witness or expert was not subject to cross-examination. A witness or expert who is not called for cross-examination has a valid reason not to appear. The Tribunal may decline to consider the witness statement of a witness or an expert report of an expert who fails to appear and does not provide a valid reason.

B. Examination of Witnesses and Experts

24. Witnesses and experts shall be examined in person except in exceptional circumstances as determined by the Tribunal, in which case examination by video-conference may be permitted.

25. Before testifying, each witness shall make the declaration contained in ICSID Arbitration Rule 35(2), and each expert shall make the declaration contained in ICSID Arbitration Rule 35(3).
26. At the Hearing, the examination of each witness shall proceed as follows:
 - a. A witness' written statement shall stand as that witness' direct testimony. The Party presenting the witness may briefly examine the witness solely for the purpose of introducing the witness, correcting, if necessary, any errors in the witness statement and addressing matters arising after the witness statement was given, if any;
 - b. the opposing Party may then cross-examine the witness;
 - c. the Party presenting the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination. At the discretion of the Tribunal, the opposing Party may re-cross examine the witness, with the re-cross examination limited to the witness's testimony on re-examination; and
 - d. the Tribunal may examine the witness at any time, either before, during or after examination by one of the Parties.
27. The examination of an expert shall proceed in the manner set forth for fact witnesses in paragraph 26, except that subparagraph (a) may, at the request of the presenting Party, for the Egyptian law and valuation experts be replaced with a presentation. Such a presentation shall not exceed 20 minutes for the Egyptian law experts and 45 minutes for the valuation experts, with time spent on Tribunal questions being taken from the time allotted to these presentations. The presentations must not refer to any new evidence or documents not already on the record and must be limited to the scope of the expert's report.
28. With respect to the Parties' valuation experts, during cross-examination, only one of each Party's two valuation experts shall be permitted to respond to each cross-examination question. By 15 March 2019, each Party shall simultaneously notify the other Party, with a copy to the Tribunal, the division of topics or areas as between the Party's valuation experts.

29. Best efforts shall be made to have the examinations of the Parties' Egyptian Law experts and the presentations and examinations of the Parties' damages valuation experts appear on the same day as the other Parties' expert. The timing for the Parties' exchange of any demonstrative exhibits used during expert presentations is addressed at paragraph 40.

C. Sequestration of Witnesses

30. Unless agreed otherwise, a fact witness shall not be present in the Hearing room during the opening statement, the hearing of oral testimony, nor shall he or she read any transcript of any oral testimony prior to his or her examination. This limitation does not apply to experts or to a fact witness if that fact witness is a party representative. Lead counsel for each Party shall be expected personally to enforce this rule.
31. The party representative means the individual designated by a Party to act as its agent and give instructions to counsel at the hearing. The Claimant has designated Mr. Alex Shalaby and Mr. David Dobbie as its party representatives. The Respondent has identified Mr. Aldo Ongaro (Innovation, Science and Economic Development, Government of Canada) and Ms. Shamali Gupta (Investment Trade Policy, Government of Canada) as its party representatives.
32. Fact witnesses may be present in the Hearing room once their examination is complete.

D. Order of Witnesses and Experts

33. The order of witnesses and experts is listed in paragraph Annex A. The Parties have conferred on a detailed order of the Parties' fact witnesses and submitted the detailed schedule to the Tribunal by 25 February 2019, which is included in Annex A to this Order.

E. Cross-Examination Bundles

34. Immediately before the cross-examination of a witness or expert, the cross-examining Party will provide one cross-examination bundle each to the witness, each Member of the Tribunal, the Secretary, and the court reporter, and 2 bundles to the other Party.
35. The provision of a cross-examination bundle will not prevent a Party from taking the witness to any other exhibit or authority on the record. The Party conducting the

examination is responsible for ensuring that the witness, each Member of the Tribunal, the Secretary, and the court reporter, and the other Party have access to such other exhibit or authority.

36. Neither Party may introduce a document during the examination or cross-examination of a witness or expert that is not already on the record.

V. HEARING MATERIALS

A. Demonstrative Exhibits

37. In accordance with paragraph 16.9 of PO1, demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at the Hearing, provided they contain no new evidence. Demonstrative exhibits may be used for opening statements, closing statements, and in the experts' presentations as contemplated at paragraph 27,
38. Each Party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived.
39. The Party submitting such exhibits shall provide them in hard copy to the other party, each Member of the Tribunal, the Secretary, and the court reporter at the Hearing, immediately prior to their use at the hearing.
40. In addition, the Parties shall produce electronic copies of all demonstrative exhibits used in the Hearing at least 1 hour before the respective demonstrative exhibit is used.

B. Core Bundle and Tribunal Materials

41. By 22 March 2019, the Parties shall provide the Members of the Tribunal and the Secretary a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.
42. The Parties shall prepare a joint core bundle of the most relevant documents from the record (including the Canada-Egypt BIT), not to exceed 30 documents. The Parties shall dispatch

the core bundle to the Members of the Tribunal and the Secretary so that it is received by 22 March 2019.

43. The Parties shall provide to each Member of the Tribunal in the Hearing room one A5 copy of the Core Bundle, of each Memorial, Counter-Memorial, Reply and Rejoinder, and of expert reports and witness statements.

C. Additional Evidence

44. No new evidence or authorities may be submitted at the Hearing, except upon an application granted by the Tribunal. The rules regarding the submission of additional documents and new evidence/exhibits are provided by paragraph 16.5 of PO1, which states:

16.5. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.

(a) Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.

(b) If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.

VI. TRANSPARENCY

45. The hearing shall not be made public.
46. If either Party intends on relying on or presenting information which has been designated by either Party as Restricted Access during the course of this Arbitration, the Party must state this before presenting the document or having it displayed on the presentation screens, and ensure that all persons that are restricted from viewing this information have exited the hearing room.

VII. RECORDS OF THE HEARING

47. Real time court reporting services are to be provided by Mr. Trevor McGowan, with same day transcript delivery to the Tribunal and the Parties via email. The verbatim transcripts will be available in real-time using LiveNote or similar software. In addition, the Hearing may be live streamed to the office location of each Party's choice, for those who are not able to attend the hearing in-person. The Party choosing to take advantage of this service will bear the cost of it.
48. An audio recording of the Hearing will be made, and the Secretary will provide the Parties and the Tribunal with access to the audio file following the Hearing.
49. Paragraph 21.3 of PO1 shall govern the process of correcting the Hearing transcript:

The parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts ("revised transcripts"). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

VIII. POST-HEARING MATTERS

A. Post-Hearing Submissions

50. The Parties will attempt to agree during the second week of the hearing, with the Tribunal's guidance, as to whether post-hearing submissions are required. In the event that such submissions are ordered, the Tribunal will provide a list of specific questions or guidance regarding the topics that the Tribunal would like addressed. Any post-hearing submissions will be subject to a strict page-limit and exchanged simultaneously.

B. Cost Submissions

51. Cost submissions in this Arbitration will take the form of a short submission (not to exceed 10 pages) and a table summarizing the cost incurred by the Party in this Arbitration. The

Parties will attempt to agree on a deadline for such submissions at a later date, once the post-hearing submission schedule (if any) is determined.

IX. OTHER MATTERS

52. The Parties respectfully request that the Tribunal provide a list of questions that it would like the Parties to address during their opening statements by 18 March 2019, as well as a further set of any additional questions by close of day on 10 April 2019 to be addressed during the Parties' closing statements, without prejudice to the right of the Parties to structure their opening and closing statements in the way that they so choose.

On behalf of the Tribunal,

[signed]

Prof. Georges Affaki
President of the Tribunal
Date: 14 March 2019

ANNEX A – ESTIMATED HEARING SCHEDULE

Monday, April 1	
10:00 A.M. – 10:30 A.M.	Meeting with Tribunal
10:30 A.M. – 11:30 A.M.	Procedural Issues ¹
Lunch (1 hour)	
12:30 P.M. – 2:00 P.M.	Claimant’s Opening Statement (1.5 hours) ²
Coffee Break (15 min)	
2:15 P.M. – 4:15 P.M.	Claimant’s Opening Statement (2 hours)

Tuesday, April 2	
9:00 A.M. – 10:30 A.M.	Canada’s Opening Statement (1.5 hours) ³
Coffee Break (15 min)	
10:45 A.M. – 12:15 P.M.	Canada’s Opening Statement (cont’d) (2 hours)
Lunch (1 hour)	
1:15 P.M. – 1:25 P.M.	Direct Examination of David Dobbie (10 min)
1:25 P.M. – 3:25 P.M.	Cross-Examination of David Dobbie (2 hours)
Coffee Break (15 min)	
3:40 P.M. – 3:45 P.M.	Direct Examination of John Andrew (5 min)
3:45 P.M. – 4:45 P.M.	Cross-Examination of John Andrew (1 hour)

Wednesday, April 3	
9:00 A.M. – 9:10 A.M.	Direct Examination of Michael Connolly (10 min)
9:10 A.M. – 10:30 A.M.	Cross-Examination of Michael Connolly (1 hour 20 min)
Coffee Break (15 min)	

¹ The Tribunal does not expect to spend the full hour on procedural issues and expects that the Claimant will begin its opening statement before the lunch break.

² The Parties may at their discretion reserve time out of its opening and closing statements for rebuttal statements.

³ If the Claimant’s opening statement concludes early on Monday, depending on the time of day, the Respondent shall start its opening statement on Monday.

10:45 A.M. – 11:25 A.M.	Cross-Examination of Michael Connolly (cont'd) (40 min)
Lunch (1 hour)	
12:25 P.M. – 12:30 P.M.	Direct Examination of Ken Campbell (5 min)
12:30 P.M. – 2:30 P.M.	Cross-Examination of Ken Campbell (2 hours)
Coffee Break (15 min)	
2:45 P.M. – 2:50 P.M.	Direct Examination of Andrew Dry (5 min)
2:50 P.M. – 5:20 P.M.	Cross-Examination of Andrew Dry (2.5 hours)

Thursday, April 4	
9:00 A.M. – 9:10 A.M.	Direct Examination of Peter Hill (10 min)
9:10 A.M. – 10:40 A.M.	Cross-Examination of Peter Hill (1.5 hours)
Coffee Break (15 min)	
11:00 A.M. – 12:30 P.M.	Cross-Examination of Peter Hill (1.5 hours)
Lunch (1 hour)	
1:30 P.M. – 1:40 P.M.	Direct Examination of Iain Stewart (10 min)
1:40 P.M. – 3:10 P.M.	Cross-Examination of Iain Stewart (1.5 hours)
Coffee Break (15 min)	
3:25 P.M. – 5:00 P.M.	Cross-Examination of Iain Stewart (1.5 hours)

Friday, April 5	
9:00 A.M. – 9:05 A.M.	Direct Examination of Jenifer Aitken (5 min)
9:05 A.M. – 10:35 A.M.	Cross-Examination of Jenifer Aitken (1.5 hours)
Coffee Break (15 min)	
10:50 A.M. – 12:20 P.M.	Cross-Examination of Jenifer Aitken (1.5 hours)
END EARLY TO BEGIN WITH EGYPTIAN LAW EXPERTS AFTER THE WEEKEND	

Saturday, April 6 - OFF	
Sunday, April 7 - OFF	

Monday, April 8	
9:00 A.M. – 9:20 A.M.	Presentation of Prof Mohamed Abdel Wahab (20 min)
9:20 A.M. – 10:50 A.M.	Cross-Examination of Prof. Mohamed Abdel Wahab (1.5 hours)
Coffee Break (15 min)	
11:05 A.M. – 11:25 A.M.	Presentation of Dr. Hani Sarie-Eldin (20 min)
11:25 A.M. – 12:25 A.M.	Cross-Examination of Dr. Hani Sarie-Eldin (1 hour)
Lunch (1 hour)	
1:25 A.M. – 3:00 P.M.	Cross-Examination of Dr. Hani Sarie-Eldin (1.5 hours) ⁴
END EARLY TO BEGIN WITH VALUATION EXPERTS THE FOLLOWING DAY	

Tuesday, April 9	
9:00 A.M. – 9:45 A.M.	Presentation of Mr. Santiago Dellepiane and Dr. Pablo Spiller (45 min)
9:45 A.M. – 10:45 A.M.	Cross-Examination of Mr. Santiago Dellepiane and Dr. Pablo Spiller (1 hour)
Coffee Break (15 min)	
11:00 A.M. – 1:00 P.M.	Cross-Examination of Mr. Santiago Dellepiane and Dr. Pablo Spiller (2 hours)
Lunch (1 hour)	
2:00 P.M. – 2:45 P.M.	Presentation of Mr. Benjamin Sacks and Dr. Coleman Bazelon (45 min)
2:45 P.M. – 3:30 P.M.	Cross-examination of Mr. Benjamin Sacks and Dr. Coleman Bazelon (45 min)
Coffee Break (15 min)	
3:45 P.M. – 5:00 P.M.	Cross-examination of Mr. Benjamin Sacks and Dr. Coleman Bazelon (1 hour 15 min)

Wednesday, April 10	
9:00 A.M. – 11:00 A.M.	Cross-examination of Mr. Benjamin Sacks and Dr. Coleman Bazelon (2 hours)

Thursday, April 11 - OFF

⁴ Subject to change length of cross-examination following the receipt of Claimant’s Rejoinder on Jurisdiction and Admissibility.

Friday, April 12	
9:00 A.M. – 10:30 A.M.	Claimant’s Closing Statement (1.5 hours)
Coffee Break (15 min)	
10:45 A.M. – 12:15 P.M.	Claimant’s Closing Statement (1.5 hours)
Lunch (1 hour)	
1:15 P.M. – 2:45 P.M.	Canada’s Closing Statement (1.5 hours)
Coffee Break (15 min)	
3:00 P.M. – 4:40 P.M.	Canada’s Closing Statement (1.5 hours)