

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Global Telecom Holding S.A.E.

v.

Canada

**(ICSID Case No. ARB/16/16)
Annulment proceedings**

**PROCEDURAL ORDER No. 3
On the Organization of the Hearing**

Members of the ad hoc Committee

Prof. Mónica Pinto, President of the *ad hoc* Committee
Prof. Lawrence Boo, Member of the *ad hoc* Committee
Ms. Dyalá Jiménez, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Aurélia Antonietti

Date: January 19, 2022

I. PROCEDURAL BACKGROUND

1. On November 24, 2021, the *ad hoc* Committee (the “**Committee**”) wrote to the Parties suggesting conducting the Hearing on February 7 and 8, 2022 (“the **Hearing**”) in-person in Washington D.C in ICSID’s premises and noted that “[i]f an in-person hearing is not feasible, the Hearing will be virtual.”
2. On December 23, 2021, the Parties advised the Committee that due to the COVID-19 pandemic they considered that it was likely that counsel would need to appear remotely. They proposed a schedule for the two hearing days.
3. On January 3, 2022, the Secretary of the Committee confirmed that, in light of the Parties’ agreement, the Hearing would be held by video conference.
4. On January 10, 2022, the Secretary addressed a draft of this Procedural Order for the Parties’ comments. The Parties provided their comments on January 13, 2022.
5. The Committee, in the present Order, sets out the procedural rules that will govern the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT OF THE HEARING

6. The Hearing will take place virtually through Zoom on February 7 and 8, 2022 to be hosted by the World Bank. The details to join the Zoom session will be shared by the ICSID Secretariat in advance of the Hearing.

B. ORDER OF PROCEEDINGS AND SCHEDULE

7. In order to accommodate the multiple time zones of all Hearing Participants, the Hearing will start at 8:00 EST. It is expected to conclude by 16:00 EST. There will be a one-hour lunch break. The Schedule of the Hearing is detailed in **Annex A**.
8. The Committee reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

C. TIME ALLOCATION

9. The Parties agreed that they will each have 2.5 hours on Day 1 and 2 hours on Day 2. Each Party may, at its discretion, reserve a portion of its allotted time each day for a rebuttal statement (if any).
10. Time taken by the Committee for its own questions during the Parties' presentations and the answers to those questions shall not be counted against the Parties' time.
11. Time used for housekeeping or to resolve technical difficulties shall be counted against the time for housekeeping or against the Committee's time, if needed.
12. The Secretary of the Committee shall keep a chess clock account of time and advise the Parties of the total daily time used at the end of each Hearing day.

D. DOCUMENTS FOR USE AT THE HEARING

1. Electronic Hearing Bundle

13. There shall be a single Electronic Hearing Bundle (PC and Mac compatible), to be prepared jointly by the Parties.
14. The Parties shall provide, no later than January 28, 2022, the Electronic Hearing Bundle which shall contain all pleadings, exhibits, legal authorities and Committee's orders or decisions on file to date, with a consolidated hyperlinked index. It shall not contain any document not previously filed.
15. The Electronic Hearing Bundle shall be uploaded by the Parties to a designated sub-folder in the BOX filesharing platform. To ensure operation of the hyperlinked index, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized Electronic Hearing Bundle to a designated sub-folder on to the BOX filesharing platform, and including a consolidated (non-hyperlinked) index.
16. Prior to the Hearing, the Members of the Committee, the Secretary of the Committee and the Parties shall download the Electronic Hearing Bundle from the BOX Case Folder into their own devices to have access to it offline during the remote Hearing. The court reporter will also be provided a copy of the Electronic Hearing Bundle via the ICSID Secretariat.

2. Demonstrative Exhibits

17. The Parties may use PowerPoint or other slide presentations for their oral statements, subject to the below rule on demonstrative exhibits.
18. Demonstrative exhibits shall be used in accordance with Sections 15.4 of PO1 (reproduced below), with certain adjustments indicated in paragraph 19 *infra*:

“15.4. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided that they contain no new evidence. 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. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Committee Members, the Secretary, the court reporter(s) and interpreter(s) at their time of use at the hearing.”

19. To account for the virtual nature of the Hearing, PO1 Section 15.4 is amended such that: (i) the hard copy submission of demonstratives is not required; and (ii) an electronic copy of each demonstrative shall be distributed by the Party intending to use it *via* an electronic mail sent to the entire case email distribution for each Party, the Secretary of the Committee, the Members of the Committee and to the court reporter no later than 1 (one) hour *prior* to its use, in order to facilitate offline access to the demonstrative by the Hearing participants. This will enable participants to print the demonstrative if desired. It is advisable to transmit the demonstrative exhibits to the members of the Committee and the ICSID Secretary with more than 1-hour notice.
20. In addition, promptly after the conclusion of the Hearing day in which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD-__ or RD-__ number.

3. Electronic Presentation of Evidence

21. Each Party shall present demonstrative exhibits and evidence to the participants in the Hearing *via* the video platform system.
22. Demonstrative exhibits and clean, unannotated electronic copies of documents on the record may be displayed to all Hearing participants via the Zoom videoconference platform. Any Hearing participant shall have the technical ability to display a document to all Hearing participants via

Zoom, and such person need not be an active speaker. The Hearing participant displaying the document will be the only one with the ability to scroll through the document being displayed.

23. Documents that do not form part of the record may not be presented at the Hearing.

E. AUDIO RECORDING

24. The provision of Section 19.1 of PO1 concerning audio recording (reproduced below) apply.

“19.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Committee Members.”

25. The Secretariat shall record the Hearing, and the audio recording will be shared with the Parties and the Committee at the conclusion of the Hearing.

26. The video recording will not be made public or become part of the record of this arbitration. However, the video recording may be used to guide transcript corrections, and once transcript corrections have been completed, the transcript shall serve as the record of the Hearing. The Committee also may refer to the video recording, as it deems necessary.

27. Except for the court reporter that will make their own audio recording of the Hearing, attendees will not otherwise make any audio, video or screenshot record of the Hearing or any part of it.

F. TRANSCRIPTION

28. The provisions of PO1, Sections 19.2 and 19.3 concerning transcription (reproduced below) apply.

“19.2. Verbatim transcript(s) in English shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Committee, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Committee on a same-day basis.

19.3. The parties shall attempt to agree on any corrections to the transcripts within 25 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 Committee shall decide upon any disagreement between the parties and any correction adopted by the Committee shall be entered by the court reporter in the revised transcripts.”

29. Real-time court reporting in English shall be made available to the Hearing participants *via* an online link connection to be provided by the court reporter. Hearing participants shall connect to the transcript by opening a link in a browser window. The details (link, password) and instructions to connect to the streamed transcript shall be provided by the Secretariat to the Hearing participants before the start of the Hearing day.
30. Transcription services will be provided by Claire Hill (the “court reporter”). The court reporter may seek to clarify the record from time to time during the course of the hearing.
31. Participants may access the remote Real-time transcript on a laptop or iPad separate from the device used for Zoom.
32. In accordance with Section 19.3 of PO1, the deadline for corrections to the transcript shall be 25 days following the later of the dates of the receipt of the sound recordings and/or transcripts.

G. POST-HEARING SUBMISSIONS

33. The provisions of Procedural Order No. 1, Sections 20.1 to 20.2 (reproduced below) apply.

“20.1. At the hearing, after consulting with the parties and taking into account their views, the Committee shall decide whether it believes it to be necessary for the parties to file Post- Hearing Memorials.

20.2. Each party will submit its Statement of Costs within 3 weeks after the hearing or the final exchange of Post-Hearing Memorials (if any) (whichever is later).”

H. VIRTUAL HEARING ARRANGEMENTS

34. The following procedures shall be followed in order to ensure the good conduct of the virtual hearing:

1. Testing

35. If requested, the Secretariat will conduct technical tests with the Committee and each Party in advance of the Hearing, to test connectivity to the Zoom video conference platform and to the transcription service. The Secretariat recommends that as many Hearing participants as possible to connect for each test. The date of each test will be communicated in due course.

36. Each participant should join the tests with the same device(s) and internet connection and from the same physical location that they intend to use for the Hearing.

2. Participants

37. Each Party shall provide its respective List of Hearing Participants (“List of Participants”) by January 31, 2022, using the format provided in **Annex B**. Each Party shall designate those participants that will have an active speaking role (“Active Participants”), and those who will be passive attendees (“Passive Participants”), as well as those who will have no access to Restricted Information.
38. For ease of identification, Participants shall join the videoconference using the naming convention indicated in the format in **Annex B**, namely, first and last name preceded by [C] (for Participants for GTH) and [R] (for Participants for Canada). Should there be Participants joining from a common conference room, the conference room connection may be identified as “[C] [R] Conference Room #” as appropriate.
39. Participants will join the videoconference through a “waiting room” to be managed by the World Bank technical operator.
40. Access to the videoconference shall be restricted to those included in the List of Participants. Should any non-listed Participant attempt to connect to the videoconference, the technical operator hosting the meeting will alert the Secretary of the Committee, and the Committee will promptly address the matter with the Parties. All Participants in the Hearing bear an ongoing duty to warn of the presence of any other person on the videoconference.
41. Participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate the identification and to address any technical contingencies.

3. Connectivity

42. The Parties shall ensure that each of their representatives who will connect to the videoconference use a stable internet connection offering sufficient bandwidth, and use a camera and microphone/headset of adequate quality.
43. If available, Participants are advised to use a wired Ethernet connection instead of Wi-Fi. Participants are also encouraged to keep a smartphone or tablet, having a 4G data connection and

mobile hotspot functionality, available as a backup internet connection at all times during the Hearing.

44. The videoconference platform will also offer a dial-in telephone audio connection as a backup option should a Participant experience a temporary technical difficulty with a computer online connection. The Parties are advised that the dial-in back up telephone connection provides access to the “floor” audio channel only, not to the interpretation channels.

4. Transcripts

45. Instructions to access the live transcript will be provided by the Secretary of the Committee.

5. Equipment and Set Up

46. For optimum sound quality, especially for the audio recording and the transcription, ICSID highly recommends that the main speakers use an external microphone connection such as a headset through the USB or “mic” jack of the computer or laptop that they use for the Zoom videoconference. If not available, Active Participants are asked to speak close to the microphone.
47. While not indispensable, Hearing participants are advised to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: (i) the Zoom video connection; (ii) the online Real-time transcript; and (iii) offline documents.

6. Videoconference Etiquette

48. Upon the joining of the Hearing Participants to the videoconference on the first day of the Hearing, those using their computer should turn both their audio and video on. The President will invite each Party to introduce its team. After each Party has introduced all of its relevant Hearing Participants, the Hearing Participants who are not expected to speak should turn off their video feed and mute their microphones.
49. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, lead counsel and Party representatives should remain connected and active throughout the Hearing day.

50. Other than the first part of the first day of the Hearing, the Parties are advised to keep the number of video connections to a minimum, and to Active Participants only. Passive Participants should join the meeting through their computer but connecting only their audio (i.e. turning their video off).
51. Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The service provider serving as host of the videoconference shall have the ability to mute Participants if needed to avoid background noise, under the Committee’s control.
52. To facilitate the accurate transcription, speakers are advised to speak at a reasonable speed and with pauses between phrases.
53. Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Participants joining via video shall avoid sitting with a window or source of light behind them.

7. Break-Out Rooms

54. Break-out rooms separate from virtual Hearing Room, to be used securely by each Party and the Committee during breaks will be arranged on the Zoom platform.
55. During the designated Hearing breaks, the Parties will be assigned to breakout rooms within the videoconference platform to enable to promptly reconvene all Participants following breaks.
56. The List of Participants (**Annex B**) shall indicate the break-out room to which Participants shall be assigned, with [C] for the GTH’s break out room, [R] for the Canada’s break out room.
57. Each Party will make its own separate arrangements for private communication within its team during the Hearing by instant messenger or other appropriate means. The Zoom built-in chat function will be disabled, except for communications with the technical service provider acting as Zoom Operator.

8. Restricted Access Information

58. If either Party intends on relying on or presenting information which has been designated 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. The World Bank technical operator

must ensure that all persons that are restricted from viewing this information are transferred to the virtual “waiting room.” The Parties have indicated who those persons are and their names are included in the Participants list. The presenting Party must state when it is no longer relying on the Restricted Access Information, and the World Bank technical operator can then allow persons in the “waiting room” to reconnect to the videoconference.

I. GENERAL PROVISIONS

1. Data Privacy

59. The List of Participants for the Hearing will contain personal data provided to ICSID in the context of the remote Hearing, including names and contact information, such as business email addresses and telephone numbers. This data is processed for the purpose of the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and Hearing arrangements are properly communicated to the Parties, their legal representatives, the Members of the Committee and other participants providing services for the Hearing.

For and on behalf of the Committee,

[signed]

Prof. Mónica Pinto
President of the Committee
Date: January 19, 2022

ANNEX A
SCHEDULE OF THE HEARING

Day 1: February 7, 2022

<i>Hour (EST)</i>	PROCEDURAL STEP
08:00 – 08:15	Introductory matters (15 min)
08:15 – 10:45	GTH arguments on its application for annulment (150 min)
<i>Coffee break (30 mins)</i>	
11:15 – 13:45	Canada’s arguments on GTH’s application for annulment (150 min)
<i>Lunch break (1 hour)</i>	
	Parties’ rebuttals, if any
14:45 – 15:45	Committee’s questions

Day 2: February 8, 2022

<i>Hour (EST)</i>	PROCEDURAL STEP
08:00 – 10:00	Canada’s arguments on its application for annulment (120 min)
<i>Coffee break (30 min)</i>	
10:30 – 12:30	GTH’s arguments on Canada’s application for annulment (120 min)
<i>Lunch break (1 hour)</i>	
	Parties’ rebuttals, if any
13:30 – 14:30	Committee’s questions

ANNEX B
LIST OF PARTICIPANTS¹

AD HOC COMMITTEE						
Room	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	Personal Contact
T	[T] – Prof. Mónica Pinto	A	V	President	Buenos Aires	Email: [email address]
T	[T] – Prof. Lawrence Boo	A	V	Member	Singapore	Email: [email address]
T	[T] – Ms. Dyalá Jiménez	A	V	Member	San José	Email: [email address]
SECRETARY OF THE AD HOC COMMITTEE						
Room	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	Personal Contact
T	[T] – Ms. Aurélia Antonietti	A	V	Secretary of the <i>ad hoc</i> Committee	Washington DC	Email: [email address] Phone: [phone number]
GLOBAL TELECOM HOLDING S.A.E.						
Room	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	Personal Contact
	<i>Counsel:</i>					
C	[C] – Name Last name	A	V		Room [Firm] [C] [City]	Email: Phone:

¹ Use “A” (Active Participants) / “P” (Passive Participants). Only participants marked as “A” who are participating virtually will activate their cameras during the Hearing.

C	[C] –	A	V		Room [Firm] [C] [City]	Email: Phone:
C	[C] –	A	V			Email: Phone:
	Party Representative:					
C	[C] – Name Last name	P	V		Home [C] []	

CANADA						
Room	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	
	Counsel:					
R	[R] – Name Last name	A	V		Room [Firm] # 1 [R] [Washington, DC]	Email: Phone:
R	[R] – Name Last name	A	V		Room # 1 [R] [Washington, DC]	

PARTICIPANTS WITH NO ACCESS TO RESTRICTED INFORMATION						
Room	Name	Role	In person (IP) or virtual (V)	Affiliation to Case	Location of Connection (if remote)	
C/R	[C/R] – Name Last name	P	V			Email: Phone:
C/R	[C/R] – Name Last name	P	V			

COURT REPORTERS

Room	Name and Contact	Role	Affiliation	Location of Connection
N/A	[TRA] – Claire Hill	P	Court Reporter	London

TECHNICAL SUPPORT STAFF

Room	Name	Role	Affiliation to Case	Location of Connection
N/A	[IT] – Name Last name [Email]	P	[xx]	[xx]
N/A	[ICSID] - Mr. Shay Lakhter	P	Paralegal, ICSID	Washington DC
N/A		P	IT FROM THE LAW FIRM	Room [Firm] # 1 [C] [City]