INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Eco Oro Minerals Corp.

Claimant

v.

Republic of Colombia

Respondent

(ICSID Case No. ARB/16/41)

PROCEDURAL ORDER No. 12

On the Format and Timetable for the Additional Submissions Requested by the Tribunal in its Decision on Jurisdiction, Liability and Directions on Quantum

---

Members of the Tribunal
Ms. Juliet Blanch, President of the Tribunal
Professor Horacio A. Grigera Naón, Arbitrator
Professor Philippe Sands, Arbitrator

Secretary of the Tribunal
Ms. Ana Constanza Conover Blancas

Assistant to the President of the Tribunal
Mr. João Vilhena Valério

3 November 2021

I. PROCEDURAL BACKGROUND

1. On 9 September 2021, the Tribunal issued its Decision on Jurisdiction, Liability and Directions on Quantum ("**Decision**").
2. In paragraph 920(4) of the Decision, the Tribunal posed certain questions to Eco Oro with regard to its case on damages ("**Questions**"). Eco Oro was ordered to file submissions responsive to the Questions and Colombia to file its submissions in response, if any. The possibility of a second round of sequential reply submissions was also foreshadowed.
3. Pursuant to paragraph 920(5) of the Decision, the Parties were invited to confer and to reach an agreement on the format and timetable for the additional submissions requested by the Tribunal in its Decision and to apprise the Tribunal of the terms of such an agreement by no later than 7 October 2021.
4. On 7 October 2021, the Parties informed the Tribunal that they were conferring on the format and timetable for the additional submissions requested by the Tribunal in accordance with paragraph 920(5) of the Decision and requested a brief extension to the deadline to apprise the Tribunal on the terms of their agreement until 11 October 2021. The Tribunal approved the extension on 7 October 2021.
5. On 11 October 2021, the Parties informed the Tribunal that they had agreed the following ("**Parties' Agreement**"):

> *"1. The parties agree that they will file one round of written submissions as follows:*
>
> *a. Claimant will file its First Submission within 120 days of the issuance of the Tribunal's Decision on 9 September 2021;*
>
> *b. Respondent will file its Response Submission 120 days from the date on which Claimant filed its First submission.*
>
> *2. The parties agree that the filing of a second round of written submissions is optional:*
>
> *a. Claimant may, at its discretion, file a Reply Submission within [a specified period] of the date on which Respondent filed its Response Submission. Claimant will indicate whether it intends to exercise its right of response within 14 days of the filing of Respondent's Response Submission;*
>
> *b. Insofar as Claimant has filed a Reply Submission, Respondent may, at its discretion, file a Rejoinder Submission within [a specified period] of the date on which Claimant filed its Reply Submission. Respondent will indicate whether it intends to exercise its right of response within 14 days of the filing of Claimant's Reply Submission.*
>
> *c. A party's decision not to exercise its right of response does not imply that that party is in agreement with the arguments and allegations put forward by the opposing party in its last written submission.*

d. The parties disagree on the deadlines for responsive submissions and will make separate proposals to the Tribunal in this regard.

3. The parties agree that their written submissions will only address the questions raised by the Tribunal in paragraphs 902, 913, 919 and 920 of the Decision, and in the case of any responsive submissions, the allegations put forward by the other party in its previous submission.

4. The parties disagree on whether additional evidence may be adduced with their submissions and will make separate proposals to the Tribunal in this regard.

5. The parties disagree on whether either party should have the right to request a hearing, and will make separate proposals to the Tribunal in this regard.

6. The parties shall send their respective proposals on the outstanding points referenced above to the ICSID Secretary only (without copying opposing counsel or the Tribunal) by COB on Tuesday 12 October 2021. The ICSID Secretary will then circulate both proposals simultaneously to the parties and the Tribunal."

6. On 12 October 2021, pursuant to paragraph 6 of the Parties' Agreement, the Parties submitted their respective proposals on the outstanding points referenced in the Parties' Agreement (i.e., paragraph 2(d) (deadlines for potential second-round submissions); paragraph 4 (submission of additional evidence); and paragraph 5 (right to request a hearing) ("**Claimant's Submission**" and "**Respondent's Submission**", as applicable).
7. On 21 October 2021, the Tribunal invited the Parties to submit brief responsive comments on each other's proposals in relation to the procedural matters on which the Parties disagreed by 28 October 2021.
8. On 28 October 2021, each Party filed its respective brief responsive comments on the opposing Party's proposals in relation to the procedural matters on which the Parties disagreed ("**Claimant's Rebuttal**" and "**Respondent's Rebuttal**", as applicable).

II. THE PARTIES' POSITIONS

a. Deadlines for potential second-round submissions

9. Eco Oro proposes that any second-round submissions, to be submitted at the Parties' discretion, be submitted within 30 days of the opposing Party's last submission. Insofar as Colombia is permitted to submit additional evidence with its submission, Eco Oro may require additional time to respond to this evidence and proposes a deadline of 60 days for second-round submissions in that circumstance.[1]

[1] Claimant's Submission, pp. 3-4.

10. Eco Oro considers that 30 days would be sufficient time to file a submission which is limited to commenting on "*the allegations put forward by the other party in its previous submission*"[2] and would be in line with the deadline within which the Parties submitted their post-hearing briefs in this arbitration. Eco Oro further notes that the efficiency of the proceedings is of critical importance to it, being a single project company which suffered a "*complete deprivation*" of its rights in relation to its mining project more than five years ago.[3]

11. Colombia proposes that, should the Parties wish to adduce any second submissions, they each be given 90 days to do so. Colombia is of the view that a 90-day period would be commensurate with the 120-day period agreed upon by the Parties for each of the Parties' first submissions. Moreover, Colombia warns that any shorter period than 90 days would potentially jeopardise its ability to present its case, in view of (i) the extent and nature of the Questions; (ii) the fact that Colombia's submissions as a sovereign State require input and approval from multiple governmental agencies; and (iii) the fact that the Parties may wish to adduce additional evidence together with their second-round submissions.[4]

12. Eco Oro takes issue with Colombia's assertion that, as a State, it requires 90 days to file a second-round submission. Eco Oro notes that Colombia has submitted far more substantive pleadings during the course of this arbitration within either 30 or 60 days without voicing any complaint.[5]

13. Colombia notes that Eco Oro itself recognises that a 30-day period is an inadequate period of time for any further expert evidence to be prepared and addressed in a further submission. Colombia stresses that a 90-day period is required in order to allow experts the time to prepare any further expert reports, Colombia's counsel to prepare a further submission reflecting the content of such further expert reports, and for Colombia, as a sovereign State, to obtain the input and approvals from all relevant government agencies.

14. Finally, Colombia asserts that the parallel that Claimant envisages to make with the post-hearing brief is inapposite. Colombia notes that the 30-day period in that instance was for the Parties to prepare a submission of up to 35 pages in response to six questions posed by the Tribunal which were predominantly legal in nature, and the Parties were barred from adducing any additional evidence. In contrast, Colombia highlights that the Tribunal has now posed 15 questions in relation to damages, has not set any page limits, and has granted the Parties the right to submit such further expert evidence as they each consider necessary to support their further submissions.[6]

b. Submission of additional evidence

15. Eco Oro accepts that it "*has the burden of proof to make its case on damages*" as noted in paragraph 902 of the Decision. Eco Oro believes that it has satisfied this burden of

---

2 Paragraph 3 of the Parties' Agreement.

3 Claimant's Submission, pp. 3-4, making reference to paragraph 634 of the Decision.

4 Respondent's Submission, section 2.

5 Claimant's Rebuttal, p. 4.

6 Respondent's Rebuttal, section 2.

proof and that it can fully respond to all the Questions by reference to evidence already on the record, except with respect to remediation.[7] On that basis, Eco Oro says that the submission of additional evidence with Colombia's responsive submission should not be necessary, considering that it will already have had an opportunity to comment on the evidence in the course of the proceedings to date.[8]

16. So as to foster time- and cost-efficiency, Eco Oro considers that new evidence should only be adduced with the Parties' submissions (i) with respect to the issue of remediation,[9] given that information regarding the nature and timing of any remediation activities only became available after Eco Oro's last written pleading; and (ii) if the Tribunal, in line with existing procedural orders,[10] allows a Party to submit additional evidence following a reasoned application which describes the nature of the evidence to be submitted (but without attaching such evidence) followed by observations of the other Party.[11]

17. With regard to the Tribunal's question at paragraph 920(4)(b) of the Decision, Eco Oro does not consider that its expert evidence needs to be revised in light of the majority Tribunal's findings and will respond to the Questions on the basis of the expert evidence already on the record. Eco Oro asserts that Colombia's expert evidence should not need to be revised and that Colombia should seek the Tribunal's leave, based on a reasoned request, in case it considers that it needs to submit additional evidence.[12]

18. Colombia asserts that, in paragraph 902 of the Decision, the Tribunal has already decided to allow expert evidence and that there would be no basis on which this direction should be varied. Colombia further notes that the need for further expert evidence will be dependent upon each Party's response to the Questions. Making specific reference to the question at paragraph 920(4)(b) of the Decision, Colombia says that, should a Party's response be that the expert evidence adduced by the Parties does require revision, then that Party should be permitted to submit the relevant revised expert evidence for the Tribunal's consideration.[13]

---

7 Claimant's Submission, p. 1.

8 Claimant's Submission, p. 2.

9 Paragraphs 920(m) and 920(n) of the Decision.

10 Reference is made to (i) Procedural Order No. 1, Sections 17.3 ("*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.*") and 23.1 ("*No additional evidence may be produced together with the post-hearing briefs, except with leave from or on the request of the Tribunal.*"); (ii) Procedural Order No. 10, Sections 19 ("*The rules regarding additional documents and new evidence are set out in Section 17.3 of Procedural Order No. 1*") and 40 ("*No additional evidence may be produced together with the post-hearing briefs, except with leave from or at the request of the Tribunal.*"); and (iii) Procedural Order No. 11, Section 5 ("*The Parties should note that in preparing these final post-hearing submissions, no additional evidence or new facts should be adduced. The Parties should further note that no new allegations or novel legal submissions be included save other than with respect to the questions raised above by the Tribunal.*")

11 Claimant's Submission, p. 2.

12 Claimant's Submission, p. 3.

13 Respondent's Submission, section 1.

19. Colombia further argues that the Parties should be permitted to submit such additional evidence as each of them considers to be necessary in support of their further submissions addressing the Questions. Colombia notes, on the one hand, that experts may require further factual evidence on which to base their opinions and, on the other hand, that the nature of certain questions posed by the Tribunal, such as those concerning remediation, requires that further factual evidence be submitted in response.[14]

20. Eco Oro asserts that it is common for tribunals to limit the parties' ability to introduce new evidence after written submissions have been completed, so as to safeguard the parties' right to be heard. Eco Oro further notes that this practice is reflected in the procedural orders issued by the Tribunal in this case.[15] Eco Oro notes that there is currently only one limited matter so exceptional as to require the submission of further evidence, namely the issue of remediation so as to address the Tribunal's questions at paragraphs 920(4)(m) and (n) of the Decision, and that a "free-for-all approach" should be rejected. Eco Oro further opposes Colombia's construction of paragraph 902 of the Decision, saying that a preliminary decision is required before new evidence can be admitted.[16]

21. Eco Oro argues that restricting Colombia to filing answers to the Questions that rely on existing factual and expert evidence (as with the first-round of post-hearing briefs) cannot offend the *principe de la contradiction*, fundamental to due process, because Colombia will not be responding to new evidence. Eco Oro stresses that, should Colombia wish to adduce new evidence, it should make a reasoned application now because (i) it is already aware that Eco Oro's forthcoming submission will not rely on new evidence and, consequently, responsive evidence will not be required; and (ii) Colombia has been aware of the Questions for the last six weeks and must therefore already be aware of the scope, purpose and exceptional nature of any new evidence it believes will be necessary to answer the Questions.[17]

22. Colombia considers that Eco Oro's assertion that the Decision "*requires a preliminary decision before new evidence can be admitted*" is inconsistent both with the Tribunal's clear direction at paragraph 902 of the Decision, which supersedes the Tribunal's prior directions in relation to the admission of new evidence, and with the Tribunal's indication at paragraph 920(6) of the Decision that [u]*pon receiving the Parties' additional submissions, the Tribunal will render its award on damages*".[18]

---

14 Respondent's Submission, section 1.

15 See footnote 10 above. Claimant further makes reference to Procedural Order No. 1, Sections 17.1 ("*The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities. Further documentary evidence relied upon by the Parties in rebuttal shall be submitted with the Reply and Rejoinder.*") and 18.1 ("*Witness statements and expert reports shall be filed together with the Parties' pleadings.*").

16 Claimant's Rebuttal, pp. 1-4.

17 Claimant's Rebuttal, p. 3

18 Respondent's Rebuttal, section 1.

23. Colombia further asserts that Eco Oro's choice not to adduce any further evidence does not provide a basis on which to preclude Colombia from submitting such further evidence as it considers necessary to respond to the Questions or to address Eco Oro's assertions made in response thereto.[19]

24. Finally, Colombia submits that there is no reason to cherry-pick the issues with respect to which further factual evidence may be adduced and argues that it should not be restricted to evidence relating to the issue of remediation.[20]

c. Right to request a hearing

25. Eco Oro submits that an oral hearing is for the benefit of the Tribunal and should only be held if requested by the Tribunal. Eco Oro further notes that an automatic right to request a hearing could result in a significant increase in the time and cost of the proceedings without assisting the Tribunal in rendering its Award.[21]

26. Colombia submits that, under the ICSID Arbitration Rules, (i) an oral hearing can only be dispensed with if all parties agree (see ICSID Arbitration Rule 29); and (ii) where the parties submit witness evidence, the other party must be given the right to test that evidence at an oral hearing (see ICSID Arbitration Rules 32-36). Respondent asserts that it would be premature to require Respondent to decide whether to waive its right to an oral hearing at this stage and requests that a hearing take place at the request of either the Tribunal or of any of the Parties, and that such request be made within 21 days of the date of the last written submission of the Parties.[22]

27. Eco Oro notes that Rule 29 of the ICSID Arbitration Rules simply provides that an oral hearing will follow the exchange of written submissions and that such an oral hearing has already taken place. Eco Oro submits that the Tribunal can therefore proceed as proposed in paragraph 920(6) of the Decision, i.e., [u]*pon receiving the Parties' additional submissions, the Tribunal will render its award on damages*".[23]

28. Colombia emphasises that a hearing is essential to allowing the Parties a fair opportunity to present their case and "*an essential attribute of the parties' dignity and equality*".[24] Colombia further submits that this principle is embodied in Rule 29 of the ICSID Arbitration Rules, which does not permit a hearing to be dispensed without both Parties' consent.

29. Colombia also notes that the further phase ordered by the Tribunal is not akin to a request for further post-hearing submissions, but rather a bifurcation of the proceedings. Colombia submits that the right to a hearing under Rule 29 of the ICSID Arbitration Rules

---

19 Respondent's Rebuttal, section 1.

20 Respondent's Rebuttal, section 1.

21 Claimant's Submission, p. 4.

22 Respondent's Submission, section 3.

23 Claimant's Rebuttal, p. 5. Claimant makes reference to paragraph 920(5) of the Decision, but the Tribunal has construed that reference as being a typo.

24 Respondent's Rebuttal, section 3, citing Born, International Commercial Arbitration, 2nd Ed, p. 3850 (excerpt attached to Respondent's Rebuttal).

applies to all parts of the proceedings, including "*incidental and subsidiary parts*" and that there is no basis to deny Colombia its right to request a hearing on the issues to be decided in this phase.[25]

III. ORDER

30. Having considered the Parties' Agreement (as set out in paragraph 5 above), and the Parties' positions with regard to the three procedural matters upon which agreement is outstanding, the Tribunal hereby orders the following:

a. Deadlines for potential second-round submissions

31. Whilst the Tribunal notes that a period of 90 days for second-round submissions is a significant period of time for responsive submissions on a limited number of issues, the Tribunal accepts that, given its ruling in paragraph 35 below, this may necessitate the submission of additional evidence in the second-round submissions. If further evidence is required, the Tribunal accepts that the Respondent may require input and approval from multiple governmental agencies. The Tribunal further notes that, as noted in paragraph 34 below, such evidence may extend to factual evidence with respect to the issue of remediation.

32. The Tribunal therefore holds that in the circumstances a period of 90 days is reasonable to ensure each Party has a fair opportunity to present its case with respect to the Questions.

b. Submission of additional evidence

33. The Claimant accepts that it bears the burden of proof but asserts, firstly, that it does not consider that its expert evidence needs to be revised in light of the majority Tribunal's findings and, secondly, that it can answer all the Questions, save those related to remediation, on the basis of the fact and expert evidence on the record. Against this, the Respondent asserts that the Tribunal has already decided to allow further expert evidence to be adduced and that there would be no basis on which this direction should be varied.

34. As a preliminary point, it is clear that both Parties accept there will likely be a need for additional fact and expert evidence with respect to the issue of remediation.

35. The Tribunal believes that paragraph 902 of its Decision is clear in specifying that each Party may supplement their further submissions with such expert evidence as they respectively consider necessary. The Tribunal understands the concerns raised by Eco Oro as to the potential consequential increase in costs. Nevertheless, the Tribunal expressed its concern as to the absence of evidence on the application of the Comparable Transactions methodology, or other methodologies, to the valuation of a loss that could be established as a direct consequence of the loss of the right to apply for an environmental license. Accordingly, the Tribunal believes that, to the extent either Party is of the view that further expert evidence would be of assistance to the Tribunal in ascertaining the quantum of Eco Oro's loss suffered as a direct consequence of its loss of

[25] Respondent's Rebuttal, section 3, citing Schreuer, The ICSID Convention – A Commentary, 2nd ed, p. 694 (excerpt attached to Respondent's Rebuttal).

the right to apply for an environmental licence, such evidence may be adduced with the Parties' further submissions. As this is a right extended to both Parties, there will be no adverse effect on either Party's right to be heard.

c. Right to request a hearing

36. If additional fact witness evidence is adduced by either or both Parties with respect to the issue of remediation, it is clear to the Tribunal that there should be provision for such evidence to be tested before the Tribunal unless both Parties and the Tribunal agree that no oral hearing is required. This may not be the case with respect to supplementary expert evidence, although the Tribunal recognises that at this stage it is premature to determine whether an oral hearing will be of assistance or needed.

37. Accordingly, the Tribunal orders that if either Party seeks an oral hearing, such Party must make a reasoned application within 14 days from the date of the last written submission of the Parties. If the opposing Party does not consent to such application, it must make its reasoned objection within 14 days of the date on which the application is filed. The Tribunal will determine whether or not there will be a final oral hearing on the basis of those two written submissions only and taking into account its own views as to the necessity or an oral hearing.

d. Consolidated format and timetable for the additional submissions requested by the Tribunal in the Decision

38. On the basis of (i) the Decision; (ii) the Parties' Agreement; and (iii) the Tribunal's decisions herein, the Tribunal consolidates below the rules governing the format and timetable for the additional submissions requested by the Tribunal in the Decision:

    38.1. Eco Oro will file its First Submission within 120 days of the issuance of the Tribunal's Decision on 9 September 2021.

    38.2. Colombia will file its Response Submission 120 days from the date on which Eco Oro filed its First Submission.

    38.3. Eco Oro may, at its discretion, file a Reply Submission within 90 days of the date on which Colombia filed its Response Submission. Eco Oro will indicate whether it intends to exercise its right of response within 14 days of the filing of Colombia's Response Submission.

    38.4. Insofar as Eco Oro has filed a Reply Submission, Colombia may, at its discretion, file a Rejoinder Submission within 90 days of the date on which Eco Oro filed its Reply Submission. Colombia will indicate whether it intends to exercise its right of response within 14 days of the filing of Eco Oro's Reply Submission.

    38.5. A Party's decision not to exercise its right of response does not imply that that Party is in agreement with the arguments and allegations put forward by the opposing Party in its last written submission.

38.6. The Parties agree that their written submissions will only address the questions raised by the Tribunal in paragraphs 902, 913, 919 and 920 of the Decision,[26] and in the case of any responsive submissions, the allegations put forward by the other Party in its previous submission.

38.7. The Parties may submit such additional evidence as the Parties each considers to be necessary in support of their further submissions addressing the Questions.

38.8. The Tribunal will determine whether an oral hearing will take place at the request of either of the Parties, such request to be made within 14 days from the date of the last written submission of the Parties. If the opposing Party does not consent to such application, it must make its reasoned objection within 14 days of the date on which the application is filed.

38.9. Subject to the provision in paragraph 38.8 above, following receipt of the Parties' additional submissions, the Tribunal will deliberate and proceed to render its award on damages.

On behalf of the Tribunal,

[Signed]

Ms. Juliet Blanch
President of the Tribunal
Date: 3 November 2021

[26] For ease of reference, these provisions of the Decision are set out in **Annex A** to this Procedural Order.

Annex A

Paragraphs 902, 913, 919 and 920 of the Decision

"*902. Having weighed up the similarities between the transactions identified by Eco Oro and Colombia − and subject to the point made above in relation to the absence of a license to engage in exploitation − the Tribunal considers that, in the absence of any track record of established trading, and given the presence of the three similar projects in the vicinity of Concession 3452, the evidence relating to the three Comparable Transactions identified by Eco Oro appears to offer the best evidence before the Tribunal as to the methodology that might be followed. The Tribunal therefore finds it reasonable to consider this approach in considering what loss has been suffered by Eco Oro. However, there is no evidence before the Tribunal as to the application of that methodology – or indeed any other – to the valuation of a loss that could be established as a direct consequence of the loss of the right to apply for an environmental license. In this context, before the Tribunal determines the quantum of loss suffered by Eco Oro, the Tribunal raises a number of questions to be addressed by the Parties, to be supplemented with such expert evidence as the Parties each considers to be necessary to adduce in support of their further submissions. In this regard, given, as Eco Oro accepts,[27] it has the burden of proof to make its case on damages, Eco Oro is ordered to file its submissions responsive to the following questions and Colombia is then to file its submissions in response, if any. To the extent either the Parties agree or the Tribunal so orders, a second round of sequential reply submissions will be permitted. The questions are as follows:*

a. Are the losses suffered by Eco Oro for a breach of Article 805 and Article 811 the same, and to be measured in the same way? If not, given the majority Tribunal's reasoning, what is the nature of the loss that Eco Oro has actually suffered, if any?

b. Should the expert evidence adduced by the Parties be revised, given the majority Tribunal's findings that Colombia is not in breach of Article 811 but is in breach of Article 805? If so, how?

c. Given the Tribunal's findings on the merits and given its analysis above with respect to the inapplicability both of an income-based valuation methodology and Colombia's chosen comparable transactions, is Eco Oro's proposed Comparable Transactions methodology the one to be applied, or is there an alternative methodology which should be considered given the nature of Eco Oro's losses?

d. How can Eco Oro's loss of opportunity to apply for an environmental licence to allow exploitation be valued? On what basis is the quantum of that loss, if any, to be assessed?

---

27 Claimant's Reply, para. 651.

e. What is the probability that the Santurbán Páramo overlaps with the Angostura Deposit and to what extent?

f. What is the probability that Eco Oro would have been awarded an environmental licence to allow exploitation in the following scenarios:

i. The Angostura Deposit is not within the boundaries of the páramo as determined by the final delimitation;

ii. The Angostura Deposit is partially within the boundaries of the páramo as determined by the final delimitation; or

iii. The Angostura Deposit is wholly within the boundaries of the páramo as determined by the final delimitation.

g. What is the effect on the identification of the loss suffered, and its valuation, if any, if Eco Oro failed to establish that an exercise in due diligence had been carried out prior to the decision to move to the development of an underground mine?

h. What is the correct valuation date for a breach of Article 805 of the FTA?

i. If there is a significant gap between the identified valuation date and the dates on which the Comparable Transactions took place, what adjustment, if any, should be made to the Comparable Transactions valuation?

j. What evidence, if any, is there on the record, in addition to Mr. Moseley-William's testimony that the area of Concession 3452 that does not lie within the current delimitation cannot be ascribed a value,[28] *such that no deduction should be made in the event that a fair market valuation is adopted to value Eco Oro's loss?*

k. What evidence is there to support Eco Oro's assertion of the costs it has incurred to date?"

[…]

"*913. The Tribunal accepts Eco Oro's submissions that the US Treasury Bill rate is not a commercially reasonable rate. The Parties are invited to make any final submissions on what is a commercially reasonable rate.*"

[…]

"*919. The Tribunal requests the Parties to address the following additional questions to assist it in determining this issue:*

a. What is the anticipated timetable for Eco Oro to undertake remediation work?

b. What is the likely nature of that remediation work?"

[28] Second Moseley-Williams Witness Statement, para. 31; Tr. Day 2 (Moseley-Williams), 504:4-14.

[…]

"*920. For the reasons set forth above, the Tribunal decides as follows:*

(1) The Tribunal has jurisdiction over the claims raised.

(2) By a majority, the Tribunal decides that Colombia is not in breach of Article 811 of the FTA.

(3) By a majority, the Tribunal decides that Colombia is in breach of Article 805 of the FTA.

(4) In this regard, given, as Eco Oro accepts, it has the burden of proof to make its case on damages, Eco Oro is ordered to file its submissions responsive to the following questions and Colombia is then to file its submissions in response, if any. To the extent either the Parties agree or the Tribunal so orders, a second round of sequential reply submissions will be permitted. The questions are as follows:

a. Are the losses suffered by Eco Oro for a breach of Article 805 and Article 811 the same, and to be measured in the same way? If not, given the majority Tribunal's reasoning, what is the nature of the loss that Eco Oro has actually suffered, if any?

b. Should the expert evidence adduced by the Parties be revised, given the majority Tribunal's findings that Colombia is not in breach of Article 811 but is in breach of Article 805? If so, how?

c. Given the Tribunal's findings on the merits and given its analysis above with respect to the inapplicability both of an income-based valuation methodology and Colombia's chosen comparable transactions, is Eco Oro's proposed Comparable Transactions methodology the one to be applied, or is there an alternative methodology which should be considered given the nature of Eco Oro's losses?

d. How can Eco Oro's loss of opportunity to apply for an environmental licence to allow exploitation be valued? On what basis is the quantum of that loss, if any, to be assessed?

e. What is the probability that the Santurbán Páramo overlaps with the Angostura Deposit and to what extent?

f. What is the probability that Eco Oro would have been awarded an environmental licence to allow exploitation in the following scenarios:

i. The Angostura Deposit is not within the boundaries of the páramo as determined by the final delimitation;

ii. The Angostura Deposit is partially within the boundaries of the páramo as determined by the final delimitation; or

iii. The Angostura Deposit is wholly within the boundaries of the páramo as determined by the final delimitation.

g. *What is the effect on the identification of the loss suffered, and its valuation, if any, if Eco Oro failed to establish that an exercise in due diligence had been carried out prior to the decision to move to the development of an underground mine?*

h. *What is the correct valuation date for a breach of Article 805 of the FTA?*

i. *If there is a significant gap between the identified valuation date and the dates on which the Comparable Transactions took place, what adjustment, if any, should be made to the Comparable Transactions valuation?*

j. *What evidence, if any, is there on the record, in addition to Mr. Moseley-William's testimony that the area of Concession 3452 that does not lie within the current delimitation cannot be ascribed a value, such that no deduction should be made in the event that a fair market valuation is adopted to value Eco Oro's loss?*

k. *What evidence is there to support Eco Oro's assertion of the costs it has incurred to date?*

l. *What is a commercially reasonable interest rate?*

m. *What is the anticipated timetable for Eco Oro to undertake remediation work?*

and

n. *What is the likely nature of that remediation work?*

(5) The Parties are invited to confer and reach an agreement on the format and timetable for the additional submissions requested by the Tribunal in this Decision and to appraise the Tribunal of the terms of such an agreement by no later than 7 October 2021.

(6) Upon receiving the Parties' additional submissions, the Tribunal will render its award on damages. Any award of damages will be expressly ordered to be net of all applicable Colombian taxes. Colombia will be ordered not to tax or attempt to tax the award and to indemnify Eco Oro in respect of any adverse consequences that may result from the imposition of a double taxation liability by the Colombian tax authorities if the declaration in the award recognising that the award is net of Colombian taxes is not accepted as the equivalent of evidence of payment.

(7) The Tribunal's decision on costs is reserved.

and

(8) All other claims are dismissed."