

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

**Rand Investments Ltd., William Archibald Rand, Kathleen Elizabeth Rand,
Allison Ruth Rand, Robert Harry Leander Rand and Sembi Investment Limited**

v.

Republic of Serbia

(ICSID Case No. ARB/18/8)

PROCEDURAL ORDER NO. 6

Members of the Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal

Mr. Baiju S. Vasani, Arbitrator

Prof. Marcelo G. Kohen, Arbitrator

Secretary of the Tribunal

Ms. Marisa Planells-Valero

Assistant to the Tribunal

Mr. Rahul Donde

13 January 2020

I. PROCEDURAL BACKGROUND

1. On 29 August 2019, the ICSID Secretariat, acting on behalf of the Tribunal, sent the Parties Procedural Order No. 5 (“PO 5”) containing the Transparency Rules applicable in this arbitration. The Parties were advised that they could propose redactions to the submissions already in the record within 15 days of the date of the Order.
2. On 12 September 2019, the Parties were advised that, subject to their objections, the Tribunal would request the Repository mentioned in the Transparency Rules to publish Procedural Order Nos. 1 to 5.
3. On 13 September 2019, the Respondent proposed certain redactions to the submissions already in the record (the “First Proposed Redactions”).
4. On 16 September 2019, the Claimants were advised that they could object to the First Proposed Redactions by 30 September 2019. A Transparency Schedule for future use in the arbitration was conveyed to the Parties on the same date.
5. On 27 September 2019, the Respondent proposed certain redactions to Annex A of Procedural Order No. 4 (the “Second Proposed Redactions”) in the form of the Transparency Schedule.
6. On 30 September 2019, the Claimants objected to the First Proposed Redactions.
7. On 1 October 2019, the Claimants were invited to comment on the Second Proposed Redactions by 14 October 2019 in the Respondent’s Transparency Schedule. The Parties were advised that, in the future, they should comply with the time limits set in PO 5 without expecting a confirmation from the ICSID Secretariat.

8. On 4 October 2019, the Claimants filed their Reply accompanied by five witness statements and seven expert reports, exhibits CE-380 to CE-769 and legal authorities CLA-069 to CLA-152.
9. On 14 October 2019, the Claimants submitted their objections to the Second Proposed Redactions.
10. On 19 October 2019, the Respondent proposed certain redactions to the Claimant's Reply and accompanying documentation (the "Third Proposed Redactions").
11. On 21 October 2019, the Tribunal invited the Respondent to comment on the Claimants' objections to redaction by 28 October 2019 in the form of the Transparency Schedule. The Respondent was asked to identify specifically the information that was not in the public domain. The Claimants were to respond by 4 November 2019, after which the Tribunal would decide.
12. On 28 October 2019, the Respondent commented on the Claimants' Objections to the First and Second Proposed Redactions in the form of the Transparency Schedule.
13. On 3 November 2019, the Claimants submitted further comments on the Respondent's communication of 28 October 2019, and their objections to the Third Proposed Redactions.
14. Accordingly, the Tribunal must now determine whether to sustain the redactions proposed by the Respondent.

II. PARTIES' POSITIONS

A. Respondent's Position

15. As mentioned above, the First Proposed Redactions were contained in the Respondent's communication of 13 September 2019. Its Second Proposed Redactions were contained in a Transparency Schedule annexed to its communication of 27 September 2019. Their Third Proposed Redactions were contained in a Transparency Schedule annexed to its communication of 19 October 2019. Further clarifications and a revised Transparency Schedule containing the First and Second Proposed Redactions were submitted on 28 October 2019.
16. The Respondent wishes to redact information "concerning various valuations of BD Agro's assets" as it is "confidential business information" under PO 5 and Article 1 of the Canada-Serbia BIT. It points out that, as BD Agro was recently sold at an auction, "publishing information on the value of its assets may hinder the property rights and business interests of its buyer".¹ Further, "protecting this information will in no way impact the public interest in transparency in treaty-based investor-State arbitration nor the Parties' interest in a fair and efficient resolution of disputes",² and may in fact have the opposite effect as "Claimants' intention is to attract the public attention to the case and argue their case not only before this Tribunal but also before the general public, which could burden the proceedings with unnecessary publicity".³
17. On this basis, the Respondent requests redactions of certain portions of the following:

¹ Respondent's letter of 13 September 2019, ¶ 3.

² *Id.*

³ Respondent's letter of 28 October 2019, ¶ 39.

- Request for Arbitration of 9 February 2019;
- Memorial of 16 January 2019;
- Consolidated List of Claimant’s Documents of 16 January 2019;
- Second Witness Statement of Mr. Igor Markićević of 16 January 2019;
- Counter-Memorial of 19 April 2019.
- Reply Memorial of 4 October 2019.
- Third Witness Statement of Mr. Igor Markićević of 3 October 2019;
- Consolidated List of Claimant’s Documents of 4 October 2019;

18. The Respondent also wishes to exclude from publication in their entirety the expert reports of Dr. Richard Hern of 16 January 2019 and 3 October 2019, of Mr. Sandy Cowan of 19 April 2019, and of Mr. Krzysztof Grzesik of 3 October 2019 stating, *inter alia*, that “specific redaction of all business information contained in [the reports] would effectively render such documents meaningless, as their only purpose and predominant content is exactly the determination of BD Agro’s value.”⁴ Moreover, the Hern and Cowan’s reports explicitly state that they are confidential.⁵ If the Tribunal were to find that these documents should nevertheless be published, the Respondent proposes the redaction of certain sections of the reports.⁶
19. The Respondent explains that after BD Agro was sold at a public auction, it was “on the market” like any other company. It is, therefore, entitled to protect information about the valuation of its assets, disclosing such information only to those whom it chooses and even then under a condition of confidentiality.⁷ The valuations to be disclosed now are of particular identifiable assets of BD Agro, unlike the information available on the website of the Serbian Business Register

⁴ Respondent’s letter of 13 September 2019, ¶ 4, and Respondent’s Transparency Schedule of 19 October 2019.

⁵ Respondent’s letter of 28 October 2019, ¶ 33.

⁶ Respondent’s letter of 13 September 2019, ¶ 5, and Respondent’s Transparency Schedule of 19 October 2019.

⁷ Respondent’s letter of 28 October 2019, ¶ 9.

Agency which contains information about the aggregate value of BD Agro's assets. Disclosing this information would make BD Agro's negotiating position with other commercial entities more difficult, as the company would never be able to sell the assets in question for a higher price.⁸

20. The Respondent further asserts that the scope and purpose of the valuations which are now to be disclosed should also be taken into account. None of the valuations were prepared for the purpose of being made publicly available years after they were submitted; they were made for the sale of BD Agro's individual assets. None of the authors of the valuations consented to their publication.⁹
21. The Respondent contests that the valuations were available to the public because they were disclosed during the bankruptcy proceedings. In fact, the "majority" of the valuations were part of the Serbian bankruptcy court case file, which only persons with "legal standing" in the BD Agro bankruptcy proceedings could access.¹⁰
22. The Respondent equally opposes the Claimants' position on Article 15 of Annex A to PO 5, contending that sub-articles (a) and (b) thereof operate in different circumstances. Confidential business information under Article 15(a) need not meet the criteria of the Serbian Law on Protection of Trade Secrecy as, unlike in Article 15(b), there is no such requirement in Article 15(a). This provision merely requires that information "should reasonably be considered confidential, taking into account how such information is usually treated in practice by businesses."¹¹ In respect of Article 15(b), the Claimant incorrectly concludes that such provision can only be satisfied if the criteria for confidentiality prescribed by the

⁸ Respondent's letter of 28 October 2019, ¶¶ 11-12.

⁹ Respondent's letter of 28 October 2019, ¶ 27.

¹⁰ Respondent's letter of 28 October 2019, ¶ 14.

¹¹ Respondent's letter of 28 October 2019, ¶ 20.

Serbian Law on Protection of Trade Secrecy are met. However, there is no such suggestion in Article 1 of the Canada-Serbia BIT; the notion of confidential information under the Canada-Serbia BIT to which Article 15(b) refers is “much wider”. For instance, “Article 10(2) of the Serbian Bankruptcy Law, by specifying that only creditors are allowed to access the whole bankruptcy court case file of a debtor, in fact prevents disclosure of the Valuations to any third party within the meaning of Article 1 of the Canada-Serbia BIT.”¹²

23. The Respondent further contends that even if one were to accept the Claimants’ reliance on Article 4 of the Serbian Law on Protection of Trade Secrecy, that law does not impose strict conditions which if not cumulatively met would deprive the information from being considered confidential. For the Respondent, “[s]uch an interpretation would be contrary to the underlying purpose of the law which was to enable the holder of information to decide whether it is confidential or not, even if the four criteria quoted by Claimants are not fulfilled.”¹³ Indeed, paragraph 2(2) of Article 4 of the Serbian Law on Protection of Trade Secrecy “stipulates that confidential information is also ‘any other information which is under a separate law, other regulation or a decision of a legal entity considered as confidential.’”¹⁴.

24. The Respondent further disputes that the fact that the valuations are prepared from publicly available financial statements means that they should not be redacted. The financial statements do not contain valuation of specific assets of BD Agro, they instead provide aggregate data about the value of BD Agro’s

¹² Respondent’s letter of 28 October 2019, ¶¶ 23 -24.

¹³ Respondent’s letter of 28 October 2019, ¶ 25.

¹⁴ Respondent’s letter of 28 October 2019, ¶ 26.

assets. This information is different from information about the value of the company's individual assets.¹⁵

25. The Respondent also challenges that a majority of the information is also available in the public domain, contending that “only information that are available on the web site of the Serbian Business Registers Agency and on the web site of the Bankruptcy Supervision Agency should be considered as being already in public domain, as they are easily accessible to the general public through simple online search. Information which are not available on these two websites should be presumed not to be in public domain.”¹⁶

B. Claimants' Position

26. The Claimants object to the Respondent's proposed redactions on the basis that the information sought to be redacted is not confidential under the transparency framework applicable in this arbitration being the Transparency Rules, the Canada-Serbia BIT and the Serbian Law on Protection of Trade Secrets.
27. The Claimants submit that the information sought to be redacted is already in the public domain and available to any “interested person” “in published legal acts and regulations, [...] in the cadaster, [...] in the financial statements published by BD Agro and information available in the court files related to BD Agro's reorganization and bankruptcy proceedings”.¹⁷ In addition, both the Respondent and BD Agro have been aware that the information regarding the value of BD Agro's assets is not confidential. Indeed, BD Agro has not protected or restricted

¹⁵ Respondent's letter of 28 October 2019, ¶ 29.

¹⁶ Respondent's letter of 28 October 2019, ¶ 30.

¹⁷ Claimants' letter of 3 November 2019, p.5.

access to information about the value of its assets disclosed in the bankruptcy proceedings.¹⁸

28. The Claimants further submit that the Respondent has failed to explain why the business interests of BD Agro’s new owner would be jeopardized by publishing information regarding the valuation of BD Agro as of 21 October 2015 and earlier. They contend that there were certain discrepancies in the sale of BD Agro’s assets, arguing that “[t]he desire of the Serbian government to avoid embarrassment from this sale is not a relevant reason for making the valuations of BD Agro’s assets confidential in this arbitration.”¹⁹
29. Further, according to the Claimants, the criteria mentioned in Article 4 of the Trade Secrets Law to designate information as confidential are not fulfilled in this case. The Respondent is wrong to suggest that the criteria are not cumulative, the Explanatory Note to the Law states to the contrary. Further, the reference in Article 4 to information designated as confidential under different circumstances is unavailing as “Serbia does not refer to any other Serbian laws—or any other authority for that matter—that would define confidential business information in a manner that would encompass the information that Serbia proposes to redact.”²⁰
30. The Claimants further contend that the information to be redacted does not merit protection under Article 15(a) or 15(b) of the Transparency Rules either. That provision does not define “confidential business information”, for which one must turn to the Trade Secrets Law, examined above. The Respondent’s proposed definition is unsupported by any legal authority. Besides, it is “unworkable” as “it does not explain the specific business practice that would ultimately distinguish confidential from non-confidential information” and would lead one

¹⁸ Claimants’ letter of 3 November 2019, p.9.

¹⁹ Claimants’ letter of 30 September 2019, p. 6-7.

²⁰ Claimants’ letter of 3 November 2019, p.4.

back to the definition of confidential information in the Trade Secrets Law. Article 15(b) explicitly refers to the Canada-Serbia BIT, which, in turn, refers to Serbian law. The Respondent has not indicated which other statute or regulation would provide guidance on the meaning of confidential business information other than the Trade Secret Law.²¹

31. The Claimants reject the Respondent’s submission that only a few persons have access to BD Agro’s bankruptcy proceedings. They point out that, pursuant to Articles 10(1), (4) and (5) of the Bankruptcy Law, bankruptcy proceedings “shall be open to the public” and that all submissions of the bankruptcy trustee and other participants in the proceedings, including their attachments, are to be made available online. Further, Article 159(3) of the Bankruptcy Law provides that all pre-pack reorganization plans are to be published online as well. In any event, even if the Respondent were right, there were over 300 registered creditors in the bankruptcy proceedings and over 450 creditors in the reorganization proceedings, all of whom had full access to the relevant information and could use it as they saw fit. In the circumstances, “Serbia cannot seriously claim that information available to 300-450 creditors, who are not subject to any obligations of non-disclosure and, hence, not limited in the use or dissemination of that information, is confidential and must be protected by the Tribunal.”²²
32. The Claimants deem it irrelevant that the valuations to be disclosed were not “prepared for the purposes of being available to the public” or that Dr. Hern and Mr. Cowan state that their reports are confidential. The owners of the information waived any potential confidentiality when they submitted their reports in the reorganization and bankruptcy proceedings, which were available to the public. Similarly, Dr. Hern and Mr. Cowan’s reports were prepared for the purposes of

²¹ *Id.*

²² Claimants’ letter of 3 November 2019, p. 7-8.

the present arbitration, and their confidentiality is subject to the Transparency Rules governing this arbitration. In any event, the Claimants waive confidentiality of any information contained in the expert reports.²³

33. The Claimants also challenge the Respondent’s submission that information which is not on the websites of the Serbian Business Register Agency or the Bankruptcy Supervision Agency should not be considered as in the public domain. For them, “where the law prescribes the publication on-line of certain information, such as the publication of the submissions in the bankruptcy proceedings under Article 10(5), then such information cannot be considered as confidential regardless of whether it has been published yet or will be published only in the future.”²⁴

III. ANALYSIS

34. The Respondent seeks to redact information concerning various valuations of BD Agro’s assets, on the basis that this information is confidential business information under paragraph 15 of the Transparency Rules and Article 1 of the Canada-Serbia BIT.
35. Paragraph 15 of the Transparency Rules defines “confidential information” for the purposes of this arbitration as follows:

“15. Confidential information consists of:

- a. Confidential business information;
- b. Information that is deemed confidential under the Canada-Serbia BIT;

²³ Claimants’ letter of 4 November 2019, p. 11-12.

²⁴ Claimants’ letter of 4 November 2019, p. 8.

- c. Information that is protected against being made available to the public, in the case of the information of the respondent State, under the law of the respondent State, and in the case of other information, under any law or rules determined by the arbitral tribunal to be applicable to the disclosure of such information; or
- d. Information the disclosure of which would impede law enforcement.”

36. Thus, confidential information includes “confidential business information”, as well as “information that is deemed confidential under the Canada-Serbia BIT”.

37. In this latter respect, Article 1 of the Canada-Serbia BIT defines “confidential information” in the following manner:

“confidential information” means confidential business information or information that is privileged or otherwise protected from disclosure under the law of a Party”.

38. The “law of a Party” relevant for present purposes is Article 4 of the Serbian Law on Protection of Trade Secrets, which contains the following definition of a “trade secret” :

“trade secret, within the meaning of this law, is any information which has commercial value because it is not generally known or available to third persons who could gain economic advantage by using or communicating said information, and which is protected by the holder by appropriate measures in accordance with the law, business policy, contractual obligations or appropriate standards with the aim of preserving its secrecy, which information could cause damages to the holder of the trade secret if communicated to a third person.”

39. Confidential information under Serbian law is thus information that has a commercial value, that is not generally known and/or known to persons who could gain from its use or disclosure and that is protected by its holder. The definition also provides that communication of such information could result in

harm to its holder. The Explanatory Report to the Law provides that these conditions are cumulative:

“The essential elements required for protection are secrecy, commercial value and relevant measures undertaken by the holder of trade secret in order to protect its secrecy. The stated conditions must be cumulatively fulfilled and essentially the trade secret is a secret, commercially valuable data, for which relevant measures for protection of its secrecy have been undertaken by the person legally controlling that data (holder).”²⁵

40. Accordingly, to qualify as confidential information under the Transparency Rules, the information must not be available to the public. Here, however, much of the information that the Respondent seeks to protect is in the public domain through published legal acts and regulations,²⁶ BD Agro’s financial statements,²⁷ court files relating to BD Agro’s reorganization and bankruptcy proceedings, and cadaster records. For instance, BD Agro’s pre-pack reorganization plan,²⁸ contemporaneous valuations of BD Agro and its assets,²⁹ and the valuations prepared for the sale of BD Agro in bankruptcy proceedings³⁰ are all available to the public pursuant to Article 10 of the Serbian Bankruptcy Law,³¹ which also requires the immediate publication of all submissions in the bankruptcy

²⁵ Exh. CE-797.

²⁶ Exh. CE-143, General Regulation Plan for BD Agro Complex Zones A, B and C in the Suburb of Dobanovci, Municipality of Surčin of 2008, which includes information about the classification of BD Agro’s land as commercial, industrial and agricultural. See also, Claimants’ letter of 3 November 2011, p.5.

²⁷ Exh. CE-171, Notes to the 2015 Financial Statements, note 7 and note 19, p.11 and p.16, which includes information about the categories of assets owned by BD Agro and their recorded value. See also, Claimants’ letter of 3 November 2011, p.5.

²⁸ Exh. CE-101.

²⁹ See, for instance, Exh. CE-172, 175, 176.

³⁰ Exh. RE-191.

³¹ Article 10 of the Serbian Bankruptcy Law: “[b]ankruptcy proceedings shall be open to the public and all participants in the proceedings shall be entitled to a timely access to data relating to the conduct of the proceedings, except the data constituting a business or official secret. All creditors have the right to ask and timely receive from the bankruptcy [trustee] all information related to the bankruptcy debtor, the course of the bankruptcy proceedings, and property and management of the assets of the bankruptcy debtor”.

proceedings.³² Even if the Respondent were correct that only limited categories of persons had access to information in the bankruptcy proceedings, which position appears contrary to Article 10 of the Bankruptcy Law,³³ it remains that over 300 creditors had access to that information. Further, much of the information that the Respondent proposes to redact was available on the website of the Serbian Business Register Agency as of September 2019.³⁴

41. The Respondent has not sufficiently established why publicly available information should be protected from disclosure in this arbitration.³⁵ Neither has it established why information that can be compiled from such publicly available information should be protected.³⁶ It has also failed to establish that the publication of this information – some of which pre-dates the auction of BD Agro to a third party buyer by several years – would “hinder the property rights and business interests of [BD Agro’s] buyer.” Finally, the Respondent has not explained how the absence of consent of some authors of information, or the invocation of confidentiality by some authors would prevent the disclosure of information. All documents in this arbitration are subject to the Transparency Rules set out by the Tribunal in consultation with the Parties. Those Rules provide that all information in this arbitration shall be made available to the

³² Article 10 of the Serbian Bankruptcy Law: “[a]ll submissions of the bankruptcy administrator and the participants in the proceedings with all attachments shall be published, immediately after reception, on the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings, but complying with regulations governing the protection of personal data”.

³³ Exh. RE-197. See, for instance, paragraph 1: “Bankruptcy proceedings shall be open to the public and all participants in the proceedings shall be entitled to a timely access to data relating to the conduct of the proceedings, except the data constituting a business or official secret.”

³⁴ Exh. CE-379.

³⁵ Paragraphs 16 and 17 of the Transparency Rules provide that a proposal for redaction of confidential information shall identify the part of the document sought to be redacted and explain the reasons for redaction.

³⁶ See, for instance, Request 7, Transparency Schedule.

public subject to certain exceptions. The consent of each author and unilateral claims of transparency are thus irrelevant in this context.

42. In the circumstances, the Tribunal cannot consider that the information which the Respondent seeks to protect is confidential. As a result, it must refuse the Respondent's proposed redactions. According to paragraph 20 of the Transparency Order, the Respondent thus has 15 days to withdraw the information it introduced into the record, if it so wishes.
43. Furthermore, at the present stage, the Tribunal does not grant the Respondent's request to redact the entirety of the expert reports of Messrs. Hern, Cowan and Grzesik. Indeed, Article 9 of the Transparency Rules requires expert reports to be made available to the public only "upon request by any person made to the ICSID Secretariat." Since no third party has requested access to the expert reports, the latter shall not to be published as matters presently stands. If a request for consultation of the expert reports were presented in the future, the Respondent would be free to renew its request for protection and the Tribunal would then revisit the issue.
44. For the sake of completeness, the Tribunal has entered its decision on each redaction requested by the Respondent in its Transparency Schedules of 19 and 28 October 2019 and has attached the completed Schedules as Annexes A and B to this Order. Those decisions reflect the Tribunal's conclusions above.

IV. DECISION

45. For the reasons set forth above, the Tribunal:
 - (i) Denies the redactions proposed by the Respondent in its communications of 13 September 2019, 27 September 2019, 19 October 2019, and

28 October 2019 as reflected in its Transparency Schedules of 19 and 28 October 2019. Completed versions of those Schedules are at Annex A and B hereto and form an integral part of this Order.

- (ii) Directs that, in accordance with Article 20 of the Transparency Rules, the Respondent may withdraw from the record all or part of the information that it sought to protect from publication 15 days from the date of this Order. If it chooses to do so, the Respondent shall then submit these documents without the respective information 10 days thereafter.
- (iii) Will direct the Repository to publish, the documents mentioned in Article 8 of the Transparency Rules once the process set out in subparagraph (ii) above is completed.

46. Prof. Kohen's declaration is appended.

On behalf of the Tribunal,

[signed]

Professor Gabrielle Kaufmann-Kohler

President of the Tribunal

ANNEX A
TRANSPARENCY SCHEDULE OF 19 OCTOBER 2019

TRANSPARENCY SCHEDULE

No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
1.	<p style="text-align: center;">Third Witness Statement of Mr. Igor Markićević, para. 21</p> <p>“While, in 2008 and 2009, BD Agro had sold parts of this land at a price between EUR 15 and EUR 23/m²,²¹ Adventis valued the same land between EUR 1.7 and EUR 1.9/m².²²”</p>	<p>Having in mind that BD Agro was sold at an auction on 9 April 2019, it is evident that publishing information on the value of its assets may hinder the property rights and business interests of its buyer. In other words, the documents reveal and establish sensitive financial information regarding a company now owned by a third party. Having that in mind, their unrestricted publication would clearly jeopardize the business interests of BD Agro's new owner.</p> <p>Furthermore, as the bankruptcy proceeding is still ongoing against the remaining bankruptcy mass of BD Agro, the interests of its creditors are at stake as well.</p>	<p>Serbia's proposal should be rejected.</p> <p>Information that Serbia proposes to redact is <i>not</i> confidential</p> <p><u>Generally:</u></p> <p>Information that Serbia proposes to redact is <i>not</i> confidential information under Article 15(a) of Annex A to Procedural Order No. 5 or Article 1 of the Canada- Serbia BIT.</p> <p>As the Claimants explain in detail in their letter of 3 November 2019, this is because the description of BD Agro's assets and their valuations: (i) is publicly available; (ii) does not have a commercial value for BD Agro or its owner; (iii) has never been protected as confidential by BD Agro; and (iv) its disclosure cannot harm BD Agro or its owner.¹</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p> <p>The Tribunal also notes the Claimants' statement that they “obtained both the information about the 2008 and 2009 sales of BD Agro's land, as well as about the Adventis valuation, from BD Agro contemporaneously and without any restrictions on their use or</p>

¹ Claimants' letter to the Tribunal, 3 November 2019, pp. 5-11.

		Bearing in mind the above, the		dissemination.”
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
		<p>pertinent information should be deemed as <u>confidential business information</u> under PO5, para. 15(a), and Article 1 of the Canada- Serbia BIT. For the avoidance of doubt, Respondent does not seek protection of this information under Serbian law.²</p> <p>On the other hand, it is equally clear that protecting this information will in no way impact the public interest in transparency in treaty-based investor-State arbitration nor the Parties' interest in a fair and efficient resolution of disputes.</p> <p>Furthermore, even if certain information proposed for redaction might be available in bankruptcy proceedings, that does not mean</p>	<p>Serbia's vague allegations that "<i>publishing information on the value of its assets may hinder the property rights and business interests of [BD Agro's] buyer</i>" or that publication of information about the value of BD Agro's assets would "<i>jeopardize the business interests of BD Agro's new owner</i>" are completely unsubstantiated.</p> <p>As the Claimants explain in detail in their letter of 3 November 2019, Serbia did not submit any evidence that BD Agro and Mr. Kostić consider the information about the value of BD Agro's assets to be confidential, or that its publication would be detrimental to BD Agro in any way.³</p> <p>To the contrary, BD Agro has always been aware that the information regarding the description and value of BD Agro's assets does <i>not</i> represent confidential information. Indeed, most of the information that Serbia proposes</p>	

² Claimant wrongly contends that the notion of „confidential business information“ should be assessed under the Serbian Law on Protection of Trade Secrets (*see* Claimants' letter dated 30 September 2019). However, both the Canada-Serbia BIT (Art. 1) and PO5 (para. 15), clearly differentiate between “confidential business information“ and information that is protected from disclosure under the law of a Party *i.e.* the respondent State.

³ Claimants' letter to the Tribunal, 3 November 2019, p. 10.

		that such information is public.	to redact comes from documents that were prepared before expropriation of	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
		<p>Namely, under Article 10(2) of the Serbian Bankruptcy Law,⁴ only <u>creditors</u> are entitled to receive all information about the bankruptcy debtor and its property. Therefore, even if the designated redaction relates to information revealed within the bankruptcy proceeding of BD Agro, this fact obviously does not render the information public.</p>	<p>BD Agro in October 2015. BD Agro—at that time still owned by the Claimants—did not consider the information that Serbia now proposes to redact to be confidential and did not protect it in any way.⁵</p> <p>BD Agro's approach did not change even after Serbia expropriated the shares of BD Agro. BD Agro continued to do nothing to protect or restrict access to the information about the value of its assets disclosed in the financial reports or reorganization and bankruptcy proceedings, despite the fact that it had an ample opportunity to do so.</p> <p>For example, while the Bankruptcy Law provides for publicity of the bankruptcy proceedings it also contains an express exemption for "<i>data constituting a business or official secret.</i>" Such data can be excluded</p>	

⁴ Article 10 of the Serbian Bankruptcy Law.

⁵ Claimants' letter to the Tribunal, 3 November 2019, p. 9.

			<p>from publication by a judge, based on the proposal of a bankruptcy trustee. Serbia did not submit any evidence that BD Agro has ever attempted to have any information excluded from publication.</p>	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>The Claimants' review of the bankruptcy files also did not reveal any such request by BD Agro or its bankruptcy trustee. As a result, such information does not qualify as confidential because BD Agro has not done anything to protect it.⁶</p> <p>Serbia's allegation that disclosure of information about the value of BD Agro's assets might somehow impair rights of BD Agro's creditors because "<i>the bankruptcy proceeding is still ongoing against the remaining bankruptcy mass of BD Agro</i>" is equally misplaced. Again, Serbia does not provide any evidence of how the publication of the information about the value of BD Agro's assets could hurt the creditors. Indeed, it cannot. To the contrary, publication of valuations done in this arbitration by Dr. Hern or Messrs. Cowan and Grzesik, would be favorable to the creditors because interested bidders would have access to independent valuations that highlight the significant value of BD Agro's assets.</p>	

⁶ Claimants' letter to the Tribunal, 3 November 2019, p. 9.

No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>Finally, Serbia's argument that not all information available in bankruptcy proceedings is public is simply incorrect. Pursuant to Articles 10(1), 10(4) and 10(5) of the Serbian Bankruptcy Law, court proceedings related to BD Agro's reorganization and bankruptcy "<i>shall be open to the public</i>" and <i>all</i> submissions in the these proceedings, together with the accompanying documents, shall be "<i>published, immediately after reception, on the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings [...].</i>"⁷</p> <p>The principle of publicity of the reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre-pack reorganization plans are to be published online as well.⁸</p>	

⁷ Bankruptcy Law, Art. 10, **RE-197**.

⁸ Bankruptcy Law, Art. 159(3), **CE-799**.

No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>As the Claimants explain in detail in their letter of 3 November 2019, Article 10(2)⁹ merely states that the creditors are entitled to request certain information <i>directly</i> from a bankruptcy trustee. Nothing more and nothing less. It does not impact the legal obligation of publicity of the reorganization and bankruptcy proceedings established under Article 10(1), 10(4), 10(5) and 159(3).¹⁰</p> <p>Furthermore, the information included in the reorganization and bankruptcy files would be publicly available even if Serbia were correct that the access to documents from the files is limited to the creditors— and it is not. There are over 300 registered creditors in the bankruptcy proceedings and there were more than 450 creditors in the reorganization proceedings. All these creditors can access information in the</p>	

⁹ Which states the following: “All creditors have the right to ask and timely receive from the bankruptcy [trustee] all information related to the bankruptcy debtor, the course of the bankruptcy proceedings, and property and management of the assets of the bankruptcy debtor.”

¹⁰ Claimants’ letter to the Tribunal, 3 November 2019, p. 8.

			<p>court files and further use it in any way they deem fit. Serbia cannot seriously claim that information available to 300-450 creditors,</p>	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>who are not subject to any obligations of non-disclosure and, hence, not limited in the use or dissemination of that information, is confidential and must be protected by the Tribunal.¹¹</p> <p>The Claimants desire transparency of these proceedings—as is required under the Canada-Serbia BIT and the Transparency Rules.</p> <p><u>Specifically:</u></p> <p>Valuation prepared by Adventis Real Estate Management d.o.o. in September 2014 (“Adventis” and the “Adventis Valuation”)¹² is publicly available as a part of the court file related to BD Agro’s reorganization. As explained above, Serbian law requires that the reorganization and bankruptcy proceedings “<i>shall be open to the public</i>” and <i>all</i> submissions in the these proceedings, together with the</p>	

¹¹ Claimants’ letter to the Tribunal, 3 November 2019, p. 8.

¹² Valuation Report of real estate owned by BD Agro a.d. Dobanovci at several locations in Serbia as at 30 August 2014 by Adventis Real Estate Management D.O.O., September 2014, **CE-508**.

			accompanying documents, shall be	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p><i>“published, immediately after reception, on the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings [...].”</i>¹³</p> <p>The principle of transparency of the reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre-pack reorganization plans are to be published online as well.¹⁴</p> <p>Where the law prescribes the publication on-line of certain information, then such information cannot be considered as confidential regardless of whether it has been published yet or will be published only in the future.¹⁵</p> <p>In any case, the text of the Pre-pack</p>	

¹³ Bankruptcy Law, Art. 10, **RE-197**.

¹⁴ Bankruptcy Law, Art. 159(3), **CE-799**.

¹⁵ Claimants' letter to the Tribunal, 3 November 2019, pp. 5-9.

			Reorganization Plan, including the	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>Adventis valuation, is available at the website of the Serbian Business Register Agency.¹⁶ Under Serbia's own case, this means that his information <i>"should be considered as being already in public domain, as [it is] easily accessible to the general public through simple online search."</i>¹⁷</p> <p>Information about the price for which BD Agro sold land in 2008 and 2009 was disclosed in the Notes to BD Agro's Financial Statements.¹⁸</p> <p>The Claimants obtained both the information about the 2008 and 2009 sales of BD Agro's land, as well as about the Adventis valuation, from BD Agro contemporaneously and without any restrictions on their use or dissemination.</p>	

¹⁶ The website is accessible through the following link: <http://pretraga2.apr.gov.rs/EnterpriseWebSearchWeb/Details/Details?beid=1028779&rnd=1D6E72009BA8F9AD4591D24A88CE2AC8E53669BE>. See also Webpage of the Business Registers Agency, 28 September 2019 (accessed), **CE-379**.

¹⁷ Serbia's letter to the Tribunal, 28 October 2019, ¶ 30.

¹⁸ Notes to Financial Statements of BD Agro for year 2008, 3 July 2017 (accessed), p. 17 (Serbian), **CE-419 (corrected)**; Notes to Financial Statements of BD Agro for year 2009, 3 July 2017 (accessed), p. 17 (Serbian), **CE-593 (corrected)**;

No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
2.	<p>Third Witness Statement of Mr. Igor Markićević, para. 102</p> <p>“JLL valued BD Agro, including its land and buildings at EUR 14,600,000.¹²⁴ BD Agro’s industrial and commercial-land was valued at EUR 4,670,000, or approximately EUR 1.74/m².¹²⁵”</p>	<p>Respondent requests redaction of the valuation of BD Agro’s assets contained in paragraph 102 for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p> <p>Valuation of provided by Jones Lang LaSalle d.o.o. (“JLL” and the “JLL Valuation”)¹⁹ is publicly available as a part of the court file related to BD Agro’s reorganization. As explained above, Serbian law requires that the reorganization proceedings “<i>shall be open to the public</i>” and <i>all</i> submissions in the these proceedings, together with the accompanying documents, shall be “<i>published, immediately after reception, on the public website of the</i></p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>

¹⁹ Jones Lang LaSalle d.o.o., Report on the Valuation of Immovable Property of BD Agro, located in Dobanovci, Serbia, February 2015, CE-176.

			<i>competent commercial court or in some other manner that allows the public to be informed about</i>	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p><i>the progress of the bankruptcy proceedings [...].</i>²⁰</p> <p>The principle of transparency of the reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre-pack reorganization plans are to be published online as well.²¹</p> <p>Where the law prescribes the publication on-line of certain information, then such information cannot be considered as confidential regardless of whether it has been published yet or will be published only in the future.²²</p>	
3.	<p>Third Witness Statement of Mr. Igor Markićević, para. 104</p> <p>“As I explained</p>	<p>Respondent requests redaction of the valuation of BD Agro’s assets contained in paragraph 104 for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is</p>

²⁰ Bankruptcy Law, Art. 10, **RE-197**.

²¹ Bankruptcy Law, Art. 159(3), **CE-799**.

²² Claimants’ letter to the Tribunal, 3 November 2019, pp. 5-9.

	above, in 2008 and 2009, BD			not confidential. The Tribunal also notes the Claimants' statement that the valuations by Serbian tax authorities are publicly available under the Serbian Law on Free Access to Information of Public Importance, and that the Claimants themselves obtained the valuations through this law.
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>Agro had sold parts of this land for the price between EUR 15 and EUR 23/m².¹²⁸ Furthermore, I am aware that, in 2016, Serbian tax authorities valued various land plots in Batajnica,¹²⁹ a location that is only around 20km from BD Agro's industrial and commercial land, at a price between approximately EUR 28 and EUR 37/m².¹³⁰"</p>		<p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p> <p>The valuations by Serbian tax authorities are publicly available because they can be requested by anyone under the Serbian Law on Free Access to Information of Public Importance.²³ The Claimants themselves obtained the valuations through such request.</p> <p>With respect to the information about the price for which BD Agro sold land in 2008 and 2009, the Claimants refer to the specific part of their response under point 1 above.</p>	
4.	<p>Second Expert Report of Mr. Richard Hern, entirely.</p> <p>Alternatively,</p>	<p>Respondent requests redaction of the valuation of BD Agro's assets contained the Second Expert Report of Mr. Richard Hern for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected.</p> <p>Serbia cannot request redaction of the entire second expert report of Dr. Hern</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the entire expert report of Dr. Hern cannot</p>

²³ Law on Free Access to Information of Public Importance, CE-800.

	Sec. 1.3-7.2 (pp. 6-78), Appendix B.1-C.2 (pp.		As the Claimants explain in detail in their letter of 3 November 2019, Serbia's request	be redacted. The parts of the report identified by the Respondent cannot be redacted either as the information sought to be redacted is not confidential for the reasons mentioned in the PO.
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	83-90)	<p>Respondent considers that specific redaction of all confidential business information contained in this report would effectively render the report meaningless, as its only purpose and predominant content is exactly the determination of BD Agro's value. In other words, this document cannot be reasonably redacted in only specific parts, meaning that its complete exclusion would be the most appropriate way of protecting confidentiality. Alternatively, in case the Tribunal considers that the said report must nevertheless be published, Respondent proposes, for the same reasons, the redaction of the parts specified in the previous column.</p>	<p>is at odds with the plain text of Article 9 of Annex A to Procedural Order No. 5 (the "Transparency Rules"), which orders that all "<i>expert reports and witness statements, exclusive of the exhibits thereto, shall be made available to the public, upon request by any person made to the ICSID Secretariat.</i>"²⁴</p> <p>The Transparency Rules allow the Parties to propose only redaction of <i>specific</i> information that qualifies as confidential. It does not allow the Parties to request exclusion from publication of entire documents on the basis that they may contain <i>some</i> confidential information.²⁵</p> <p>Serbia's alternative request is unjustified</p> <p>Serbia's alternative proposal to redact Sections 1.3-7.2 (pp. 6-78) and Appendices B.1-C.2 (pp. 83-90) of Dr.</p>	

²⁴ Transparency Rules, Art. 9.

²⁵ Claimants' letter to the Tribunal, 3 November 2019, p. 11.

			<p>Hern's second expert report is equally unjustified. This is because Serbia did not provide any explanation as to what specific information</p>	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>contained in these parts of Dr. Hern's second expert report represents confidential information—let alone why the presence of such alleged confidential information warrants the redaction of entire sections of Dr. Hern's second expert report.</p> <p>As explained in Article 17 of the Transparency Rules, a proposal for redaction of confidential information shall “<i>specifically identify the part (or parts) of the document sought to be designated as confidential and explain the reasons for confidentiality.</i>”²⁶ Serbia did not do so.</p> <p>Information that Serbia proposes to redact is <i>not</i> confidential</p> <p>The Claimants hereby incorporate their response provided under point 1 above and waive confidentiality of any information contained in the expert reports submitted by Dr. Hern and</p>	

²⁶ Transparency Rules, Art. 17.

			confirm that he agrees with their publication. ²⁷	
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²⁷ Claimants' letter to the Tribunal, 3 November 2019, pp. 11-12.

No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
5.	<p>Expert Report of Mr. Krzysztof Grzesik, entirely.</p> <p>Alternative y, fn. 1 (“Report on the Valuation of the Market Value of Building Land in the BD-Agro Complex-Zones A, B and C in the Town of Dobanovei as at 31 August 2014 drafted in December 2014 by Pero Mrgud, CE-175; Valuation Report, Land and Farm of BD-Agro in Dobanovei, as at 18 February 2015 by Jones Lang LaSalle, CE-176”), para. 3.1.5, fn. 6 (“Translation of</p>	<p>Respondent requests redaction of the valuation of BD Agro’s assets contained in the Expert Report of Mr. Krzysztof Grzesik for the same reasons noted under points 1 and 4 hereunder.</p>	<p>Serbia’s proposal should be rejected.</p> <p>Serbia cannot request redaction of the entire expert report of Mr. Grzesik</p> <p>The Claimants hereby incorporate their response provided under point 4 above.</p> <p>Information that Serbia proposes to redact is <i>not</i> confidential</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate their response provided under the general part of point 1 above and waive confidentiality of any information contained in the expert report submitted by Mr. Grzesik and confirm that he agrees with its publication.</p> <p><u>Specifically:</u></p> <p>The valuation prepared by Mr. Pero Mrgud</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the entire expert report of Mr. Grzesik cannot be redacted. The parts of the report identified by the Respondent cannot be redacted either as the information sought to be redacted is not confidential for the reasons mentioned in the PO.</p>

	<p>Report on the Valuation of the Market Value of</p>		<p>In December 2014 (the “Mrgud Valuation”)²⁸ is publicly available as a part</p>	
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²⁸ Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci, December 2014, **CE- 175**.

No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>Building Land in the BD Agro Complex Zones A, B, and C in the Town of Dobanovci drafted in December 2014 by Pero Mrgud”) Sec. 4-16 (pp. 5-37)</p>		<p>of the court file related to BD Agro’s reorganization. As explained above, Serbian law requires that the reorganization proceedings “<i>shall be open to the public</i>” and all submissions in the these proceedings, together with the accompanying documents, shall be “<i>published, immediately after reception, on the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings [...].</i>”²⁹</p> <p>The principle of transparency of the reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre- pack reorganization plans are to be published online as well.³⁰</p> <p>Where the law prescribes the publication on-line of certain information, then such information</p>	

²⁹ Bankruptcy Law, Art. 10, **RE-197**.

³⁰ Bankruptcy Law, Art. 159(3), **CE-799**.

			cannot be considered as confidential regardless of whether it has	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>been published yet or will be published only in the future.³¹</p> <p>The fact that BD Agro owns construction land in Zones A, B and C is evident from: <i>(i)</i> the publicly accessible cadaster records;³² and <i>(ii)</i> the Regulation Plan for BD Agro Complex Zones A, B and C in the Suburb of Dobanovci, Municipality of Surčin of 2008 (the “Regulation Plan”), which is a publicly available document published in the official gazette of the city of Belgrade.³³</p> <p>For the sake of completeness, the Claimants note that the information about the land owned by BD Agro, including the size and location of its construction land, is also publicly available in other regulation plans, where they exist, and documents that</p>	

³¹ Claimants’ letter to the Tribunal, 3 November 2019, pp. 5-9.

³² Law on State Survey and Cadaster, Art. 62, **CE-798**. *See also* Claimants’ letter to the Tribunal, 3 November 2019, p. 5.

³³ General Regulation Plan for BD Agro Complex Zones A, B and C in the Suburb of Dobanovci, Municipality of Surčin of 2008, **CE-143**. *See also* Claimants’ letter to the Tribunal, 3 November 2019, p. 5.

			are publicly accessible as a part of the court files related to BD Agro's reorganization	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>and bankruptcy (such as the Pre-pack Reorganization Plan and contemporaneous valuation reports).</p> <p>With respect to the information related to the JLL Valuation, the Claimants refer to the specific part of their response provided under Point 2 above.</p>	
6.	<p>Claimant's Reply, dated 4 October 2019, para. 272</p> <p>“...which were zoned as industrial and commercial land, appeared to be far too low...”</p> <p>“...BD Agro had sold parts of this land for the price between EUR 15 and EUR 23 per m².302 Adventis, however, valued this land between EUR 1.7 and EUR 1.9”</p>	<p>Respondent requests redaction of the valuation of BD Agro's assets contained in paragraph 272 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p> <p>With respect to the Adventis Valuation and the information about the sale of land by BD Agro, the Claimants refer to the specific part of their response under Point 1 above.</p> <p>With respect to the description of land</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>

	per m2. Adventis's valuation was more- than		owned by BD Agro, the Claimants refer to	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	ten times lower than..."		the specific part of their response provided under point 5 above.	
7.	<p>Claimant's Reply, dated 4 October 2019, para. 473</p> <p>"The sale of BD Agro did not include all of BD Agro's commercial land. The following map shows the commercial land in Zones A, B and C that was not included in the sale (in red)."</p>	Respondent requests redaction of the valuation of BD Agro's assets contained in paragraph 473 of the Claimant's Reply for the same reasons noted under point 1 hereunder.	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p> <p>The map showing the land excluded from the bankruptcy sale was prepared based on a comparison of the list of land plots owned by BD Agro included in BD Agro's Pre-pack Reorganization Plan³⁴ and the list of land plots included in the bankruptcy sale of BD Agro and the valuation of BD Agro prepared for that purpose.³⁵ All these documents</p>	DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.

³⁴ Amendment to the Pre-pack Reorganization Plan, 6 March 2015, pp. 91-92, **CE-101**.

³⁵ Report on evaluation of market value of bankruptcy debtor's property and evaluation of debtor as legal entity "BD AGRO" AD Dobanovci, 24 January 2019, pp. 41-44, **CE-511**.

			are publicly available as a part of the court files related to BD Agro's	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>reorganization and bankruptcy. The Pre-pack Reorganization Plan was published on the Internet with all of its attachments.</p> <p>Identification of the land that was not sold in the auction and remains in the bankruptcy estate is also available in the court decision regarding continuance of bankruptcy proceedings over the bankruptcy estate from 15 July 2019, which is publicly available on the website of the Serbian Business Registers Agency.³⁶ The list of land plots constituting the commercial land in Zones A, B and C is evident from the Regulation Plan, which is a publicly available document published in the Official Gazette. Thus, the map can be prepared also by compiling the information from these other publicly available sources.</p>	

³⁶ The decision is accessible through the following link:

http://pretraga2.apr.gov.rs/InsolventEstatePublicWebSearch/InsolventEstatePublicWebSearchDetails/Details?beid=10264239&rnd=CE5437C685C1837DA0D4_A577A5B3976930B80EAB. See also Website of the Serbian Business Registers Agency, 1 November 2019 (accessed), **CE-801**.

			<p>With respect to the information about the commercial land owned by BD Agro, the Claimants refer to the specific part of their response under Point 5 above.</p>	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
8.	<p>Claimant's Reply, dated 4 October 2019, para. 1120</p> <p>"The value of the Claimants' investment was EUR 61.5 million as of the expropriation date ... Claimants' investment had lost value because of factors not attributable to Serbia, the EUR 61.5 million figure is net of such loss..."</p>	<p>Respondent requests redaction of the valuation of BD Agro's assets contained in paragraph 1120 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 4 above.</p>	<p>Same decision as request No. 4 above.</p>

<p>9.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1298(a)</p> <p>“...Taking the value of land calculated by Mr. Mrgud, the equity value of BD Agro was more than EUR 71 million.”</p>	<p>Respondent requests redaction of the valuation of BD Agro’s assets contained in paragraph 1298, point (a) of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 5 above.</p>	<p>Same decision as request No. 5 above.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
10.	<p>Claimant's Reply, dated 4 October 2019, para. 1298(b)</p> <p>"... the total value of its liabilities as of 31 December 2014, was EUR 57.2 million"</p>	<p>Respondent requests redaction of the valuation of BD Agro's assets contained in paragraph 1298, point (b) of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p> <p>Information that Serbia proposes to redact is from the valuation prepared by Confineks d.o.o. Beograd ("Confineks") in December 2015 (the "First Confineks Valuation").³⁷</p> <p>The First Confineks Valuation is publicly available as a part of the court file related to BD Agro's reorganization. As explained above, Serbian law requires that the reorganization proceedings "<i>shall be open to the public</i>" and <i>all</i> submissions in the these proceedings, together with</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>

³⁷ Report on the valuation of assets, liabilities and capital of BD Agro Dobanovci, December 2015, **CE-142**.

			the accompanying documents, shall be " <i>published, immediately after reception, on</i> "	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p><i>the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings [...].</i>³⁸</p> <p>The principle of publicity of reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre-pack reorganization plans are to be published online as well.³⁹</p> <p>Where the law prescribes the publication on-line of certain information, then such information cannot be considered as confidential regardless of whether it has been published yet or will be published only in the future.⁴⁰</p> <p>Furthermore, the publicly available notes to BD Agro's 2015 financial</p>	

³⁸ Bankruptcy Law, Art. 10, **RE-197**.

³⁹ Bankruptcy Law, Art. 159(3), **CE-799**.

⁴⁰ Claimants' letter to the Tribunal, 3 November 2019, pp. 5-9.

			statements explain that the recorded value of BD	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			Agro's assets was based on the Confines valuations, which means that BD Agro's 2015 financial statements disclose also a part of the information from the Confines valuations. ⁴¹	
11.	<p>Claimant's Reply, dated 4 October 2019, para. 1298(c)</p> <p>"... the total value of its liabilities as of 31 December 2015, was EUR 56.3 million"</p>	Respondent requests redaction of the valuation of BD Agro's assets contained in paragraph 1298, point (c) of the Claimant's Reply for the same reasons noted under point 1 hereunder.	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p> <p>The information that Serbia proposes to redact is from the valuation prepared by Confineks in February 2016 (the "Second Confineks Valuation").⁴²</p>	DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.

⁴¹ Notes to the 2015 Financial Statements, note 7 and note 19, p.11 and p.16, **CE-171**. See also Reply, ¶ 1313.

⁴² Confineks d.o.o. Beograd, Report on the Valuation of Assets, Liabilities and Capital of BD Agro AD Dobanovci, January 2016, **CE-172**.

			The Second Confineks Valuation is publicly available as a part of the court file	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>related to BD Agro's bankruptcy. As explained above, Serbian law requires that the bankruptcy proceedings "<i>shall be open to the public</i>" and all submissions in the these proceedings, together with the accompanying documents, shall be "<i>published, immediately after reception, on the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings [...]</i>."⁴³</p> <p>The principle of publicity of reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre-pack reorganization plans are to be published online as well.⁴⁴</p> <p>Where the law prescribes the publication on-line of certain information, then such information</p>	

⁴³ Bankruptcy Law, Art. 10, **RE-197**.

⁴⁴ Bankruptcy Law, Art. 159(3), **CE-799**.

			cannot be considered as confidential regardless of whether it has been published yet or will be published only	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>in the future.⁴⁵</p> <p>Furthermore, the publicly available notes to BD Agro's 2015 financial statements explain that the recorded value of BD Agro's assets was based on the Confinkes valuations, which means that BD Agro's 2015 financial statements disclose also a part of the information from the Confinkes valuations.⁴⁶</p>	
12.	<p>Claimant's Reply, dated 4 October 2019, para. 1300</p> <p>"Dr. Hern concluded that the equity value of BD Agro as of 21 October 2015 was EUR 53.3 to EUR 81 million..."</p>	<p>Respondent requests redaction of the valuation of BD Agro's assets contained in paragraph 1300 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 4 above.</p>	<p>Same decision as request No. 4 above.</p>
13.	<p>Claimant's Reply, dated 4 October</p>	<p>Respondent requests redaction of the valuation of BD Agro's</p>	<p>Serbia's proposal should be rejected because the information that Serbia</p>	<p>Same decision as request No. 5 above.</p>

⁴⁵ Claimants' letter to the Tribunal, 3 November 2019, pp. 5-9.

⁴⁶ Notes to the 2015 Financial Statements, note 7 and note 19, p.11 and p.16, **CE-171**. *See also* Reply, ¶ 1313.

	2019, p. 332 section 1. title	assets contained in the stated reference	proposes to redact is not confidential.	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>“1. The Mrgud Valuation implies an equity value of over EUR 71 million”</p>	<p>for the same reasons noted under point 1 hereunder.</p>	<p>The Claimants hereby incorporate their response provided under point 5 above.</p>	
<p>14.</p>	<p>Claimant's Reply, dated 4 October 2019, para. 1304</p> <p>“The Mrgud Valuation estimated the market value of the construction land to be EUR 87 million. As explained in the Memorial, this value of construction land implies an equity value of BD Agro of more than EUR 71 million.”</p>	<p>Respondent requests redaction of the valuation of BD Agro's assets contained in paragraph 1304 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 5 above.</p>	<p>Same decision as Request No. 5 above.</p>

<p>15.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1305</p> <p>“The Mrgud Valuation is supported by a valuation of the</p>	<p>Respondent requests redaction of the valuation and identification of BD Agro’s principal assets contained in para. 1305 of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 5 above.</p>	<p>Same decision as Request No. 5 above.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>industrial and commercial land prepared by the Claimants' real estate valuation expert, Mr. Krzysztof Grzesik..”</p> <p>“Mr. Grzesik concludes that the value of the commercial and industrial land owned by BD Agro was, as of 21 October 2015, EUR 85.4 million...”</p>			
16.	<p>Claimant's Reply, dated 4 October 2019, p. 333 section 2. title</p> <p>“Confineks appraised BD Agro's fair market value between EUR-56.4 million and EUR-57.2 million”</p>	Respondent requests redaction of the valuation of BD Agro's assets contained in the stated reference for the same reasons noted under point 1 hereunder.	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under points 10 and 11 above.</p>	DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.

17.	<p>Claimant's Reply, dated 4 October 2019, para. 1310</p>	<p>Respondent requests redaction of the valuation of BD Agro's assets contained in paragraph 1310 of the</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>“...the total value of its liabilities as of 31 December 2014, was EUR 57,232,236.”</p>	<p>Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>The value that Serbia proposes to redact comes from the First Confineks Valuation. The Claimants therefore refer to their response provided under point 10 above.</p>	
<p>18.</p>	<p>Claimant's Reply, dated 4 October 2019, para. 1311</p> <p>“...the fair market value of BD Agro as of 31 December 2015 to be EUR 56,358,939.”</p>	<p>Respondent requests redaction of the valuation of BD Agro's assets contained in paragraph 1311 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The value that Serbia proposes to redact comes from the Second Confineks Valuation. The Claimants therefore refer to their response provided under point 11 above.</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
<p>19.</p>	<p>Claimant's Reply, dated 4 October 2019, para. 1316</p> <p><i>“Bearing in mind that it showed a significant positive value of capital (around 56 million euros) ...”</i></p>	<p>Respondent requests redaction of the valuation of BD Agro's assets contained in paragraph 1316 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>

No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>The quote that Serbia proposes to redact is from a translation of a letter sent by Ms. Radmila Knežević to the Ministry of Economy on 17 February 2016.⁴⁷</p> <p>This letter is publicly available as a part of the court file related to BD Agro's bankruptcy. As explained above, Serbian law requires that the bankruptcy proceedings "<i>shall be open to the public</i>" and <i>all</i> submissions in the these proceedings, together with the accompanying documents, shall be "<i>published, immediately after reception, on the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings [...]</i>."⁴⁸</p> <p>The principle of transparency of the reorganization and bankruptcy proceedings is further specified by</p>	

⁴⁷ Letter from R. Knežević to the Ministry of Economy, 17 February 2016, **CE-371**.

⁴⁸ Bankruptcy Law, Art. 10, **RE-197**.

			Article 159(3) of the Bankruptcy Law, pursuant to which all pre-	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>pack reorganization plans are to be published online as well.⁴⁹</p> <p>Where the law prescribes the publication on-line of certain information, then such information cannot be considered as confidential regardless of whether it has been published yet or will be published only in the future.⁵⁰</p>	

⁴⁹ Bankruptcy Law, Art. 159(3), **CE-799**.

⁵⁰ Claimants' letter to the Tribunal, 3 November 2019, pp. 5-9.

<p>20.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1317</p> <p><i>“...the appraised value of capital of the company is significantly positive and amounts to 56,358,939.00 euros.”</i></p>	<p>Respondent requests redaction of the valuation of BD Agro’s assets contained in paragraph 1317 of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p> <p>The quote that Serbia proposes to redact is from a translation of a letter sent by BD</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>Agro to the commercial court on 17 February 2016.⁵¹</p> <p>This letter is publicly available as a part of the court file related to BD Agro's bankruptcy. As explained above, Serbian law requires that the bankruptcy proceedings "<i>shall be open to the public</i>" and <i>all</i> submissions in the these proceedings, together with the accompanying documents, shall be "<i>published, immediately after reception, on the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings [...].</i>"⁵²</p> <p>The principle of publicity of reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre-</p>	

⁵¹ Letter from BD Agro to the Commercial Court in Belgrade, 17 February 2016, **CE-372**.

⁵² Bankruptcy Law, Art. 10, **RE-197**.

No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
			<p>pack reorganization plans are to be published online as well.⁵³</p> <p>Where the law prescribes the publication on-line of certain information, then such information cannot be considered as confidential regardless of whether it has been published yet or will be published only in the future.⁵⁴</p>	
21.	<p>Claimant's Reply, dated 4 October 2019, para. 1327</p> <p>“As explained by Dr. Hern, the JLL Valuation presents a valuation of BD Agro's land of 2 EUR/m2 for the Construction Land in Zone A and 1.5 EUR/m2 for the Construction land in</p>	<p>Respondent requests redaction of the valuation and identification of BD Agro's principal assets contained in para. 1327 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 2 and 4 above.</p>	<p>Same decision as Request No. 4 above.</p>

⁵³ Bankruptcy Law, Art. 159(3), CE-799.

⁵⁴ Claimants' letter to the Tribunal, 3 November 2019, pp. 5-9.

	<p>Zones B and C. As noted by Dr. Hern, there is no "evidence from contemporaneous</p>			
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	transactions that would justify a valuation of BD Agro's construction-land as low as that presented in the [the JLL Valuation].”			
22.	<p>Claimant's Reply, dated 4 October 2019, footnote no. 1306</p> <p>“...located next to the farm complex (the “Construction land in Zones A, B and C”).”</p>	Respondent requests redaction of the identification of BD Agro's principal assets contained in footnote no. 1306 of the Claimant's Reply for the same reasons noted under point 1 hereunder.	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 5 above.</p>	Same decision as Request No. 5 above.
23.	<p>Claimant's Reply, dated 4 October 2019, para. 1329</p> <p>“...it would have arrived at the total value of land equal to EUR 30/m2.”</p>	Respondent requests redaction of the valuation of BD Agro's assets contained in paragraph 1329 of the Claimant's Reply for the same reasons noted under point 1 hereunder.	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The information that Serbia proposes to redact comes from the expert report of Mr. Grzesik. The Claimants therefore refer to their response provided under point 5 above.</p>	Same decision as Request No. 5 above.

24.	Claimant's Reply, dated 4 October 2019, para. 1332	Respondent requests redaction of the identification of BD Agro's principal assets contained in	Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.	Same decision as Request No. 5 above.
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>“Based on all the above reasons, it is clear that the JLL Valuation does not reflect the fair market value of BD Agro’s Construction land in Zones A, B and C as of the date of expropriation 21 October 2015.”</p>	<p>footnote no. 1332 of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>The Claimants hereby incorporate their responses provided under points 2 and 5 above.</p>	
25.	<p>Claimant’s Reply, dated 4 October 2019, p. 339 section D. title</p> <p>“Dr. Hern estimates the fair market value of BD Agro between EUR 53.3 million and EUR 81 million”</p>	<p>Respondent requests redaction of the valuation of BD Agro’s assets contained on page 339, Section D., title, of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 4 above.</p>	<p>Same decision as Request No. 4 above.</p>

<p>26.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1336</p> <p>“For the purposes of his valuation, Dr. Hern</p>	<p>Respondent requests redaction of the identification of BD Agro’s principal assets contained in para. 1336 of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p>	<p>Same decision as Request Nos. 4 and 5 above.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	divided BD Agro's assets into two categories: (i) core assets—being the assets required for BD Agro's dairy production business, such as agricultural land, farm buildings, equipment, herd and other current assets ; and (ii) non-core assets—being the assets that are not required for dairy production, such as construction land. "		The Claimants hereby incorporate their responses provided under points 4 and 5 above.	
27.	Claimant's Reply, dated 4 October 2019, para. 1339 "Using the above methods, Dr. Hern estimated the fair market value of BD Agro between EUR-53.3 million and EUR-	Respondent requests redaction of the valuation of BD Agro's assets contained in paragraph. 1339 of the Claimant's Reply for the same reasons noted under point 1 hereunder.	Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential. The Claimants hereby incorporate their response provided under point 4 above.	Same decision as Request No. 4 above.

	81 million . In his second expert report, Dr. Hern			
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	confirms that these values are correct.”			
28.	<p>Claimant's Reply, dated 4 October 2019, footnote no. 1320</p> <p>“All BD Agro's assets, with the exception of certain construction land and the castle in Novi Bečej, which are not required for the operation of the dairy farm. Hern First ER, ¶ 124.”</p>	Respondent requests redaction of the identification of BD Agro's principal assets contained in footnote no. 1320 of the Claimant's Reply for the same reasons noted under point 1 hereunder.	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 4 and 5 above.</p>	Same decision as Request Nos. 4 and 5 above.

<p>29.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1351</p> <p>“In his first expert report, Dr. Hern concluded that BD Agro’s most valuable asset is its land, which can be divided into the following three</p>	<p>Respondent requests redaction of the identification of BD Agro’s principal assets contained in para. 1351 of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>categories:</p> <p>a. Construction land in Zones A, B and C;</p> <p>b. Additional construction land in Dobanovci and Bečmen (the "Other construction land");</p> <p>and</p> <p>c. Agricultural land in Ašanja, Deč, Ugrinovci and Dobanovci (the "Agricultural land")"</p>		<p>The categorization of BD Agro's land in Dr. Hern's expert report is consistent with the First Confineks Valuation.⁵⁵ The First Confineks Valuation is not confidential for the reasons explained by the Claimants in the specific part of their response under Point 10 above.</p> <p>With respect to the remaining part of Serbia's request, the Claimants refer to their responses provided under points 4 and 5 above.</p>	

⁵⁵ Richard Hern First Expert Report, ¶¶ 51-56; First Confineks Valuation, pp. 41-51, CE-142.

<p>30.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1352</p> <p>“To value the Construction land in Zones A, B and C, Dr. Hern analyzed: ... Based on his analysis, Dr. Hern valued the Construction</p>	<p>Respondent requests redaction of the valuation and identification of BD Agro’s assets contained in para. 1352 of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 4 and 5 above.</p>	<p>Same decision as Request Nos. 4 and 5 above.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>land in Zones A, B and C at between EUR 62.9 million and EUR 82.9 million.</p>			
31.	<p>Claimant's Reply, dated 4 October 2019, para. 1353</p> <p>“To value the Other construction land, Dr. Hern analyzed evidence from comparable transactions and the First and Second Confineks Valuations. Based on his analysis, Dr. Hern estimates the value of this land to be between EUR 1.1 million and EUR 3.4 million.”</p>	<p>Respondent requests redaction of the valuation and identification of BD Agro's assets contained in para. 1353 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 4 and 5 above.</p>	<p>Same decision as Request Nos. 4 and 5 above.</p>

<p>32.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1354</p> <p>“Finally, to value the Agriculture- land, Dr.</p>	<p>Respondent requests redaction of the valuation and identification of BD Agro’s assets contained in para. 1354 of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p>	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>Hern again relied on evidence from comparable transactions and the First and Second Confineks Valuations. Using these inputs, Dr. Hern estimated a value of the Agricultural land between EUR 4 million and 15.5 million.”</p>		<p>The Claimants hereby incorporate their responses provided under points 4, 10 and 11 above.</p>	<p>Same decision as Request No. 4 above.</p>
33.	<p>Claimant's Reply, dated 4 October 2019, para. 1357</p> <p>“...market value of Construction land in Zones A, B and C of at least EUR 30/m2. This translates into a total value of the Construction land in Zones A, B and C equal to EUR 87”</p>	<p>Respondent requests redaction of the valuation and identification of BD Agro's assets contained in para. 1357 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The information that Serbia proposes to redact comes from the expert report of Mr. Grzesik. The Claimants therefore refer to their response provided under point 5 above.</p>	<p>Same decision as Request No. 5 above.</p>

	million.”			
34.	Claimant’s Reply, dated 4 October 2019, para. 1358	Respondent requests redaction of the valuation and identification of BD Agro’s assets, as well as the	Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.	DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential. For the latter redactions, same decision as Request No. 5 above.

No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>“Mr. Grzesik, same as Dr. Hern, concludes that, because it would be necessary to convert the land in the Reals Estate Register from agricultural to industrial, and pay a corresponding conversion fee, the amount of such fee should be deducted from the total value of land.</p> <p>After subtraction of the applicable conversion fee, Mr. Grzesik arrives at the total value of EUR 85.3 million, which is slightly higher than the EUR 82.9 million upper range calculated by Dr. Hern.”</p>	<p>information allowing for the identification of BD Agro's principal assets contained in para. 1358 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p><u>Generally:</u></p> <p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p> <p>Information about the existence of the conversion fee and its calculation is publicly available in the Law on Agriculture Land.⁵⁶</p> <p>With respect to the remaining part of Serbia's request, the Claimants refer to their response provided under Point 5 above.</p>	

⁵⁶ E.g. Reply, ¶¶ 1369-1372.

35.	Claimant's Reply, dated 4 October 2019, para. 1359	Respondent requests redaction of the valuation and identification of BD Agro's assets contained in	Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.	Same decision as Request No. 5 above.
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>“For the sake of completeness, the Claimants note that Mr. Grzesik values the Other Construction Land owned by BD Agro at EUR 3.6 million, which is again slightly higher than the upper range of EUR 3.4 million provided by Dr. Hern. As for the Agriculture land owned by BD Agro, Mr. Grzesik values it at EUR 10 million, which is around in the middle of the range provided by Dr. Hern.”</p>	<p>para. 1359 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>The Claimants hereby incorporate their response provided under point 5 above.</p>	

<p>36.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1360, point (c)</p> <p>“Dr. Hern assumed a low conversion fee for conversion of agriculture land to construction</p>	<p>Respondent requests redaction of the information allowing for the identification of BD Agro’s principal assets contained in para. 1360, point (c) of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	land”		<p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p> <p>The information about the existence of the conversion fee and its calculation is publicly available in the Law on Agriculture Land.⁵⁷</p> <p>With respect to the remaining part of Serbia's request, the Claimants refer to their responses provided under Points 4 and 5 above.</p>	
37.	<p>Claimant's Reply, dated 4 October 2019, para. 1368</p> <p>“Finally, Dr. Hern used the correct conversion fee. As Dr. Hern explained in his first expert</p>	<p>Respondent requests redaction of the information allowing for the identification of BD Agro's principal assets contained in para. 1368 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided point 34 above.</p>	<p>Same decision as for Request No. 34 above.</p>

⁵⁷ E.g. Reply, ¶¶ 1369-1372.

	report, he has been instructed to use a fee determined as “50			
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	per cent of the market value of the agriculture land.”			
38.	<p>Claimant's Reply, dated 4 October 2019, para. 1369</p> <p>“Dr. Hern's instructions were fully in line with Serbian law. According to Article 25(1) of the Law on agricultural land applicable as of 21 October 2015, the fee for conversion of agriculture land was indeed “equal to 50% of market value of arable agricultural land on the day of submission of the request for change of purpose of arable agricultural land.”</p>	Respondent requests redaction of the information allowing for the identification of BD Agro's principal assets contained in para. 1369 of the Claimant's Reply for the same reasons noted under point 1 hereunder.	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 34 above.</p>	Same decision as for Request No. 34 above.

39.	Claimant's Reply, dated 4 October 2019, para. 1370	Respondent requests redaction of the information allowing for the identification of BD Agro's principal assets contained in para.	Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.	Same decision as for Request No. 34 above.
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>“The higher fee—equal to 20% of the market value of development land—was paid only if the agriculture land was to be converted in “general interest.” ... Conversion of agricultural land for the purposes of commercial development clearly does not fall into these categories.”</p>	<p>1370 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>The Claimants hereby incorporate their response provided under point 34 above.</p>	

<p>40.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1371</p> <p>“The conversion fee applicable to the conversion of agricultural land motivated by private interest—such as development of land for commercial use—was therefore equal to 50% of market value of</p>	<p>Respondent requests redaction of the information allowing for the identification of BD Agro’s principal assets contained in para. 1371 of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 34 above.</p>	<p>Same decision as for Request No. 34 above.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>agricultural land on the day of submission of the request for the change of purpose of the land.”</p>			
41.	<p>Claimant's Reply, dated 4 October 2019, para. 1372</p> <p>“In fact, Serbia itself does not state that the conversion fee should be calculated as 20% of the market value of construction land. Serbia merely states that the conversion fee “could be as high as” 20% of the market value of construction land. Serbia is right, the conversion fee “could be as high as” 20% of the market value—in cases of the conversion done in “general interest.”</p>	<p>Respondent requests redaction of the information allowing for the identification of BD Agro's principal assets contained in para. 1372 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p> <p>With respect to the information about the existence and calculation of the conversion fee, the Claimants refer to the specific part of their response under Point 34 above.</p> <p>With respect to the information about the land owned by BD Agro, the Claimants refer to the specific part of their response provided under Point 5</p>	<p>Same decision as for Request No. 34 above.</p>

	<p>That would not have been the case with respect to conversion of BD</p>		<p>above.</p>	
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
42.	<p>Agro's land.</p> <p>Claimant's Reply, dated 4 October 2019, para. 1373</p> <p>"For the sake of completeness, the Claimants note that Serbia's allegation that "[i]n addition, converting the land is a process that could take years" is entirely irrelevant..."</p>	<p>Respondent requests redaction of the information allowing for the identification of BD Agro's principal assets contained in para. 1373 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate their response provided under the general part of point 1 above.</p> <p><u>Specifically:</u></p> <p>The statement that "<i>converting the land is a process that could take years</i>" does not in any way disclose any information about BD Agro's assets and their value, or any other confidential information for that matter.</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>

<p>43.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1380, points (a) and (c)</p> <p>“a. “maximum” valuation of EUR 4.4 million based on the net asset value reported in the February 2016</p>	<p>Respondent requests redaction of the valuation of BD Agro’s assets contained in para. 1380, points (a) and (c) of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1 and 11 above.</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>Confineks report, adjusted downwards for a distressed sale of assets and other factors..."</p> <p>"c. "alternative" valuation of EUR-4.4 million based on stock market data; and..."</p>			
44.	<p>Claimant's Reply, dated 4 October 2019, para. 1407</p> <p>"...Claimants use the upper bound of the valuation provided by Dr. Hern, i.e. the equity value of EUR-81 million"</p>	<p>Respondent requests redaction of the valuation of BD Agro's assets contained in para. 1407 the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The information that Serbia proposes to redact comes from the expert reports submitted by Dr. Hern. The Claimants therefore refer to their response provided under point 4 above.</p>	<p>Same decision as Request No. 4 above.</p>

<p>45.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1409</p> <p>“With BD Agro’s total equity value amounting</p>	<p>Respondent requests redaction of the valuation of BD Agro’s assets contained in para. 1409 of the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The information that Serbia proposes to redact comes from the expert reports</p>	<p>Same decision as Request No. 4 above.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	to EUR 81 million , the value of Sembi's interest was EUR 61.5 million as of 21 October 2015. This is also the value of Sembi's loss as of that date."		submitted by Dr. Hern. The Claimants therefore refer to their response provided under point 4 above.	
46.	<p>Claimant's Reply, dated 4 October 2019, para. 1410</p> <p>"According to Dr. Hern's calculations, the loss suffered by Sembi uplifted to 4 October 2019 amounts to EUR 81 million"</p>	Respondent requests redaction of the valuation of BD Agro's assets contained in para. 1410 the Claimant's Reply for the same reasons noted under point 1 hereunder.	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The information that Serbia proposes to redact comes from the expert reports submitted by Dr. Hern. The Claimants therefore refer to their response provided under point 4 above.</p>	Same decision as Request No. 4 above.

<p>47.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1421</p> <p>“As explained above, contemporaneous valuations—namely the Mrgud valuation and the Confineks valuations—</p>	<p>Respondent requests redaction of the valuation of BD Agro’s assets contained in para. 1421 the Claimant’s Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 5, 10 and 11 above.</p>	<p>Same decision as Request No. 5 above.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	valued BD Agro between EUR-56.4 million and EUR-71 million. "			
48.	<p>Claimant's Reply, dated 4 October 2019, para. 1422</p> <p>"Mr. Rand's Indirect Shareholding was 3.9%, and it was held through MDH Serbia. With the equity value of BD Agro equal to EUR-81 million, the value of a 3.9% shareholding in BD Agro was EUR-2.7 million as of 21 October 2015. Uplifted to 4 October 2019, the value of Mr. Rand's Indirect Shareholding equals EUR-3.6 million"</p>	Respondent requests redaction of the valuation of BD Agro's assets contained in para. 1422 the Claimant's Reply for the same reasons noted under point 1 hereunder.	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The information that Serbia proposes to redact comes from the expert reports submitted by Dr. Hern. The Claimants therefore refer to their response provided under point 4 above.</p>	Same decision as Request No. 4 above.

<p>49.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1424</p>	<p>Respondent requests redaction of the valuation of BD Agro’s assets, as well as the information allowing</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential. The Tribunal also notes the Claimants’ statement “[t]he redemption price is calculated based on Sembi’s corporate documents and does not depend on the value of BD Agro’s assets. This information is therefore owned by the Claimants who agree to its publication.”</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>“...limited to the redemption price of the preferable shares held by Rand Investments, which was EUR 11,201,890 as of 21 October 2015. Uplifted to 4 October 2019, the value of Rand Investments' indirect interest in BD Agro's equity equals to EUR 14.7 million”</p>	<p>for the identification of the estimated value of BD Agro's assets contained in para. 1424 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p><u>Generally:</u></p> <p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p> <p>The information that Serbia proposes to redact does <i>not</i> relate to description of BD Agro's assets or their value. The redemption price is calculated based on Sembi's corporate documents and does not depend on the value of BD Agro's assets.⁵⁸</p> <p>This information is therefore owned by the Claimants who agree to its publication.</p>	

⁵⁸ Memorial, ¶¶ 570-572.

<p>50.</p>	<p>Claimant’s Reply, dated 4 October 2019, para. 1428</p> <p>“Therefore, as of 21 October 2015, the Ahola Family Trust was entitled to the entire</p>	<p>Respondent requests redaction of the valuation of BD Agro’s assets, as well as the information allowing for the identification of the estimated value of BD Agro’s assets contained in para. 1428 of the Claimant’s Reply for the same reasons noted under point 1</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 49 above.</p>	<p>Same decision as for Request No. 49.</p>
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	value of Sembi less the EUR 11,201,890 redemption price that Sembi owed to Rand Investments”	hereunder.		
51.	<p>Claimant's Reply, dated 4 October 2019, para. 1429</p> <p>“As of 21 October 2015, the value of the Ahola Family Trust's interest in Sembi was equal to the value of Sembi's interest in BD Agro's equity of less the EUR 11,201,890 redemption price owed to Rand Investments. With the value of Sembi's interest in BD Agro's equity equal to approximately EUR-61.5 million, the value of the Ahola Family</p>	Respondent requests redaction of the valuation of BD Agro's assets, as well as the information allowing for the identification of the estimated value of BD Agro's assets contained in para. 1429 of the Claimant's Reply for the same reasons noted under point 1 hereunder.	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>With respect to the information about the value of Rand Investments' shareholding, the Claimants refer to their response provided under point 49 above.</p> <p>The remaining information that Serbia proposes to redact comes from the expert reports submitted by Dr. Hern. With respect to this information, the Claimants refer to their response provided under point 4 above.</p>	Same decision as for Request Nos. 4 and 49.

	Trust's interest in Sembu, and thus BD Agro's equity, was			
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	approximately EUR-50.3 million. "			
52.	<p>Claimant's Reply, dated 4 October 2019, para. 1430</p> <p>"This is approximately EUR-16.8 million for each of Ms. Kathleen Elizabeth Rand, Ms. Allison Ruth Rand and Mr. Robert Harry Leander Rand."</p>	Respondent requests redaction of the valuation of BD Agro's assets, as well as the information allowing for the identification of the estimated value of BD Agro's assets contained in para. 1430 of the Claimant's Reply for the same reasons noted under point 1 hereunder.	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The information that Serbia proposes to redact comes from the expert reports submitted by Dr. Hern. The Claimants therefore refer to their response provided under point 4 above.</p>	Same decision as for Request No. 4.
53.	<p>Claimant's Reply, dated 4 October 2019, para. 1431</p> <p>"This amount, however, again needs to be uplifted to its present value. Dr. Hern calculates the present value at EUR-</p>	Respondent requests redaction of the valuation of BD Agro's assets, as well as the information allowing for the identification of the estimated value of BD Agro's assets contained in para. 1431 of the Claimant's Reply for the same reasons noted under point 1 hereunder.	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The information that Serbia proposes to redact comes from the second expert report submitted by Dr. Hern. The Claimants therefore refer to their response provided under point 4 above.</p>	Same decision as for Request No. 4.

	22 million.”			
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
54.	<p>Claimant's Reply, dated 4 October 2019, para. 1450</p> <p>"The Claimants request that the Tribunal issues an award:</p> <p>a. declaring that Serbia has breached the Cyprus-Serbia BIT;</p> <p>b. ordering Serbia to pay compensation to Sembi of no less than EUR 81 million;</p> <p>c. declaring that Serbia has breached the Canada-Serbia BIT;</p> <p>d. in the alternative to request b. above, ordering Serbia to pay compensation to:</p>	<p>Respondent requests redaction of the valuation of BD Agro's assets, as well as the information allowing for the identification of the estimated value of BD Agro's assets contained in para. 1450 of the Claimant's Reply for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The information about the size of the Claimants' claims is not confidential. The Claimants are at a liberty to publish it at any moment, as the existence of the arbitration and the claims raised therein are not confidential.</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p> <p>The Tribunal also notes the Claimants' statement that the size of the claim is not confidential and that the Claimant may publish it at their discretion.</p>

(i) Rand Investments of no less than EUR- 14.7			
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>million;</p> <p>(ii) Ms. Kathleen Elizabeth Rand of no less than EUR 22 million, plus a gross-up of 33.2% on that amount;</p> <p>(iii) Ms. Allison Ruth Rand of no less than EUR 22 million, plus a gross-up of 33.2% on that amount; and</p> <p>(iv) Mr. Robert Harry Leander Rand of no less than EUR 22 million, plus a gross-up of 33.2% on that amount;</p> <p>e. in the alternative to request d.(i) above, ordering Serbia to pay compensation to Mr.</p>			

	<p>William Rand of no less than EUR 14.7 million.</p> <p>f. ordering Serbia to pay</p>			
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	<p>compensation to Mr. William Rand:</p> <p>(i) no less than EUR-3.6 million for loss of value of Mr. Rand's Indirect Shareholding; and</p> <p>(ii) no less than EUR 3.2 million for loss of value of Mr. Rand's receivables against BD Agro; ...”</p>			
55.	<p>Claimant's Reply, dated 4 October 2019, footnotes no. 1264, 1274 and 1276</p> <p>Consolidated List of Documents dated 4 October 2019, Exhibit CE-175</p> <p>“Report on the valuation of the</p>	<p>Respondent requests redaction of the identification of BD Agro's principal assets contained in footnotes no. 1264, 1274 and 1276 of the Claimant's Reply and the title of Exhibit CE-175 in the Consolidated List of Documents submitted with the Reply, the for the same reasons noted under point 1 hereunder.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 5 above.</p>	<p>Same decision as for Request No. 5.</p>

	market value of construction land in the BD Agro-complex Zones A, B and C in the			
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No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
	town of Dobanovci...”			

Rand Investments Ltd., William Archibald Rand, Kathleen Elizabeth Rand, Allison Ruth Rand, Robert Harry Leander Rand and Sembi Investment Limited v. Republic of Serbia
(ICSID Case No. ARB/18/8)
Transparency Schedule

ANNEX B
TRANSPARENCY SCHEDULE OF 28 OCTOBER 2019

TRANSPARENCY SCHEDULE

No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
Request for Arbitration				
1.	<p>Request for Arbitration, ¶ 3</p> <p>The net value of the Claimants' expropriated beneficial interest in BD Agro, which the Claimants will claim in this arbitration, is at least EUR 67 million.</p>	<p>Source: no clear source but can only be based on the valuation in Hern ER (CER-2) which is not in public domain.</p> <p>Reasons for confidentiality: As explained in detail in Respondent's Letter of 28 October 2019, Respondent submits that only the information available on the web site of the Serbian Business Registers Agency and on the web site of the Bankruptcy Supervision Agency related to the company BD Agro is information in the public domain. Information contained in the evaluation reports prepared by various experts and submitted during the bankruptcy proceedings of BD Agro is not information in public domain, since, under Article 10(2) of the Serbian Law on Bankruptcy, access to this information was</p>	<p>Serbia's proposal should be rejected.</p> <p>Information that Serbia proposes to redact is <i>not</i> confidential</p> <p><u>Generally:</u></p> <p>Information that Serbia proposes to redact is <i>not</i> confidential information under Article 15(a) of Annex A to Procedural Order No. 5 or Article 1 of the Canada-Serbia BIT.</p> <p>As the Claimants explain in detail in their letter of 3 November 2019, this is because the description of BD Agro's assets and their valuations: (i) is publicly available; (ii) does not have a commercial value for BD Agro or its owner; (iii) has</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p> <p>The Tribunal also notes the Claimants' statement that "The information regarding the Claimants' claims in the Request for Arbitration is not confidential because the Claimants can publish the size of their claim at any moment and they could have done so even when they filed the Request for Arbitration."</p>

No.	Reference to Designation	Reasons for Designation	Objections to Designation	Tribunal's Decision
Request for Arbitration				
		allowed only to natural and legal	never	

		<p>persons who had legal standing in the BD Agro’s bankruptcy proceedings (i.e. creditors of BD Agro).</p> <p>Respondent further submits that valuations of BD Agro’s assets, as well as BD Agro shareholders’ shares, losses, and/or any other estimation of the value of BD Agro’s assets, given at any point in time, even if prepared on the grounds of publicly available information (such as BD Agro’s financial statements), are not in the public domain, and as such should be redacted for the reasons explained in the Respondent’s letter of 28 October 2019.</p> <p>Disclosure of information related to value of BD Agro’s assets and/or value of the claims of its former shareholders may have detrimental effect to the company’s current business operations, and may have negative impact on the value of</p>	<p>been protected as confidential by BD Agro; and (iv) its disclosure cannot harm BD Agro or its owner.¹</p> <p>Serbia’s argument that “<i>only the information available on the web site of the Serbian Business Registers Agency and on the web site of the Bankruptcy Supervision Agency related to the company BD Agro is information in the public domain</i>” is simply incorrect.</p> <p><i>First</i>, Serbia is incorrect to suggest that publication is a necessary condition for information not to be considered confidential. To the contrary, publication is a <i>sufficient</i> condition for information not to be confidential—but it is not necessary.²</p> <p><i>Second</i>, Serbia cannot seriously argue that only</p>	
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¹ Claimants’ letter to the Tribunal, 3 November 2019, pp. 5-11.

² Claimants’ letter to the Tribunal, 3 November 2019, p. 9.

		BD Agro's assets in its current and future	information that is published on two websites is to be	
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		commercial transactions.	<p>considered in the public domain. Such argument completely ignores the fact that information can be available through numerous other means—for example through inspection of publicly available cadaster records.³</p> <p>Furthermore, where the law prescribes the publication on-line of certain information, then such information cannot be considered as confidential regardless of whether it has been actually published or not.⁴</p> <p>Serbia’s argument that access to information from court files related to reorganization and bankruptcy of BD Agro is “<i>allowed only to natural and legal persons who had legal standing in the BD Agro’s bankruptcy proceedings (i.e. creditors of BD Agro)</i>” is equally incorrect.</p>	
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³ Law on State Survey and Cadaster, Art. 62, **CE-798**. See also Claimants’ letter to the Tribunal, 3 November 2019, pp. 5-9.

⁴ Claimants’ letter to the Tribunal, 3 November 2019, p. 8.

			<p>As the Claimants explain in detail in their letter of 3 November 2019, pursuant to Articles 10(1), 10(4) and 10(5) of the Serbian Bankruptcy Law, court proceedings related to BD Agro's reorganization and bankruptcy "<i>shall be open to the public</i>" and all submissions in the these proceedings, together with the accompanying documents, shall be "<i>published, immediately after reception, on the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings [...].</i>"⁵</p> <p>The principle of publicity of the reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all</p>	
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⁵ Bankruptcy Law, Art. 10, **RE-197**.

			pre-pack reorganization plans are to be published online as well. ⁶	
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⁶ Bankruptcy Law, Art. 159(3), **CE-799**.

			<p>As the Claimants explain in detail in their letter of 3 November 2019, Article 10(2)⁷ merely states that the creditors are entitled to request certain information <i>directly</i> from a bankruptcy trustee. Nothing more and nothing less. It does not impact the legal obligation of publicity of the reorganization and bankruptcy proceedings established under Article 10(1), 10(4), 10(5) and 159(3).⁸</p> <p>Furthermore, the information included in the reorganization and bankruptcy files would be publicly available even if Serbia were correct that the access to documents from the files is limited to the creditors—and it is not. There are over 300 registered creditors in the bankruptcy proceedings and there were</p>	
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⁷ Which states the following: “All creditors have the right to ask and timely receive from the bankruptcy [trustee] all information related to the bankruptcy debtor, the course of the bankruptcy proceedings, and property and management of the assets of the bankruptcy debtor.”

⁸ Claimants’ letter to the Tribunal, 3 November 2019, p. 8.

			more than 450 creditors in the reorganization proceedings. All these creditors can access	
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			<p>information in the court files and further use it in any way they deem fit. Serbia cannot seriously claim that information available to 300-450 creditors, who are not subject to any obligations of non-disclosure and, hence, not limited in the use or dissemination of that information, is confidential and must be protected by the Tribunal.⁹</p> <p>The fact is that BD Agro has always been aware that the information regarding the description and value of BD Agro's assets does <i>not</i> represent confidential information. Indeed, most of the information that Serbia proposes to redact comes from documents that were prepared before expropriation of BD Agro in October 2015. BD Agro—at that time still owned by the Claimants—did not consider the information that</p>	
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⁹ Claimants' letter to the Tribunal, 3 November 2019, p. 8.

			Serbia now proposes to redact to be confidential and did not protect it	
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			<p>in any way.</p> <p>BD Agro's approach did not change even after Serbia expropriated the shares of BD Agro. BD Agro continued to do nothing to protect or restrict access to the information about the value of its assets disclosed in the financial statements or reorganization and bankruptcy proceedings, despite the fact that it had an ample opportunity to do so.</p> <p>For example, while the Bankruptcy Law provides for publicity of the bankruptcy proceedings it also contains an express exemption for "<i>data constituting a business or official secret.</i>" Such data can be excluded from publication by a judge, based on the proposal of a bankruptcy trustee. Serbia did not submit any evidence that BD Agro has ever attempted to have any information excluded from publication. The Claimants'</p>	
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			review of the bankruptcy files also did not reveal any such request by BD Agro or its	
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			<p>bankruptcy trustee. As a result, such information does not qualify as confidential because BD Agro has not done anything to protect it.¹⁰</p> <p>Finally, Serbia’s vague allegations that “[d]isclosure of information related to value of BD Agro’s assets and/or value of the claims of its former shareholders may have detrimental effect to the company’s current business operations” or that publication of information about the value of BD Agro’s assets “may have negative impact on the value of BD Agro’s assets in its current and future commercial transactions” are completely unsubstantiated.</p> <p>As the Claimants explain in detail in their letter of 3 November 2019, Serbia did not submit any evidence that BD Agro and Mr. Kostić consider the information</p>	
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¹⁰ Claimants’ letter to the Tribunal, 3 November 2019, p. 9.

			about the value of BD Agro's	
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			<p>assets to be confidential, or that its publication would be detrimental to BD Agro in any way.¹¹</p> <p>The Claimants wave confidentiality of any information contained in the expert reports submitted by Dr. Hern, Mr. Grzesik and other Claimants' experts and confirm that they agree with their publication.¹²</p> <p>The Claimants desire transparency of these proceedings—as is required under the Canada-Serbia BIT and the Transparency Rules.</p> <p><u>Specifically:</u></p> <p>The information regarding the Claimants' claims in the Request for Arbitration is not confidential because the Claimants can publish the size of their claim at any moment and they could have done so</p>	
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¹¹ Claimants' letter to the Tribunal, 3 November 2019, p. 10.

¹² Claimants' letter to the Tribunal, 3 November 2019, p. 12.

			even when they filed the Request for Arbitration.	
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2.	<p>Request for Arbitration, ¶ 20</p> <p>During 2014, notwithstanding the significant value of BD Agro's underlying assets, particularly its construction land near the Belgrade international airport, the company was experiencing difficulty meeting its debt obligations due to lower cash flows from revenue generating operations.</p>	<p>Source: no clear source</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p> <p>The fact that BD Agro owns construction land located near the Belgrade international airport is evident from: (i) the publicly accessible cadaster records;¹³ and (ii) the Regulation Plan for BD Agro Complex Zones A, B and C in the Suburb of Dobanovci, Municipality of Surčin of 2008, which is a publicly available document published in the official</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
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¹³ Law on State Survey and Cadaster, Art. 62, **CE-798**. See also Claimants' letter to the Tribunal, 3 November 2019, p. 5.

			<p>gazette of the city of Belgrade.¹⁴</p> <p>For the sake of completeness, the Claimants note that the information about the land owned by BD Agro, including the size and location of its construction land, is also publicly available in other regulation plans, where they exist, and documents that are publicly accessible as a part of the court files related to BD Agro’s reorganization and bankruptcy (such as the Pre-pack Reorganization Plan or contemporaneous valuation reports).</p> <p>As explained above, Serbian law requires that the reorganization and bankruptcy proceedings “<i>shall be open to the public</i>” and all submissions in the these proceedings, together with the accompanying documents, shall be “<i>published,</i></p>	
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¹⁴ General Regulation Plan for BD Agro Complex Zones A, B and C in the Suburb of Dobanovci, Municipality of Surčin of 2008, **CE-143**. See also Claimants’ letter to the Tribunal, 3 November 2019, p. 5.

			<i>immediately after reception, on the public website of the competent commercial court</i>	
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			<p><i>or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings [...].”¹⁵</i></p> <p>The principle of publicity of the reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre-pack reorganization plans are to be published online as well.¹⁶</p> <p>Where the law prescribes the publication on-line of certain information, then such information cannot be considered as confidential regardless of whether it has been actually published or not.¹⁷</p>	
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¹⁵ Bankruptcy Law, Art. 10, **RE-197**.

¹⁶ Bankruptcy Law, Art. 159(3), **CE-799**.

¹⁷ Claimants’ letter to the Tribunal, 3 November 2019, pp. 6-9.

<p>3.</p>	<p>Request for Arbitration, ¶ 262</p> <p>“... the Investors have suffered losses presently estimated at no less than EUR 67 million plus interest. The main component</p>	<p>Source: no clear source but can only be based on the valuation in Hern ER (CER-2) which is not in public domain</p> <p>Reasons for confidentiality: See</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p>	<p>Same decision as Request Nos. 1 and 2 above.</p>
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	<p>of the loss is the substantial market value of BD Agro's 295 hectares of construction land, strategically located along a major communications axis in the suburbs of Belgrade and in close vicinity of the Belgrade international airport."</p>	<p>Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p> <p>With respect to the Serbia's request to redact the EUR 67 million figure, the Claimants hereby incorporate the specific part of their response provided under point 1 above.</p> <p>With respect to the remaining part of the Serbia's request, the Claimants hereby incorporate the specific part of their response provided under point 2 above.</p>	
<p>4.</p>	<p>Request for Arbitration, ¶ 272</p> <p>ordering Serbia to pay compensation to the Claimants of no less than EUR 67 million plus pre- and post-award interest;</p>	<p>Source: no clear source but can only be based on the valuation in Hern ER (CER-2) which is not in public domain.</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	<p>Same decision as Request No. 1 above.</p>
<p>Memorial</p>				

5.	Memorial, Table of contents	Source: Report on the valuation of the market value of	Serbia's proposal should be rejected because the information	DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.
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<p>C.1 The Mrgud Valuation implies equity value of over EUR 71 million</p> <p>C.2 The First Confineks Valuation appraises BD Agro’s fair market value at EUR 57.2 million</p> <p>C.3 The Second Confineks Valuation appraises BD Agro’s fair market value at EUR 56.4 million</p> <p>C.4 Dr. Hern estimates the fair market value of BD Agro between EUR 53.3 million and EUR 81 million</p>	<p>construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175); First Confineks Valuation (CE- 142); Second Confineks Valuation (CE-172); Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p> <p>The valuations prepared by Mr. Pero Mrgud in December 2014 (the “Mrgud Valuation”),¹⁸ by Confineks d.o.o. Beograd (“Confineks”) in December 2015 (the “First Confineks Valuation”)¹⁹ and by Confineks in in February 2016 (the “Second Confineks Valuation”)²⁰ are publicly available as a part of the court files related to BD Agro’s reorganization and bankruptcy. As explained</p>	
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¹⁸ Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci, December 2014, **CE-175**.

¹⁹ Report on the valuation of assets, liabilities and capital of BD Agro Dobanovci, December 2015, **CE-142**.

²⁰ Confineks d.o.o. Beograd, Report on the Valuation of Assets, Liabilities and Capital of BD Agro AD Dobanovci, January 2016, **CE-172**.

			above, Serbian law requires that the reorganization and bankruptcy proceedings “ <i>shall be open to the public</i> ” and	
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			<p><i>all submissions in the these proceedings, together with the accompanying documents, shall be “published, immediately after reception, on the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings [...]”</i>²¹</p> <p>The principle of publicity of reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre-pack reorganization plans are to be published online as well.²²</p> <p>Where the law prescribes the publication on-line of certain information, then such information cannot be considered as confidential regardless of whether it has</p>	
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²¹ Bankruptcy Law, Art. 10, **RE-197**.

²² Bankruptcy Law, Art. 159(3), **CE-799**.

			been actually published or not. ²³	
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²³ Claimants' letter to the Tribunal, 3 November 2019, pp. 6-9.

			Furthermore, the publicly available notes to BD Agro's 2015 financial statements explain that the recorded value of BD Agro's assets was based on the Confineks valuations, which means that BD Agro's 2015 financial statements disclose also a part of the information from the Confineks valuations. ²⁴	
6.	<p>Memorial, ¶ 6</p> <p>The net value of the Claimants' expropriated interest in BD Agro's equity, not including the Indirect Shareholding and Mr. Rand's outstanding loans to BD Agro, was EUR 61.5 million.</p>	<p>Source: Hern ER (CER-2), para. 166 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>

²⁴ Notes to the 2015 Financial Statements, note 7 and note 19, p.11 and p.16, **CE-171**. See also Reply, ¶ 1313.

7.	<p>Memorial, ¶ 25</p> <p>Notwithstanding the significant value of BD Agro's underlying assets, particularly its construction land near the Belgrade international airport, the company was experiencing difficulty meeting its debt</p>	<p>Source: no clear source</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>
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	obligations due to lower cash flows from revenue generating operations.		the general part of their response provided under point 1 above. <u>Specifically:</u> The Claimants hereby incorporate the specific part of their response provided under point 2 above.	
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<p>8.</p>	<p>Memorial, ¶ 171</p> <p>One of the main amendments was a new valuation of BD Agro’s real estate. BD Agro owned almost 900 hectares of land, with the “<i>total estimated value of approximately EUR 93,4 million.</i>”</p>	<p>Source: Amendment to the Pre- pack Reorganization Plan of BD Agro dated 6 March 2015, p. 16 (CE-101) – not in public domain as the only Pre-pack Reorganization Plan in public domain, available on the web page of the Serbian Business Registers Agency is the Pre-pack Reorganization Plan from November 2014 (CE-321)</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p> <p>The Amendment to the Pre-pack Reorganization plan is publicly available as a part of the court file related to BD Agro’s reorganization. As explained above, Serbian law requires that the reorganization proceedings “<i>shall be open to the public</i>” and <i>all</i> submissions in the these proceedings, together with the accompanying documents, shall</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
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			<p>be “<i>published, immediately after reception, on the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings [...].</i>”²⁵</p> <p>The principle of publicity of the reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre-pack reorganization plans are to be published online as well.²⁶</p> <p>Where the law prescribes the publication on-line of certain information, then such information cannot be considered as confidential regardless of whether it has been actually published or not.²⁷</p>	
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²⁵ Bankruptcy Law, Art. 10, **RE-197**.

²⁶ Bankruptcy Law, Art. 159(3), **CE-799**.

²⁷ Claimants’ letter to the Tribunal, 3 November 2019, pp. 6-9.

9.	Memorial, ¶ 173 Under a bankruptcy scenario,	Source: Amendment to the Pre- pack Reorganization Plan of BD Agro dated 6 March 2015, pp. 22,	Serbia’s proposal should be rejected because the information that Serbia proposes to redact is	Same decision as Request No. 8 above.
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	<p>BD Agro's property could legally be sold for only 50% of its estimated value, causing a drop in the value of the company's assets from approximately EUR 120 million to EUR 60 million, and resulting in the creditors receiving significantly less and within an uncertain deadline.</p>	<p>78 (CE-101) – not in public domain, as the only Pre-pack Reorganization Plan in public domain, available on the web page of the Serbian Business Registers Agency is the Pre-pack Reorganization Plan from November 2014 (CE-321)</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 8 above.</p>	
10.	<p>Memorial, ¶ 513</p> <p>According to these valuations, the equity value of BD Agro was between EUR 56 million and EUR 71 million.</p>	<p>Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175); First Confineks Valuation (CE- 142); Second Confineks Valuation (CE-172) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 5 above.</p>	<p>Same decision as Request No. 5 above.</p>

<p>11.</p>	<p>Memorial, ¶ 514</p> <p>In December 2014, Mr. Pero Mrgud, a Serbian licensed expert witness in the area of valuation of construction</p>	<p>Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) –</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate</p>	<p>Same decision as Request Nos. 2 and 5 above.</p>
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	<p>facilities, was commissioned to appraise the value of BD Agro's most valuable asset, the construction land in Dobanovi (the "Mrgud Valuation"). Taking the value of land calculated by Mr. Mrgud, the equity value of BD Agro was more than EUR 71 million.</p>	<p>not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>their responses provided under points 2 and 5 above.</p>	
<p>12.</p>	<p>Memorial, ¶ 515</p> <p>According to Confineks's valuation received on 5 December 2015 (the "First Confineks Valuation"), which was again prepared by licensed Serbian expert witnesses, BD Agro's fair market value, calculated as the total value of its assets less the total value of its liabilities as of 31 December 2014, was EUR 57.2 million.</p>	<p>Source: First Confineks Valuation (CE-142) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 5 above.</p>	<p>Same decision as Request No. 5 above.</p>

<p>13.</p>	<p>Memorial, ¶ 516</p> <p>According to the valuation received on 4 February 2016 (the “Second Confineks Valuation”), BD Agro’s fair</p>	<p>Source: Second Confineks Valuation (CE-172) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate</p>	<p>Same decision as Request No. 5 above.</p>
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	market value, calculated as the total value of its assets less the total value of its liabilities as of 31 December 2015, was EUR 56.3 million.	Letter of October 28, 2019.	their response provided under point 5 above.	
14.	Memorial, fn. 512 Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci , December 2014, p. 4, CE-175.	Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) – not in public domain Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.	Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential. The Claimants hereby incorporate their responses provided under points 2 and 5 above.	Same decision as Request Nos. 2 and 5 above.
15.	Memorial, ¶ 518 The Claimants’ quantum expert, Dr. Richard Hern from NERA Consulting, prepared an expert report for the purposes of this arbitration and concluded that the equity value of BD Agro as of 21 October 2015 was EUR 53.3 to EUR 81 million.	Source: Hern ER (CER-2) – not in public domain Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.	Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential. The Claimants hereby incorporate their response provided under point 1 above.	Same decision as Request Nos. 2 and 5 above.


<p>16.</p>	<p>Memorial, ¶ 519</p> <p>1. The Mrgud Valuation implies equity value of over EUR 71 million</p> <p>519. In December 2014, BD Agro commissioned Mr. Mrgud to prepare a new valuation of BD Agro’s most valuable asset, that being approximately 290 hectares of construction land owned by BD Agro in Dobanovei, for the purposes of the Amended pre-pack reorganization plan. Mr. Mrgud estimated the market value of the construction land to be EUR 87 million.</p>	<p>Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 2 and 5 above.</p>	
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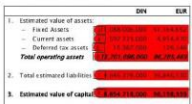
<p>17.</p>	<p>Memorial, ¶ 520</p> <p>520. Mr. Mrgud's valuation of the construction land implies an equity value of more than EUR 71 million. This value can be calculated by substituting the value of land estimated by Confineks in the Second Confineks Report by the value of the construction land estimated by Mr. Mrgud. Mr.</p>	<p>Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175); First Confineks Valuation (CE- 142); Second Confineks Valuation (CE-172) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 2 and 5 above.</p>	<p>Same decision as Request Nos. 2 and 5 above.</p>
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	<p>Mrgud's valuation of the construction land is EUR 14.4 million higher than the valuation of all land in the Second Confineks Valuation. Adding this difference to the fair market value of BD Agro calculated in the Second Confineks Valuation, other things held equal, results in the value of EUR 71 million.</p> <p>2. The First Confineks Valuation appraises BD Agro's fair market value at EUR 57.2 million</p>	<p>Letter of October 28, 2019.</p>		
<p>18.</p>	<p>Memorial, fn. 519</p> <p>Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci, December 2014, p. 5, CE-175.</p>	<p>Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 2 and 5 above.</p>	<p>Same decision as Request Nos. 2 and 5 above.</p>

<p>19.</p>	<p>Memorial, fn. 520 Report on the valuation of the</p>	<p>Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p>	<p>Same decision as Request Nos. 2 and 5 above.</p>
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	market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci, December 2014, p. 14, CE-175 .	town of Dobanovci (CE-175) – not in public domain Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.	The Claimants hereby incorporate their responses provided under points 2 and 5 above.	
20.	Memorial, fn. 521 Mr. Mrgud valued only the construction land . He did not value remaining assets and liabilities.	Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) – not in public domain Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.	Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential. The Claimants hereby incorporate their responses provided under points 2 and 5 above.	Same decision as Request Nos. 2 and 5 above.

<p>21.</p>	<p>Memorial, ¶ 524</p> <p>According to the First Confineks Valuation of 5 December 2015, BD Agro's fair market value, calculated as the total value of its assets less the total value of its liabilities as of 31 December 2014, was EUR 57,232,236:</p> <p>[...]</p>  <p>The values denominated in EUR were converted at the average exchange rate as at December 31, 2014 (EUR 1 = 133.3583 dinars).</p>	<p>Source: First Confineks Valuation (CE-142) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 5 above.</p>	<p>Same decision as Request No. 5 above.</p>
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<p>22.</p>	<p>Memorial, ¶ 527</p> <p>3. The Second Confineks Valuation appraises BD Agro's fair market value at EUR 56.4 million</p> <p>527. In January 2016, BD Agro—still under full control of the Privatization Agency—tasked Confineks to prepare an updated valuation as of 31 December 2015. This Second Confineks Valuation calculated the fair market value of BD Agro as of 31 December 2015 to be EUR 56,358,939:</p> <p>[...]</p>  <p><small>The values denominated in EUR were converted at the mid-market rate as at December 31, 2015 (EUR 1 = 121.6266 SEK).</small></p>	<p>Source: Second Confineks Valuation (CE-172) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 5 above.</p>	<p>Same decision as Request No. 5 above.</p>
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<p>23.</p>	<p>Memorial, ¶ 530</p> <p>BD Agro submitted to the court the Second Confineks Valuation and noted that it “<i>undoubtedly demonstrates that the appraised value of capital of the company is significantly</i></p>	<p>Source: Second Confineks Valuation (CE-172); Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
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<p><i>positive and amounts to 56,358,939.00 euros.”</i></p> <p>4. Dr. Hern estimates the fair market value of BD Agro between EUR 53.3 million and</p>		<p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p>	
<p>EUR 81 million</p>		<p>The quote that Serbia proposes to redact is from a letter sent by BD Agro to the commercial court on 17 February 2016.²⁸</p> <p>This letter is publicly available as a part of the court file related to BD Agro’s bankruptcy. As explained above, Serbian law requires that the bankruptcy proceedings “<i>shall be open to the public</i>” and all submissions in the these proceedings, together with the accompanying documents, shall be “<i>published, immediately after reception, on the public website of the competent commercial court or in some other manner that</i></p>	

²⁸ Letter from BD Agro to the Commercial Court in Belgrade, 17 February 2016, **CE-372**.

allows the public to be informed about the progress of the bankruptcy proceedings [...].”²⁹

²⁹ Bankruptcy Law, Art. 10, **RE-197**.

			<p>The principle of publicity of the reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre-pack reorganization plans are to be published online as well.³⁰</p> <p>Where the law prescribes the publication on-line of certain information, then such information cannot be considered as confidential regardless of whether it has been actually published or not.³¹</p> <p>With respect to the Second Confineks Valuation, the Claimants refer to the specific part of their response provided under point 5 above.</p> <p>With respect to Dr. Hern's valuation, the Claimants refer to their response provided</p>	
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³⁰ Bankruptcy Law, Art. 159(3), **CE-799**.

³¹ Claimants' letter to the Tribunal, 3 November 2019, pp. 5-9.

			under point 1 above.	
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24.	<p>Memorial, ¶ 533</p> <p>For the purposes of his valuation, Dr. Hern divides BD Agro’s assets into two categories: (i) core assets—being the assets required for BD Agro’s dairy production business, such—as agricultural land, farm buildings, equipment, herd and other current assets; and (ii) non-core assets—being the assets that are not required for dairy production, such—as construction land.</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p> <p>Information about the assets owned by BD Agro is publicly available in BD Agro’s financial statements ³² and documents that are public as a part of the court files related to BD Agro’s reorganization and bankruptcy (such as the pre-pack reorganization plans or contemporaneous valuation reports).</p> <p>With respect to Serbia’s</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>
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³² Law on Accounting, Art. 36, **CE-802**; Website of the Serbian Business Registers Agency, Original financial statements, 3 November 2019 (accessed), **CE-803**.

			request to redact information about the land owned by BD Agro, the Claimants refer to their response provided under Point 2 above.	
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25.	<p>Memorial, ¶ 536</p> <p>Using the above methods, Dr. Hern estimates the fair market value of BD Agro between EUR 53.3 million and EUR 81 million.</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	
26.	<p>Memorial, ¶ 537</p> <p>b. BD Agro’s land</p> <p>537. Dr. Hern confirms that BD Agro’s most valuable asset is its land, representing between 71% and 79% of BD Agro’s total asset value under the adjusted book valuation method. Dr. Hern identifies three categories of land owned by BD Agro:</p> <p>a. Construction land in Dobanovci, regulated under the General Regulation Plan for BD Agro Complex</p>	<p>Source: Hern ER (CER-2), paras. 51 & 116-119 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1 and 2 above.</p> <p>Furthermore, the categorization of land in Dr. Hern’s expert report follows is consistent with the First Confineks Valuation.³³ The First Confineks Valuation is not confidential because of the reasons explained by the Claimants in the specific part</p>	Same decision as Request Nos. 1, 2 and 5 above.

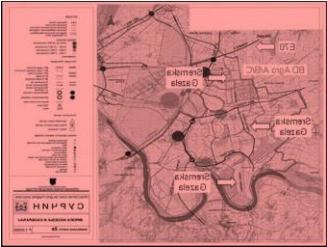
³³ Richard Hern First Expert Report, ¶¶ 51-56; First Confineks Valuation, pp. 41-51, **CE-142**.

	<p>Zones A, B and C in the Suburb of Dobanovec, Municipality of Surčin, which can be used for</p>		<p>of their response under point 5 above.</p>	
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<p>business and commercial activities and is located next to the farm complex (the “Construction land in Zones A, B and C”);</p> <p>b. Additional construction land in Dobanovci and Bečmen (the “Other construction land”); and</p> <p>c. Agricultural land in Asanja, Deč, Ugrinovci and Dobanovci (the “Agricultural land”).</p>			
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<p>27.</p>	<p>Memorial, ¶ 538</p> <p>ii. Construction land in Zones A, B and C</p> <p>538. The Construction land in Zones A, B and C consists of approximately 290 hectares of land located in Dobanovei, which may be developed for the purposes of construction of business and commercial areas.</p>	<p>Source: Amendment to the Pre-pack Reorganization Plan of BD Agro dated 6 March 2015, pp. 22, 78 (CE-101) – not in public domain as the only Pre-pack Reorganization Plan in public domain, available on the web page of the Serbian Business Registers Agency is the Pre-pack Reorganization Plan from November 2014 (CE-321); also, Hern ER (CER-2), para. 57 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 2 and 8 above.</p>	<p>Same decision as Request Nos. 2 and 8 above.</p>
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		Letter of October 28, 2019.		
28.	<p>Memorial, ¶ 539</p> <p>These land plots have a strategic location near the Belgrade city center (approx. 20 km) and the Belgrade airport (approx. 5 km). Furthermore, these land plots are located on a planned road called “Sremska gazela”, which will connect these land plots to the E70 highway.</p>	<p>Source: Hern ER (CER-2), para. 57 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1 and 2 above.</p>	Same decision as Request Nos. 1 and 2 above.

<p>29.</p>	<p>Memorial, ¶ 540</p> <p>The below map shows the strategic location of the Construction land in Zones A, B and C:</p> 	<p>Source: Hern ER (CER-2), para. 58 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1 and 2 above.</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>
<p>30.</p>	<p>Memorial, fn. 543</p> <p>Dr. Hern values also land that is a part of the castle complex in Novi Bečej, which is however valued separately due to the</p>	<p>Source: Hern ER (CER-2), paras. 116-119 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>

	cultural importance of the complex. Hern ER (CER-2), ¶¶ 116-119.	Letter of October 28, 2019.	their responses provided under points 1 and 2 above.	
31.	<p>Memorial, ¶ 541</p> <p>As explained by Dr. Hern, the future development of the Construction land in Zones A, B and C for business and commercial purposes together with its connection to the existing road network via Sremska gazela support setting the price for the Construction land in Zones A, B and C significantly above the prices for the other types of BD Agro's land.</p>	<p>Source: Hern ER (CER-2), para. 61 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1 and 2 above.</p>	Same decision as Request Nos. 1 and 2 above.

<p>32.</p>	<p>Memorial, ¶ 542</p> <p>To value the Construction-land in Zones A, B and C, Dr. Hern analyzed:</p> <p>a. evidence from comparable transactions;</p> <p>b. property tax evidence;</p> <p>c. the First and Second</p>	<p>Source: Hern ER (CER-2), paras. 62-87 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1 and 2 above.</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>
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	Confineks Valuation; d. the Mrgud Valuation; and e. other contemporaneous valuation reports.			
33.	Memorial, ¶ 543 Based on this analysis, Dr. Hern values the Construction land in Zones A, B and C at between 22- and 30 EUR/m² , which leads to a total value of this land between EUR 63.6 million and EUR 85.5 million.	Source: Hern ER (CER-2), paras. 89-90 – not in public domain Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.	Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential. The Claimants hereby incorporate their response provided under points 1 and 2 above.	Same decision as Request Nos. 1 and 2 above.

<p>34.</p>	<p>Memorial, ¶ 544</p> <p>All land plots in Zones A, B and C are currently formally registered as agricultural land, which registration must be changed to construction land prior to development. While the conversion is a purely administrative task, it is subject to a conversion fee equal to 50% of the value of the land subject to conversion,</p>	<p>Source: Hern ER (CER-2), paras. 91-94, Markicevic Second WS – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>Information about the existence of the conversion fee and its calculation is publicly available in the Law on Agriculture Land.³⁴</p> <p>With respect to the remaining part of Serbia’s request, the Claimants</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>
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³⁴ E.g. Reply, ¶¶ 1369-1372.

	<p>assuming its use for agriculture.</p> <p>However, certain land plots are exempted from the payment of the fee.</p>		<p>refer to their responses provided under points 1 and 2 above.</p>	
35.	<p>Memorial, ¶ 545</p> <p>Dr. Hern estimates the total value of the Construction land in Zones A, B and C, after the payment of the conversion fee, to be between EUR 62.9 million and EUR 82.9 million.</p>	<p>Source: Hern ER (CER-2), para. 94 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1 and 2 above.</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>
36.	<p>Memorial, ¶ 546</p> <p>iii. Other construction land</p> <p>546. In addition to the Construction land in Zones A, B and C, BD Agro owns other construction land in Dobanovei and Bečmen.</p>	<p>Source: Hern ER (CER-2), para. 95 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under points 1 and 2 above.</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>

37.	<p>Memorial, ¶ 547</p> <p>Relying on evidence from comparable transactions and the First and Second Confineks Valuations, Dr. Hern estimates</p>	<p>Source: Hern ER (CER-2), paras. 95-103 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>Information about the existence</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>
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	<p>the value of this land to be between 3 to 10 EUR/m². Using this range, Mr. Hern calculates the total value of the Other construction land to be between EUR 1.2 million and EUR 3.8 million. Where applicable, Dr. Hern again subtracts the conversion fee, arriving at the final value between EUR 1.1 million and EUR 3.4 million.</p>	<p>Letter of October 28, 2019.</p>	<p>of the conversion fee and its calculation is publicly available in the Law on Agriculture Land.³⁵</p> <p>With respect to the remaining part of the Serbia's request, the Claimants refer to their responses provided under points 1 and 2 above.</p>	
38.	<p>Memorial, ¶ 548</p> <p>iv. Agricultural land</p> <p>548. BD Agro owns agricultural land in various locations in Serbia. Relying on evidence from comparable transactions and the First and Second Confineks Valuations, Dr. Hern estimates the value of the Agricultural land between 0.7 and 2.9 EUR/m². This leads to a value of the Agricultural land between EUR 4 million and 15.5</p>	<p>Source: Hern ER (CER-2), paras. 104-109 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1 and 2 above.</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>

³⁵ E.g. Reply, ¶¶ 1369-1372.

million.

<p>39.</p>	<p>Memorial, ¶ 549</p> <p>c. Other assets</p> <p>549. Other assets owned by BD Agro include buildings, equipment and BD Agro's herd. Using the adjusted book value method, Dr. Hern estimates the value of the buildings owned by BD Agro to be EUR 16.8 million, the value of BD Agro's equipment to be EUR 2.4 million and the value of BD Agro's herd to be EUR 0.4 million. Dr. Hern also provides a separate value of EUR 0.8 million for the Dundjerski castle and the surrounding lands owned by BD Agro in Novi Bečej. Finally, Dr. Hern calculates the total value of other current and non-current assets (e.g. receivable, inventories, etc.) to be EUR 7.4 million.</p>	<p>Source: Hern ER (CER-2), paras. 111 & 115-121 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1, 2 and 24 above.</p>	<p>Same decision as Request Nos. 1, 2 and 24 above.</p>
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<p>40.</p>	<p>Memorial, ¶ 550</p> <p>d. Valuation of BD Agro’s farm using the DCF analysis</p> <p>550. Dr. Hern also values the core-assets owned by BD Agro (i.e. the assets necessary for dairy production on its farm) using a DCF valuation method. This alternative analysis includes all assets owned by BD Agro, with the exception of: (i) the Construction land in Zones A, B and C; (ii) the Other construction land; and (iii) the Dundjerski castle and the surrounding lands owned by BD Agro in Novi Bečej. The reason for excluding these assets from the DCF analysis is that these non-core assets are not necessary for BD Agro’s business to operate.</p>	<p>Source: Hern ER (CER-2), para. 124; also Markicevic Second WS – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1 and 2 above.</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>
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<p>41.</p>	<p>Memorial, ¶ 551</p> <p>Using the DCF valuation method, Dr. Hern estimates the value of BD Agro's core assets to be between EUR 31.5 million</p>	<p>Source: Hern ER (CER-2), para. 140 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under</p>	<p>Same decision as Request No. 1 above.</p>
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	and EUR 36.9 million.		point 1 above.	
42.	<p>Memorial, ¶ 555</p> <p>Applying this approach, Dr. Hern calculates the total value of BD Agro's assets to be between EUR 93.3 million and EUR 121 million.</p>	<p>Source: Hern ER (CER-2), para. 153 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	Same decision as Request No. 1 above.
43.	<p>Memorial, ¶ 558</p> <p>Dr. Hern calculates the total value of BD Agro's liabilities to be EUR 40 million. Using this value of liabilities and the value of assets as between EUR 93.3 million and EUR 121 million, Dr. Hern estimates the value of BD Agro's equity to be between EUR 53.3 million and EUR 81 million.</p>	<p>Source: Hern ER (CER-2), paras. 162-163 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The value of BD Agro's liabilities is public because it is contained in the publicly available financial statements.</p> <p>With respect to the remaining part of the Serbia's request, the Claimants refer to their response provided under point 1 above.</p>	Same decision as Request No. 1 above.

<p>44.</p>	<p>Memorial, ¶ 559</p> <p>To calculate the value of interest of individual Claimants in BD Agro's equity, the Claimants use the upper bound</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate</p>	<p>Same decision as Request No. 1 above.</p>
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	of the valuation provided by Dr. Hern, i.e. the equity value of EUR 81 million .	Letter of October 28, 2019.	their response provided under point 1 above.	
45.	Memorial, ¶ 561 With BD Agro's total equity value amounting to EUR 81 million , the value of Sembi's interest was EUR 61.5 million as of 21 October 2015. This is also the value of Sembi's loss as of that date.	Source: Hern ER (CER-2), para. 166 – not in public domain Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.	Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential. The Claimants hereby incorporate their response provided under point 1 above.	Same decision as Request No. 1 above.
46.	Memorial, ¶ 562 According to Dr. Hern's calculations, the loss suffered by Sembi uplifted to 16 January 2019 amounts to EUR 77.5 million .	Source: Hern ER (CER-2), para. 177 – not in public domain Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.	Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential. The Claimants hereby incorporate their response provided under point 1 above.	Same decision as Request No. 1 above.

<p>47.</p>	<p>Memorial, ¶ 566</p> <p>Mr. Rand's Indirect Shareholding was 3.9%, and it was held through MDH Serbia. With the equity value of BD Agro equal to EUR 81 million, the value of a 3.9% shareholding in BD Agro was EUR 3.2 million as of 21</p>	<p>Source: Hern ER (CER-2), para. 169 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	<p>Same decision as Request No. 1 above.</p>
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	October 2015.			
48.	<p>Memorial, ¶ 567</p> <p>This tax would amount to EUR 0.4 million.</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	Same decision as Request No. 1 above.
49.	<p>Memorial, ¶ 568</p> <p>The value of Mr. Rand’s Indirect Shareholding, less corporate income tax payable, was, therefore, EUR 2.7 million as of 21 October 2015.</p>	<p>Source: Hern ER (CER-2), para. 169 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	Same decision as Request No. 1 above.
50.	<p>Memorial, ¶ 569</p> <p>Uplifted to 16 January, the value of Mr. Rand’s Indirect Shareholding equals EUR 3.4 million.</p>	<p>Source: Hern ER (CER-2), para. 177 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	Same decision as Request No. 1 above.

<p>51.</p>	<p>Memorial, ¶ 572</p> <p>Since the maximum annual dividend was relatively low, EUR 337,200, the value of Rand Investments' interest in</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p>	<p>Same decision as Request No. 1 above.</p>
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	<p>Sembi, and thus the value of its indirect interest in BD Agro's equity, was limited to the redemption price, which was EUR 11,201,890 as of 21 October 2015.</p>	<p>Letter of October 28, 2019.</p>	<p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p> <p>The information that Serbia proposes to redact does <i>not</i> relate to description of BD Agro's assets or their value. The redemption price is calculated based on Sembi's corporate documents and does not depend on the value of BD Agro's assets.³⁶</p> <p>This information is therefore owned by the Claimants who agree to its publication.</p>	
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³⁶ Memorial, ¶¶ 570-572

<p>52.</p>	<p>Memorial, ¶ 573 Uplifted to 16 January 2019, the value of Rand Investments' indirect interest in BD Agro's equity equals to EUR 14.1 million.</p>	<p>Source: Hern ER (CER-2) – not in public domain Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential. <u>Generally:</u> The Claimants hereby incorporate the general part of their response</p>	<p>Same decision as Request No. 1 above.</p>
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			<p>provided under point 1</p> <p>above. <u>Specifically:</u></p> <p>The information that Serbia proposes to redact does <i>not</i> relate to description of BD Agro's assets or their value. The redemption price is calculated based on Sembi's corporate documents and does not depend on the value of BD Agro's assets.³⁷</p> <p>This information is therefore owned by the Claimants who agree to its publication.</p> <p>The uplift is calculated based on the applicable Serbian interest rate, which is publicly available.</p>	
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³⁷ Memorial, ¶¶ 570-572.

<p>53.</p>	<p>Memorial, ¶ 576</p> <p>Therefore, as of 21 October 2015, the Ahola Family Trust was entitled to the entire value of Sembi less the EUR 11,201,890 redemption price that Sembi owed to Rand</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 51 above.</p>	<p>Same decision as Request No. 51 above.</p>
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	Investments.			
54.	<p>Memorial, ¶ 577</p> <p>Thus, the value of the Ahola Family Trust’s interest in Sembi was equal to the value of Sembi’s interest in BD Agro’s equity less the EUR 11,201,890 redemption price owed to Rand Investments.</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 51 above.</p>	Same decision as Request No. 51 above.
55.	<p>Memorial, ¶ 578</p> <p>With the value of Sembi’s interest in BD Agro’s equity equal to approximately EUR 61.5 million, the value of the Ahola Family Trust’s interest in Sembi, and thus BD Agro’s equity, was approximately EUR 50.3 million.</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	Same decision as Request No. 1 above.
56.	<p>Memorial, ¶ 579</p> <p>This is approximately EUR 16.8 million for each of Ms. Kathleen Elizabeth Rand, Ms. Allison Ruth Rand and Mr.</p>	<p>Source: Hern ER (CER-2), para. 168 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby</p>	Same decision as Request No. 51 above.

			incorporate their response provided under	
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	Robert Harry Leander Rand.		point 1 above.	
57.	<p>Memorial, ¶ 580</p> <p>Dr. Hern calculates the present value at EUR 21.1-million.</p>	<p>Source: Hern ER (CER-2), para. 177 – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	Same decision as Request No. 51 above.
58.	<p>Memorial, ¶ 597</p> <p>597. The Claimants request that the Tribunal issue an award:</p> <p>a. Declaring that Serbia has breached the Cyprus-Serbia BIT;</p> <p>b. Ordering Serbia to pay compensation to Sembi of no less than EUR 77.5-million;</p> <p>c. Declaring that Serbia has breached the Canada-Serbia BIT;</p> <p>d. In the alternative to request</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under points 1 and 51 above.</p>	Same decision as Request Nos. 1 and 51 above.

	<p>b. above, ordering Serbia to pay compensation to:</p> <p>(i) Rand Investments of no less</p>			
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<p>than EUR 14.1 million;</p> <p>(ii) Ms. Kathleen Elizabeth Rand of no less than EUR 21.1 million, plus a gross-up of 33.2% on that amount;</p> <p>(iii) Ms. Allison Ruth Rand of no less than EUR 21.1 million, plus a gross-up of 33.2% on that amount; and</p> <p>(iv) Mr. Robert Harry Leander Rand of no less than EUR 21.1 million, plus a gross- up of 33.2% on that amount;</p> <p>e. Ordering Serbia to pay compensation to Mr. William Rand:</p> <p>(i) no less than EUR 3.4 million for loss of value of Mr. Rand's Indirect Shareholding; and</p> <p>(ii) no less than EUR 3 million for loss of value of Mr. Rand's receivables</p>			
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	against BD Agro; f. ordering Serbia to pay interest on any amounts			
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	<p>awarded at the rate of Serbian statutory default interest rate (currently 8%) from 16 January 2019 until payment in full;</p> <p>g. ordering Serbia to pay the costs of this proceeding, including costs of legal representation; and</p> <p>h. ordering such other relief as the Tribunal may deem appropriate in the circumstances.</p>			
Second witness statement of Mr. Igor Markićević				

<p>59.</p>	<p>Markićević Second WS, ¶ 14</p> <p>However, BD Agro also had several operational problems that had to be resolved. The most pressing issue was BD Agro's debt of approximately EUR 40 million, mostly in bank loans. While the actual value of BD Agro's assets significantly exceeded the value of its debt, this was</p>	<p>Source: Consolidated financial statements dated 31 December 2012 (CE-267) – not in public domain; only financial statements starting from 2015 are publically available at the web page of the Serbian Business Registers Agency.</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p> <p>BD Agro's consolidated financial</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
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	not enough to prevent the solvency issues. This is because the main driver of the high value of BD Agro's assets was the value of its land, which did not generate any regular cash flows.		statements from the years prior to 2015 are publicly available because they have been filed with the Business Registers Agency and anybody can obtain a copy thereof from the Business Registers Agency, regardless of whether they have been published on the Agency's website or not. ³⁸	
60.	<p>Markićević Second WS, ¶ 15</p> <p>BD Agro had capacities for a herd of approximately 2,500 milking cows, however, to reach this full capacity, BD Agro needed additional investment of approximately EUR 5 million.</p>	<p>Source: Amendment to the Pre-pack Reorganization Plan of BD Agro dated 6 March 2015, pp. 59-77 (CE-101) – not in public domain, as the only Pre-pack Reorganization Plan in public domain, available on the web page of the Serbian Business Registers Agency is the Pre-pack Reorganization Plan from November 2014 (CE-321)</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 8 above.</p>	Same decision as Request No. 8 above.

³⁸ Law on Accounting, Art. 36, **CE-802**; Website of the Serbian Business Registers Agency, Original financial statements, 3 November 2019 (accessed), **CE-803**.

<p>61.</p>	<p>Markićević Second WS, ¶ 16</p> <p>BD Agro's annual payroll was approximately EUR 2.5</p>	<p>Source: no clear source</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p>	<p>Same decision as Request Nos. 1 and 8 above.</p>
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	<p>million, while the payroll with only operationally relevant employees would be significantly less, around EUR 800,000.</p>	<p>Letter of October 28, 2019.</p>	<p><u>Generally:</u></p> <p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p> <p>The information that Serbia proposes to redact under this request does <i>not</i> relate to description of BD Agro's assets or their valuation in any way. BD Agro's costs are publicly available in its financial statements and reorganizations plans that are public as a part of the reorganization files.</p> <p>The decrease in BD Agro's payroll can be simply calculated as the difference between the original payroll and the salaries of its employees made redundant.</p> <p>Furthermore, information about BD Agro employees and costs of their salaries was also included in</p>	
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			the Amendment to the Pre-pack	
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			Reorganization plan. ³⁹ The Amendment to the Pre-pack Reorganization plan is not confidential for the reasons explained by the Claimants in their response under point 8 above.	
62.	<p>Markićević Second WS, ¶ 130</p> <p>The supplemental valuation of BD Agro's commercial and industrial land included in the Amended pre-pack reorganization plan was prepared by an independent real estate valuator, Mr. Pero Mrgud, who concluded that the value of land plots was EUR 25 per m² in Zone C, EUR 30 per m² in Zone A and EUR 35 per m² in Zone B. The total value of all land plots located within zones A, B and C in Dobanovci was EUR 87.1 million.</p>	<p>Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 2 and 5 above.</p>	Same decision as Request Nos. 2 and 5 above.

³⁹ E.g. Amendment to the Pre-pack Reorganization Plan of BD Agro, 6 March 2015, pp. 10, 13-14, 23, 31, 72-73, **CE-101**.

<p>63.</p>	<p>Markičević Second WS, ¶ 131</p> <p>We found Mr. Mrgud's valuation reasonable not only given the possibility of future commercial and industrial use of this land and its strategic location, but also given past sales of this land by BD Agro. In 2008 and 2009, BD Agro made three sales of the land located in Zone A for the price between EUR 15 and EUR 23 per m². We found it entirely reasonable that the price of that land had increased to EUR 30 per m² over the previous 6-7 years, owing not only to the general increase of real estate prices, but also to the materialization of the plans to build the Sremska gazela road.</p>	<p>Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 2 and 5 above.</p>	
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<p>64.</p>	<p>Markićević Second WS, ¶ 132</p> <p>Besides these land plots, which were to be used as an industrial and commercial zone, BD Agro also owned almost 600 hectares of agricultural land. The valuation of all the land owned by BD Agro was EUR 93.4</p>	<p>Source: Amendment to the Pre-pack Reorganization Plan of BD Agro dated 6 March 2015, pp. 16-17 (CE-101) – not in public domain as the only Pre-pack Reorganization Plan in public domain, available on the web page of the Serbian Business Registers Agency is the Pre-pack</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 2 and 8 above.</p>	<p>Same decision as Request Nos. 2 and 8 above.</p>
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	million.	Reorganization Plan from November 2014 (CE-321) Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.		
65.	Markićević Second WS, fn. 113 Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci dated December 2014, p. 4, CE-175.	Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) – not in public domain Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.	Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential. The Claimants hereby incorporate their responses provided under points 2 and 5 above.	Same decision as Request Nos. 2 and 5 above.
66.	Markićević Second WS, fn. 114 Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci dated December 2014, p. 4, CE-175.	Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) – not in public domain Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.	Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential. The Claimants hereby incorporate their responses provided under points 2 and 5 above.	Same decision as Request Nos. 2 and 5 above.

<p>67.</p>	<p>Markićević Second WS, ¶ 137</p> <p>The sale of the commercial and industrial land in Dobanovci would also require BD Agro to install an irrigation system on some of its remaining land plots in order to maintain an adequate level of its own production of certain feeding crops that could not be bought from suppliers. This would cost around RDS 234,000 (approximately EUR 1,950) per one hectare.</p>	<p>Source: Offer for the irrigation system dated 25 June 2014 (CE-187) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p> <p>The information that Serbia proposes to redact under this request does <i>not</i> relate to description of BD Agro’s assets or their valuation in any way.</p> <p>Furthermore, the costs of the irrigation system can be obtained by anyone simply by asking the companies installing such systems to provide a fee quote.</p>	<p>Same decision as Request Nos. 5 and 8 above.</p>
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Markićević Second WS, ¶ 138

68.

Table 6.1 Indicative overview of value of assets in the event of bankruptcy (EUR 000)

Item	Book value on 31/08/2014	Liquidation value of the property
1 Land	91,402.7	46,701.3
2 Facilities	19,122.5	9,561.2
3 Equipment	1,636.5	1,334.5
4 Herd	1,238.9	164.5
5 Supplies	1,030.4	515.2
6 Claims	4,721.7	2,360.8
7 Short-term financial investments	454.5	227.2
8 Cash and cash equivalents	0.0	0.3
9 VAT and accounts receivable	96.0	49.3
Overall	121,829.1	60,914.5

Source: Amendment to the Pre- pack Reorganization Plan of BD Agro dated 6 March 2015, pp. 16-17 (CE-101) – not in public domain as the only Pre-pack Reorganization Plan in public domain, available on the web page of the Serbian Business Registers Agency is the Pre-pack Reorganization Plan from November 2014 (CE-321); also First Confineks Valuation (CE- 142); Second Confineks Valuation (CE-172) – not in public domain

Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.

Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.

The Claimants hereby incorporate their response provided under point 5 and 8 above.

<p>69.</p>	<p>Markićević Second WS, ¶ 164</p> <p>However, some creditors, including Banca Intesa, filed appeals to the Appellate Court in Belgrade. Banca Intesa argued, among other things, that the supplemented valuation of land owned by BD Agro was overstated. Banca Intesa referred to a valuation prepared by Jones Lang LaSalle d.o.o., which it had submitted during</p>	<p>Source: JLL Valuation (CE-176) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
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<p>the reorganization proceedings and which valued BD Agro's land at an amount lower than the valuation prepared by Mr. Mrgud and included in the Amended _____ pre-pack reorganization plan.</p>		<p>The valuation prepared by Jones Lang LaSalle d.o.o. (“JLL”) and Banca Intesa’s submission are publicly available as parts of the court file related to BD Agro’s reorganization. As explained above, Serbian law requires that the reorganization proceedings “<i>shall be open to the public</i>” and all submissions in the these proceedings, together with the accompanying documents, shall be “<i>published, immediately after reception, on the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of the bankruptcy proceedings [...].</i>”⁴⁰</p>	
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⁴⁰ Bankruptcy Law, Art. 10, **RE-197**.

			<p>The principle of publicity of reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre-pack reorganization plans are to be published online as well.⁴¹</p>	
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⁴¹ Bankruptcy Law, Art. 159(3), **CE-799**.

			Where the law prescribes the publication on-line of certain information, then such information cannot be considered as confidential regardless of whether it has been actually published or not. ⁴²	
70.	<p>Markićević Second WS, ¶ 204</p> <p>On 5 December 2015, BD Agro received Confineks's report. The report stated that the value of the BD Agro's land as of 31 December 2014 was 8,602,088,000 dinars (approximately EUR 71 million). While this value was lower than that stated in the reorganization plan (approximately EUR 93.4 million), it still significantly exceeded BD Agro's liabilities. The Confineks report confirmed that the</p>	<p>Source: First Confineks Valuation (CE-142) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 5 above.</p>	Same decision as Request No. 5 above.

⁴² Claimants' letter to the Tribunal, 3 November 2019, pp. 5-9.

	valuation used in the Amended pre-pack reorganization plan was reasonable, as opposed to the valuation submitted by Banca Intesa.			
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Consolidated list of the Claimants' documents				
71.	<p>CE-175</p> <p>Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovei</p>	<p>Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 2 and 5 above.</p>	<p>Same decision as Request Nos. 2 and 5 above.</p>
72.	<p>CE-176</p> <p>Jones Lang LaSalle d.o.o., Report on the Valuation of Immoveable Property of BD Agro, located in Dobanovei, Serbia</p>	<p>Source: JLL Valuation (CE-176) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 2 and 69 above.</p>	<p>Same decision as Request Nos. 2 and 69 above.</p>
Counter-Memorial				

73.	<p>Counter-Memorial, ¶ 681</p> <p>In accordance with the Serbian legislation on bankruptcy, the company was sold at the public auction for approximately EUR 13 million. Since the price achieved at the auction is significantly smaller in comparison to BD Agro's overall liabilities, Grant Thornton Report values the company on 9 April 2019 at €nil which is also the value of Claimants' claim on 21 October 2015 as the date of the alleged expropriation. The same result is achieved based on the JLL report on valuation of BD Agro's building land in Dobanovei.</p>	<p>Source: Cowan ER (RER-1); JLL Valuation (CE-176) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1 and 69 above.</p>	<p>Same decision as Request Nos. 1 and 69 above.</p>
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<p>74.</p>	<p>Counter-Memorial, ¶ 772</p> <p>Claimants start their discussion of BD Agro's value by mentioning that the company was the object of three "contemporaneous" valuations carried between December 2014 and February 2016, which established that the company's</p>	<p>Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175); First Confineks Valuation (CE- 142); Second Confineks Valuation (CE-172) – not in public domain</p> <p>Reasons for confidentiality: See</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 5 above.</p>	<p>Same decision as Request No. 5 above.</p>
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	value was between EUR 56 and EUR 71 million.	Point 1 above and Respondent's Letter of October 28, 2019.		
75.	<p>Counter-Memorial, ¶ 773</p> <p>For example, the value of the company's land in Dobanovci, which Claimants consider to be its most valuable asset, varied between EUR 4.7 million and EUR 87.1 million.</p>	<p>Source: Cowan ER (RER-1), para. 6.3; also JLL Valuation (CE- 176); Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1, 2, 5 and 69 above.</p>	Same decision as Request Nos. 1, 2, 5 and 69 above.

<p>76.</p>	<p>Counter-Memorial, ¶ 774</p> <p>For example, they dismiss, without sufficient justification, the JLL valuation of BD Agro's land in Dobanovi, commissioned by Banca Intesa.</p> <p>[...]</p> <p>In Dr Hern's own words 'Albeit this evidence is not from actual transactions, it represents the seller's expectations of the price of land comparable to BD Agro's</p>	<p>Source: JLL Valuation (CE-176); Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 2 and 69 above.</p>	<p>Same decision as Request Nos. 2 and 69 above.</p>
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	land in Zones A, B and C', the use of Mr Mrgud's report inflates Dr Hern's range unit price.			
77.	Counter-Memorial, fn. 922 See Jones Lang LaSalle d.o.o, Report on the Valuation of Immovable Property of BD Agro, located in Dobanovei, Serbia, CE-176.	Source: JLL Valuation (CE-176) – not in public domain Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.	Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential. The Claimants hereby incorporate their responses provided under points 2 and 69 above.	Same decision as Request Nos. 2 and 69 above.
78.	Counter-Memorial, ¶ 775 The JLL valued the land in Dobanovei (in Zones A, B and C) at EUR 4.7 million in February 2015.925 In contrast to that, the valuation prepared by the Mr. Mrgud, used by Claimants, assessed the value of the land in Zones A, B, C to be EUR 87.1 million at 31 August 2014.	Source: JLL Valuation (CE-176); Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) – not in public domain Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.	Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential. The Claimants hereby incorporate their responses provided under points 2, 5 and 69 above.	Same decision as Request Nos. 2, 5 and 69 above.

79.	<p>Counter-Memorial, fn. 925</p> <p>Jones Lang LaSalle d.o.o, Report on the Valuation of Immovable Property of BD Agro, located in Dobanovei,</p>	<p>Source: JLL Valuation (CE-176) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate</p>	<p>Same decision as Request Nos. 2 and 69 above.</p>
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	Serbia, CE-176.	Letter of October 28, 2019.	their responses provided under points 2 and 69 above.	
80.	<p>Counter-Memorial, fn. 926</p> <p>Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci, pp. 14-15, CE-175.</p>	<p>Source: Report on the valuation of the market value of construction land in the BD Agro complex Zones A, B and C in the town of Dobanovci (CE-175) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 2 and 5 above.</p>	Same decision as Request Nos. 2 and 5 above.
81.	<p>Counter-Memorial, ¶ 779</p> <p>Claimants’ financial expert values BD Agro between EUR 55.3 million and EUR 81 million. He arrives at these numbers by (1) valuing BD Agro’s non-core assets, primarily the construction land in Dobanovci, using the Adjusted Book Value method, and (2) valuing BD Agro’s farming business using the Discount Cash Flow (“DCF”) method. According to him, the total</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under points 1 and 2 above.</p>	Same decision as Request Nos. 1 and 2 above.

	value of the company's assets is between EUR 96.3 million and EUR 124 million ,			
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	from which he subtracts the value of current and non-current liabilities in line with their book value, as reported in the 2015 current accounts (EUR 43 million).			
82.	<p>Counter-Memorial, ¶ 785</p> <p>The major element in the valuation provided by Claimants' expert is the value of certain land plots (in Zones A, B, and C in Dobanovei) registered as agricultural land which could have been sold at the value of construction land. He assumes that this land could be sold at high prices (between EUR 62.9 million and EUR 82.9 million) on the basis of the Mrgud valuation, two Confineks valuations, as well as other sources.</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1 and 2 above.</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>

<p>83.</p>	<p>Counter-Memorial, ¶ 786 Grant Thornton report criticizes Mr. Hern's valuation of the land for a number of reasons. As already mentioned, he unjustifiably dismissed the JLL</p>	<p>Source: Cowan ER (RER-1), paras. 7.8.2-3. – not in public domain Reasons for confidentiality: See Point 1 above and Respondent's</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential. The Claimants hereby incorporate their responses provided under</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>
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<p>valuation, which was prepared for Banca Intesa and used reputable standards. Further, there is evidence that actual sales of BD Agro's land were for the amounts much lower than their estimated value. For example, in one transaction in 2012, agricultural land in Novi Becej was sold at 55% of its estimated value (sold at EUR 7.4 million, estimated at EUR 13.5 million). Even BD Agro's management acknowledged that the estimated value of the land in Dobanovei at EUR 120,000 per ha could not be achieved in the short term. Indeed, the company encountered difficulties when it tried to sell the land in the past.</p>	<p>Letter of October 28, 2019.</p>	<p>point 1 and 2 above.</p>	
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<p>84.</p>	<p>Counter-Memorial, ¶ 787</p> <p>Further, it seems that Claimants' expert assumed a lower fee for conversion of agricultural land to construction land. While he assumed the conversion fee would be 50% of the value of the agricultural land, in fact the fee could be as</p>	<p>Source: Cowan ER (RER-1), paras. 7.10. & 7.12; Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>Information about the existence of the conversion fee and its calculation is publicly available in</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>
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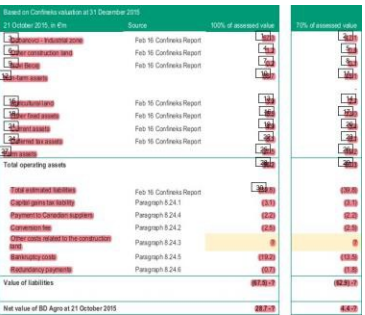
	<p>high as 20% of the market value for construction land. This alone could increase the conversion fee to between EUR 7.7 million and EUR 10.6 million, in contrast to Dr. Hern's estimate of between EUR 1.2 million and EUR 3.8 million. In addition, converting the land is a process that could take years. All in all, Grant Thornton report finds it <i>"surprising that Dr Hern does not seem to have considered the liquidity and marketability of the land before it is converted, the long lead-time or the extra costs that would be incurred."</i></p>		<p>the Law on Agriculture Land.⁴³</p> <p>With respect to the remaining part of the Serbia's request, the Claimants refer to their responses provided under points 1 and 2 above.</p>	
85.	<p>Counter-Memorial, ¶ 789</p> <p>Grant Thornton report provides a valuation of BD Agro as at 21 October 2015 and concludes that it was between EUR nil and EUR</p>	<p>Source: Cowan ER (RER-1) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby</p>	<p>Same decision as Request No. 1 above.</p>

⁴³ E.g. Reply, ¶¶ 1369-1372.

	4.4 million.		incorporate their response provided under point 1 above.	
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<p>86.</p>	<p>Counter-Memorial, ¶ 793</p> <p><i>“to the difficulty of marketing the business or assets to potential investors and their having time to complete due diligence and also the difficulty in assessing the land conversion and value.”</i></p>	<p>Source: Cowan, para. 8.12. – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 84 above.</p>	<p>Same decision as Request No. 84 above.</p>
<p>87.</p>	<p>Counter-Memorial, ¶ 794</p> <p>Also, previous sales of BD Agro’s land achieved the price which was at around 50% of its estimated value.</p>	<p>Source: Cowan ER (RER-1), para. 8.15. – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1 and 2 above.</p>	<p>Same decision as Request Nos. 1 and 2 above.</p>

<p>88.</p>	<p>Counter-Memorial, ¶ 795</p> <p>Grant Thornton report bases its valuation on the Confineks report dated 4 February 2016, whose valuation of construction land did not factor in the liquidity and marketability of the land. For this reason, it considers the land valuation in Confineks report to be a maximum value. The Confineks report valued BD Agro's assets at 31 December</p>	<p>Source: Cowan ER (RER-1); also First Confineks Report (CE-142); Second Confineks Report (CE-172) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1, 2 and 5 above.</p>	<p>Same decision as Request Nos. 1, 2 and 5 above.</p>
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	<p>2015 at RSD 6,854 million (EUR 56.4 million). On this basis, and after applying 30% discount, Grant Thornton report establishes the value of BD Agro's total operating assets at EUR 67.3 million. At the same time, its total liabilities (after discount) are EUR 62.9 million, so the value of the company is EUR 4.4 million at 21 October 2015.</p>															
<p>89.</p>	<p>Counter-Memorial, ¶ 796</p>  <table border="1"> <thead> <tr> <th>Source</th> <th>100% of assessed value</th> <th>70% of assessed value</th> </tr> </thead> <tbody> <tr> <td>Total operating assets</td> <td>67.3</td> <td>47.1</td> </tr> <tr> <td>Total assessed liabilities</td> <td>62.9</td> <td>44.0</td> </tr> <tr> <td>Net value of BD Agro at 21 October 2015</td> <td>4.4</td> <td>3.1</td> </tr> </tbody> </table>	Source	100% of assessed value	70% of assessed value	Total operating assets	67.3	47.1	Total assessed liabilities	62.9	44.0	Net value of BD Agro at 21 October 2015	4.4	3.1	<p>Source: Cowan ER (RER-1) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	<p>Same decision as Request No. 1 above.</p>
Source	100% of assessed value	70% of assessed value														
Total operating assets	67.3	47.1														
Total assessed liabilities	62.9	44.0														
Net value of BD Agro at 21 October 2015	4.4	3.1														

<p>90.</p>	<p>Counter-Memorial, ¶ 797</p> <p>Since Claimants had 79.77% shareholding in the company, this means that the maximum value of their claim is EUR 3.5 million plus pre-award interest.</p>	<p>Source: Cowan ER (RER-1), para. 8.1. – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	<p>Same decision as Request No. 1 above.</p>
<p>91.</p>	<p>Counter-Memorial, ¶ 798</p> <p>Alternatively, Grant Thornton report contains a valuation based on the value of BD Agro’s land, taking into account the JLL valuation. The latter was prepared for the purposes of obtaining a bank loan, “<i>which implies it reflects the value that the bank could realistically extract from the land it had to repossess and sell the business, i.e. if the business was in a bankruptcy situation</i>”. JLL valued the land at EUR 4.7 million, in comparison to Confineks valuation of between EUR 65.8 million and EUR 67.3 million.</p>	<p>Source: Cowan ER (RER-1), para. 8.23. – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their responses provided under points 1, 2, 5 and 69 above.</p>	<p>Same decision as Request Nos. 1, 2, 5 and 69 above.</p>

<p>92.</p>	<p>Counter-Memorial, ¶ 799</p> <p>A valuation of BD Agro on the basis of JLL valuation would be EUR nil, since the liabilities of BD Agro would be significantly greater than its assets.</p>	<p>Source: Cowan ER (RER-1), para. 8.24. – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	<p>Same decision as Request No. 1 above.</p>
<p>93.</p>	<p>Counter-Memorial, ¶ 800</p> <p>The sale of BD Agro also implies a value of EUR nil at 9 April 2019, which, according to Grant Thornton report could also be used as a representative value for 21 October 2015.</p>	<p>Source: Cowan ER (RER-1), para. 8.28. – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	<p>Same decision as Request No. 1 above.</p>
<p>94.</p>	<p>Counter-Memorial, ¶ 801</p> <p>In conclusion, the value of BD Agro on 21 October 2015 was between EUR 4.4 and EUR nil, while the value of Claimants’ shareholding was between EUR 3.5 million and EUR nil.</p>	<p>Source: Cowan ER (RER-1) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	<p>Same decision as Request No. 1 above.</p>

<p>95.</p>	<p>Counter-Memorial, fn. 963 See RE-171. It was valued in the bankruptcy proceedings at EUR 26 million on 30 June 2018, see RE-191.</p>	<p>The value of the valuation is in public domain, available at the web page of the Bankruptcy Supervision Agency</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential. Serbia itself admits that it is in the public domain.</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
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<p>96.</p>	<p>Counter-Memorial, ¶ 804</p> <p>In addition, Claimants accept that MDH doo would need to pay 15% corporate income tax in Serbia on the difference between the selling price and the original purchase price and claim that this tax would amount to EUR 0.4 million.</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	<p>Same decision as Request No. 1 above.</p>
<p>97.</p>	<p>Counter-Memorial, ¶ 805</p> <p>In their instructions to Dr. Hern, Claimants stated that the value of MDH doo’s original purchase price of 3.9% of shares was EUR 200,000. Now they claim the value of the same shares on 21 October 2016 was EUR 3.2 million. This in itself shows how unrealistic and absurd Claimants’ calculation is: the value of MDH doo’s share in a failing company somehow sky-rocketed from EUR 0.2 to 3.2 million.</p>	<p>Source: Hern ER (CER-2) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	<p>Same decision as Request No. 1 above.</p>

<p>98.</p>	<p>Counter-Memorial, ¶ 810</p> <p>However, this scenario is absolutely unrealistic, because there was no realistic prospect of selling BD Agro at the price sought by Claimants or at any price that would result in their net cash gain. The price for which BD Agro was sold on 9 April 2019 was around EUR 13 million, which, taken together with the company's liabilities, means that its worth is nil. Therefore, no cash would ever be coming to the Ahola Family Trust and there would be no possibility to avoid Canadian taxes.</p>	<p>Source: Cowan ER (RER-1) – not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent's Letter of October 28, 2019.</p>	<p>Serbia's proposal should be rejected because the information that Serbia proposes to redact is not confidential.</p> <p>The Claimants hereby incorporate their response provided under point 1 above.</p>	<p>Same decision as Request No. 1 above.</p>
<p>Procedural Order No. 4, Annex A</p>				

<p>99.</p>	<p>Procedural Order No. 4, Annex A, point 66</p> <p>“...a company ING Expert performed a valuation of BD Agro and concluded that the value of BD Agro was EUR 98,177,861, with the industrial land being valued at EUR 220,000 per hectare.”</p>	<p>Source: Letter from Center for education and representation of shareholders and employees to the Privatization Agency of 26 January 2009 (R-114) – not in public domain; more importantly, the results of the ING Valuation are not in public domain</p> <p>Reasons for confidentiality: See</p>	<p>Serbia’s proposal should be rejected.</p> <p>Serbia’s proposal is untimely</p> <p>As the Claimants explain in detail in their letter of 3 November 2019, Serbia’s proposal should be rejected as untimely.</p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>
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	<p>“...we found out and obtained relevant evidence that total assets of the business company BD Agro in March 2008 were assessed at EUR 98,177,861 and that said construction land in the Industrial zone is evaluated at EUR 220,000/ha. Evaluation was made by licensed company ‘ING EKSPERT’.”</p>	<p>Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Information that Serbia proposes to redact is <i>not</i> confidential</p> <p><u>Generally:</u></p> <p>The Claimants hereby incorporate the general part of their response provided under point 1 above.</p> <p><u>Specifically:</u></p> <p>As the Claimants explained in their request for production of documents, they learned about the existence of the valuation requested under request No. 66 from a third-party document—a letter from the Center for Education and Representation of Shareholders and Employees to the Privatization Agency of 26 January 2009.⁴⁴</p>	
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⁴⁴ Procedural Order No. 4, Annex A, Request 66.

		In its letter, the Center referred to the valuation and the specific value of land that Serbia now proposes to redact: <i>“[The] total assets of the business company BD Agro in March 2008 were</i>	
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			<p><i>assessed at EUR 98,177,861 and [...] construction land in the Industrial zone is evaluated at EUR 220,000/ha. Evaluation was made by licensed company 'ING EKSPERT.'”⁴⁵</i></p> <p>It is therefore clear that the information that Serbia proposes to redact has already been disclosed to third parties and, hence, is not confidential.</p>	
100.	<p>Procedural Order No. 4, Annex A, point 83</p> <p>“...Ms. Knežević (the Privatization Agency’s representative administering the expropriated 75.87% shareholding in BD Agro) stated that BD Agro “showed a significant positive value of capital (around 56 million euros).”</p>	<p>Source: Letter from R. Knežević to the Ministry of Economy (CE-371) - not in public domain</p> <p>Reasons for confidentiality: See Point 1 above and Respondent’s Letter of October 28, 2019.</p>	<p>Serbia’s proposal should be rejected.</p> <p>Serbia’s proposal is untimely</p> <p>As the Claimants explain in detail in their letter of 3 November 2019, Serbia’s proposal should be rejected as untimely.</p> <p>Information that Serbia proposes to redact is not confidential</p> <p><u>Generally:</u></p>	<p>DENIED. For the reasons mentioned in the accompanying PO to which the Tribunal refers, the information sought to be redacted is not confidential.</p>

⁴⁵ Letter from Center for Education and Representation of Shareholders and Employees to the Privatization Agency, 26 January 2009, p. 5, **RE-114**.

		The Claimants hereby incorporate the general part of their response	
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			<p>provided under point 1</p> <p>above. <u>Specifically:</u></p> <p>The quote that Serbia proposes to redact is from a letter sent by Ms. Radmila Knežević to the Ministry of Economy on 17 February 2016.⁴⁶</p> <p>This letter is publicly available as a part of the court file related to BD Agro’s bankruptcy. As explained above, Serbian law requires that the bankruptcy proceedings “<i>shall be open to the public</i>” and all submissions in the these proceedings, together with the accompanying documents, shall be “<i>published, immediately after reception, on the public website of the competent commercial court or in some other manner that allows the public to be informed about the progress of</i></p>	
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⁴⁶ Letter from R. Knežević to the Ministry of Economy, 17 February 2016, **CE-371**.

			<i>the bankruptcy proceedings [...].”⁴⁷</i>	
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⁴⁷ Bankruptcy Law, Art. 10, **RE-197**.

			<p>The principle of publicity of the reorganization and bankruptcy proceedings is further specified by Article 159(3) of the Bankruptcy Law, pursuant to which all pre-pack reorganization plans are to be published online as well.⁴⁸</p> <p>Where the law prescribes the publication on-line of certain information, then such information cannot be considered as confidential regardless of whether it has been actually published or not.⁴⁹</p>	
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⁴⁸ Bankruptcy Law, Art. 159(3), **CE-799**.

⁴⁹ Claimants' letter to the Tribunal, 3 November 2019, pp. 5-9.

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Rand Investments Ltd., William Archibald Rand, Kathleen Elizabeth Rand, Allison Ruth Rand, Robert Harry Leander Rand and Sembi Investment Limited

v.

Republic of Serbia

(ICSID Case No. ARB/18/8)

PROCEDURAL ORDER NO. 6

DECLARATION OF PROFESSOR MARCELO G. KOHEN

13 January 2020

I have already expressed my serious concerns about the manner in which the decision on transparency was adopted.¹ Even though the case is well advanced, the Parties and the Tribunal are still discussing issues of transparency and the decision of rendering the written procedure public has not been made effective yet. In my view, these matters could have been decided at the end of the proceeding, with the entire picture of the case at hand. Up until now, the only consequences I see is that the costs of the proceedings are higher and that the Respondent is put in the uncomfortable stance of deciding to render public documents that it does not consider to be public or to withdraw them. At the end of the day, this only produces inequality of arms and a more expensive procedure. Quite the opposite of the alleged efficiency that was meant to result from deciding not to bifurcate or from applying the transparency rules of a BIT to another that does not contain them.

[signed]

Professor Marcelo Kohen

¹ PO N° 5, statement of dissent.