

**IN THE MATTER OF AN ARBITRATION UNDER
THE TRADE PROMOTION AGREEMENT BETWEEN THE REPUBLIC OF
COLOMBIA AND THE UNITED STATES OF AMERICA**

**BEFORE THE INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES**

**NEUSTAR, INC., and
.CO INTERNET SAS**

Claimants

v.

THE REPUBLIC OF COLOMBIA

Respondent

**REQUEST FOR ARBITRATION
23 DECEMBER 2019**

**Teddy Baldwin
Chloe Baldwin
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036**

**José Manuel Alvarez Zarate
Alvarez Zarate & Asociados
Calle 82 11 37 Off 501
Bogota – Colombia**

**Thomas Innes
Steptoe & Johnson UK LLP
5 Aldermanbury Square
London EC2V 7HR
United Kingdom**

Counsel for the Claimants

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I. REQUEST TO REGISTER THIS ARBITRATION

1. Neustar, Inc. (“**Neustar**”) and its enterprise .CO Internet SAS (“**.CO Internet**”) (collectively, “**the Claimants**”), hereby respectfully requests that the Secretary-General of the International Centre for Settlement of Investment Disputes (“**the Centre**”) register this arbitration against Respondent, the Republic of Colombia (“**Colombia**”), concerning the claims stated herein.
2. Such request is made pursuant to Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (“**the ICSID Convention**”); Rules 1 and 2 of the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (“**the Institution Rules**”); and Articles 10.16.1(a), 10.16.1(b) and 10.16.3(a) of the Trade Promotion Agreement between the Republic of Colombia and the United States of America (“**the TPA**”).

II. THE PARTIES AND THEIR NATIONALITIES

A. The Claimants

3. Neustar, a company established under the laws of the State of Delaware, United States of America. Its main business address is 21575 Ridgetop Circle, Sterling, Virginia, USA. Neustar conducts substantial business activities in the United States.
4. .CO Internet SAS is an entity which has been established under the laws of Colombia as a *sociedad por acciones simplificada* (simplified joint stock company). Its address is Calle 100 No. 8a - 49 Torre B, Oficina 507.
5. Until 14 April 2014, .CO Internet’s issued share capital was owned as follows: 99% by Arcelandia SA (a Colombian company); and 1% by Neustar. From 14 April 2014, Neustar has owned and controlled (directly) all of .CO Internet’s issued share capital.
6. As contemplated by Rule 18 of the Rules of Procedure for Arbitration Proceedings (“**the Arbitration Rules**”), the persons named on the cover page of this Request for Arbitration shall serve as the Claimant’s duly authorized agents, counsel and advocates. For the purposes of these proceedings, the Claimant’s addresses of

record shall be deemed to be those of its counsel of record and all communications shall be served on them through counsel.

B. The Respondent

7. The Respondent is the Republic of Colombia, a sovereign State which is a Party to the TPA and a Contracting State to the ICSID Convention.
8. Under Article 10.27 and Annex 10-C of the TPA, delivery of notices and documents to the Government of Colombia shall be made to the following address:

Ms. Paula Arenas
Director
Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28 # 13 A – 15
Bogotá D.C. - Colombia

Although not required under the TPA, we respectfully request that this Request for Arbitration be provided to:

His Excellency Iván Duque Márquez
President of the Republic of Colombia
Casa de Nariño
Carrera 8 No 7-22/24
Bogotá D.C.
Colombia

III. THE BACKGROUND TO AND SUMMARY OF THE DISPUTE

9. The following statement is a short, general and abbreviated description of the facts. It is being submitted for the limited purpose of showing information concerning the issues in dispute, indicating that there is, between the parties, a legal dispute arising directly out of an investment – as required by Rule 2(1)(e) of the Institution Rules. The Claimants will present a full statement of the facts together with supporting evidence and legal grounds at the appropriate stages of this proceeding.

A. Summary

10. This dispute primarily concerns the commercial expansion and administration of the country-level top-level domain (**“ccTLD”**) for Colombia, “.CO” (as in the domain name <www.example.co>).
11. In 2009, following a lengthy public consultation and tender process, .CO Internet (then a joint venture between Arcelandia SA and Neustar) was awarded the concession for the promotion, administration, technical operation and maintenance of the .CO domain (**the “Concession”**).
12. In 2014, Neustar purchased Arcelandia’s shares in .CO Internet and became the sole shareholder of .CO Internet. The Respondent authorized Neustar’s purchase of these shares and registered its investment in the Colombian Central Bank.
13. Neustar and .CO Internet have achieved significant results in the first ten years of the Concession, including in terms of growth of the domain, the branding, the security, and the technical measures put in place by Neustar and .CO Internet.
14. The .CO top-level domain (TLD) has become particularly valuable in that it has come to represent the world’s single, most credible alternative to the generic .com domain for worldwide commercial use. This positioning and development of the .CO domain is the direct result of Neustar/.CO Internet relentlessly marketing and spending upwards of \$60 million dollars over the last 10 years through long-term branding programs for the .CO domains (both inside of Colombia and internationally), resulting in .CO becoming the domain of choice for innovators, entrepreneurs, and start-up businesses worldwide. Neustar made these efforts and substantial investments in .CO Internet in part because it knew that it was entitled to extend the Concession for an additional 10 years.
15. As just some examples of these substantial investments, .CO Internet ran three Super-Bowl Ads, posted billboards in Times Square, and made countless other massive branding investments. Over the past nine years, Neustar/.CO Internet have consistently sponsored an average of between 800 - 1,000 start up/business development events on five continents to introduce Colombia’s TLD to the global business population and to grow domain registrations and usage. In addition,

Neustar has opened marketing offices in China, India, EU, Australia, United States and Colombia. As a direct result of these efforts and investments, .CO has become one of the fastest growing and most dynamic domains in the world. In less than a decade, the .CO name space has grown from just under 28,000 domain names registered only inside of Colombia to nearly 2.3 million domain names registered by users in nearly 200 countries and territories worldwide, making it the 20th largest TLD in the world (out of approx. 1,500) and the second largest in Latin America. In addition, .CO Internet spent substantial effort to ensure that the TLD would be licensed in China, opening up an additional market that will add substantial registrations for years to come.

16. The main feature that demonstrates the value that has been created in the .CO name space is the fact that .CO is utilized daily by world leading businesses and brands as part of their global branding and marketing efforts. By way of example, Amazon (a.co), Apple (apple.co), Google (g.co and campus.co), Station F (stationf.co), Volvo Car Mobility (m.co), Mirror (mirror.co), Snapchat (s.co), Twitter (t.co), Taco Bell (ta.co), Brit + co (brit.co), Angel List (angel.co), 500 Startups (500.co), Starbucks (sbux.co), and countless more.
17. These marketing efforts, described in small part above, have positioned Colombia in the spotlight of the global domain industry, and will resonate for years to come as they were long-term investments made by Neustar/.CO Internet into the .CO domain.
18. On 21 September 2018, .CO Internet expressed its intention to formalize the extension of the Concession for a further period of ten years, in exercise of its rights under Colombian Law 1065 of 2006 and the Concession. Despite making initial signs that it would comply with Colombian law formalities and the terms of the Concession, the President of Colombia abruptly announced in March 2019 that he had decided to not extend the Concession and instead launch a public tender, thus ignoring the Concession extension process entirely.
19. The President's decision has mostly been implemented by the Ministry of Information Technologies and Communications (“**MinTIC**”), acting in its capacity (under Colombian law) as regulator of the .CO domain.

20. Despite repeated entreaties by the Claimants, the Respondent has pushed forward with the tender process. Not only has the Respondent failed to stop the tender, it has engaged in actions that call into question the propriety and regularity of the tender process. As one example, MinTIC has held closed-door meetings with Neustar's competitors – while deliberately excluding Neustar – where proprietary information was disclosed by Respondent.
21. In addition, Respondent's tender was designed to exclude .CO Internet and Neustar and to favor Neustar's competitor. Specific requirements in the original Terms of Reference included qualifications that .CO Internet and Neustar could not meet, despite the fact that .CO Internet has been successfully and unquestionably managing and promoting the domain for ten years and surpassed the plan presented to the government in 2009 by 150%. Because .CO Internet has been required to make disclosures as to information related to the company, Respondent was aware when drafting the Terms of Reference that .CO Internet and Neustar would not likely be able to satisfy these requirements. The violations and abuses were so significant that Nuestar/.CO requested that the Attorney General (*Procurador General de Nación*) supervise the tender process.
22. Troublingly, Respondent has included with the tender an opaque and subjective qualification criteria, thereby creating a significant risk of improper conduct in connection with the tender. As a whole, by the manner by which Respondent has acted and the tender documents themselves have been drafted, the process has already been tainted and does not comply with Transparency International's Minimum Standards for Government Contracting.
23. Thus, the Government's decision and the resulting actions arising therefrom were in breach of .CO Internet's rights under the Concession and Law 1065, and of Neustar/.CO's rights under the TPA.
24. Neustar and .CO Internet have already been harmed by Respondent's actions and will be further harmed if Respondent continues with the tender process and its other ongoing mistreatment of Neustar and .CO Internet.

B. Background

25. The .CO domain was initially delegated to the Universidad de los Andes (“**the University**”) on 24 December 1991. Around 2001, the University explored the possibility of exploiting the domain for commercial purposes. The University planned to develop a bidding process to identify an international operator of the domain.
26. In response, the Colombian Government took various actions to prevent the University from proceeding in such manner. Ultimately, in December 2001, at the request of the Minister of Communications, the Council of State considered the status of the .CO domain and concluded that the domain is of public interest, intrinsically related to communications, and by virtue of this the Ministry may put into action planning, regulation, and control of the domain.¹ Subsequently, the University terminated the commercialization process with respect to the domain.
27. On 7 May 2002, the Colombian Government issued Resolution 600 of 2002, “on partial regulation of administration of the domain name .CO”. That Resolution noted that Law 72 of 1989 “confers on the Ministry of Communications the authority to plan, regulate and control all services in the communications sector, including certain elements and resources necessary for the provision of such services”. It went on to resolve in part that the “Internet domain name under the country code corresponding to Colombia .CO is an asset of the telecommunications sector, of public interest, which administration, maintenance and development shall be planned, regulated and controlled by the State, through the Ministry of Communications” and that the Ministry “shall coordinate application of the system laid down in this resolution with the international bodies responsible for managing top-level domain names.”
28. On 10 July 2002, the Council of State in Colombia ordered the Minister of Communications to take over administration of the .CO domain from the University (see State Council, Administrative Contentious Chamber Section Four - Class Action (*Acción Popular*) Process 2001-0465).

¹ Chamber of Consultation and Civil Service, File No. 1.376 on 11 December 2001

29. On 29 July 2006, the Colombian Government issued Law 1065 of 2006 (“**Law 1065**”), regulating the administration of domain name registration service for the .CO domain. Article 1(2) of that Law declared:

“[T]he Internet domain name under the country code corresponding to Colombia -.co-, is a resource of the telecommunications sector, of public interest, whose administration, maintenance and development will be under the planning, regulation and control of the State, through the Ministry of Communications, for the advancement of global telecommunications and its use by users.”

Further, Article 2 provided that:

“For all purposes, the administration of the registration of .co domain names is an administrative function under the remit of the Ministry of Communications, whose exercise may be conferred on individuals in accordance with the law. In this case, the duration of the agreement may be for up to 10 years, extendable, only once, for a period equal to that of the initial term.”

30. Accordingly, as a matter of Colombian law, the .CO domain is regarded as a public resource and MinTIC exercises a regulatory function as regards to its administration, maintenance, and development. In exercise of that regulatory function, the Ministry may appoint a private party as the administrator of the domain. When it does so, the concession period must be set in accordance with Law 1065. Indeed, as discussed at [49] and [56] below, the Government has recognized in correspondence with Neustar/.CO Internet that Article 2 is the source of the extension of the term of the Concession.

C. Public Consultation and Tender Process – 2006 to 2009

31. In late 2006, Respondent began what was to be a three-year public consultation as to the administration of the .CO domain. During that period, in 2008, MinTIC decided to outsource the registration functions to a private entity (Resolution 284 of 2008) and later recognized that its own role was that of regulator (Resolution 1652 of 2008).

- 32. On 19 May 2009, Respondent began the procurement process to select the operator for the .CO domain. Consistent with Article 2 of Law 1065, the tender documents made clear that the operator would be entitled to extend the term of the concession.
- 33. On 19 August 2009, MinTIC announced that .CO Internet had been selected as the successful bidder. As noted above, at that time, .CO Internet was a joint venture between Arcelandia SA (a Colombian company) and Neustar. In addition to its then 1% shareholding in .CO Internet, Neustar was to serve as the back-end² provider of registry services and infrastructure support for the .CO domain.
- 34. The tender documents required that the successful bidder have “specific experience, individually or by at least one member of the joint venture . . . of at least 500,000 registrations within a ccTLD.”³ Neustar’s involvement in the joint venture satisfied this requirement.⁴

D. The Concession – 3 September 2009

- 35. On 3 September 2009, MinTIC and .CO Internet (“the Concessionaire”) signed Concession State Contract 0019 of 2019 for the promotion, administration, technical operation and maintenance of the .CO domain and to provide such additional services as required by the Concession.
- 36. Consistent with Article 2 of Law 1065 (and the tender documentation), Clause 4 of the Concession reflected the extension of the Concession in accordance with that legislative provision. Clause 4 provides as follows:

“VALIDITY PERIOD AND TERM AGREED. The current concession contract will have a term of ten (10) years that will commence from the date of the authorization given by ICANN to THE CONCESSIONARY to carry out the activities of the domain, provided that by such time, the Universidad de los Andes, in cooperation with the concessionaire, had carried out every

² The back-end organization provides for the technical operation of the ccTLD for the administrator.

³ Terms of Reference 2008, p. 44

⁴ Neustar’s certification for .CO Internet’s 2008 offer, p. 918.

single activity required in the transition process, in a timely and adequate manner.”

Paragraph: The term agreed may be extended in the manner and terms established in the legislation in force at the time of its implementation. It may not be less than the term initially established, for which the expansion and extension of the guarantee(s) and the prior subscription of a document that so provides, are required, where the circumstances that motivated it must be indicated.

37. Under the Concession, and in accordance with Article 3 of Law 1065, the Colombian Government receives a specified share of the proceeds arising from each .CO domain registration under the Concession, which was not paid by Andes University before. In addition, Respondent receives income tax, VAT, and commerce and industry taxes.
38. The Concession entered into effect on 7 February 2010.
39. Following an initial registration period open to eligible trademark holders and those interested in certain high-priority domain names, general availability began on 20 July 2010, opening the .CO domain to registrations on a first-come, first-served basis around the world.

E. The TPA Entered into Force – 15 May 2012

40. The TPA entered into force on 15 May 2012 and remains in force. It protects investments in existence as of that date as well as those established, acquired, or expanded thereafter (see definition of “covered investment” at Article 1.3).

F. Neustar Expands its Investment in .CO Internet – 14 April 2014

41. On 3 February 2014, Colombia and .CO Internet agreed to Amendment No. 3 to the Concession. This Amendment authorized an additional investment from Neustar in .CO Internet in order to change to the ownership of .CO Internet, by permitting Neustar to own up to 100% of its shares. Further, a new requirement was added to the terms of the Concession such that the Concessionaire had to

organize a minimum of two events per year to support MinTIC programs. This amendment paved the way for Neustar to increase its participation in the venture.

42. Prior to agreeing that authorization, MinTIC carried out a technical and legal analysis of the market having regard to the fact that over 800 new top-level domains had begun to compete with the .CO domain. The result of this increase was that the continued growth of the .CO domain required technical, economic, and sales leverage. Neustar was well positioned to provide that expertise and investment through its increased participation.
43. On 14 April 2014, Neustar acquired Arcelandia SA's 99% shareholding in .CO Internet, thereby increasing its interest to 100%. It also acquired certain associated assets. The total consideration for this purchase included a cash consideration of US\$113.7 million, of which US\$86.7 million was paid at closing and US\$27 million was deposited into escrow for the satisfaction of potential indemnification claims and certain performance obligations. Further, under the terms of the sale, Neustar may be required to make a contingent payment of up to US\$6 million prior to or during the first quarter of 2020 in the event that the seller satisfies certain post-closing performance obligations. Neustar's investment in .CO Internet was registered by the Colombian Central Bank.

G. Neustar/.CO Internet Achieve Significant Results in Performance of the Concession

44. The tender for the Concession awarded to .CO Internet directed (section 2.1.1.1) that the winning bidder provide the necessary marketing and promotion needed to grow the domain. Both .CO Internet and Neustar wanted to market and promote the domain in order to create substantial growth to achieve the goals imposed by the business plan provided in the Concession.
45. Accordingly, over the years, Neustar has committed and made significant investments for the administration, promotion and commercialisation of the .CO domain. Neustar has developed technical capacity, considerably increased the number of clients, and progressed the development of a secure, solid, and diversified commercial distribution network through 140 distributors (Registrars) globally and thousands of resellers. In particular, Neustar/.CO Internet have grown

the number of domain registrations from a mere 28,000 in 2010 to over 2.2 million by the end of 2018 – i.e. an increase of a factor of 80. That performance significantly exceeds the business plan figures contained in the Concession, by 150%. .CO domains have been registered by users in over 200 countries and territories worldwide. It is currently the 20th largest top-level domain (of approx. 1,500).

46. As a regulator, MinTIC managed and supervised .CO Internet's performance with the Concession. MinTIC repeatedly expressed, in several ways, its satisfaction with the performance of .CO Internet and the accordant growth of the domain. MinTIC watched as Neustar – via .CO Internet – went far above the tender requirements to grow the domain and to provide top-level security for its domain holders.

H. .CO Internet Expresses its Intention to formalize the Extension – 21 September 2018

47. On 21 September 2018, .CO Internet wrote to the Minister of Information Technology and Communications (“**the MinTIC Minister**”), expressing its intention to formalize the extension of the Concession. As some formalities were required for the extension, .CO Internet made this notification in exercise of its rights under Law 1065 and the Concession.

I. MinTIC’s Actions from Late 2018 to Date

48. There followed an extended period of correspondence between Respondent and Neustar/.CO Internet. A full discussion of that correspondence is beyond the scope of this Request for Arbitration and will instead be briefed, together with supporting evidence, at the appropriate stages of this proceeding. Rather, this subsection provides an overview of MinTIC’s key actions from late 2018 to date.

(i) MinTIC’s letter of 22 November 2018

49. On 22 November 2018, MinTIC replied to .CO Internet’s letter of 21 September. In its reply, MinTIC recalled that Law 1065: **(i)** required that the administration, maintenance and development of the .CO domain be under the planning, regulation and control of the Ministry; **(ii)** had charged MinTIC with the administration of the

register of names in the .CO domain; (iii) established the possibility that the exercise of such administrative function be conferred on private entities; and (iv) granted the power to, if deemed appropriate, extend such agreement. MinTIC further observed that it was required (by Article 3 of Law 489 of 1998) to act in accordance with principles of good faith, equality, speed and efficiency, impartiality, effectiveness, and transparency (among others). Indeed, Neustar had a very reasonable expectation that MinTIC would act in such a manner, both in terms of its obligations under Colombian law and those under the Concession.

(ii) .CO Internet's letter of 27 December 2018 and the 11 February 2019 meeting

50. On 27 December 2018, .CO Internet reiterated its desire to extend the Concession and requested to commence discussions to that end with MinTIC.
51. .CO Internet did so again on 11 February 2019 at a meeting between Neustar/.CO Internet's management, the Vice-Minister of Digital Economy, and MinTIC officials. At that meeting, the Vice-Minister and his officials indicated that MinTIC would be putting in place a simultaneous process of negotiating an extension to the Concession with .CO Internet and preparing for a potential tendering process. There was, however, no suggestion whatsoever that MinTIC might ignore the Concession extension process entirely and instead proceed directly to a new tendering process. Rather, the Vice-Minister and his officials represented to Neustar/.CO Internet that negotiations with them would commence shortly, and that MinTIC would soon share with them its offer to extend the Concession.
52. Despite that representation, the Colombian Government did not take up Neustar/.CO Internet's offer to commence negotiations on the changes for the Concession, nor did it ever share with them any offer as to the terms of an extension to the Concession.

(iii) MinTIC's request of 8 March 2019 for a transition plan

53. To the contrary, on 8 March 2019, MinTIC wrote to .CO Internet requesting that it produce by 15 March a plan for the transition of the .CO domain in light of a possible new concessionaire being appointed. The transition was to take place on 2

February 2020. On 15 March 2019, .CO Internet responded that it had not been supplied with sufficient details in order to provide the requested transition plan – in particular, it was essential that it be appraised of the technical capabilities of the new concessionaire. Further, .CO Internet highlighted that MinTIC was required to first negotiate the terms of an extension to the existing Concession before taking steps to make way for a new concessionaire.

(iv) The President announces a public tendering process on 30 March 2019

54. Nevertheless, on or about 30 March 2019, the President of Colombia announced that he had decided to launch a public tendering process for the administration of the .CO domain. The President made his announcement at the annual meeting of the Colombian Chamber of IT and Telecommunications, with the announcement subsequently reported by the Colombian press. At around the same time, Respondent's Senior Presidential Advisor for Innovation and Digital Transformation announced that the tender would take place during the second half of 2019, again appearing to completely ignore that MinTIC was required to formalize the ten-year extension and to negotiate with .CO Internet the specific aspects of such extension.
55. It is of note that both those announcements came from the President. Indeed, it is apparent that the decision to ignore the Concession extension process and instead proceed directly to a tender was made by the President without proper consultations with the stakeholders and, of course, without discussions with .CO Internet or Neustar. That is particularly notable given that neither the President, nor his Office, is a party to the Concession – rather, the Concession is between MinTIC and .CO Internet.

(v) MinTIC's letter of 10 April 2019 explicitly rejects an extension of the Concession or even a negotiation process

56. It became clear on 10 April 2019 that Respondent was not going to honor the formalization process or the extension itself. In its letter of 10 April 2019, Respondent asserted that it had the “sole and exclusive power” according to Article 2 of Law 1065 of 2006 to evaluate and decide as to whether to extend the

Concession or to instead commence a new tendering process. Respondent stated that it would proceed with a process to choose a new concessionaire. It thus rejected .CO Internet's efforts to procure an extension to the Concession. Respondent did so in total and blatant disregard for .CO Internet's rights under the Concession and Law 1065, and for Neustar/.CO's rights under the TPA.

57. Further, Respondent's letter asserts that the decision to choose a new concessionaire had purportedly been made by MinTIC's Advisory Committee on 18 March 2019, 23 days before it informed .CO Internet. Yet even more problematic is that the minutes of the Advisory Committee's meeting (disclosed only following a petition by .CO Internet) demonstrate that the technical, legal and economic reasons on which its decision was based are wholly untenable, and inconsistent with both the market circumstances and the legal framework applicable to the Concession. In any event, it became clear as of April 2019 that Respondent was going to choose a new concessionaire. And it also became clear that the decision to proceed with a tender rather than comply with the law and legal framework was made by the President of Colombia.
58. Further, on 21 May 2019, MinTIC announced its action plan to commence the public tendering process to select a new concessionaire.

(vi) .CO Internet's 22 May Offer as a basis to extend the Concession

59. Having already been harmed by not being allowed to formalize the extension or even a discussion an extension of the Concession on terms generally consistent with the current terms, the Claimants sought to mitigate their damages.
60. As an initial matter, it should be recalled, that Respondent had represented on 11 February 2019 that it would provide an offer with respect to an extension of the concession. This offer from Respondent never came. Respondent would not even discuss a framework for such discussions or the presentation of an offer.
61. Respondent's mistreatment and its stated intention to proceed with the tender left Neustar no choice (through .CO Internet) but to proceed with a unilateral offer of its own in the hope that this offer would serve to formalize the extension and as a basis to negotiate the extension of the Concession ("the 22 May Offer"). Even had

this offer been accepted, Neustar would have been harmed as this offer provided far more benefits to Respondent than the current Concession, which was supposed to be the basis of the negotiation. Nevertheless, Neustar was forced in an effort to salvage this situation and mitigate its damages to submit the 22 May Offer.

62. Under the 22 May Offer, .CO Internet would have assumed the risks of the operation, of the technological trends in the use of domains, and of the competition in the market by paying almost 5 times the existing royalties (approximately US\$110 million over 10 years) and pay US\$50 million to Respondent in advance, thereby completely removing any commercial risk to Respondent during the next 10 years – including the risks that the domain becomes less relevant, abuse of the domain, and technical and cyber-security risks. Neustar also offered to sponsor IT programs for a sum of up to US\$10 million over the 10 years, offering local scholarships and to support certain other MinTIC programs. In addition, Neustar offered to provide a free online presence to all the Small Businesses in the country (“Pymes”) for an estimated value of USD \$90 million. The total monetary value of the 22 May Offer over the life of the ten-year extension period was approx. US\$200 million and provided significant support for the Government towards its digital economy development agenda.
63. On 13 June 2019, MinTIC informed .CO Internet that it had three months to consider and respond to the 22 May Offer. Despite this representation, Respondent never actually rejected the 22 May Offer. Rather, Respondent kept it open past the three months period it itself claimed to be relevant.
64. On 21 June 2019, MinTIC wrote and reiterated that it had decided unilaterally to not extend the Concession. MinTIC asserted that an extension was not viable, but failed to explain its justification for that assertion and failed to substantively address the economic offer that Neustar had made.

(vii) Notification of an investment dispute under the TPA on 7 June 2019

65. Respondent's continued insistence to move forward with a tender and to refuse to negotiate in good faith (or at all), left Neustar with no choice but to invoke the TPA. Thus, on 7 June 2019, Neustar notified MinTIC and the Ministry of

Commerce, Industry and Tourism (“**MinCIT**”) of the existence of an investment dispute between it and Colombia under the TPA. Neustar referred in particular to the Respondent’s decision to expropriate the Concession, among other claims, as manifested by its initiation of the tendering process to select a new concessionaire. The 7 June notice also noted that the process to date had lacked transparency, and that Respondent was refusing to negotiate or have any discussions about an extension. Neustar thus requested the commencement of consultations and negotiations under Article 10.15 of the TPA.

66. On 18 June 2019, Neustar expanded on its prior notification. Among other matters, it complained about the arbitrariness and lack of consistency of the conclusions and recommendations presented to the Advisory Committee by MinTIC economists.
67. On 26 June 2019, executives from Neustar flew to Bogota to meet with MinCIT’s then Director for Foreign Investment, Services and Intellectual Property, as well as others. Neustar was led to believe that this was to be an opportunity for the parties to discuss a resolution of the dispute and, at a minimum, an exchange of views or proposals. Instead, Respondent’s officials said nothing of substance, just listening (ostensibly) to Neustar’s presentation and offering nothing in response.

(viii) MinTIC instructs external lawyers to help justify the termination of the Concession – 27 June 2019

68. Unbeknown to Neustar/.CO Internet at the time, on 27 June 2019, MinTIC signed a service contract with the law firm Durán y Osorio to help justify the termination of Concession. The legal services contract also instructed the law firm to assist with the legal aspects of the tender process. This provides further confirmation of the Government’s intention to ignore .CO Internet’s rights under the Concession and Law 1065, and Neustar/.CO’s rights under the TPA.

(ix) MinTIC’s requests of June-August 2019 for final reports

69. Further to the correspondence discussed at [53] above, on 5 June 2019, MinTIC demanded that .CO Internet provide it with a plan for the transition of the .CO domain to a new concessionaire. .CO Internet provided such a plan on 4 July 2019.

70. Despite this, on 29 July 2019, MinTIC presented a request for a final transition report, stating that the Concession was to end on 7 February 2020. In its response of 6 August 2019, .CO Internet recalled that it had already provided the requested information on 4 July, and requested that discussions as to termination of the Concession take place in the context of the negotiations under the TPA.
71. Nevertheless, on 29 August 2019, MinTIC once again demanded that a final transition report be provided. On this occasion, it threatened to sanction non-compliance by “use of all the tools that the law grants it.”

(x) Notice of Intent under the TPA filed on 16 September 2019

72. On 16 September 2019, Neustar/.CO Internet provided the Colombian Government⁵ with their Notice of Intent to submit the investment dispute between them to arbitration under the TPA. A copy of that Notice is provided as **Annex RFA-4**.
- (xi) Colombia Did Not Respond to this Notice of Intent Until the Very End of the Period**
 73. Despite sending the Notice of Intent and informing Respondent that it wanted to resolve this dispute, Respondent took no effective steps in response to Notice of Intent until almost 87 out of the 90 days period after the submission of the Notice of Intent.
 74. On 12 December 2019, .CO Internet received a letter from the National Legal Defence Agency in which it purported to reject the validity of the Notice of Intent.
 75. During the almost 90-day period in which Respondent ignored the Notice of Intent, it likewise ignored all of Neustar’s efforts to resolve this dispute. More troubling, Respondent continued with the tender process in an opaque and problematic manner.

⁵ More specifically, the Notice of Intent was addressed to the President, MinCIT’s Director of Foreign Investment and Services, and the MinTIC Minister.

76. Respondent's measures constitute a breach of several provisions of the TPA and have already resulted in loss, including but not limited to the wasted costs of having to participate in the unlawful tender process to select a new concessionaire. That Respondent's intended future actions, which will further breach the TPA and in turn cause Neustar further loss and further aggravate the dispute, necessitate the filing of this Request for Arbitration.

J. Issues Arising from the New Tender Process

77. Respondent has continued with the tender process. On 13 December 2019, Respondent issued the final Request for Proposals ("RFP"). The RFP contained a terms of reference that laid out the requirements and conditions with respect to the tender process (**the "TORs"**).

78. As discussed below, however, it is apparent that the RFP process is designed to exclude Neustar and .CO Internet and to allow Respondent to choose another concessionaire. In addition, Respondent has failed to include in the RFP the basic requirements needed for the ongoing development of the domain and to ensure the marketing and security needed for its continued success.

79. The way in which the preliminary TORs were drafted demonstrates that they have been prepared to exclude Neustar/.CO Internet and to benefit only one competitor. This is the height of manifest arbitrariness as the entity (.CO Internet) which has been successfully, operating, promoting, and managing the domain for 10 years is being excluded by fiat whereas one entity – AFILIAS – appears to have the TORs specifically designed for it. Some of the arbitrariness and opaqueness of the TORs include the following:

79.1 Section 5.2 of the preliminary TORs requested proponents to demonstrate financial ratios including the level of indebtedness to be (70%), which is unusual given the average of the domain industry is (115%).⁶ What is yet more remarkable is that that threshold was set a

⁶ The nature of the domain business is that each domain sale is accounted for as a liability for the duration of time of the domain. For example, a 12-month domain purchase gets recorded as 11/12ths liability and 1/12th revenue. Then every month an additional 1/12th is moved from being a liability to

mere 2% below Neustar/.CO’s ratio of (72%), a fact known to MinTIC when it issued the preliminary TORs. Further, it is of note that only one company – AFILIAS – was able to meet the requirements of the TORs as they were originally drafted.

- 79.2 Section 5.4(c) of the preliminary TORs requested proponents to demonstrate, as an experience qualification, having more than 1,500 distributors (registrars) accredited by the Internet Corporation for Assigned Names and Numbers (“ICANN”). The company AFILIAS has 1,600 registrars. MinTIC knows that Neustar/.CO has 141 accredited distributors (registrars), and that this has been more than enough to do a very efficient global distribution of the .CO domain in more than 200 countries and territories, representing an exponential growth of the volumes and targets that were projected at the beginning of the Concession. There is no good reason to demand an arbitrary number such as 1,500 registrars. The circumstances clearly suggest that the number was set with regard to AFILIAS’s characteristics.
- 79.3 Section 6(9) of Technical Appendix 2 (Service Levels) is an exact transcript of a provision contained in other TORs published on 25 July 2016, within a selection process that culminated with the award of the contract to the company AFILIAS. This is particularly concerning since those TORs were not public, suggesting that Respondent consulted AFILIAS or persons connected with it when drafting the TORs.
- 79.4 Section 5.4(b) of the final TOR requests proponents to demonstrate, as an experience qualification to participate in the final offer, that they have proven experience as an TLD Operator in the operation of DNS databases in which an average of at least twenty-five million transactions (EPP billable transactions as well as EPP searching transactions) per day during one month were verified. MinTIC knows that .CO Internet has a maximum record of an average 6.2 million of EPP billable and searching

an asset. Consequently, companies in the Domain industry have fairly large debt ratios from an accounting standpoint but not necessarily from a cash or operational standpoint.

transactions per day in a month, and that this has been more than enough to do a very efficient global distribution of the .CO domain as indicated above. There is no technical reason to demand an arbitrary number such as 25 million transactions, which represents more than four times the number of transactions that .CO domain has achieved. The circumstances clearly suggest again, that the number is tied to AFILIAS, which is arguably the only entity which could satisfy this arbitrary requirement.

- 79.5 In addition, some of the provisions in the terms of reference are internally inconsistent in an apparent attempt to assist AFILIAS. Section 7.1 of the TORs allows the bidder to contract with third parties with regard to the DNS system and network despite the fact that other sections and the overall framework require that the bidder have the technical abilities itself. This specific carve out is in the area where AFILIAS does not have the technical expertise and contracts such expertise from third parties, suggesting again that this was done to benefit AFILIAS.
80. It is apparent from these circumstances that the outcome of the new tender process is predetermined. Thus, it was necessary for Neustar/.CO Internet to report to the Attorney General Attorney such irregularities.
81. A further issue arising from the new tender process is a fundamental lack of transparency. In particular, MinTIC has held meetings with Neustar/.CO's competitors, without inviting Neustar/.CO Internet, and in which proprietary issues related to the .CO selection process were discussed. For example: **(i)** on 23 September 2019, a meeting in New York was attended by at least two officers of the company AFILIAS, an expected bidder for the tender; and **(ii)** on 6 November 2019, MinTIC convened a special meeting in Montreal on the premises of the annual session of ICANN to discuss the terms of the .CO selection process where AFILIAS was invited, but Neustar/.CO Internet were not, despite their having interacted with MinTIC officials during the ICANN event. MinTIC has thus far refused to respond to Neustar's request for information as whether or not any

further formal meetings or informal meetings with bidders have taken place by Respondent's officials.

82. The issue as to lack of transparency is compounded by Addendum 16 of the RFP. That Addendum sets out a new "Protocol" for MinTIC's interaction with the market players, which was introduced to the selection process not only after the meetings referenced above were held, but after .CO Internet raised its concern by sending three letters (none of which were responded to) to MinTIC. This is an atypical and odd form of interaction between potential proponents, MinTIC and its advisors. It allows MinTIC to undertake private, closed-door meetings during the selection process. The process now prescribed for comments and for MinTIC responses with this new Protocol is different than the one prescribed in the stages of public government contracting. Therefore, Neustar considers that this extemporaneous and atypical Protocol has a negative effect, in terms of legitimizing the lack of transparency that has been inflicted on the process so far.

K. The Respondent Continues To Violate The TPA In Connection With The Transition Period Of The Concession

83. Along with the expropriation and other mistreatment Neustar has suffered, Respondent is seeking to apply coercive and unfair conditions to the transition period. Respondent summoned Neustar/.CO Internet to a meeting with MinTICs advisors for the sole purpose of negotiating on the modification of the terms for the "Transition Period" – i.e., the period of time after Respondent has terminated the existing Concession and before a new concessionaire begins operating the domain. Respondent sought to upend the current provisions of the Concession during the transition period to Neustar/.CO Internet's substantial detriment. Respondent further told Neustar/.CO Internet that it would change the terms unilaterally if .CO Internet did not agree.

L. Conclusion

84. For the reasons state above and in Section V below, and to be further elaborated during the course of the arbitration, a legal dispute exists between Neustar and .CO Internet, on the one hand, and Respondent, on the other hand, arising directly out of Neustar's investments in Colombia in connection with the Concession.

IV. CONSENT TO JURISDICTION OF THE CENTRE

85. As set out in the paragraphs below, the Centre has jurisdiction over this investment dispute pursuant to Article 25 of the ICSID Convention, based on the consent expressed by Respondent in the TPA which Neustar and .CO Internet hereby accept by filing this Request for Arbitration.

A. Introduction – the ICSID Convention and Article 25

86. Article 25(1) of the ICSID Convention provides as follows:

“The jurisdiction of the Centre shall extend to any [i] legal dispute [ii] arising directly out of an investment, [iii] between a Contracting State [to the ICSID Convention] ... and [iv] a national of another Contracting State, which [v] the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.”

87. Each of the elements in Article 25(1) is satisfied here:

- 87.1 There is a “legal dispute” between Neustar and .CO Internet, on the one hand, and Respondent on the other hand. A summary of that dispute is set out in Sections III and V;
- 87.2 That dispute arises directly out of an “investment” – see Section IV.B;
- 87.3 Respondent is a Contracting State to the ICSID Convention – see Section IV.C;
- 87.4 Neustar is a national of the United States, another Contracting State – see Section IV.D and .CO Internet is an enterprise based in the Respondent’s jurisdiction that is a juridical person that Neustar directly owns and controls and on whose behalf Neustar is bringing this claim; and, separately and additionally, .CO Internet obtains its right as a Claimant in this arbitration through the MFN provision of the TPA and by invocation of the Swiss-Colombia BIT; and

87.5 The parties to the dispute have consented in writing to submit to the Centre – see Section IV.E.

B. **Investment**

88. Article 25(1) of the ICSID Convention requires that the dispute must arise out of an “investment”. Neustar owns, directly and indirectly, various investments in the territory of Colombia and .CO Internet has rights under the Concession directly (“the Investments”).

89. While the term “investment” is not defined in the ICSID Convention, it is defined in the TPA. Article 10.28 of the TPA defines “investment” as:

“every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans;
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;
- (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;”

90. Neustar's Investments include:
- 90.1 its 100% shareholding in .CO Internet (*see definition of "investment", items (a) and (b)*);
 - 90.2 the Concession and the subcontracts stemming therefrom (*see definition of "investment", item (e)*);
 - 90.3 the monetary claims and activities resulting from the Concession (*see definition of "investment", "every asset ... that has the characteristics of an investment"*);
 - 90.4 the tangible and intangible assets constructed and developed during the performance of the Concession (*see definition of "investment", item (h)*); and
 - 90.5 its expectations concerning earnings and profits resulting from its activities resulting from the Concession (*see definition of "investment", "every asset ... that has the characteristics of an investment"*).
91. .CO Internet's investments include:
- 91.1 the Concession and the subcontracts stemming therefrom (*see definition of "investment", item (e)*);
 - 91.2 the monetary claims and activities resulting from the Concession (*see definition of "investment", "every asset ... that has the characteristics of an investment"*);
 - 91.3 the tangible and intangible assets constructed and developed during the performance of the Concession (*see definition of "investment", item (h)*); and
 - 91.4 its expectations concerning earnings and profits resulting from its activities resulting from the Concession (*see definition of "investment", "every asset ... that has the characteristics of an investment"*).

92. All of the Investments thus fall within the TPA’s definition of “investment”. Thus, Claimant’s investments are protected under the TPA:

C. Respondent is a Contracting State to the ICSID Convention

93. Article 25(1) of the ICSID Convention further requires that the State party to the dispute be a Contracting State to the Convention. Respondent is such a Contracting State, as can be seen from the List of the Contracting States and other Signatories of the ICSID Convention published by the Centre (**Annex RFA-1**). The Convention entered into force for Respondent on 15 August 1997.

D. Neustar is a National of Another Contracting State and .CO Internet is an Enterprise of Respondent that is a Juridical Person Directly Owned by Neustar

94. Article 25(1) of the ICSID Convention further requires that the non-State party to the dispute be “a national of another Contracting State” to the Convention.

95. Under Article 25(2)(b), the term “national of another Contracting State” is defined to include “any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to … arbitration”. Pursuant to Institution Rule 2(3), the date on which the parties consented to submit their dispute to arbitration is the date of this Request for Arbitration. As at that date (and indeed at all material times), Neustar is a national of the USA.

96. The USA is a Contracting State to the ICSID Convention, as can be seen from the List of the Contracting States and other Signatories of the ICSID Convention published by the Centre (**Annex RFA-1**). The Convention entered into force for the USA on 14 October 1966.

97. Accordingly, Neustar fulfils the nationality requirements of Article 25 of the ICSID Convention.

98. The TPA allows Neustar on its own behalf to submit a claim under the TPA. *See* Article 10.16(1)(a) of the TPA.

99. The TPA also provides that a claimant can submit a claim on behalf of an enterprise of the Respondent that is a juridical person that the claimant owns or controls directly or indirectly. Here, Neustar owns 100% of .CO Internet, which is a Colombian entity. Neustar thus submits a claim on behalf of .CO Internet on its own accord on .CO Internet's behalf, notwithstanding .CO Internet's assertion of its own claim directly.
100. Neustar and .CO Internet are protected investors under the TPA. In addition, Neustar and .CO Internet invoke the MFN clause to incorporate the substantive protections that Respondent offers other investors, including but not limited to those protections under the Swiss-Colombia Agreement of the Promotion and Reciprocal Protection of Investments (“**BIT**”) in force since 6 October 2009, which allows .CO Internet to act as a Claimant under its own name, in addition to the claim being submitted on its behalf by Neustar.⁷

E. Consent in Writing to Submit the Dispute to ICSID Arbitration

101. Under Article 25(1) of the ICSID Convention, a further condition required for the Centre to have jurisdiction is that the dispute must be one that “the parties to the dispute consent in writing to submit to the Centre”. Respondent’s consent and Neustar’s consent are each addressed separately below.

(i) The Respondent’s Consent

102. As set out below, Respondent’s written consent to arbitration is contained in Chapter Ten of the TPA, a copy of which is attached as **Annex RFA-2**. The TPA entered into force on 15 May 2012 and remains in force, which is confirmed by the US State Department publication Treaties in Force (2019), an extract of which is attached as **Annex RFA-3** (see p. 91).⁸

⁷ In accordance with the Most Favoured Nation clause provided in Article 10.2 of the Treaty, it applies the Agreement between the Republic of Colombia and the Swiss Confederation about the Reciprocal Promotion and Protection of Investments (BIT) agreed on 17 May 2006, approved by Law 1198 of 2008, declared constitutional via ruling C-150/09 and incorporated by means of Decree No 4309/09 of the Ministry of Foreign Affairs of Colombia, 5 November 2009.

⁸ Colombia approved on 4 July 2007 via Law 1143, subject of constitutional control under ruling C-750/08 where its constitutionality was declared. The "Protocol of Amendment" of the Agreement was signed in

103. By Article 10.17.1, Respondent “consent[ed] to the submission of a claim to arbitration under this Section [B] in accordance with this Agreement”. Article 10.17.2(a) further provides that “[t]he consent under paragraph 1 and the submission of a claim to arbitration under this Section [B] shall satisfy the requirements of ... Chapter II of the ICSID Convention (Jurisdiction of the Centre) ... for written consent of the parties to the dispute”.

104. The scope of Respondent’s consent to arbitration is defined in particular by Article 10.16.1 of the TPA, which provides as follows:

“In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A, ... or

(C) an investment agreement;

and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A, ... or

Washington on June 28 2007, approved by Law 1166 of 2007 and its constitutionality was declared via Ruling C-751/08. The incorporation process culminated with the publication of Decree 993 of May 15, 2012.

(C) an investment agreement;

and

(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,

provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.”

105. Additionally, Article 10.16.3 provides that if both the respondent Party and the Party of the claimant investor are parties to the ICSID Convention, the dispute may be submitted to the Centre for arbitration at the request of the investor. Those conditions are met – see Sections IV.C and IV.D.

106. Therefore, the following elements must be satisfied:

106.1 There must be an “investment dispute”.

106.2 The investment dispute must be between a “claimant” and a “respondent”.

106.3 The claimant and/or the respondent must consider that the investment dispute “cannot be settled by consultation and negotiation”.

(a) There is an investment dispute

107. Under Article 10.16.1, Colombia’s consent to arbitration extends to investment disputes in connection with breaches of the substantive obligations owed under Section A of Chapter Ten, as well as breaches of an investment authorization or investment agreement, insofar as the claimant has incurred loss or damage by reason of, or arising out of, such breaches. The dispute between Neustar/.CO Internet and Colombia (summarised in Sections III and V) satisfies those requirements.

108. Specifically, as set out in the Notice of Intent, and based on the facts above, Respondent has violated or is violating Articles 10.3, 10.4, 10.5, and 10.7 of the TPA.

(b) The dispute is between a “claimant” and “respondent”, as defined by the TPA

109. As noted above, Article 10.16.1 allows the submission to arbitration of investment disputes between a “claimant” and a “respondent”, as defined by the TPA.

110. As to the “respondent”, Article 10.28 defines this as “the Party that is a party to an investment dispute.” Respondent is a Party to the TPA, and a party to this dispute.

111. As to the “claimant,” Article 10.28 defines claimant as “an investor of a Party that is a party to an investment dispute with another Party.” Neustar is an investor of the USA for the reasons set out below, and is a party to this investment dispute with another Party to the TPA (namely, Colombia). .CO Internet derives its status as a Claimant through Neustar pursuant to Article 10.16(1)(b) and as an Investor pursuant Article 1(2)(b) of the Swiss-Colombia BIT.

112. The term “investor of a Party” is defined by Article 10.28 as including “an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party”. This definition thus has two elements.

112.1 First, Neustar must qualify as an “enterprise of a Party”. Taken together, Articles 1.3 and 10.28 define that term as covering “any entity constituted or organized under applicable law [of a Party], whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association”. As indicated above, Neustar is a company established under the laws of the State of Delaware, United States of America. (Attached as **Annex RFA-6** is a Certificate of Good Standing of Neustar, Inc. issued by the Secretary of State of the State of Delaware.) As such, Neustar qualifies as an enterprise of the US. .CO Internet has also made investments in Colombia, as described above,

through the development of the domain, as well as through the Concession.

- 112.2 Second, Neustar/.CO Internet must be an enterprise that “attempts through concrete action to make, is making, or has made an investment in the territory of another Party”. For the reasons stated in Section IV.B, Neustar/.CO Internet have made investments in the territory of Colombia.
113. Accordingly, Neustar qualifies as an “investor of a Party” (namely, of the US). And .CO Internet is a Claimant through Neustar and, separately, as an investor pursuant to the Swiss-Colombia BIT.
114. For the reasons stated, the requirement under Article 10.16.1 that the dispute be between a “claimant” and a “respondent”, as defined by the TPA, is thus met.

(c) The dispute cannot be settled by consultation and negotiation

115. Article 10.15 of the TPA provides that the disputing parties “should initially seek to resolve the dispute through consultation and negotiation”. That is not a jurisdictional requirement, as is made clear by Article 10.16.1, which allows the dispute to be submitted to arbitration in the event that either disputing party “considers that [the] investment dispute cannot be settled by consultation and negotiation”. As discussed above, Neustar/.CO notified Colombia of the existence of a dispute in terms of the TPA on 7 and 18 June 2019, and by way of its Notice of Intent filed on 16 September 2019. Consultation meetings took place on 26 June and 23 July 2019 to no avail, as Respondent never sought to resolve the issues at hand. Having regard to that, and to Respondent’s conduct to date (as set out above), Neustar has been unable to settle this dispute despite its repeated efforts to do so.

(d) The conditions precedent to submission to arbitration are met

116. Chapter 10 of the TPA includes certain conditions precedent to the submission of a claim to arbitration.

117. In the first instance, Articles 10.16.2 and .3 set out temporal requirements. For the reasons that follow, those requirements have been met.
- 117.1 First, Neustar complied with Article 10.16.2 by submitting to Colombia its Notice of Intent to submit a claim to arbitration on 16 September 2019. A copy of that notice is attached as **Annex RFA-4**, and documentation proving its delivery to Colombia is attached as **Annex RFA-5**.
- 117.2 Second, Neustar has complied with Article 10.16.3, which states that a claimant investor may submit a claim to arbitration “[p]rovided that six months have elapsed since the events giving rise to the claim”. The President’s announcement of March 2019 (see [54]) and, separately, MinTIC’s letter of 10 April 2019 (see [56]) are the events that give rise to this claim. It has been apparent since those events that Respondent is acting (and continues to act) in disregard of Neustar/.CO’s rights in relation to the Concession, and in connection with the tender process, in breach of the TPA. Accordingly, more than six months have elapsed since the events giving rise to this claim.
118. Additional conditions precedent are established by Article 10.18.2. As required by sub-paragraph (a) thereof, Neustar has consented in writing to arbitration in accordance with the procedures set out in the TPA. Further, as required by sub-paragraph (b), provided with this Request for Arbitration are Neustar’s and its enterprise’s (.CO Internet’s) written waivers of any rights to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16. However, Neustar and.CO Internet reserve their rights to initiate or continue such actions as are permitted by Article 10.18.3. The written consent and waivers required by Article 10.18.2 are provided at **Annex RFA-7**.

(ii) The Claimants’ Consent

119. Both Neustar and .CO Internet consent to the submission of this dispute to the jurisdiction of the Centre by the filing of this Request for Arbitration.

120. Respondent's consent to arbitration by way of the TPA and Neustar's filing of this Request for Arbitration thus form the agreement to arbitrate between the parties to the dispute.

F. Conclusion

121. For the reasons stated, the Centre thus has jurisdiction over this investment dispute.

V. THE CLAIMS

122. The factual background to the dispute and the claims it gives rise to are set out in Section III. Neustar's claims and their legal basis will be explained in detail at the appropriate stages of this proceeding. The following statement of claims is to show that for the purpose of the TPA there is a dispute between Neustar/.CO and Colombia in relation to Neustar/.CO's investments. It is also provided in order to give a brief description of the claims as required by Institution Rule 2(1)(e).

A. Breaches of the TPA, Chapter 10, Section A

123. Respondent by way of its measures as described in Section III has breached its international obligations under the TPA with respect to the Investments made by Neustar and its enterprise .CO Internet. In particular, Respondent has engaged in wrongful actions and omissions by intentionally depriving Neustar/.CO of their rights in relation to the Concession and the fair and transparent participation in a tender process, among other things.

124. Respondent's breaches of the TPA based on its conduct to date include: **(i)** breach of the minimum standard of treatment standard, including fair and equitable treatment (Article 10.5); **(ii)** breach of the national treatment standard (Article 10.3); and **(iii)** breach of the most-favoured-nation treatment standard (Article 10.4). Further, Colombia has manifested a clear intention to continue to act in violation of Neustar/.CO's rights under the TPA, including but not limited to expropriating their Investments without regard to the obligations imposed by Article 10.7. Respondent has also breached the observation of obligations clause, as found in the Swiss-Colombia BIT and which protection the Claimants invoke here through the MFL clause of the TPA.

125. Such breaches have and will continue to cause Neustar/.CO loss and damage, in an amount to be established at the proper stage of the proceeding, but which Neustar/.CO presently estimates to be in excess of US\$350 million.

B. Breach of an Investment Agreement

126. Article 10.16.1 of the TPA (quoted at [104]) allows the submission to arbitration of claims based on a breach by the respondent of an investment agreement. Article 10.28 defines the term “investment agreement” as:

“a [i] written agreement between [ii] a national authority of a Party and [iii] a covered investment or an investor of another Party, [iv] on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that [v] grants rights to the covered investment or investor: ... (b) to supply services to the public on behalf of the Party, such as ... telecommunications; or (c) to undertake infrastructure projects ... that are not for the exclusive or predominant use and benefit of the government;”

127. The Concession meets that definition. It is (i) a written agreement (ii) between MinTIC (a national authority of a Party) and (iii) .CO Internet (a covered investment – see [90.2]) and investor see [100; 112], (iv) on which Neustar/.CO Internet relied in establishing or acquiring other covered investments (see e.g. those indicated at [90.3] and [90.4]). Further, (v) the Concession plainly grants rights to .CO Internet to supply services to the public on behalf of Colombia and/or to undertake an infrastructure project.

128. Accordingly, Neustar/.CO Internet are entitled to submit to arbitration claims based on Colombia’s breaches of the Concession itself. Such breaches are described in Section III and have and will continue to cause Neustar/.CO Internet loss and damage, in an amount to be established at the proper stage of the proceeding.

C. Other Relevant Provisions

129. The Colombia – Swiss BIT was signed on 17 May 2006,⁹ and entered into force on 6 October 2009 Article 1(1)(e), Definitions provides for the term “investment” “concessions under public law... as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.”
130. Article 1(2)(b), Definitions provides for the term “investor” “legal entities, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organised under the law of that Party and have their seat, together with real economic activities in the territory of the same Party;”
131. Article 1(2)(c), Definitions provides for the term “investor” “legal entities not established under the law of that Party but effectively controlled... by legal entities as defined in (b) above.” This provision, through the MFN clause in the TPA, allows .CO Internet to act as a claimant in this arbitration in addition to Neustar’s rights to claim on .CO Internet’s behalf.
132. Article 4(1), provides that “Each Party shall protect within its territory investments made in accordance with its law and regulations by investors of the other Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investments.” And Article 10(2) requires Colombia to observe any obligations it has entered into deriving from a written agreement.

VI. INTERNAL AUTHORIZATION TO MAKE THIS REQUEST

133. Neustar has taken all necessary internal actions to authorise this Request for Arbitration. The boards of directors of Neustar and .CO Internet’s President have considered the matter and issued resolutions authorizing consent to arbitration and execution of the instruments necessary to make this Request. Resolutions of the

⁹ Agreement between the Republic of Colombia and the Swiss Confederation about the Reciprocal Promotion and Protection of Investments (BIT) agreed on 17 May 2006, approved by Law 1198 of 2008, declared constitutional via ruling C-150/09 and incorporated by means of Decree No 4309/09 of the Ministry of Foreign Affairs of Colombia, 5 November 2009.

boards and additional relevant documentation are attached as **Annex RFA-7**. In addition, Neustar and .CO Internet have, as reflected in that annex, appointed the undersigned as attorneys in this matter, have provided the appropriate notification to the ICSID Secretariat pursuant to Arbitration Rule 18(1), and have specifically authorized the undersigned to file this Request. This Request has been fully authorized in accordance with the law and applicable corporate instruments.

VII. METHOD OF APPOINTMENT OF THE ARBITRAL TRIBUNAL

134. Article 10.19.1 of the TPA provides as follows:

“Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.”

135. Having regard to that provision and to Article 37 of the ICSID Convention, Rule 3 of the Institution Rules and Rule 2 of the Arbitration Rules, in light of the substantial amounts that will be involved in this proceedings, Neustar and .CO Internet hereby request the constitution of a tribunal consisting of three arbitrators, one appointed by each of the disputing parties and the third, the presiding arbitrator, appointed by agreement of the disputing parties.
136. Pursuant to Article 10.19.3 of the TPA and Article 38 of the ICSID Convention, if a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration (i.e. received by the Secretary-General),¹⁰ the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.
137. As required by Article 10.16.6 of the TPA, Neustar hereby appoints Professor Dr. Kaj Hobér, a Swedish national, as an arbitrator in this proceeding. Professor Hobér

¹⁰ In circumstances where a claim is submitted to ICSID Convention arbitration (as here), Article 10.16.4(a) of the TPA deems the claim to have been “submitted to arbitration” “when the claimant’s notice of or request for arbitration (‘notice of arbitration’) … [as] referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General”. Therefore, the 75-day period runs from the date of receipt of this Request for Arbitration, not from the date of registration.

can be contacted at the following address (3 Verulam Buildings, Gray's Inn, London, U.K.) and at the following email (khober@3vb-arbitrators.com).

138. As required by Article 10.19.4(b) and (c) of the TPA, Neustar and its enterprise (.CO Internet) agree to the appointment of each individual member of the tribunal, for the purposes of Article 39 of the ICSID Convention, without prejudice to any objection that Neustar may choose to make to an arbitrator on a ground other than nationality. Such written agreement is provided at **Annex RFA-7**.

VIII. THE PLACE AND LANGUAGE OF THE ARBITRATION

139. In accordance with Article 62 of the ICSID Convention, the arbitration proceedings shall be held at ICSID's headquarters in Washington D.C.
140. Neustar proposes that the arbitration be conducted in English.

IX. REQUEST FOR RELIEF

141. As a result of the Republic of Colombia's actions and breaches as described briefly above, without limitation and reserving Claimant's right to supplement these prayers for relief, including without limitation in light of further action which may be taken by Colombia, Claimants respectfully requests an award in its favour,
- 141.1 Finding and declare that Colombia has breached its obligations under the TPA;
- 141.2 Finding and declare that Colombia has breached its obligations under the Investment Agreement (i.e. the Concession);
- 141.3 Finding and declare that such breaches have cause Neustar and. CO Internet to suffer loss and/or damage;
- 141.4 Ordering Respondent:
- 141.4.1 to provide Neustar and its enterprise¹¹ .CO Internet restitution and to pay them such additional compensation and damages as

¹¹ As required by Article 10.26.2 of the TPA.

is necessary in order to wipe out all the consequences of Colombia's unlawful conduct; or

to provide other relief that may be necessary to wipe out the consequences of Colombia's wrongful actions.

141.4.2 in lieu of such restitution,¹² or if such restitution is not made within a reasonable period to be determined by the Tribunal, to pay Neustar and its enterprise (.CO Internet) full compensation and damages in accordance with the applicable law for the breaches pleaded above, in an amount to be established in the proceeding, but which Neustar presently estimates to be in excess of US\$350 million;

141.5 In the alternative to the preceding paragraph, ordering Respondent to pay Neustar and its enterprise (.CO Internet) full compensation and damages in accordance with the applicable law for the breaches pleaded above, in an amount to be established in the proceeding, but which Neustar presently estimates to be in excess of US\$350 million;

141.6 In any event, ordering Respondent:

141.6.1 to pay all sums awarded by the tribunal gross up of any taxes that may be imposed by Colombia on or affecting such sums;

141.6.2 to pay Neustar pre- and post-award compound interest on all sums awarded by the tribunal until the date of payment in accordance with the applicable law;

141.6.3 to pay Neustar all of its legal and other costs and expenses in respect of the arbitration, plus compound interest thereon;

141.6.4 to bear in full the arbitration costs (including the fees and disbursements of the arbitrators and the costs of the Centre),

¹² As required by Article 10.26.1(b) of the TPA.

including by ordering Colombia to pay to Neustar any share paid in advance by it in respect of such costs, plus compound interest thereon; and

- 141.7 Ordering such further or additional relief as may be appropriate in the circumstances under the applicable law.

Respectfully submitted on the 23rd of December 2019,



Steptoe & Johnson LLP
Edward "Teddy" Baldwin
Chloe Baldwin
Thomas Innes



Alvarez Zárate & Asociados
Prof. José Manuel Alvarez Zárate

LIST OF ANNEXES TO NEUSTAR'S REQUEST FOR ARBITRATION

- RFA-1** List of the Contracting States and other Signatories of the ICSID Convention published by the Centre
- RFA-2** Chapter Ten of the Trade Promotion Agreement between the Republic of Colombia and the United States of America
- RFA-3** Extract from the US State Department publication Treaties in Force (2019)
- RFA-4** Neustar/.CO's Notice of Intent under the TPA, filed 16 September 2019
- RFA-5** Proof of Delivery of the Notice of Intent: Response from the Directorate of Foreign Investment and Services of the Ministry of Commerce, Industry and Tourism accusing received of the Notice of Intent, dated 19 September 2019.
- RFA-6** Certificate of Good Standing of Neustar, Inc. issued by the Secretary of State of the State of Delaware.
- RFA-7**
- Neustar's Written Consent and Waivers under Articles 10.18.2(a), 10.18.2(b), 10.19.4(b) and 10.19.4(c) of the TPA and Appointment of Attorneys.
 - .CO Internet's Written Consent and Waivers under Articles 10.18.2(b) and 10.19.4(c) of the TPA and Appointment of Attorneys.
 - Ministry of Foreign Affairs Decree No 993, 15 May 2012, describing Colombia's and United States' compliance with their respective constitutional requirements in relation to the approval and entry into force of the Treaty.
 - Articles of Incorporation of Neustar Inc. and amendments.
 - Registration of international investments made with the Declaration of Change - External Regulatory Circular DCIN-83 of July 19, 2013 Form No. 4 of the Central Bank.

- Certificate issued by Silena Johanna Quintero Montenegro, the Statutory Auditor of .CO Internet S.A.S. establishing ownership by Neustar Inc. of all issued shares of .CO Internet S.A.S. since 14 April 2014, dated 11 December 2019.
- Certification by the Chamber of Commerce of Bogotá regarding .CO Internet S.A.S. dated 16 December 2019 (Certificado de existencia y representación legal de inscripción de documentos)
- By-laws of .CO Internet S.A.S. and amendments.
- Power of Attorney granted by Neustar Inc.
- Power of Attorney granted by .CO Internet S.A.S.