



Agencia Nacional de Defensa  
Jurídica del Estado

**ICSID CASE No. ARB/20/7**

IN THE MATTER OF AN ARBITRATION BEFORE THE INTERNATIONAL  
CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

**VERCARA LLC (FORMERLY SECURITY SERVICES LLC, FORMERLY NEUSTAR, INC.)**

**CLAIMANT**

**AND**

**REPUBLIC OF COLOMBIA**

**RESPONDENT**

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**RESPONDENT'S APPLICATION FOR SECURITY FOR COSTS**

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**19 April 2023**

## 1. INTRODUCTION

1. As set forth during the Final Hearing on Jurisdiction and the Merits held between 27-29 March 2023 (the "**Hearing**"), the Republic of Colombia ("**Colombia**" or "**Respondent**") hereby confirms that any award of costs in Colombia's favour should be rendered first and foremost against Neustar, Inc. ("**Neustar**"), i.e. the claimant that initiated the present proceedings.<sup>1</sup>
2. However, pending the Tribunal's decision on Colombia's objection to the intended change of claimant from Neustar to Security Services LLC d/b/a Neustar Security Services ("**Security Services**"), now Vercara LLC following Claimant's latest change, Colombia respectfully requests the Tribunal order Neustar and Security Services/Vercara LLC to post security in the amount of USD 3.5 million to cover a potential award of costs in Colombia's favour, to be deposited in an escrow account or provided as an unconditional and irrevocable bank guarantee.
3. This application for security for costs is based on the unusual and, to Colombia's knowledge, unprecedented setting of this proceeding, where there is complete uncertainty regarding the precise identity of the intended claimant in the arbitration, its assets, business operations and its ownership chain.
4. The ubiquitous doubts that this situation casts over the ability and willingness of Neustar and Security Services, now Vercara LLC, to comply with an adverse award of costs have only been progressively compounded by the procedural behaviour of this intended claimant. Indeed, since the completion of the alleged transfer of the ICSID claim on or before 1 December 2021 (which was only disclosed and presented as a "change of name" on 29 July 2022), Claimant has carefully crafted a strategy to avoid disclosing any material and concrete evidence of the transfer and Security Services' business operations (despite contrary representations to Respondent), including at the Hearing.
5. What is more, shortly after Colombia informed the Tribunal of its intention to request a security for costs, on 7 April 2023 Claimant notified ICSID and Respondent of a second change in relation to the party to the proceeding: the change in name of Security Services LLC to Vercara LLC ("**Vercara**"). As with Security Services, Colombia knows little to nothing about this change and the underlying reasons or potential corporate consequences behind such modification, and much less about Vercara LLC.
6. These circumstances are exceptional and fully justify an order that Neustar and Security Services/Vercara be required to post security for costs in an amount no less than USD 3.5 million.

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<sup>1</sup> Respondent's use of the term 'Claimant' in this application refers solely to **the party having performed the procedural acts of claimant in this proceeding** (filing of memorials, communications to ICSID, et al.). Use of this capitalized term does not constitute, and should not be construed as, acceptance of the status of any particular entity as claimant party in the proceedings. This is because Respondent is unaware of the real party in interest in these proceedings, and is unable to confirm which entity actually instructed counsel to perform procedural acts in the present proceeding following the alleged transfer of the claim on or before 1 December 2021.

In the absence of such an order, there would be a material risk that Colombia would not be able to recover any of the costs that it has and continues to incur in mounting its successful defence. This measure is all the more necessary in light of Colombia's recent experiences of being unable to recover a favourable award on costs against an opaque claimant with no available information on its assets and finances.<sup>2</sup> Against this background, the requested order is therefore crucial to ensure that any potential award on costs favourable to Colombia is not rendered meaningless and can be effectively enforced.

## 2. RELEVANT FACTS AND CIRCUMSTANCES

7. On 29 July 2022, Claimant disclosed for the first time to ICSID and Respondent a corporate and procedural change that it misleadingly presented as a change of "[t]he name of the Claimant."<sup>3</sup> Claimant explained that the former owners of Neustar decided to sell Neustar to TransUnion on 1 December 2021, and had previously completed a reorganization of the business to spin-out Neustar's security services division to operate as a standalone business. As part of this transaction, Claimant's owners would have transferred not only the security business but also the rights to the ICSID arbitration to their new "*portfolio company*" Security Services LLC, portrayed as Neustar's "*successor*".<sup>4</sup>
8. To document this transaction and support its request that the name of the Claimant be "*changed*", Claimant produced a total of **five documents**, including one duplicate:
  - The homepage of the Neustar Security Services website,<sup>5</sup> which Claimant alleges in its 29 July 2022 letter is sufficient to establish that Security Services LLC "*is a successor of Neustar with regard to the assets it retained to operate the Security Business*" because such webpage notes the "*over 20 years of experience of the company*" ([C-0134]);<sup>6</sup>
  - A five-page internal press release (produced twice) titled "*Neustar Security Services Spins Out with Focused Investment to Foster Accelerated Growth*" ([C-0135], [C-0138]);<sup>7</sup>
  - A heavily redacted version of a Unit Purchase Agreement between Neustar, Inc., Aerial Blocker Corp., Aerial Security Services Intermediate, LLC, and Security Services, LLC dated 1 December 2021 (the "**UPA**", [C-0136]);<sup>8</sup> and,

<sup>2</sup> See *AFC Investment Solutions S.L. v. Republic of Colombia*, ICSID Case No. ARB/20/16, Laudo sobre la Excepción Preliminar formulada por la Demandante con base en la Regla 41(5) de las Reglas de Arbitraje CIADI, 24 February 2022 [RL-192].

<sup>3</sup> Letter from Claimant to ICSID of 29 July 2022.

<sup>4</sup> Letter from Claimant to ICSID of 29 July 2022.

<sup>5</sup> Neustar Security Services Homepage, accessible at: <https://neustarsecurityservices.com> [C-0134].

<sup>6</sup> Letter from Claimant to ICSID of 29 July 2022.

<sup>7</sup> Neustar Press Release, 'Neustar Security Services Spins Out with Focused Investment to Foster Accelerated Growth', 1 December 2021, accessible at: [//www.home.neustar/about-us/news-room/press-releases/2021/neustar-security-services-spins-out-with-focused-investment-to-foster-accelerated-growth](https://www.home.neustar/about-us/news-room/press-releases/2021/neustar-security-services-spins-out-with-focused-investment-to-foster-accelerated-growth) [C-0135] (also produced as [C-138]).

<sup>8</sup> Unit Purchase Agreement between Neustar Inc., Aerial Blocker Corp., Aerial Security Services Intermediate, LLC, and Security Services, LLC dated 1 December 2021 [C-0136].

- A three-page certificate of formation of Security Services LLC issued by the Delaware Division of Corporations dated 4 December 2017, which confirms that the company was formed on 12 April 2017 ([C-0137]).<sup>9</sup>

9. Following Claimant's notification of this alleged "*change of name*", the ICSID Secretariat informed the Parties on 8 August 2022 that it would proceed to update the record for the proceeding unless it heard from any of the Parties. On 12 August 2022, Respondent answered to ICSID's communication noting that while the record of the case could be updated "*for purely administrative purposes*", it reserved its rights regarding the corporate changes notified by Claimant, which it was in the process of investigating:

*While Respondent reserves all of its rights in relation to the corporate changes referred to in Claimant's letter of 29 July 2022, Respondent kindly requests that for administrative purposes and in order to avoid any confusion to members of the public who might seek information about the case, the proceeding be referred to as 'Security Services, LLC d/b/a Neustar Security Services (formerly Neustar, Inc.) v. Republic of Colombia.'*<sup>10</sup>

10. As Colombia was subsequently able to confirm, far from a simple change of name, the issue at stake was in reality an intended *change of claimant* midway in the proceedings. However, the documents disclosed by Claimant were completely insufficient to confirm whether (i) Neustar, Inc. effectively transferred the ICSID claim, (ii) if so, to which exact entity this claim was transferred to, and (iii) the exact terms of this transfer/assignment.<sup>11</sup> And most importantly, it provided no evidence of the financial viability or wherewithal of this supposed new claimant.
11. On 5 September 2022, Colombia was therefore forced to submit an application to the Tribunal requesting additional information on this alleged transfer.<sup>12</sup> In its two responses to the application dated 15 September and 3 October 2022, Claimant contended that the changes were perfectly legitimate, but carefully refrained from disclosing any further concrete evidence of the purported transfer or Security Services' business operations.
12. This application was ultimately decided in Procedural Order No. 3 dated 25 October 2022, in which the Tribunal held that the Claimant "*has the burden of proof to show that it remains entitled to present and recover in respect of the claims presented in this Arbitration following the corporate*

<sup>9</sup> Certificate of Formation of Security Services, LLC of 12 April 2017 [C-0137]. Following Respondent's Application of 5 September 2022 and Procedural Order No. 3 of 25 October 2022, Claimant also disclosed an unredacted version of the UPA to Respondent's internal and external counsel team. However, as anticipated in Respondent's Application of 5 September 2022, this unredacted version of the UPA does not shed light on the mechanisms whereby the purported transfer of the 'MinTIC Claim' would have occurred prior to the execution of the UPA on 1 December 2021.

<sup>10</sup> Email from Respondent to ICSID of 12 August 2022 (emphasis added).

<sup>11</sup> See Unit Purchase Agreement between Neustar Inc., Aerial Blocker Corp., Aerial Security Services Intermediate, LLC, and Security Services, LLC dated 1 December 2021, Recitals, Sections 1.1, 2.1, 2.3, 5.10 [C-0136]: the UPA specifies that prior to the closing of the transaction, a "*reorganization*" of the business had been completed pursuant to which Neustar caused any "*Transferred Security Assets*" and "*Security Liabilities*" (including the ICSID claim) to be assumed by "*a member of the Company Group*", defined as Security Services LLC or one of its subsidiaries.

<sup>12</sup> Application from Respondent to the Tribunal of 5 September 2022.

*restructuring*”.<sup>13</sup> The Tribunal further noted Claimant’s acceptance “*that it has this burden*” and contention that “*it has satisfied the burden of proof and has submitted evidence in support of this contention by way of the Unit Price Agreement (UPA) submitted as exhibit C-136 (albeit significantly redacted)*.”<sup>14</sup>

13. As Respondent demonstrated in its Rejoinder of 4 November 2022 and at the Hearing, Claimant has blatantly failed to meet this burden:<sup>15</sup> this is notably because the UPA is not the legal instrument whereby the ICSID claim was allegedly transferred but simply references a prior transfer/assignment, and it is not even clear to which member of Security Services’ “*Company Group*” such claim was allegedly transferred.<sup>16</sup>
14. But as it transpired at the Hearing, these documents are also insufficient to establish the reality of Security Services’ (now Vercara’s) business operations. In particular, the UPA does not indicate either to which precise entity within Security Services’ “*Company Group*” the security business and associated assets would allegedly have been transferred as part of the reorganization.<sup>17</sup> This business (and associated assets) may accordingly well be held by a different entity than Security Services or Vercara.
15. To recap, the documents produced by Claimant in this arbitration are insufficient to establish:
  - Whether Neustar Inc. effectively transferred its ICSID claim to another entity;
  - Assuming that this was the case:
    - To which entity this claim was transferred to (Security Services or another entity part of the “*Company Group*”); and,
    - Whether the entity to which the claim was really transferred to possesses sufficient assets to satisfy a potential adverse costs award.
16. At the Hearing, Claimant pointed to Exhibit C-0135, the internal press release titled “*Neustar Security Services Spins Out with Focused Investment to Foster Accelerated Growth*” of 1 December 2021, and claimed that it contained “*all the answers*” necessary to alleviate Respondent’s concerns.<sup>18</sup> As explained at the Hearing, this single exhibit is not only insufficient for Claimant to meet its burden of proving that “*it remains entitled to present and recover in respect of the claims presented in this Arbitration following the corporate restructuring*”,<sup>19</sup> but it is also

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<sup>13</sup> Procedural Order No. 3, para. 4(a).

<sup>14</sup> Procedural Order No. 3, para. 4(b).

<sup>15</sup> See Rejoinder, Section 2.1.

<sup>16</sup> See Rejoinder, para. 24.

<sup>17</sup> See Unit Purchase Agreement between Neustar Inc., Aerial Blocker Corp., Aerial Security Services Intermediate, LLC, and Security Services, LLC dated 1 December 2021, Recitals, Sections 1.1, 2.1, 2.3, 5.10 [C-0136].

<sup>18</sup> Transcript, Day 1 [Gouiffès/T. Baldwin], 203:9-16; Day 2 [Gouiffès/T. Baldwin], 292.

<sup>19</sup> Procedural Order No. 3, para. 4(a).

insufficient to confirm that Security Services LLC has substantial business operations. This is because this press release, which is not a legal document:

- Does not mention the transfer of the ICSID claim or to which entity it was allegedly transferred to;
- Fails to confirm that Security Services LLC has any substantial business operations or at the very least enough assets to cover an adverse award of costs. In particular, while the press release affirms that the security business has several employees,<sup>20</sup> it does not indicate which legal entity in Security Services' company group employs these employees or possesses the underlying assets necessary to operate the security business. It is in any event unclear whether this entity is the same than the one to which the ICSID claim was allegedly transferred to; and,
- Fails to provide any specific information about the precise ownership structure of Security Services LLC or its directors and officers (other than a vague mention that "*Neustar Security Services, LLC*" is the "*new portfolio company*" of Golden Gate Capital and GIC).

17. Claimant had also indicated in correspondence to the Tribunal and Respondent of 15 September 2022 that "*the then General Counsel of Neustar and the now General Counsel of Neustar Security Services, Kevin Hughes, [would] be at the hearing and could be questioned by the Tribunal or the Respondent regarding this very regular transaction.*"<sup>21</sup> Regrettably, while Mr Hughes was indeed present at the Hearing, Claimant carefully refrained from offering him up for questioning by either the Tribunal or Respondent on behalf of Security Services, instead electing to continue to hide behind smokescreens and lawyers' statements.
18. Despite Claimant's repeated indications in correspondence and at the Hearing that it would provide additional information on the transfer of the ICSID claim and Security Services' alleged business operations, Claimant has thus failed to do so time and time again.
19. What is more, Claimant has continued with additional unclear dealings regarding its ICSID claim after the Hearing. As the Tribunal is aware, on 7 April 2023, just days after Colombia informed of its intention to file request for security for costs during the Hearing, the "name" of the Claimant in this proceeding has changed yet again. It is worth noting that Claimant kept silent about this prospective change during the Hearing, although it is probable that it was underway. Colombia and the Tribunal are back at square one: with no clarity whatsoever as to who is the real Claimant, and an overwhelming uncertainty on the potential recovery of costs for this frivolous ICSID claim.

<sup>20</sup> Neustar Press Release, 'Neustar Security Services Spins Out with Focused Investment to Foster Accelerated Growth', 1 December 2021, accessible at: [//www.home.neustar/about-us/news-room/press-releases/2021/neustar-security-services-spins-out-with-focused-investment-to-foster-accelerated-growth](https://www.home.neustar/about-us/news-room/press-releases/2021/neustar-security-services-spins-out-with-focused-investment-to-foster-accelerated-growth) [C-0135]

<sup>21</sup> Letter from Claimant to ICSID of 15 September 2022 (response to Respondent's Application), pp. 1-2.

20. Claimant's dealings regarding its ICSID claim, coupled with its continued reluctance to disclose any information on the transactions (other than vague press releases and partial agreements), casts serious doubts over its approach to the present proceeding and likelihood that it would be able and/or willing to satisfy a potential award of costs in Colombia's favour.
21. As set out below, Colombia's primary position is that any award on costs should be rendered first and foremost against Neustar. However, pending the Tribunal's decision on whether it has jurisdiction over Security Services, both Neustar and Security Services/Vercara should be ordered to post security for costs to ensure that Colombia will be able to recover any favourable award of costs against any of these would-be claimants.

### 3. THE TRIBUNAL HAS AUTHORITY TO RENDER AN AWARD AGAINST NEUSTAR, INC.

22. As Respondent explained at the Hearing, any potential award of costs in Colombia's favour should be rendered primarily against Neustar, Inc. This is because irrespective of Claimant's attempted change of claimant, the Tribunal retains jurisdiction over Neustar, Inc. for purposes of cost allocation.
23. In its 29 July 2022 letter, Claimant represented that the "*Claimant (now 'Security Services LLC d/b/a/ Neustar Security Services, a US limited liability company) retained and continues to retain the rights to this arbitration'*", and that that this entity is the "**successor of Neustar with regard to the assets it retained to operate the Security Business**".<sup>22</sup> At the Hearing, Claimant repeated that "*Neustar has no right and/or obligations in this proceeding, unlike Neustar Security Services which retained the rights to the arbitration*", concluding on this basis that the Tribunal has no jurisdiction to issue an award of costs against Neustar.<sup>23</sup>
24. This is however blatantly incorrect:
- From a legal standpoint, Security Services LLC and/or Vercara LLC cannot be the legal successor of Neustar, Inc.: this legal concept refers to the situation where a company has ceased to exist and its rights and obligations have been transferred to another company following, for instance, a merger or liquidation. This is not the case here: Security Services LLC existed since April 2017<sup>24</sup>, long in advance of the purported spin out, and Neustar, Inc. similarly continued to exist –albeit under a different ownership– after the completion of the transaction.<sup>25</sup>

<sup>22</sup> Letter from Claimant to ICSID of 29 July 2022.

<sup>23</sup> See Transcript, Day 3 [T. Baldwin], 427:1-8.

<sup>24</sup> Certificate of Formation of Security Services, LLC of 12 April 2017 [C-0137].

<sup>25</sup> It bears noting that the only document Claimant ever produced in support of this allegation is the extract of Neustar Security Services' homepage ([C-0137]) which mentions its "*over 20 years of experience*." Claimant appears to consider that this webpage extract is sufficient to prove that Security Services LLC is a successor of Neustar, Inc. regarding the assets necessary to operate the security business or the MinTIC claim. Claimant has simply failed to provide any *legal* explanation of the alleged succession in rights between Neustar, Inc. and Security Services LLC.

- From a factual perspective, the few documents that Claimant has disclosed show that the issue at stake is not a simple change of name of the claimant but an intended change of claimant.<sup>26</sup>
25. As explained in the Rejoinder, the first consequence of this attempted change of claimant is that the Tribunal lacks jurisdiction *ratione voluntatis* over this intended new claimant Security Services/Vercara,<sup>27</sup> as consent to arbitrate under the TPA and the ICSID Convention is necessarily limited to a specific party.<sup>28</sup>
  26. But this is not all: as Respondent explained in its closing submission,<sup>29</sup> Neustar, Inc. has not formally discontinued its participation in the present proceeding and cannot do so unilaterally to avoid liability for a potential adverse costs award.
  27. This is because Article 25 of the ICSID Convention provides in its relevant part that “[w]hen the parties have given their consent, no party may withdraw its consent unilaterally.” In line with this principle, ICSID Arbitration Rule 44 regarding the “discontinuance at the request of a party” provides that “if a party requests the discontinuance of the proceeding, the Tribunal [...] shall in an order fix a time limit within which the other party may state whether it opposes the discontinuance. [...] **If objection is made, the proceeding shall continue.**”<sup>30</sup>
  28. On this basis, previous ICSID tribunals have held that a claimant could only discontinue its participation in the proceeding where the respondent did not object to such discontinuance as per the procedure under Rule 44.<sup>31</sup> Even when such discontinuance is accepted, ICSID tribunals have held that the withdrawing claimant would still remain liable for costs.<sup>32</sup> In the words of the *Adamakopoulos* tribunal:

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<sup>26</sup> See Rejoinder, paras. 21-27.

<sup>27</sup> See Rejoinder, Section 2.1(b).

<sup>28</sup> See *Wintershall Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB/04/14, Award, 8 December 2008, para. 59 [RL-123]; *Ambiente Ufficio S.p.A. v. Argentine Republic*, ICSID Case No. ARB/08/9, Decision on Jurisdiction and Admissibility, 8 February 2013, para. 123 [RL-121]; *Sumrain et al v. Kuwait*, ICSID Case No. ARB/19/20, Decision on the Joinder Application, 5 October 2020, para. 21 [RL-122].

<sup>29</sup> Respondent’s Closing Statement, slide 6; Transcript, Day 3 [Gouïffès], 444:19-446:6.

<sup>30</sup> Emphasis added.

<sup>31</sup> It should be noted that in these cases, the Tribunal was faced with requests by some of the claimant investors at an early stage in the proceedings that their claims be withdrawn (in multiparty arbitrations). However, none of these cases involved a request for the withdrawal of a claimant and its **replacement** by another claimant. As explained at length in Respondent’s Rejoinder, such replacement is impossible and the Tribunal lacks jurisdiction *ratione voluntatis* over Security Services LLC (see Rejoinder, Section 2.1(b)). See, for previous cases, *Suez, Sociedad General de Aguas de Barcelona S.A. and Interagua Servicios Integrales de Agua S.A. v. Argentine Republic*, ICSID Case No. ARB/03/17, Procedural Order No. 1 Concerning the Discontinuance of Proceedings with Respect to Aguas Provinciales de Santa Fe S.A., 14 April 2006, pp. 2-3: “whereas discontinuance of the proceedings with respect to one of the parties at its request **and in the absence of objection from other parties** is in accordance with the basic objective of the ICSID Convention of facilitating the settlement of investment disputes”; *Burlington v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction, 2 June 2010, para. 79 [RL-016]: “1) **Provided that the [Initial] Respondents make no objection** by 6 November 2009, the Contract Claims will be deemed withdrawn with prejudice as of that date.”;

<sup>32</sup> See *Ambiente Ufficio S.p.A. v. Argentine Republic*, ICSID Case No. ARB/08/9, Decision on Jurisdiction and Admissibility, 8 February 2013, para. 346 [RL-121]; *Abaclat and others (formerly Giovanna a Beccara and others) v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, paras. 628-639 [RL-057].



*The Respondent acknowledged the request for discontinuance with regard to Claimants No. 2 and No. 417, but contends that these Claimants should remain parties and be subject to an award of costs in an award on jurisdiction.*

*As Claimants No. 2 and No. 417 do not have the required nationalities, they do not meet the jurisdictional requirements and the Tribunal must dismiss jurisdiction vis-à-vis these Claimants, except with regard to any potential costs award against them. **They are therefore excluded from any future involvement in this case but remain liable for costs in respect of the jurisdictional phase.***<sup>33</sup>

29. As such, irrespective of whether Neustar has (or ever does) request to withdraw its claims in the proceedings, the Tribunal retains jurisdiction to render an award on costs against Neustar.
30. Finally, Claimant also submitted at the Hearing that Respondent should be precluded from requesting that an award of costs be rendered against Neustar because the ICSID Secretariat updated the record of the proceeding in August 2022 to reflect the intended change of name.<sup>34</sup> As explained above however, Neustar did not request to discontinue its involvement in the proceeding, and it is therefore unnecessary for Respondent to submit any new or specific *request* that costs be awarded against Neustar, since this company has simply remained a party to the proceeding for purposes of cost allocation.
31. In any event, Claimant's submission quietly disregards Respondent's email to ICSID of 12 August 2022 and the Rejoinder of 4 November 2022.<sup>35</sup> As already explained above, Respondent clearly and repeatedly reserved its rights regarding the change of name in these documents and indicated that the record of the proceedings could be updated only for purely "*administrative purposes*".<sup>36</sup>
32. It is therefore clear that Respondent has not agreed that Neustar discontinue its involvement entirely in the proceedings and avoid liability for an adverse award on costs. Instead, such an award should be rendered primarily against Neustar.

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<sup>33</sup> *Theodoros Adamakopoulos, Ilektra Adamantidou, Vasileios Adamopoulos and others v. Republic of Cyprus*, ICSID Case No. ARB/15/49, Decision on Jurisdiction, 7 February 2020, paras. 327-328 [**RL-193**] (emphasis added). As previously explained, Colombia did not request bifurcation in the present case as several of its jurisdictional objections (including notably Claimant's abuse of rights and the contractual nature of Claimant's claims) required an examination of the facts in dispute and Claimant's claims.

<sup>34</sup> See Transcript, Day 3 [T. Baldwin], 427:15-25.

<sup>35</sup> See Rejoinder, fn. 1: "[a]s per Respondent's email of 12 August 2022, Respondent has reserved all of its rights in relation to the corporate changes referred to in Claimant's letter of 29 July 2022, and the ensuing update to the reference of the present proceedings for administrative purposes. As further set out in Respondent's Application of 5 September 2022, Letter of 28 September 2022, and below at Section 2.1, Respondent does not consent to this change of party midway through the proceedings, which Claimant has failed to properly and timely document."

<sup>36</sup> Email from Respondent to ICSID of 12 August 2022 (emphasis added).

#### 4. PENDING THE TRIBUNAL'S DECISION ON SECURITY SERVICES, SECURITY FOR COSTS IS NECESSARY TO PRESERVE COLOMBIA'S RIGHTS

##### 4.1 The Tribunal has authority to grant security for costs

33. It is amply established that ICSID tribunals have the power to order security for costs. This power derives from Article 47 of the ICSID Convention and Rule 39(1) of the ICSID Arbitration Rules, which provide the Tribunal with wide discretion to order provisional measures. Article 47 states that:

*Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.*

34. In turn, ICSID Arbitration Rule 39 provides, in relevant part, that:

*(1) At any time after the institution of the proceeding, a party may request that provisional measures for the preservation of rights be recommended by the Tribunal. The request shall specify the rights to be preserved, the measures the recommendation of which is requested, and the circumstances that require such measures.*

35. On their face, these provisions require that the Tribunal engage in a two-step process to assess whether provisional measures are required: first, the Tribunal's authority to order provisional measures depends on the identification of "rights to be preserved"; second, the Tribunal should be satisfied that the "circumstances [...] require" that the provisional measures requested be ordered.<sup>37</sup>
36. Tribunals dealing with security for costs applications have unanimously recognized their authority to order such relief and followed this two-step approach. As set out below, the circumstances of the present case call for such security for costs to be ordered.

##### 4.2 The Tribunal should order Neustar and Security Services/Vercara to post security for costs

37. With respect to the first step of the enquiry, ICSID tribunals have consistently recognized they have the power to order security for costs as a provisional measure.<sup>38</sup> This is because the applicant's right to claim reimbursement of its costs in the event that (i) it prevails in the arbitration, and (ii) the

<sup>37</sup> *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No. ARB/15/50, Procedural Order No. 3 Decision on Respondent's Request for Provisional Measures, 12 April 2017, para. 32 [RL-194]: "[b]efore one can examine what is 'required' [...] it is important to examine the nature of the 'rights', or entitlement, said to be in question"; see also, *Occidental Petroleum Corp. and Occidental Expl. & Prod. Co. v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Provisional Measures, 17 August 2007, para. 59 [RL-195].

<sup>38</sup> See e.g. *RSM Production Corporation et al. v. Grenada*, ICSID Case No. ARB/10/6, Tribunal's Decision on Respondent's Application for Security for Costs, 14 October 2010, para. 5.8 [RL-196]; *BSG Resources v. Guinea (I)*, ICSID Case No. ARB/14/22, Procedural Order No. 3 on Respondent's Request for Provisional Measures, 25 November 2015, para. 75 [RL-197]; *Eugene Kazmin v. Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent's Application for Security for Costs), 13 April 2020, para. 27 [RL-198].

Tribunal grants a claim for reimbursement of costs is a protected right under Article 47 of the ICSID Convention and ICSID Arbitration Rule 39.<sup>39</sup>

38. In the case at hand, Colombia's right to be preserved is precisely its right to claim reimbursement of the costs it has and continues to incur in the course of the present proceeding: Colombia's application therefore satisfies the requirement that it be for a "*right to be preserved*".
39. As explained above, after establishing the existence of a right to be preserved, a tribunal should also assess whether the "*circumstances*" do "*require*" that a particular measure be taken to preserve the right in question.<sup>40</sup>
40. ICSID tribunals interpreting these provisions have classically held that the controlling criterion to assess whether security for costs should be granted is whether there are "*exceptional circumstances*."<sup>41</sup> In this assessment, tribunals have taken into account the necessity, urgency and proportionality of the requested measures.<sup>42</sup> It is also worth noting that the new ICSID Arbitration Rules effective on 1 July 2022 specifically enshrine the tribunal's authority to grant security for costs, and provide that "*all relevant circumstances*" shall be taken into account, including "*(a) that party's ability to comply with an adverse decision on costs; (b) that party's willingness to comply with an adverse decision on costs; (c) the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and (d) the conduct of the parties*."<sup>43</sup>
41. In the case at hand, there are such exceptional circumstances present warranting such an order **(a)**, and the requested measures are necessary and proportional **(b)**. Further, Respondent's application is timely **(c)**.

<sup>39</sup> This is because while the "*rights to be preserved*" by a provisional measure must "*bear a relation with the dispute*", they need not form the subject matter of the dispute, and they can be both procedural in nature and conditional. See *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures, 26 February 2010, paras. 117-118 **[RL-199]** (citing *Plama Consortium Ltd. v. Republic of Bulgaria* ICSID Case No. ARB/03/24, Order, 6 September 2005, para. 40 **[RL-200]**).

<sup>40</sup> *Dirk Herzig v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, 27 January 2020, para. 20 **[RL-201]**.

<sup>41</sup> See, for instance, *RSM Production Corporation et al. v. Grenada*, ICSID Case No. ARB/10/6, Tribunal's Decision on Respondent's Application for Security for Costs, 14 October 2010 **[RL-196]**; *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Provisional Measures, 26 February 2010, paras. 117-118 **[RL-199]**.

<sup>42</sup> See *Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No. ARB/15/50, Procedural Order No. 3 Decision on Respondent's Request for Provisional Measures, 12 April 2017, para. 32 **[RL-194]**; *Sanum Investments Limited v. Lao People's Democratic Republic (II)*, ICSID Case No. ADHOC/17/1, Procedural Order No. 6 (Decision on Respondent's Application for Security for Costs of 29 June 2018), 26 July 2018 **[RL-202]**.

<sup>43</sup> 2022 ICSID Arbitration Rules, Rule 53(3).

(a) **There are exceptional circumstances warranting an order for security for costs**

42. In the context of security for costs applications, previous tribunals have put particular emphasis on whether there were “*exceptional circumstances*” present that would warrant an order for security for costs.<sup>44</sup>
43. Applicants requesting security for costs often appear to have relied on the claimant’s financial difficulties and presence of a third-party funder to characterize the existence of such exceptional circumstances.<sup>45</sup> However, this does not mean that a tribunal may find that there are “*exceptional circumstances*” only against such a factual background. Instead, a Tribunal must engage in a case-specific enquiry to determine whether there are such exceptional circumstances. For instance, in *Kazmin v Latvia*, the tribunal considered that the “*actual weight*” of the different circumstances put forward by the applicant “*for the Application has to be considered jointly*”.<sup>46</sup> The tribunal in that case went on to find that there were exceptional circumstances warranting ordering the claimant to post security for costs on the basis that (i) the claimant had failed to pay former counsel, (ii) criminal investigations had been initiated against a company group associated with claimant, (iii) the claimant had previously moved assets across different jurisdictions, and (iv) ***there had been unusual transactions involving the claimant’s assets***.<sup>47</sup>
44. In the present case, there is an equally compelling reason for the Tribunal to find that exceptional circumstances exist on the basis of Claimant’s combined actions and omissions with respect to its ICSID claim.
45. This is because, as described above, the original claimant in these proceedings (Neustar, Inc.) apparently transferred its claim to a new entity on 1 December 2021, yet ICSID and the Respondent were only informed of this transfer more than six months later. Such an important procedural issue should have been notified immediately. Instead, Claimant preferred to delay the announcement of this transfer, thereby depriving Respondent from the opportunity to address the issue in its Counter-Memorial (filed on 25 February 2022), or to request that Claimant disclose information relating to

<sup>44</sup> See *Dirk Herzig v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent’s Request for Security for Costs and the Claimant’s Request for Security for Claim, 27 January 2020, paras. 50, 53 [RL-201]; *RSM Production Corporation et al. v. Grenada*, ICSID Case No. ARB/10/6, Tribunal’s Decision on Respondent’s Application for Security for Costs, 14 October 2010, para. 5.8 [RL-196].

<sup>45</sup> See, for instance, *RSM Production Corporation et al. v. Grenada*, ICSID Case No. ARB/10/6, Tribunal’s Decision on Respondent’s Application for Security for Costs, 14 October 2010 [RL-196]; *EuroGas Inc. and Belmont Resources Inc. v. Slovak Republic*, ICSID Case No. ARB/14/14, Procedural Order No. 3 (Decision on the Parties’ Request for Provisional Measures), 23 June 2015 [RL-203]; *Dirk Herzig v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent’s Request for Security for Costs and the Claimant’s Request for Security for Claim, 27 January 2020 [RL-201].

<sup>46</sup> *Eugene Kazmin v. Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent’s Application for Security for Costs), 13 April 2020, para. 31 [RL-198].

<sup>47</sup> *Eugene Kazmin v. Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent’s Application for Security for Costs), 13 April 2020, paras. 32-60 [RL-198].

this transfer during the document production phase which took place between 18 March and 10 June 2022.

46. When it finally notified ICSID and the Respondent of this transfer on 29 July 2022, Claimant elected to disingenuously present it as a simple change of name. What is more, it failed to provide any documentary evidence of the terms of the transfer, the new intended claimant's business operations, or its ability to satisfy an adverse cost award, leading Respondent to reserve its rights on 12 August 2022. Faced with Respondent's subsequent inquiries regarding this opaque situation (as reflected in Respondent's application of 5 September 2022 and the ensuing Procedural Order No. 3), Claimant refused to produce any additional documentation on the alleged transfer of Security Services and represented that it would provide additional explanations at the Hearing (while Respondent continued to reserve its rights in its Rejoinder of 4 November 2022).
47. However, instead of delivering on these representations, Claimant then reneged on them and failed to provide any concrete explanations (much less documents) of the mechanisms of the transfer. Claimant's unwillingness to do so is all the more suspicious considering that Security Services/Vercara is a limited liability company incorporated in Delaware, a jurisdiction characterized by the very limited disclosure obligations imposed on such private companies.<sup>48</sup> Accordingly, there is virtually no public information available on Security Services/Vercara's actual business operations or assets.
48. Claimant's opaque behaviour continued at the Hearing. After Respondent repeated its longstanding requests that Claimant provide evidence of Security Services' rights to the ICSID claim and its business operations, in an effort to obviate the need for the present application, Claimant referred Respondent to Exhibit C-0135 (the internal press release titled "*Neustar Security Services Spins Out with Focused Investment to Foster Accelerated Growth*"). Respondent once more reviewed this document -in line with the Tribunal's indications-, and confirmed to Claimant that it was insufficient to alleviate any of its concerns. Respondent concluded by requesting that Claimant provide clarifications at the Hearing "*regarding Security Services LLC and its ability to cover any potential adverse cost award (including financial documentation), failing which [it would] have no option but to revert to the Tribunal with all appropriate applications.*"<sup>49</sup>

<sup>48</sup> Limited Liability Companies incorporated in the State of Delaware are not even required to file an Annual Report or to disclose the names of LLC members. See Delaware Division of Corporations, 'Annual Report and Tax Information', accessible at: <https://corp.delaware.gov/frtax/#:~:text=Although%20Limited%20Partnerships%2C%20Limited%20Liability,or%20late%20payment%20is%20%24200.00> (last accessed on 11 April 2023) .

<sup>49</sup> See Transcript, Day 2 [T. Baldwin], 292-293:14: "[F]ollowing on the hearing today and as per the Chairman's indications, we have further reviewed exhibit C-135." "We can confirm that this 5-page press release dated 1 December 2021 is in no way sufficient to answer our doubts regarding Security Services LLC's legitimacy as a claimant in this arbitration, or its ability and willingness to satisfy a potential adverse costs award. In particular, we note that while this press release states that 'Neustar Security Services, LLC [...] has become the newest portfolio company of Golden Gate Capital and GIC': 1. It fails to provide any indication as to whether 'Neustar Security Services, LLC' is a different company from 'Security Services LLC'." 2. It does not confirm that Security Services LLC has any substantial business operations or at the very least enough resources to cover a substantial adverse costs award. 3. It does not provide any specific information about the precise ownership structure of Security Services LLC, or its officers and directors. 4. There is not

49. Yet, Claimant failed to provide any financial information, arguing that it had already provided sufficient evidence by way of the press releases and other documents listed at Section 2 *supra*.<sup>50</sup> As explained above, these documents are clearly insufficient to establish the mechanisms of the ICSID claim transfer, or ascertain whether Security Services has substantial business operations. What is more, Claimant explained during its Closing Presentation that Neustar, the original claimant, “*has no rights and/or obligations in this proceeding*”,<sup>51</sup> thereby casting doubts on Neustar’s own willingness to comply with an adverse cost award.
50. But Claimant did not stop there. Just after the Hearing was over, Claimant has now informed of a new alleged change in name, and once again provided no detail whatsoever on who the Claimant is or the reasons behind this new change (or any underlying corporate reorganization).
51. The lack of information or documentation on the record regarding Claimant’s transfer of its ICSID claim and Claimant’s reluctance to provide any further financial records casts strong doubts on its ability and willingness to comply with an adverse award of costs. In the words of the *Kazmin* tribunal: “*the Claimant could have avoided the present order by producing convincing and reliable evidence of its assets*”.<sup>52</sup> Similarly, in the present case Claimant’s refusal to provide any concrete information beyond its initial limited disclosure only goes to confirm that there are exceptional circumstances warranting an order for security for costs.

**(b) The requested security for costs is necessary and proportional**

52. As explained above, in deciding security for costs applications, previous tribunals have generally put particular emphasis on the existence of “*exceptional circumstances*” in order to assess whether the security was necessary and proportional.<sup>53</sup>
53. In light of the exceptional circumstances identified above, Colombia’s requested measure, i.e. that Neustar and Security Services/Vercara be ordered to post security for costs in the amount of no less than USD 3.5 million to be either deposited in an escrow account or provided as an unconditional and irrevocable bank guarantee, meets both the requirements of necessity and proportionality.

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*even any mention of Mr Kevin Hughes, and whether he remains General Counsel of Neustar in addition to being General Counsel of Security Services, LLC. Against this background, we urgently request that you provide clarifications tomorrow [...] at the start of the hearing regarding Security Services LLC and its ability to cover any potential adverse cost award (including financial documentation), failing which we will have no option but to revert to the Tribunal with all appropriate applications.”*

<sup>50</sup> See Transcript, Day 3 [T. Baldwin], 426-427.

<sup>51</sup> Transcript, Day 3 [T. Baldwin], 427:1-8.

<sup>52</sup> *Eugene Kazmin v. Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent’s Application for Security for Costs), 13 April 2020, para. 61 [RL-198].

<sup>53</sup> See *Dirk Herzig v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent’s Request for Security for Costs and the Claimant’s Request for Security for Claim, 27 January 2020, paras. 50, 53 [RL-201]; *RSM Production Corporation et al. v. Grenada*, ICSID Case No. ARB/10/6, Tribunal’s Decision on Respondent’s Application for Security for Costs, 14 October 2010, para. 5.8 [RL-196].

54. *First*, such order is necessary because in the absence of it, Claimant's unclear dealings regarding its ICSID claim and unwillingness to disclose any financial information show that there is a material risk that Colombia would be unable to recover from Neustar and/or Security Services/Vercara any of the costs incurred in mounting its successful defence.
55. *Second*, such order would be proportionate and not create any undue burden on Neustar and Security Services/Vercara, considering that Colombia's request specifies that security for costs could be posted in the form of a bank guarantee. In the words of the *Dirk Herzig* tribunal, which found that a nearly identical request for security for costs of USD 3 million (or a bank guarantee for that amount) met the proportionality requirement, "*the Claimant is not required to obtain and escrow the full US \$3 million of security sought, but instead to incur the likely far lower expense of funding a bank guarantee as sought by the Respondent.*"<sup>54</sup> Similarly, Colombia's request meets the proportionality requirement and there is no allegation (much less proof) that it would thwart in any manner Claimant's intended participation to the proceeding.
56. Respondent's request for security for costs is therefore both necessary and proportional.

**(c) Respondent's application is timely**

57. At the Hearing Claimant has made clear its intention to argue that Respondent's request is untimely and should not be examined on the merits by the Tribunal.<sup>55</sup> While the basis for Claimant's request that the Tribunal does not consider the merits of the application is unclear, this application was submitted in a timely manner.
58. *First*, it should be noted that when deciding requests for security for costs, tribunals have not necessarily required that the requested security be urgent. For instance, in *Dirk Herzig v. Turkmenistan*, the tribunal opined that "[i]nsofar as the element of urgency is concerned", it was "*not persuaded that Turkmenistan must prove an urgent need for the provisional measure of security for costs*" and went on to order such measure.<sup>56</sup> Similarly, in the present case the existence of exceptional circumstances casting serious doubts over Neustar's and Security Services/Vercara's ability or willingness to satisfy an adverse award of costs are therefore sufficient to justify the requested measure.
59. *Second*, in any event Respondent's application was submitted timely and meets any requirement of urgency. This is because the exceptional circumstances outlined above include not only the initial disclosure of the intended change of claimant on 29 July 2022, but also Claimant's subsequent procedural behavior, from its response to Respondent's application of 5 September 2022 to its unwillingness to provide any concrete information or documentation on the transfer at

<sup>54</sup> *Dirk Herzig v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, 27 January 2020, para. 65 [RL-201].

<sup>55</sup> Transcript, Day 3 [T. Baldwin], 427:9-25.

<sup>56</sup> *Dirk Herzig v. Turkmenistan*, ICSID Case No. ARB/18/35, Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, 27 January 2020, para. 67 [RL-201].

the Hearing. And even after the Hearing, we are still wrestling with new change of name assertions that make this application both timely and necessary.

60. In this respect, the findings of the tribunal in *Kazmin v. Latvia* are particularly relevant: in that case, the claimant argued that the application was untimely because it had been submitted more than four months after the claimant had disclosed the information on the basis of which Respondent claimed that there were “exceptional circumstances” warranting an order. However, the tribunal dismissed this objection, instead considering that “*the Respondent had not waited an unduly long time to bring his application for security for costs*” given that the information could only become known gradually over time, thus acquiring “*its overall significance only when it could be considered in its totality.*”<sup>57</sup> The tribunal in that case went on to note that “*it necessarily took some time before an overall understanding of the relevance of each piece of information would be acquired and arouse the Respondent’s specific suspicion about the Claimant’s business practices and what they could mean for his ability and willingness to pay a possible costs award.*”<sup>58</sup>
61. Similarly, in the present case, Respondent’s “*specific suspicion*” has progressively emerged in light of Claimant’s increasingly doubtful behaviour towards the proceedings and repeated unwillingness to provide any concrete information regarding the ICSID claim transfer or Security’s Services’ business operations. Such suspicions culminated in the face of Claimant’s unclear explanations at the Hearing, rendering the present application urgent and necessary due to the potential implications of this behaviour on Neustar’s and Security Services/Vercara’s ability and willingness to pay a possible cost award. These suspicions are now only compounded by Claimant’s latest change to Vercara.

## 5. REQUEST

62. Whomever *Claimant* truly is, one thing is for certain---it is trying to make a complete mockery of ICSID. This should not be tolerated.
63. For all the above reasons, Respondent respectfully requests that pending its decision on whether it has jurisdiction over Security Services/Vercara, the Tribunal order Neustar and Security Services/Vercara, as a condition to the continuation of this proceeding, to post security for costs in the amount of USD 3.5 million to cover a potential award of costs in favour of the Republic of Colombia, to be deposited in an escrow account or provided as an unconditional and irrevocable bank guarantee.

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<sup>57</sup> *Eugene Kazmin v. Latvia*, ICSID Case No. ARB/17/5, Procedural Order No. 6 (Decision on the Respondent’s Application for Security for Costs), 13 April 2020, para. 29 [RL-198].

<sup>58</sup> *Ibid.*



Respectfully submitted,

19 April 2023

[Signed]

**Agencia Nacional de Defensa Jurídica del  
Estado**

Ana María Ordoñez Puentes  
Elizabeth Prado López  
Camilo Valdivieso León

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**Hogan Lovells**

Laurent Gouiffès  
Daniel E. González  
Melissa Ordoñez  
Juliana De Valdenebro Garrido  
Lucas Aubry