
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**ESPÍRITU SANTO HOLDINGS, LP,
L1BRE HOLDING, LLC,**

Claimants,

v.

UNITED MEXICAN STATES

Respondent.

(ICSID CASE NO. ARB/20/13)

(ICSID CASE NO. ARB/21/55)

L1BRE HOLDING'S ADDENDUM TO THE ES HOLDINGS CLAIM MEMORIAL

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I. **INTRODUCTION**

1. L1bre Holding, LLC (“L1bre Holding”) serves this submission on the United Mexican States (“Mexico” or “Respondent”) pursuant to Annex 14-C of the Agreement between the United States of America, Mexico, and Canada (“USMCA”), Article 1120 of the North American Free Trade Agreement (“NAFTA”), Rule 31 of the Arbitration Rules of the International Centre for Settlement of Investment Disputes (“ICSID Rules”) and the parties’ procedural agreement communicated to the Tribunal on 26 January 2022.¹

2. L1bre Holding claims for the loss of the value of its investment in Mexico pursuant to NAFTA Article 1116 as a result of Mexico’s breaches of NAFTA, and also on behalf of Servicios Digitales Lusad S. de R.L. de C.V. (“Lusad”) (its wholly-owned Mexican subsidiary) for losses that it sustained from those same breaches pursuant to NAFTA Article 1117. The factual background, description of Mexico’s breaches of NAFTA and the damages that L1bre Holding and Lusad have suffered are described in Espiritu Santo Holdings LP’s (“ES Holdings”) Claim Memorial filed on 17 September 2021 in ICSID Case No. ARB/20/13 (“Claim Memorial”).

3. As explained in the Claim Memorial, ES Holdings is the parent company of L1bre Holding and Lusad (ES Holdings is, indirectly, the sole shareholder of L1bre Holding, and L1bre Holding is, indirectly, the sole shareholder of Lusad).² As also explained in the Claim Memorial, Lusad was granted a concession giving it, *inter alia*, the exclusive right to install its proprietary digital taximeter system in all of Mexico City’s taxis (the “Concession”), but Mexico then proceeded to illegitimately destroy all value in the Concession.³ In doing so, Mexico breached several provisions of NAFTA.⁴ Mexico thereby caused Lusad to suffer a loss as a result of the destruction of its Concession, and caused ES Holdings and L1bre Holding to each also independently suffer losses as a result of their ownership of Lusad.⁵

4. As the parties have agreed that ES Holdings’ and L1bre Holding’s claims shall proceed and be heard together, L1bre Holding adopts and incorporates herein as if fully set out herein, *mutatis mutandis*, the Claim Memorial and ES Holdings’ subsequent filings, together with their accompanying factual exhibits, legal authorities, witness statements and expert reports, subject to the additional details set-out below regarding (i) the jurisdictional basis for L1bre Holding’s claims (**Section II**), and (ii) the computation of damages owing to L1bre Holding for its own losses and for those of Lusad (**Section III**).⁶ In **Section IV**, ES Holdings and L1bre

¹ See **Exhibit C-0128-ENG** (Letter from ES Holdings to the Tribunal, dated 26 January 2022).

² See Claim Memorial, ¶¶ 26, 49.

³ See Claim Memorial, ¶¶ 77-87, 122-148.

⁴ See Claim Memorial, ¶¶ 162-286.

⁵ See Claim Memorial, ¶¶ 287-293.

⁶ The Claim Memorial included the following accompanying documents, which are adopted by L1bre Holding and incorporated in the present brief, *mutatis mutandis*: exhibits C-0001 through C-0114, legal

Holding (the “Claimants”) set out their combined Request for Relief. The present submission is thus intended to be read as an addendum to the Claim Memorial (“Claim Memorial Addendum”). The Claim Memorial Addendum follows the exhibit numbering system established in the Claim Memorial and subsequent filings, and is accompanied by exhibits C-0116 through C-0128 and legal authorities CL-0117 through CL-0118.

II.

THE CONDITIONS FOR JURISDICTION HAVE BEEN MET

5. For the purposes of L1bre Holding’s claims, Section IV of the Claim Memorial, which addresses the Tribunal’s jurisdiction over ES Holdings’ claims, is supplemented by the paragraphs below.

6. As explained in L1bre Holding’s Request for Arbitration, this dispute is within the competence of the Tribunal. All requirements for jurisdiction have been met. L1bre Holding and Mexico have both consented to arbitration of this dispute, and all applicable treaty requirements, as well as those under the ICSID Convention, for submission of this dispute to arbitration have been met. Each element is discussed below.

A. MEXICO IS A PARTY TO THE USMCA AND NAFTA, AND THE USMCA ENTITLES L1BRE HOLDING TO BRING ITS CLAIMS UNDER NAFTA

7. ES Holdings filed its Request for Arbitration under NAFTA on 1 May 2020, shortly before NAFTA was terminated on 1 July 2020, and replaced by the USMCA.⁷ Notwithstanding its replacement, NAFTA’s provisions remain in limited force, by agreement of Mexico, Canada and the United States of America, for the purpose of filing investor-state claims under NAFTA relating to “legacy investments.”⁸

8. For purposes of Annex 14-C of the USMCA, a “legacy investment” is defined as “an investment of an investor of another Party in the territory of the Party established or acquired between January 1, 1994, and the date of termination of NAFTA, and in existence on the date of entry into force of [the USMCA].”⁹ L1bre Holding’s investment qualifies as a “legacy investment” for purposes of Annex 14-C of the USMCA because it was made after NAFTA’s entry into force

authorities CL-0001 through CL-0103, the Witness Statement of Eduardo Zayas Dueñas dated 13 September 2021, the Witness Statement of Santiago León Aveyra dated 14 September 2021, the Expert Report of Howard Rosen dated 17 September 2021 (which was subsequently supplemented by a Supplemental Disclosure of Howard Rosen dated 5 January 2022) and its accompanying exhibits, exhibits HR-0001 through HR-0121.

⁷ See **Exhibit CL-0117-SPA** (Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada, dated 29 June 2020); Claim Memorial, ¶ 150.

⁸ See **Exhibit CL-0118-ENG** (Agreement between the United States of America, the United Mexican States, and Canada, “USMCA”), Annex 14-C, Paragraphs 1, 3, 6(a).

⁹ See **Exhibit CL-0118-ENG** (USMCA), Annex 14-C, Paragraph 6(a).

in 1994 and before the entry into force of the USMCA on 1 July 2020.¹⁰

9. Paragraph 1 of Annex 14-C to the USMCA provides that “[e]ach Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under: (a) Section A of Chapter 11 (Investment) of NAFTA 1994”¹¹ Paragraph 3 of Annex 14-C of the USMCA provides that “a Party’s consent under paragraph 1 shall expire three years after the termination of NAFTA 1994.”¹² The three year period thus expires on 1 July 2023. L1bre Holding filed its claims in its Request for Arbitration dated 27 October 2021, and these claims have thus been brought within the limitation period established under Annex 14-C of the USMCA.

10. Article 1120 of NAFTA—which appears in Section B of Chapter 11, the section referred to explicitly in Annex 14-C of the USMCA and under which Mexico continues to consent to the submission of NAFTA claims—provides that a “disputing investor may submit the claim to arbitration under”, *inter alia*, “the ICSID Convention.”¹³

11. For these reasons, pursuant to Annex 14-C of the USMCA, a tribunal constituted under the ICSID Convention shall have jurisdiction over L1bre Holding’s claims so long as NAFTA and ICSID’s jurisdictional requirements are met. As shown below, all such requirements are met here.

B. LIBRE HOLDING IS AN INVESTOR AND HAS MADE A PROTECTED INVESTMENT, AND LUSAD IS AN ENTERPRISE OWNED AND CONTROLLED BY LIBRE HOLDING

12. L1bre Holding brings the present action on its own behalf pursuant to NAFTA Article 1116 and on behalf of Lusad, an enterprise that it owns and controls, pursuant to NAFTA Article 1117. L1bre Holding meets all jurisdictional requirements to bring the action under both provisions: (i) L1bre Holding is a protected investor, (ii) L1bre Holding made protected investments, and (iii) L1bre Holding owns and controls Lusad, an “enterprise” in Mexico that held the Concession at issue in this arbitration.

13. NAFTA Article 1139 defines an “investor” as “a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment.”¹⁴ NAFTA Article 201 defines an “enterprise” as being “any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint

¹⁰ For details regarding L1bre Holding’s investment, see Claim Memorial, ¶¶ 49-79.

¹¹ See **Exhibit CL-0118-ENG** (USMCA), Annex 14-C, Paragraph 1.

¹² See **Exhibit CL-0118-ENG** (USMCA), Annex 14-C, Paragraph 3.

¹³ See **Exhibit CL-0001-ENG** (NAFTA), Chapter 11, Article 1120(1).

¹⁴ See **Exhibit CL-0001-ENG** (NAFTA), Chapter 11, Article 1139.

venture or other association.”¹⁵

14. L1bre Holding is a company incorporated in the United States of America¹⁶ and thus it is an “enterprise” under the terms of NAFTA. L1bre Holding qualifies as an “investor” because it made an “investment” in Mexico, as discussed below.

15. NAFTA Article 1139 defines “investment,” in relevant part, as:

- (a) an enterprise;
- (b) an equity security of an enterprise; . . .

- (e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise; . . .

- (g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and
- (h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory such as under
 - (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or
 - (ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but investment does not mean,

- (i) claims to money that arise solely from
 - (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of another Party, or
 - (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or
- (j) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) through (h)¹⁷

¹⁵ See **Exhibit CL-0001-ENG** (NAFTA), Chapter 2, Article 201.

¹⁶ See **Exhibit C-0089-ENG** (Certificate of Formation of L1bre Holding LLC, dated 7 January 2016) (stating that L1bre Holding LLC was incorporated on 7 January 2016); **Exhibit C-0124-ENG** (Status of L1bre Holding LLC from the State of Delaware Website, dated 26 October 2021).

¹⁷ **Exhibit CL-0001-ENG** (NAFTA), Chapter 11, Article 1139.

16. L1bre Holding's investment satisfies this definition. L1bre Holding's investment includes, *inter alia*: (i) "an enterprise" (Lusad, its wholly owned subsidiary); (ii) "an equity security" (L1bre Holding's direct and indirect shareholding in Lusad); (iii) "an interest in an enterprise that entitles the owner to share in income or profits of the enterprise" (L1bre Holding's direct and indirect shareholding in Lusad); (iv) "an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution" (L1bre Holding's shareholding in Lusad); (v) "intangible property" (the technology developed by Lusad); (vi) "interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or *concessions*" (the Concession granted to Lusad); and (vii) "claims to money" arising from the interests detailed sections (a) to (h) of NAFTA Article 1139 (claims to money arising from the Concession). L1bre Holding's investment therefore satisfies subsections (a), (b), (e), (g), and (h) of NAFTA Article 1139.¹⁸

17. L1bre Holding is thus a qualifying investor that made a qualifying investment under NAFTA, and it is thus entitled to bring a claim against Mexico under NAFTA Article 1116.

18. L1bre Holding is also entitled to bring a claim on behalf of Lusad pursuant to Article 1117 of NAFTA because (i) Lusad is an "enterprise of another Party" (i.e., Mexico), and (ii) L1bre Holding "owns or controls" Lusad "directly or indirectly".¹⁹

19. Lusad is an entity constituted under the laws of Mexico, and thus qualifies as an "enterprise" in Mexico pursuant to Article 201 of NAFTA.²⁰

20. L1bre Holding directly owns 72% of Lusad (the party to the Concession) and, through its wholly owned Delaware subsidiary L1bre LLC, indirectly owns the remaining 28% of Lusad.²¹ L1bre LLC and L1bre Holding were incorporated on 22 December 2015 and 7 January 2016, respectively.²² Lusad was incorporated on 15 October 2015.²³ On 7 January 2016, Lusad's

¹⁸ The details regarding L1bre Holding's investment is described in Section III of the Claim Memorial.

¹⁹ See **Exhibit CL-0001-ENG** (NAFTA), Chapter 11, Article 1117.

²⁰ See **Exhibit C-0002-SPA** (Deed of Incorporation of Servicios Digitales Lusad, dated 15 October 2015); **Exhibit C-0042-SPA** (Certificate of Transformation of Servicios Digitales Lusad S. de R.L. de C.V., dated 1 March 2016).

²¹ See **Exhibit C-0126-SPA** (Servicios Digitales Lusad S. de R.L. de C.V. Partner Register, various dates).

²² See **Exhibit C-0088-ENG** (Certificate of Formation of L1bre LLC, dated 22 December 2015) (stating that L1bre LLC was incorporated on 22 December 2015); **Exhibit C-0089-ENG** (Certificate of Formation of L1bre Holding LLC, dated 7 January 2016) (stating that L1bre Holding was incorporated on 7 January 2016); **Exhibit C-0124-ENG** (Status of L1bre Holding LLC from the State of Delaware Website, dated 26 October 2021); **Exhibit C-0066-ENG** (Amended and Restated Limited Liability Company Agreement of L1bre Holding LLC, dated 2 August 2016).

²³ Lusad originated in 2015, when Espiritu Santo Investments LLC, a Delaware company, incorporated a subsidiary operating company in Mexico named Servicios Digitales Lusad S.A.P.I, which was later changed to

parent company, Espiritu Santo Investments LLC, assigned its majority equity holding in Lusad to L1bre Holding, with Eduardo Zayas Dueñas assigning his minority holding in Lusad to L1bre LLC on the same date.²⁴ Therefore, L1bre Holding satisfies the ownership/control criterion of NAFTA Article 1117 to bring a claim on behalf of Lusad.

C. MEXICO, L1BRE HOLDING AND LUSAD HAVE CONSENTED TO SUBMIT THIS DISPUTE TO ARBITRATION, AND L1BRE HOLDING AND LUSAD HAVE WAIVED DOMESTIC PROCEEDINGS UNDER NAFTA ARTICLE 1121

21. NAFTA Article 1116 provides that “[an] investor of a Party may submit to arbitration under this Section a claim that another Party has breached an obligation under: (a) Section A [of Chapter 11 titled “Investment”].”²⁵ NAFTA Article 1117 also provides that “[an] investor of a Party, on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under (a) Section A [of Chapter 11 titled “Investment”].”²⁶ NAFTA Articles 1121(1) and (2) provide that a disputing investor may submit a claim to arbitration under Articles 1116 and 1117 only if both the investor and the enterprise consent to arbitration and waive their right to initiate or continue domestic proceedings.²⁷ NAFTA Article 1122 further provides that “[e]ach Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.”²⁸

22. Both Mexico and the United States are parties to the ICSID Convention. Mexico expressly consented, in NAFTA Article 1122, to submit to arbitration all investment disputes with investors from the United States related to Mexico’s obligations under NAFTA Chapter 11.²⁹ L1bre Holding provided its written consent to arbitrate through the filing of its Request for

a limited liability company on 1 March 2016, becoming Servicios Digitales Lusad S. de R.L. de C.V. *See Exhibit C-0002-SPA* (Deed of Incorporation of Servicios Digitales Lusad, dated 15 October 2015); *Exhibit C-0042-SPA* (Certificate of Transformation of Servicios Digitales Lusad S. de R.L. de C.V., dated 1 March 2016).

²⁴ Initially, L1bre Holding directly owned 99.9% of Lusad and indirectly owned the remaining 0.01% of Lusad through its wholly-owned subsidiary, L1bre LLC. By virtue of capital contributions, by 21 February 2018, L1bre LLC became the direct owner of 28% of Lusad and L1bre Holding the direct owner of 72% Lusad and the indirect owner of 28% of Lusad through L1bre LLC. *See Exhibit C-0126-SPA* (Servicios Digitales Lusad S. de R.L. de C.V. Partner Register, various dates); *Exhibit C-0117-ENG* (L1bre LLC Operating Agreement, dated 7 January 2016).

²⁵ *See Exhibit CL-0001-ENG* (NAFTA), Chapter 11, Article 1116.

²⁶ *See id.*, Chapter 11, Article 1117.

²⁷ *See id.*, Chapter 11, Article 1121.

²⁸ *See id.*, Chapter 11, Article 1122.

²⁹ *See Exhibit C-0116-SPA* (Decree enacting the North American Free Trade Agreement, dated 20 December 1993); *Exhibit C-0127-SPA* (Government of Mexico website showing date of NAFTA's entry into force, undated). These documents are exhibits C-013 and C-043 in the exhibits accompanying L1bre Holding’s Request for Arbitration.

Arbitration.³⁰

23. Consequently, both Mexico and L1bre Holding have expressed their consent, in writing, to submit this investment dispute to arbitration under NAFTA.

24. Further, in compliance with NAFTA Article 1121, L1bre Holding provided with its Request for Arbitration a waiver (on its own behalf, and on behalf of the subsidiaries it owns or controls directly or indirectly) of the right to initiate or continue certain local proceedings in accordance with the terms of NAFTA Article 1121.³¹

25. Finally, for purposes of NAFTA Article 1121(2), L1bre Holding also submitted a document establishing that Lusad had also (i) provided its own consent to have the present dispute against Mexico arbitrated, and (ii) provided the requisite waiver of the right to initiate or continue certain local proceedings in accordance with the terms of NAFTA Article 1121(2).³²

D. LIBRE HOLDING HAS SATISFIED THE OTHER PROCEDURAL REQUIREMENTS TO BRING CLAIMS UNDER NAFTA

26. NAFTA Article 1120(1) provides that an investor may submit a claim to arbitration “provided that *six months have elapsed since the events giving rise to a claim.*” Here, as described at paragraph 159 of the Claim Memorial, the events that give rise to the claim occurred when Semovi indefinitely suspended the Concession on 28 October 2018.³³ Consequently, more than six months have elapsed since the events that give rise to the dispute.

27. NAFTA Article 1119 further provides that “[t]he disputing investor shall deliver to the disputing Party written notice of its intention to submit a claim to arbitration at least *90 days before the claim is submitted.*”³⁴ L1bre Holding served a formal Notice of Intent to Mexico under NAFTA on 29 March 2019.³⁵ Regrettably, Mexico refused to acknowledge its breaches of NAFTA or seek amicable resolution for this dispute, and L1bre Holding proceeded to file its Request for Arbitration on 27 October 2021. Thus, ninety days passed following the service of the Notice of

³⁰ See also **Exhibit C-0119-ENG** (Notice of Intent of L1bre Holding, dated 29 March 2019); See **Exhibit C-0121-ENG** (Power of Attorney granted by L1bre Holding LLC to Hogan Lovells US LLP, dated 25 October 2021); See **Exhibit C-0123-ENG** (Power of Attorney granted by L1bre Holding LLC to Freshfields Bruckhaus Deringer US LLP, dated 26 October 2021).

³¹ See **Exhibit C-0120-ENG** (Unanimous Written Consent of the Board of Managers of L1bre Holding LLC, dated 25 October 2021).

³² See **Exhibit C-0122-SPA** (Unanimous Resolution of the Board of Managers of Servicios Digitales Lusad, S. de R.L. de C.V., dated 25 October 2021).

³³ See **Exhibit C-0019-SPA** (Oficio No. DGSTPI-1943-2018 from Semovi announcing indefinite suspension of the Concession, dated 28 October 2018).

³⁴ See **Exhibit CL-0001-ENG** (NAFTA), Chapter 11, Article 1119.

³⁵ See **Exhibit C-0119-ENG** (Notice of Intent of L1bre Holding, dated 29 March 2019).

Intent before L1bre Holding proceeded to file its Request for Arbitration.

28. NAFTA Article 1116 provides that “[a]n investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.”³⁶ NAFTA Article 1117 contains the same requirement, but refers to the knowledge of the enterprise (here, Lusad) as opposed to the investor (here, L1bre Holding).³⁷ In this case, as discussed at paragraph 159 of the Claim Memorial, the indefinite suspension of the Concession on 28 October 2018 represents the earliest date upon which either L1bre Holding or Lusad could have determined that Mexico had breached the Treaty and that either of them had suffered a resulting loss or damage.³⁸ L1bre Holding filed its Request for Arbitration on 27 October 2021. Therefore, the three-year limitation period set forth in NAFTA Articles 1116 and 1117 had not elapsed at the time L1bre Holding filed its Request for Arbitration.

E. THE JURISDICTIONAL REQUIREMENTS OF THE ICSID CONVENTION ARE MET

29. Paragraphs 156 to 158 of the Claim Memorial are incorporated herein, *mutatis mutandis*, subject to the following.

30. L1bre Holding is a company with the nationality of the United States because it is incorporated in the United States in accordance with United States law and has its registered office in the United States.³⁹ Therefore, L1bre Holding is a “juridical person which had the nationality of a Contracting State other than the State party to the dispute” for purposes of satisfying Article 25(2)(b) of the ICSID Convention and this is a legal dispute involving a Contracting State (Mexico) and a national of another Contracting State (L1bre Holding, a national of the United States).

III.
MEXICO IS REQUIRED TO COMPENSATE CLAIMANTS TO WIPE OUT ALL CONSEQUENCES OF ITS UNLAWFUL CONDUCT

31. As explained in the Claim Memorial, ES Holdings instructed Howard Rosen, a Managing Director of Secretariat Advisors, LLC (“Secretariat”), to value the damages that ES Holdings suffered as a result of Mexico’s measures and the Claim Memorial was accompanied by his report dated 17 September 2021 (the “Secretariat Report”).⁴⁰ Secretariat calculated ES Holdings’ damages as of 27 October 2018, the day before Mexico’s indefinite suspension of the

³⁶ See **Exhibit CL-0001-ENG** (NAFTA), Chapter 11, Article 1116.

³⁷ See **Exhibit CL-0001-ENG** (NAFTA), Chapter 11, Article 1117.

³⁸ See **Exhibit C-0019-SPA** (Oficio No. DGSTPI-1943-2018 from Semovi announcing indefinite suspension of the Concession, dated 28 October 2018).

³⁹ See **Exhibit C-0089-ENG** (Certificate of Formation of L1bre Holding LLC, dated 7 January 2016); **Exhibit C-0124-ENG** (Status of L1bre Holding LLC from the State of Delaware Website, dated 26 October 2021).

⁴⁰ See Claim Memorial, ¶ 293.

Concession.⁴¹ Secretariat calculated ES Holdings' damages to amount to USD \$1.777 billion before the addition of a tax gross-up (USD \$657 million) and pre-award interest calculated through 17 September 2021 (USD \$368 million), with damages totaling USD \$2.802 billion.⁴² By comparison, a few weeks prior to Mexico's indefinite suspension of the Concession, Goldman Sachs valued Lusad's business at USD \$2.43 billion.⁴³

32. L1bre Holding makes two independent claims: a claim for damages that it suffered (a claim made pursuant to NAFTA Article 1116) and a claim for damages that Lusad suffered (a claim made pursuant to NAFTA Article 1117). In connection with its report submitted with the Claim Memorial, Secretariat valued the damages suffered by ES Holdings by reference to the enterprise value of the underlying business, which included (*inter alia*) computing the interest-bearing debt and equity components that financed the business.⁴⁴ The enterprise value was computed by reference to Lusad's foregone cashflows that would have been generated by Lusad's Concession but for Mexico's unlawful measures.⁴⁵

33. The basis for computing ES Holdings' damages (*i.e.*, by reference to Lusad's foregone cashflows) is the same for computing the damages payable to L1bre Holding in respect of both its NAFTA Article 1116 and Article 1117 claims.

34. L1bre Holding's damages, for purposes of its NAFTA Article 1116 claim, are computed on the same basis as ES Holdings' damages because they have the same ownership interest in Lusad.⁴⁶ For purposes of its NAFTA Article 1116 claim, L1bre Holding thus adopts the damages and interest (3.96% compounded annually) figures computed for ES Holdings (as of 17 September 2021) set forth at paragraph 196 of the Secretariat Report and paragraphs 350, 358 and 363 of the Claim Memorial.

35. L1bre Holding's claim for damages on behalf of Lusad, under NAFTA Article 1117, is also computed in the same way as ES Holdings' damages because Lusad is the holder of the Concession under which the cash flows were to be generated for purposes of computing the enterprise value in the business that Secretariat valued in computing ES Holdings' damages.⁴⁷ There is one difference in the damages that Lusad (for purposes of L1bre's NAFTA Article 1117

⁴¹ See Expert Report of Howard Rosen (Secretariat Advisors), dated 17 September 2021, ¶ 88; Claim Memorial, ¶ 303.

⁴² See Expert Report of Howard Rosen (Secretariat Advisors), dated 17 September 2021, ¶ 196(c); Claim Memorial, ¶¶ 350, 358, 363.

⁴³ **Exhibit C-0079-ENG**, p. 23 (Goldman Sachs Report, Pre-Marketing Recap & Potential Next Steps, dated 4 October 2018); Claim Memorial, ¶¶ 118-121.

⁴⁴ See Expert Report of Howard Rosen (Secretariat Advisors), dated 17 September 2021, ¶ 84.

⁴⁵ See Expert Report of Howard Rosen (Secretariat Advisors), dated 17 September 2021, ¶¶ 101-106.

⁴⁶ See Expert Report of Howard Rosen (Secretariat Advisors), dated 17 September 2021, ¶ 40; Claim Memorial, ¶ 26.

⁴⁷ See Expert Report of Howard Rosen (Secretariat Advisors), dated 17 September 2021, ¶¶ 84, 101-106.

claim) has suffered as compared to ES Holdings. As explained in the Secretariat Report in connection with ES Holdings' damages, Secretariat deducts withholding taxes "given that [ES Holdings] is a Canadian entity and the cashflows from the Concession would be generated in Mexico" and "in remitting any profits generated by the Concession in Mexico to shareholders [outside of Mexico], [5%] withholding tax would be deducted."⁴⁸ That withholding tax would not apply in computing Lusad's damages. On that basis, for purposes of its NAFTA Article 1117 claim, L1bre Holding adopts the pre-withholding tax "enterprise value" figures computed for Lusad's cashflows set forth at paragraphs 112, 114 and 116 of the Secretariat Report.⁴⁹ Pre-award interest is owing on those amounts, and L1bre Holding adopts the rate computed for ES Holdings' damages set forth in Section 6 of the Secretariat Report, 3.96% compounded annually (with the only difference being that the interest rate applies to the pre-withholding tax "enterprise value" figures set forth in the aforementioned paragraphs, as opposed to the final damages figures computed for ES Holdings set out at paragraph 196 of the Secretariat Report).

36. Subject to the points set out above, L1bre Holding adopts and incorporates herein, *mutatis mutandis*, Section VI of the Claim Memorial for both its NAFTA Article 1116 and Article 1117 claims.

37. In summary: (i) ES Holdings maintains its claims as set forth in the Claim Memorial and the Secretariat Report, in particular as set out at paragraph 196(c) of the Secretariat Report and paragraphs 350, 358 and 363 of the Claim Memorial, amounting to USD \$2.802 billion (reflecting interest payable as of 17 September 2021); (ii) L1bre Holding claims, under NAFTA Article 1116, for the damages and interest also set out at paragraph 196(c) of the Secretariat Report and paragraphs 350, 358 and 363 of the Claim Memorial, and (iii) L1bre Holding claims, under NAFTA Article 1117, for the pre-withholding tax enterprise value figure set out at paragraph 116 of the Secretariat Report (USD \$1.869 billion), together with pre-award interest computed pursuant to the rate set out at paragraph 180 of the Secretariat Report (3.96%, compounded annually). In respect of all claims, the Claimants claim interest from the valuation date of 27 October 2018 through to the date of the award.

38. For the avoidance of doubt, in all events, insofar as ES Holdings and L1bre Holding (acting on its own behalf in connection with its Article 1116 claim and/or on behalf of Lusad in connection with its Article 1117 claim) are successful in their claims and are awarded damages for the same harm, L1bre Holding and ES Holdings undertake to ensure that no double recovery will ensue.

⁴⁸ See Expert Report of Howard Rosen (Secretariat Advisors), dated 17 September 2021, ¶ 85.

⁴⁹ See Expert Report of Howard Rosen (Secretariat Advisors), dated 17 September 2021, ¶¶ 112, 114, 116.

IV.
REQUEST FOR RELIEF

Claimants submit the following requests of the Tribunal:

Requests:

- (i) A declaration that Mexico breached Articles 1102, 1105, and 1110 of the NAFTA;
- (ii) An order directing Mexico to compensate Claimants for their losses and for Lusad's losses resulting from Mexico's breaches of NAFTA and international law in an award of damages of not less than USD \$2.802 billion (reflecting pre-award interest payable through 17 September 2021, and to be updated as of the date of the Award); such compensation to be paid without delay, be effectively realizable and be freely transferrable, and bear post award interest at a compound rate sufficient to fully compensate Claimants for the loss of the use of this capital as from the date of Mexico's breaches of NAFTA;
- (iii) A declaration that the award of damages and interest be made net of all Mexico's taxes, and that Mexico may not deduct taxes in respect of the payment of the award of damages and interest;
- (iv) An order that Respondent reimburse Claimants for all costs, expenses, expert fees, and reasonable attorneys' fees incurred or paid by Claimants in connection with this arbitral proceeding, plus interest; and
- (v) An order granting any further relief as the Tribunal considers appropriate.

Claimants also reserve their right to alter, amend, and/or supplement their claims as necessary and in accordance with the applicable rules during the course of this arbitral proceeding.

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