INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ABH HOLDINGS S.A.

v.

UKRAINE

ICSID Case No. ARB/24/1

DECISION ON BIFURCATION

Members of the Tribunal
Prof. Bernard Hanotiau, President of the Tribunal
Mr. Francis Xavier SC, Arbitrator
Prof. Sean D. Murphy, Arbitrator

Secretary of the Tribunal
Mr. Yuichiro Omori

Assistant to the President of the Tribunal
Ms. Iris Raynaud

12 May 2025

1. This Decision is issued in ICSID Case No. ARB24/1, between ABH Holdings S.A. ("**ABHH**" or "**Claimant**") and Ukraine ("**Ukraine**" or "**Respondent**"), initiated pursuant to the Agreement between the Belgo-Luxembourg Economic Union and the Government of Ukraine on the Reciprocal Promotion and Protection of Investments dated 20 May 1996 and entering into force on 27 July 2001 ("**Treaty**") and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("**ICSID Convention**"), and in accordance with the Rules of Procedure for Arbitration Proceedings in force as of 1 July 2022 ("**Arbitration Rules**") of the International Centre for Settlement of Investment Disputes ("**ICSID**").

2. This Decision addresses Respondent's request of 18 February 2025 that the issues of jurisdiction and liability be bifurcated from the issues of quantum and valuation ("**Request**" or "**Request for Bifurcation**"). The Tribunal first summarises the procedural background of the Request (**I**). It then presents the Parties' respective positions on the Request (**II**), before setting out its considerations (**III**), and decision (**IV**).

I. ABRIDGED PROCEDURAL HISTORY

3. By its Request for Arbitration dated 29 December 2023, Claimant commenced arbitration proceedings against Respondent pursuant to Article 9 of the Treaty.

4. On 12 September 2024, the Tribunal and the Parties participated in the first session, which took place by means of video conference ("**First Session**").

5. On 7 October 2024, the Tribunal issued Procedural Order No. 1, establishing the calendar of the arbitration and other procedural rules governing the arbitration.

6. On the same day, the Tribunal issued Procedural Order No. 2, establishing the rules on transparency and confidentiality governing the arbitration.

7. On 20 December 2024, Claimant filed its Memorial ("**Memorial**"), along with several factual exhibits, legal authorities, witness statements, and expert reports.

8. On 18 February 2025, pursuant to the procedural calendar set out in Procedural Order No. 1, Respondent submitted its Request for Bifurcation along with several factual exhibits and legal authorities.

9. On 19 April 2025, Claimant submitted its Response to Respondent's Request for Bifurcation ("**Response**"), along with several factual exhibits and legal authorities.

10. On 2 May 2025, Respondent submitted its Reply to the Response ("**Reply**").

11. On the same day, Claimant briefly commented on the Reply, informing the Tribunal it did not intend to respond further.

II. POSITIONS OF THE PARTIES ON BIFURCATION

12. The summaries below do not intend to be exhaustive. They are provided for information and context purposes only. The Parties made detailed submissions with many arguments. The Tribunal sets out below only the broad lines of the Parties' respective positions.

Respondent's position

13. Respondent requests the bifurcation of issues of jurisdiction and liability from the issues of quantum and valuation.

14. Respondent argues that bifurcation would result in material cost and time efficiencies, and would serve significantly to narrow the issues in dispute between the Parties. Respondent asserts that it would be grossly disproportionate and unfair to subject Ukraine to the very substantial expense of a complex valuation exercise in circumstances where Ukraine will be able to mount robust jurisdictional and merits defences. If Claimant fails on jurisdiction or liability, Ukraine will have been forced needlessly to incur significant costs arguing about the level of compensation supposedly owed to Claimant. In consideration of the ongoing war, which is severely straining Ukraine's finances, the needless expenditure of significant additional fees and expenses would be grossly unfair. Even if Claimant fails only in part, bifurcation and the Tribunal's findings on liability, if any, will assist in narrowing the outstanding questions and will allow for a more focused quantum phase. If the Tribunal makes findings on liability in a non-bifurcated procedure, the Parties will have unnecessarily wasted significant resources in arguing the different damages permutations of Claimant's merits case.[1]

15. Respondent adds that, while the determination of the issues of jurisdiction and liability will serve to narrow (or render obsolete) the issues of quantum to be determined, the reverse is not the case: there are no issues contemplated in the quantum section of the Memorial or in Claimant's quantum expert report that are so intertwined with jurisdiction or liability so as to render the bifurcation impracticable.[2]

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1 Request for Bifurcation, ¶¶ 20-36.
2 *Id.*, ¶¶ 37-42.

16. Respondent further states that the principles of fairness, equality of arms, and the right to be heard all militate in favour of bifurcation. Ukraine is a nation at war, constantly under attack and forced to defend its territory and sovereignty, and these circumstances alone significantly hinder Respondent's ability to properly engage with and defend itself in the present arbitration. Ukraine would be particularly prejudiced by these circumstances with regard to its defence against Claimant's case on quantum. To properly assess the value of "Alfa-Bank" (renamed JSC "Sense Bank") ("**Bank**") and the appropriate counterfactual, Respondent would be required to access and review numerous documents related to the Bank's historical data. The information will need to be requested of the Bank and other entities some of which, including the Bank, are third parties to this matter, and will mostly be covered by Ukrainian legislation on banking secrecy. Access to such documents for the purposes of this case will most likely require substantial efforts, potentially including amendments to the relevant Ukrainian legislation. Given the complexity and time-consuming nature of accessing these documents, Respondent will undoubtedly be left with extremely limited, if any, time for this analysis.[3]

17. Respondent finally adds that should Claimant be fully or partially successful in the jurisdiction and liability phase, Claimant will not be prejudiced by the bifurcation. If the quantum phase does take place, the costs already incurred by Claimant in this regard in its Memorial will not be in vain. Should Claimant partially succeed on the issue of liability, bifurcation will allow the quantum phase to proceed in a more focused manner, thereby saving the Parties and the Tribunal the time and cost of considering Claimant's claims which the Tribunal will have ultimately found to be unmeritorious. In any event, Claimant's approach in the Memorial suggests that its case on quantum is not fully developed and that further extensive analysis was already envisaged. In circumstances where Claimant itself has factored in significant further work at a later stage in the proceedings, particularly on issues of quantum, there can be no allegation that the bifurcation would cause it any prejudice.[4]

Claimant's position

18. Claimant asks the Tribunal to reject the Request for Bifurcation, and to confirm that Respondent's Counter-Memorial on the merits (which should address both liability and quantum) must be submitted by 3 September 2025 as envisioned in Procedural Order No. 1.[5]

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3 *Id.*, ¶¶ 43-52.
4 *Id.*, ¶¶ 53-58.
5 Response, ¶ 101.

19. According to Claimant, the Request is an improper and strategically timed manoeuvre, not a genuine, good faith request for bifurcation. Before the First Session and Procedural Order No. 1, Respondent had ample opportunity to indicate that a possible deferral of quantum issues ought to be anticipated, since Claimant had already set out the core pillars of its claim, including the *de jure* expropriation claim later referred to in the Memorial when quantifying Claimant's losses. Yet, during the First Session, Respondent's Counsel spoke of "the jurisdictional phase" and a "subsequent merits phase". The ineluctable conclusion is that the Request is a tactical contrivance, concocted at the last minute to delay these proceedings.[6]

20. Claimant adds that the Request is inconsistent with Procedural Order No. 1, which does not envisage or permit a bifurcation request confined to issues of quantum. "Scenario 2" in Annex B to Procedural Order No. 1, provides for separate pleadings on "jurisdiction" if bifurcation were to be granted. Accordingly, the Request falls outside the scope of what is contemplated or permitted in the already-settled procedural calendar.[7]

21. Claimant further asserts that Respondent has yet to pay its share of the advance requested by ICSID. As a simple matter of procedural fairness, Respondent cannot be entitled to delay these proceedings by seeking bifurcation in a manner neither contemplated nor permitted in Procedural Order No. 1, with Claimant alone bearing the financial burden.[8]

22. Claimant considers, in any event, that the Request fails to satisfy any of the criteria under Rule 42 of the Arbitration Rules ("**Rule 42**").

23. The Request fails precisely to define the "question(s)" to be bifurcated (Rule 42(3)(b)). Rule 42 does not provide for the deferral of an entire procedural phase, let alone of a "quantum phase" as such. Instead, pursuant to Rule 42(1) and (3)(b), only discrete "questions" may be bifurcated. The Request is therefore defective *ab initio*. The ambiguity of the Request makes the proposed parameters of bifurcation unclear, and accordingly, unworkable. It is unclear, for example, whether "quantum issues" encompass issues of causation as opposed to valuation *stricto sensu*.[9]

24. The Request fails to show that material cost or time benefits may be anticipated from bifurcation (Rule 42(4)(a)). If the Tribunal were to bifurcate the proceedings into a "liability" phase and a "quantum" phase, any marginal cost savings in the event of Respondent succeeding at the liability phase would be dwarfed by the significant wasted

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6 *Id*., ¶¶ 3-5.
7 *Id*., ¶¶ 6-7.
8 *Id*., ¶ 16.
9 *Id*., ¶¶ 26-31.

cost of bifurcation if Claimant prevails at the liability phase. First, the reduced hearing length and cost of a hearing on liability alone compared to a single non-bifurcated hearing (in the event Respondent succeeds at the liability phase) is vastly overshadowed by the increased hearing length and cost of holding two separate hearings (in the event Claimant succeeds at the liability phase). The length of a separate quantum hearing in all probability would exceed the number of hearing days dedicated to quantum in a single non-bifurcated hearing due to the need to call the same witnesses twice, and to consider the same documentary evidence twice. The additional cost of a second hearing would outweigh any savings expected from scheduling one or two fewer hearing days at the first hearing on liability, to say nothing of travel expenses. Second, having two separate hearings for liability and quantum would necessitate witnesses having to be called twice. Both witnesses Mr. Andrew Baxter and Ms. Alla Komisarenko would have to be called twice, having submitted evidence in support of both arguments on liability and arguments on the quantification of losses. Third, having separate hearings for liability and quantum would also require the repeat ventilation of the same documentary evidence. For example, the National Bank of Ukraine ("**NBU**") documents and the documents in relation to the Bank's finances would have to be examined twice, at the stage of liability and at the stage of quantum. Fourth, a separate "quantum phase" would require a separate disclosure process, whilst the documentary evidence that is relevant to quantum would overlap with the documentary evidence that is relevant to liability. Fifth, in weighing up the potential time and cost savings of bifurcation in the event that Respondent succeeds at the liability stage, against the wasted time and cost of bifurcation in the event that Claimant succeeds at the liability stage, it is relevant for the Tribunal to consider, even if only on a *prima facie* basis, the strength of Claimant's case on liability; and given the strength of Claimant's case, it is inevitable that bifurcated proceedings will proceed to a quantum phase.[10]

25. The Request also fails to demonstrate that a "substantial" portion of the dispute may be disposed of by virtue of bifurcation (Rule 42(4)(b)). Respondent concedes that quantum does not constitute a "substantial portion" of this dispute. It follows that, even if liability was somehow resolved in Respondent's favour, the fact that the quantum phase would not follow could not conceivably result in a "substantial portion" of the dispute being disposed of. At most, it would spare the Parties the time and cost of one or two hearing days. Claimant's case before the Tribunal is clear, simple, and straightforward. Respondent has expropriated Claimant's Bank, and, pursuant to the plain language of the Treaty forbidding expropriation by Respondent for any reason or none, Claimant is accordingly entitled to compensation for its losses, calculated by reference to the lost value of the Bank. This is a

[10] *Id.*, ¶¶ 33-47.

textbook expropriation case before the Tribunal, plainly suitable for consideration at a single, non-bifurcated hearing.[11]

26. The Request further ignores the significant overlaps between the liability and quantum aspects of this case, which render the two manifestly "intertwined" (Rule 42(4)(c)). A finding to the effect that Claimant has been unlawfully deprived of its investment presupposes a finding that Claimant has suffered *a loss* of its investment, a question that must be addressed to establish liability. Pursuant to Article 4(1) of the Treaty, the causal consequences of Ukraine's measures on Claimant's investment are relevant already at the stage of analysis of Ukraine's liability. Consequently, if bifurcation were granted, the Tribunal would have to conduct an assessment of the effect of Respondent's conduct twice: once at the liability phase and then again at the quantum phase, which would plainly defeat the point of bifurcation. In addition, if the Tribunal finds that an expropriation has taken place, it also will have to determine whether it was accompanied by adequate and effective compensation (Article 4(2)(c) of the Treaty), amounting to the actual value of the investment (Article 4(3)). Consequently, already at the liability phase, the actual value of the investment taken from Claimant is a relevant factual matter to assess. Whether a particular measure constitutes unfair treatment may also depend on the extent to which such a measure causes an interference with the investment. Accordingly, it is unworkable to bisect an assessment of liability from an assessment of quantum.[12]

27. Finally, Claimant argues that the various additional miscellaneous considerations relied upon by Respondent cannot assist its Request. Respondent's demand for the Tribunal's further indulgence based on the ongoing hostilities on its territory has already been generously accommodated since Respondent has been afforded an unusually generous procedural calendar that strains the balance against Claimant's interest in resolving this dispute in a timely manner. There has been no change in circumstances since the issuance of Procedural Order No. 1 that can justify the reconsideration of the already-decided procedural calendar. Also, Respondent cannot rely on the alleged logistical impediments arising from ill-defined domestic law issues, and the bureaucratic processes and practices in place in the functioning of its government, to delay these proceedings. The alleged impact of logistical impediments is a matter that goes to scheduling in general and has already been taken into account by the Tribunal in setting down the procedural calendar, which governs, *inter alia*, disclosure. Respondent's alleged difficulties are reasons weighing against bifurcation, which would require two disclosure processes: one for each bifurcated phase. It is also incontrovertible that Ukraine's State organs have full access to the materials and documents required for Respondent to form its case on quantum. The

[11] *Id.*, ¶¶ 48-59.
[12] *Id.*, ¶¶ 30-31, 60-69.

NBU is undoubtedly a State organ, and the Ministry of Finance of Ukraine (also a State organ) is now the sole owner of the Bank, and its designated representatives sit on the Bank's Supervisory Board. Any suggestion that the current sole owner of the Bank does not have access to sufficient materials to support a view as to what value the Bank is or was would be remarkable. Respondent's reliance on alleged Ukrainian "banking secrecy" laws is irrelevant to bifurcation and is a pre-emptive attempt to resist Claimant's eventual disclosure requests. Respondent is represented by two sizeable teams from two highly experienced law firms. This shows that Respondent is able to dedicate substantial resources to its representation in this case and also that the management of its documents is in the hands of a large and experienced legal team with particular experience in the Ukrainian banking sector. Any logistical challenges which Respondent has to manage in these proceedings must accordingly be considered attenuated.[13]

III. ANALYSIS OF THE ARBITRAL TRIBUNAL

28. This arbitration is governed by the ICSID Convention and the Arbitration Rules. The requirements to be applied by the Tribunal to address the Request are set in Rule 42, which provides in its relevant part as follows:

> "Rule 42
>
> Bifurcation
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> (1) A party may request that a question be addressed in a separate phase of the proceeding ('request for bifurcation').
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> (2) If a request for bifurcation relates to a preliminary objection, Rule 44 shall apply.
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> (3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 44:
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> […]
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> (b) the request for bifurcation shall state the questions to be bifurcated;
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> […]
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> (4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:
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> (a) bifurcation would materially reduce the time and cost of the proceeding;

[13] *Id.*, ¶¶ 21-22, 70-90.

(b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and

(c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical. […]".

29. It is undisputed that the Request does not relate to a preliminary objection and thus falls under Rule 42.

30. In support of their respective positions for or against bifurcation, both Parties refer to the criteria set out under Rule 42(4)(a), (b), and (c). Whilst Claimant insists that these criteria are not satisfied in the present case,[14] Respondent argues that the Tribunal should undertake an overall assessment of all the factors both for and against bifurcation and be guided by the principle of fairness and efficiency.[15] The Tribunal endorses the *EMS v. Albania* tribunal's view that, "in an arbitration governed by the 2022 version of the ICSID Arbitration Rules which codifies earlier practice, the Tribunal must apply the requirements as they are framed in the 2022 ICSID Arbitration Rules".[16] Pursuant to Rule 42(4), when determining whether to bifurcate, arbitral tribunals shall consider "all relevant circumstances", "including" the criteria set out under Rule 42(4)(a), (b), and (c). Insofar as circumstances other than those set out under Rule 42(4)(a), (b), and (c) could assist the Tribunal in determining whether bifurcation would be conducive to a fair and effective administration of these proceedings, the Tribunal should take them into account.

31. The Tribunal is not persuaded by Claimant's preliminary arguments in opposition to the Request.

32. The arguments that Rule 42 does not provide for the deferral of an entire procedural phase, that it allows only discrete "questions" to be bifurcated, and that Respondent has failed to specify these "questions", are unconvincing. In the Tribunal's view, the Request is sufficiently clear: Respondent requests that all questions related to jurisdiction and liability be bifurcated from all questions related to quantum. Nothing in Rule 42 prevents the Tribunal from bifurcating all "questions" related to a specific issue, such as the issue relating to the quantification of a claim. In fact, when previous ICSID tribunals have

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14 *Id*., ¶¶ 25-69.

15 Request for Bifurcation, ¶¶ 2, 4, 43-58, citing **RL-1**, *Emmis International Holding, B.V. et al. v. The Republic of Hungary*, ICSID Case No. ARB/12/2 ("***Emmis International v. Hungary***"), Decision on Respondent's Application for Bifurcation, 13 June 2013, ¶ 37; **RL-2**, *Ayat Nizar Raja Sumrain and others v. State of Kuwait*, ICSID Case No. ARB/19/20 ("***Sumrain v. Kuwait***"), Procedural Order No. 2 (Decision on Bifurcation), 1 February 2021, ¶ 16.

16 **CL-51**, *EMS Shipping & Trading GmbH v. Republic of Albania*, ICSID Case No. ARB/23/9 ("***EMS v. Albania***"), Procedural Order No. 3, 23 February 2024, ¶ 40.

bifurcated the quantum phase, they have done so without spelling out the specific issues that such a phase would involve.[17]

33. The argument that Procedural Order No. 1 does not envisage or permit a bifurcation request confined to issues of quantum is equally unpersuasive. Procedural Order No. 1 contemplates the possibility for Respondent to file some form of a bifurcation application after the Memorial. The procedural schedule attached to Procedural Order No. 1 outlines how the proceedings may unfold if such an application is made. This schedule certainly contemplates jurisdictional objections being part of a first stage, but does not exclude jurisdictional objections and liability also being part of that first stage. The Tribunal agrees with Respondent that the reference in the procedural schedule to separate pleadings on "jurisdiction" is not to be interpreted as determinative, but as indicative.[18] At no point in time prior to Procedural Order No. 1 had the Parties indicated that they intended to exclude the possibility of bifurcating the quantum phase.

34. Having dealt with Claimant's preliminary arguments, the Tribunal now turns to the merits of the Request.

35. Each Party considers that it has a strong case on jurisdiction and liability. However, it is not for the Tribunal to now decide, even on a *prima facie* basis, who has the strongest case on jurisdiction and liability and whether bifurcation would therefore inevitably lead to a quantum phase or, in contrast, inevitably render such a phase obsolete. The Tribunal's only concern at this stage is whether bifurcating the quantum phase from the jurisdiction and liability phase would promote fairness and procedural efficiency more than considering all issues together.

36. The Tribunal explains in the following paragraphs why it has concluded that bifurcation would promote fairness and procedural efficiency more than considering all issues together.

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[17] See **RL-9**, *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40 ("***Churchill Mining v. Indonesia***"), Procedural Order No. 12, 27 October 2014, ¶ 52; **RL-10**, *Lao Holdings N.V. v. Lao People's Democratic Republic (II)*, ICSID Case No. ARB(AF)/16/2 ("***Lao Holdings v. Lao***"), Procedural Order No. 2 dated 23 October 2017, ¶¶ 46, 50; **RL-13**, *Coropi Holdings Limited, Kalemegdan Investments Limited and Erinn Bernard Broshko v. Republic of Serbia*, ICSID Case No. ARB/22/14 ("***Coropi v. Serbia***"), Procedural Order No. 5, 21 August 2023, ¶ 27; **RL-15**, *Suez, Sociedad General de Aguas de Barcelona S.A., and InterAgua Servicios Integrales del Agua S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/17 ("***Suez v. Argentina***"), Decision on Liability dated 30 July 2010, ¶¶ 244, 246; **RL-16**, *Peteris Pildegovics and SIA North Star v. Kingdom of Norway*, ICSID Case No. ARB/20/11 ("***Pildegovics v. Norway***"), Procedural Order No. 5, 5 December 2021, ¶¶ 23-27.

[18] Reply, ¶ 3.

37. *First*, the Tribunal is persuaded that bifurcation would materially reduce the time and cost of these proceedings (Rule 42(4)(a)) and has the potential to dispose of the entire case or substantial parts thereof (Rule 42(4)(b)).

38. In its Memorial, Claimant seeks USD 653 million in damages for the loss of the Bank. Claimant makes a claim for direct, *de jure* and unlawful expropriation, as well as claims for breach of the fair and equitable treatment, full protection and security, and non-discrimination standards.[19] Claimant explains that the entirety of its damages claim is calculated based on the unlawful expropriation, and that its losses are ascertained with reference to the actual value of the Bank. However, Claimant has clarified that, whilst it does not presently put forward a separate quantification of the losses caused by breaches other than the unlawful expropriation, it reserves the right to supplement its submissions and separately quantify the damages caused by these other distinct Treaty breaches.[20] This means that, like in *Pildegovics v. Norway*,[21] a range of outcomes on liability is possible and that those outcomes may make a difference to the way the quantum issues would have to be approached.

39. Valuing an investment at a specific point in time, or calculating the impact of a particular measure on an investment, is always a complex, time-consuming, and costly exercise. If the Tribunal bifurcates quantum from jurisdiction and liability and finds in favour of Respondent, all or a substantial portion of the dispute would be disposed of and significant time and cost savings will be achieved. Conversely, if the Tribunal orders bifurcation and finds in favour of Claimant (in whole or in part), both the Tribunal and the Parties will benefit from a more focused quantum phase, with the time and costs savings that it implies. In this scenario, the Tribunal's factual and legal findings on liability will focus the Parties' submissions on quantum and simplify the experts' work.

40. The Tribunal understands Claimant's concern that bifurcation may result in two hearings (one on jurisdiction and liability, and one on quantum), two document production phases (one at the jurisdiction and liability phase, and one at the quantum phase), and in calling some of the factual witnesses twice (since Claimant asserts that several of its witnesses testify both on liability and quantum issues). If the Tribunal finds in favour of Claimant at the jurisdictional and liability stage, bifurcation may indeed lead to an extension of the proceedings. Claimant's concern is all the more legitimate given that Respondent has not yet paid its share of the advance requested by ICSID in these proceedings. However, the Tribunal will not allow a quantum phase (if any) to extend significantly. The Tribunal is

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19 Memorial, ¶¶ 256 *et seq*.
20 *Id*., ¶ 337.
21 **RL-16**, *Pildegovics v. Norway*, ¶¶ 21-22.

also persuaded – as was the tribunal in *Coropi v. Serbia*[22] – that any extension of the length of proceedings as a result of bifurcation will be offset by the added focus of the evidence and argument on quantum, which will allow both Parties to save costs.

41. *Second*, the Tribunal is not persuaded that the quantum issues are so intertwined with the liability issues as to make bifurcation impractical (Rule 42(4)(c)). As mentioned, Claimant makes a claim of direct and unlawful expropriation, as well as claims for breach of the fair and equitable treatment, full protection and security, and non-discrimination standards.[23] As regards its expropriation claim (which forms the basis of its entire case on damages at this stage of the proceedings), Claimant does not argue that Respondent offered it inadequate compensation, but that it offered no compensation at all.[24] Since Claimant argues that it lost its entire investment, the Tribunal will not have to decide whether the loss in value of Claimant's investment was of such degree as to justify a finding of expropriation.

42. *Third*, if bifurcation is ordered and the Tribunal finds in favour of Respondent, Claimant will not have to incur any additional costs in relation to quantum than those already incurred for preparing its Memorial. And if the quantum phase does take place, the costs already incurred by Claimant in that regard will not be in vain.

43. *Fourth*, the Tribunal also considers that bifurcation may be helpful for any document production issues pertaining to quantum. In this respect, the Tribunal is mindful of Respondent's argument that it will encounter difficulties accessing the Bank's historical data for the purpose of quantum valuation. Without expressing any view on whether these alleged difficulties are real or not, the Tribunal anticipates that some debates *will likely* take place in that regard at the document production stage. If the jurisdiction and liability phase is bifurcated, the discussions that the Parties may have at this stage in relation to accessing the Bank's historical data may be limited in scope. And if the quantum phase does take place, the Tribunal's findings on liability will assist the Parties in better identifying and limiting the historical data to be sought at the document production stage.

44. For all these reasons, the Tribunal considers that bifurcating quantum from jurisdiction and liability will better promote fairness and procedural efficiency than considering all issues together.

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22 **RL-13**, *Coropi v. Serbia*, ¶ 25.
23 Memorial, ¶¶ 256 *et seq*.
24 *Id*., ¶¶ 257, 270.

45. For the sake of completeness, and in light of the concerns addressed by the Tribunal at paragraph 40 above, the Tribunal reminds the Parties that, pursuant to Regulation 15(2) of the ICSID Administrative and Financial Regulations, each Party must pay one half of the advance payments requested by the Secretary-General. Respondent is therefore invited to pay its share of the advance in these proceedings.

46. Finally, the Tribunal turns to the procedural calendar. The Tribunal considers that the calendar set out under "Scenario 2" in Procedural Order No. 1 is applicable to the jurisdiction and liability phase. The Tribunal has updated the procedural calendar accordingly, after taking into account the fact that jurisdiction and liability will be heard together and the document production phase shall take place after the filing of the Counter-Memorial. The updated procedural calendar is sent to the Parties alongside the present Decision. The Tribunal is available for a hearing on jurisdiction and liability during the weeks of 30 November, 7 December, and 14 December 2026.

IV. DECISION

47. For the foregoing reasons, the Tribunal decides as follows:

- Bifurcates the present proceedings into a jurisdiction and liability phase, and a quantum phase, respectively;

- Reserves to the final award its decision on costs incurred in respect of the Request for Bifurcation;

- Directs the Parties to confirm their availability for the hearing on jurisdiction and liability during one of the weeks proposed by the Tribunal at paragraph 46 above, by Tuesday, 27 May 2025.

[signed]

On behalf of the Arbitral Tribunal
Professor Bernard Hanotiau
Date: 12 May 2025

Procedural Schedule

Event	Date	Interval
Request for Arbitration	29 December 2023	
Constitution of the Tribunal	9 April 2024	
Decision to reject Claimant's Proposal to Disqualify Professor Murphy	15 July 2024	
First session	12 September 2024	Within 60 days after the constitution of the Tribunal, i.e. by 13 September 2024
Order of the Tribunal on procedure	7 October 2024	15 days after the later of the first session or the last written submission on procedural matters addressed at the first session, or as the Tribunal may require
Claimant's Memorial	20 December 2024	12 months from Request for Arbitration
Respondent's Request for bifurcation	18 February 2025	The request for bifurcation shall be filed within 60 days after filing the Memorial on the Merits
Claimant's Response to the request for bifurcation	19 April 2025	Within 60 days from request for bifurcation
Tribunal's Decision on Bifurcation (bifurcation granted)	12 May 2025	Tribunal shall issue its decision on the request for bifurcation within 30 days after the last submission on the request for bifurcation, or as the Tribunal may require
Respondent's Counter-Memorial and Objections to Jurisdiction	26 August 2025	3 months and 2 weeks from the Decision on bifurcation
Document production phase: a. Request b. Objection c. Replies d. Decision e. Production	a. 23 September 2025 b. 14 October 2025 c. 4 November 2025 d. 25 November 2025 e. 23 December 2025	a. 4 weeks b. 3 weeks c. 3 weeks d. 3 weeks, or as the Tribunal may require e. 4 weeks
Claimant's Reply and Response to the Objections to Jurisdiction	23 February 2026	2 months from Production under (e)

Respondent's Rejoinder and Reply on Jurisdiction	23 May 2026 [*Saturday, thus the submission will be due on 25 May 2026*]	3 months from Reply and Response to the Objections to Jurisdiction
Claimant's Rejoinder on Jurisdiction	8 August 2026 [*Saturday, thus the submission will be due on 10 August 2026*]	2 months and 2 weeks from Rejoinder and Reply on Jurisdiction
Pre-hearing conference	TBC	
Hearing on Jurisdiction and Liability	TBC	
Tribunal's Decision on Jurisdiction and Liability	TBC	Within 6 months after the last submission, or as the Tribunal may require
N.B.: If jurisdiction and liability are accepted, calendar for the quantum phase will be drawn up in consultation with the Parties.		