IN THE MATTER OF AN ARBITRATION UNDER THE 2006 INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES CONVENTION ARBITRATION RULES

-between-
FriendsLook plc,
Whistler Inc.,
SpeakUp Media Inc.
CLAIMANTS

-and-
Republic of Tyrea
RESPONDENT

MEMORIAL FOR CLAIMANT

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID Case No. ARB/18/155

16 September 2019
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>TABLE OF CONTENTS</th>
<th>ix</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDEX OF ABBREVIATIONS AND DEFINITIONS</td>
<td>IV</td>
</tr>
<tr>
<td>INDEX OF AUTHORITIES</td>
<td>V</td>
</tr>
<tr>
<td>INDEX OF ARBITRAL AWARDS AND CASES</td>
<td>VII</td>
</tr>
<tr>
<td>INDEX OF OTHER AUTHORITIES</td>
<td>XI</td>
</tr>
<tr>
<td>INDEX OF LEGAL SOURCES</td>
<td>XI</td>
</tr>
<tr>
<td>STATEMENT OF FACTS</td>
<td>1</td>
</tr>
<tr>
<td>SUMMARY OF ARGUMENTS</td>
<td>4</td>
</tr>
<tr>
<td>ARGUMENTS</td>
<td>6</td>
</tr>
</tbody>
</table>

## 1. THE TRIBUNAL SHOULD NOT GRANT PROVISIONAL MEASURES REQUESTED BY RESPONDENT. 6

1.1. Tyrea’s rights are not jeopardized ............................................. 6
1.2. Two of the rights, protection of which Respondent seeks are not rights in dispute, thus outside of this Tribunal’s competence ............................................. 8
1.3. Harm to the propriety rights alleged by Respondent is not irreparable ........ 8
1.4. Respondent’s motion is vague to the extent that it is unenforceable ........... 9

## 2. THE TRIBUNAL HAS JURISDICTION OVER THE DISPUTE 9

2.1. Respondent’s denunciation of the ICSID Convention does not influence Tribunal’s jurisdiction over the dispute ............................................. 9

2.1.1. Respondent’s consent to arbitrate was still valid when Claimants’ submitted their Notice of Arbitration ............................................. 10
2.1.2. In any case, Respondent agreed to arbitration under Additional Facility Rules .... 14

2.2. The claim should be heard by this Tribunal on a multi-party basis ........... 15

2.2.1. The multi-party aspect of this arbitration is not an issue of consent, but of procedural modalities ............................................. 15
2.2.2. There are no procedural obstacles to hear the case on a multi-party basis ....... 17
2.2.3. Even if this Tribunal finds that consent to the multi-party arbitration is required, the consent given by the parties is wide enough to cover multi-party claims. ........... 19

## 3. RESPONDENT BREACHED THE BITS 21

3.1. Respondent breached Article 6 of the BITs ........................................ 21

3.1.1. Respondent indirectly deprived Claimants’ of their investments ........... 22
3.1.2. Respondent’s actions were not taken in public interest and with observance of due process ............................................. 24
3.1.3. Respondent’s actions were discriminatory ........................................ 26
3.1.4. Respondent did not pay due compensation to Claimants .................. 26
3.1.5. **RESPONDENT’s measures towards CLAIMANTS cannot be recognized as exercise of regulatory powers** ........................................................................................................................................... 27
3.2. **RESPONDENT breached ARTICLE 3(1) OF THE BITs** ................................................................................................................................. 28
   3.2.1. **RESPONDENT breached CLAIMANTS’ legitimate expectations** .................................................................................................................. 29
   3.2.2. **RESPONDENT’s actions breached the due process of law principle** ..................................................................................................... 31
   3.2.3. **RESPONDENT’s actions were discriminatory** ................................................................................................................................. 31

4. **THE DCF METHOD IS THE PROPER METHOD TO CALCULATE THE DUE COMPENSATION** ................................................................................................................................................. 32
   4.1. **CLAIMANTS’ damage should be fully compensated** ................................................................................................................................. 32
      4.1.1. Full compensation standard is applicable .................................................................................................................................................. 32
      4.1.2. In any case, the application of the genuine value standard also requires full compensation of the damage .......................................................................................................................... 34
   4.2. **THE DCF METHOD IS APPROPRIATE TO COMPUTE THE FULL COMPENSATION DUE** ................................................................................................................................. 34
   4.3. **THE DCF METHOD WAS DULY APPLIED BY CLAIMANTS’ EXPERT** .................................................................................................................... 36

**REQUEST FOR RELIEF** ................................................................................................................................................................................................. 37
# INDEX OF ABBREVIATIONS AND DEFINITIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>¶/¶¶</td>
<td>Paragraph/ Paragraphs</td>
</tr>
<tr>
<td>Centre, ICSID</td>
<td>International Centre for Settlement of Investment Disputes</td>
</tr>
<tr>
<td>Damages Report</td>
<td>Claimants’ Exhibit 7 – Damages Report for the Case</td>
</tr>
<tr>
<td>DCF</td>
<td>Discounted Cash Flow</td>
</tr>
<tr>
<td>FET</td>
<td>Fair and Equitable Treatment Standard</td>
</tr>
<tr>
<td>First Decree</td>
<td>Decree No. 0578/201-D of 12 January 2018</td>
</tr>
<tr>
<td>ILC</td>
<td>International Law Commission</td>
</tr>
<tr>
<td>Kitoa</td>
<td>Union of Kitoa</td>
</tr>
<tr>
<td>Law No. 0808-L</td>
<td>Law 0808-L Amending the Law on Media and Communications</td>
</tr>
<tr>
<td>Media Law</td>
<td>Law on Media and Information No. 1125-L on 10 September 2013</td>
</tr>
<tr>
<td>Novada</td>
<td>Federation of Novanda</td>
</tr>
<tr>
<td>Ordinances</td>
<td>Ordinance of 28 February 2018, Ordinance of 1 March 2018 and Ordinance of 2 March 2018 issued by Communications Authority of The Republic of Tyrea</td>
</tr>
<tr>
<td>p./pp.</td>
<td>Page/ Pages</td>
</tr>
<tr>
<td>PO2</td>
<td>Procedural Order No. 2</td>
</tr>
<tr>
<td>PO3</td>
<td>Procedural Order No. 3</td>
</tr>
<tr>
<td>Presidential Decree</td>
<td>Decree No. 0599/201-D of 11 February 2018</td>
</tr>
<tr>
<td>RfPM</td>
<td>Request for Provisional Measures</td>
</tr>
<tr>
<td>SoUF</td>
<td>Statement of Uncontested Facts</td>
</tr>
<tr>
<td>Tyrea</td>
<td>Republic of Tyrea</td>
</tr>
<tr>
<td>WACC</td>
<td>Weighted average cost of capital</td>
</tr>
</tbody>
</table>
## INDEX OF AUTHORITIES

<table>
<thead>
<tr>
<th>Cited as</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kantor</td>
<td>M. A. Kantor <em>Valuation for Arbitration</em> (Kluwer Law International 2008)</td>
</tr>
<tr>
<td>Kolb</td>
<td>R Kolb, <em>The Elgar Companion to the International Court of Justice</em> (Edward Elgar Publishing 2014)</td>
</tr>
<tr>
<td>Lieblich</td>
<td>W. C. Lieblich, &quot;Determining the Economic Value of Expropriated Income-Producing Property in International Arbitrations&quot; (1991) 8 Journal of International Arbitration 1, 59</td>
</tr>
<tr>
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<td>J. O. Rodner and J. M. Estévez, &quot;BITs in Pieces: The Effectiveness of ICSID Jurisdiction after the ICSID Convention Has Been Denounced&quot; (2012) 29 Journal of International Arbitration 4, 437</td>
</tr>
</tbody>
</table>
Strong

Tejera

Thirlway
H Thirlway, The International Court of Justice (OUP 2016)
# INDEX OF ARBITRAL AWARDS AND CASES

<table>
<thead>
<tr>
<th>Cited as</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAPLL</td>
<td><em>AAPLL v. Sri Lanka</em>, Final Award (27 June 1990) ICSID case No. ARB/87/3</td>
</tr>
<tr>
<td>Abaclat</td>
<td><em>Abaclat and Others v. Argentine Republic</em>, Decision on Jurisdiction and Admissibility (4 August 2011) ICSID Case No. ARB/07/5 (formerly Giovanna a Beccara and Others v. The Argentine Republic)</td>
</tr>
<tr>
<td>ADC</td>
<td>ADC &amp; ADMC Management Limited v. The Republic of Hungary, Award of the Tribunal (2 October 2006) ICSID Case No. ARB/03/16</td>
</tr>
<tr>
<td>Aegean</td>
<td><em>Aegean Sea Continental Shelf Case (Greece v. Turkey)</em>, Separate Opinion of President Jiménez de Aréchaga, Order, (11 September 1976) ICJ Reports 1976, p. 3</td>
</tr>
<tr>
<td>Alemanni</td>
<td><em>Giovanni Alemanni and Others v. The Argentine Republic</em>, Decision on Jurisdiction and Admissibility (17 November 2014) ICSID Case No. ARB/07/8</td>
</tr>
<tr>
<td>Amco</td>
<td><em>Amco Asia Corporation and others v. Republic of Indonesia</em>, Decision on Request for Provisional Measures (9 December 1983) ICSID Case No. ARB/81/1</td>
</tr>
<tr>
<td>Azurix (Annulment)</td>
<td><em>Azurix Corp. v. The Argentine Republic</em>, Decision on the Application for Annulment (1 September 2009) ICSID Case No. ARB/01/12</td>
</tr>
<tr>
<td>Azurix (Provisional Measures)</td>
<td><em>Azurix Corp. v. The Argentine Republic</em>, Decision on Provisional Measures (6 August 2003) ICSID Case No. ARB/01/12</td>
</tr>
<tr>
<td>Azurix (Liability)</td>
<td><em>Azurix Corp. v. The Argentine Republic</em>, Award (14 July 2006) ICSID Case No. ARB/01/12</td>
</tr>
<tr>
<td>CME (Final Award)</td>
<td><em>CME Czech Republic B.V. v. The Czech Republic</em>, Final Award (14 March 2003) UNCITRAL Arbitration</td>
</tr>
<tr>
<td>CME (Partial Award)</td>
<td><em>CME Czech Republic B.V. v. The Czech Republic</em>, Partial Award (13 September 2001) UNCITRAL Arbitration</td>
</tr>
</tbody>
</table>
CMS  
CMS Gas Transmission Company v. The Argentine Republic, Award (12 May 2005) ICSID Case No. ARB/01/8

Crystalex  
Crystalex International Corp. v. Bolivarian Republic of Venezuela, Award (30 March 2016) ICSID Case No. ARB(AF)/11/2

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Karaha  

Kuwait  
Kuwait v. The American Independent Oil Company (AMINOIL), 21 ILM 976

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Loewen  
The Loewen Group, Inc. and Raymond L. Loewen v. United States of America, Award (26 June 2003) ICSID Case No. ARB(AF)/98/3

Metalclad (Liability)  
Metalclad Corporation v. The United Mexican States, Award (30 August 2000), ICSID No. ARB(AF)/97/1

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Plama  *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24

PSEG  *PSEG Global Inc. and Konya Ilgin Elektrik Yönetim Ve Ticaret Limited Şirketi v. Republic of Turkey*, Award (19 January 2007) ICSID Case No. ARB/02/5

Rusoro  *Rusoro Mining Limited v. The Bolivarian Republic of Venezuela*, Award (22 August 2016) ICSID Case No. ARB(AF)/12/5


Sempra  *Sempra Energy International v. The Argentine Republic*, Award (28 September 2007) ICSID CASE NO. ARB/02/16

Sistem  *Sistem Mohendislik İwat Sanayi ve Ticaret a.s. v. Kyrgyz Republic*, Award (9 September 2009) ICSID Case No. ARB(AF)/06/1


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Case No. ARB/03/19 (formerly Aguas Argentinas, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A.and Vivendi Universal, S.A. v. Argentine Re)

Tecmed  
*Tecnicas Medioambientales Tecmed S.A. v. The United Mexican States*, Award (29 May 2003) ICSID Case No. ARB (AF)/00/2

Tenaris  

Total  
*Total S.A. v. Argentine Republic*, Decision on Liability (27 December 2010) ICSID Case No. ARB/04/1

Venoklim  
*Venoklim Holding B.V. v. Bolivarian Republic of Venezuela*, Award (3 April 2017) ICSID Case No. ARB/12/22

Vivendi  
*Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, Award (20 August 2007) ICSID case No. ARB/97/3

Waste  
*Waste Management v. Mexico*, Final Award (30 April 2004), ICSID Case No ARB(AF)/00/3
## INDEX OF OTHER AUTHORITIES

<table>
<thead>
<tr>
<th>Cited as</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>History of the ICSID Convention</td>
<td>History of the ICSID Convention, Vol. II-1, 400, 413</td>
</tr>
<tr>
<td>World Bank Guidelines</td>
<td>World Bank Guidelines on the Treatment of Foreign Direct Investments</td>
</tr>
</tbody>
</table>

## INDEX OF LEGAL SOURCES

<table>
<thead>
<tr>
<th>Source</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional Facility Rules</td>
<td>The ICSID Additional Facility Rules (1978)</td>
</tr>
<tr>
<td>BITs</td>
<td>The Agreement for the Promotion and Reciprocal Protection of Investments between the Republic of Tyrea and the Federation of Novanda concluded on 28 March 2000 and the Agreement for the Promotion and Reciprocal Protection of Investments between 80 Republic of Tyrea and the Union of Kitoa concluded on 20 January 2001</td>
</tr>
<tr>
<td>Declaration of Human Rights</td>
<td>United Nations, Universal Declaration of Human Rights, 10 December 1948</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by...</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
<td>-------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>ICJ Statute</td>
<td>Statute of the International Court of Justice, 26 June 1945, 892 UNTS 119</td>
</tr>
<tr>
<td>ICSID Convention</td>
<td>Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, open for signature March 18, 1965 575 UNTS 159</td>
</tr>
<tr>
<td>Tyrea-Kitoa BIT</td>
<td>The Agreement for the Promotion and Reciprocal Protection of Investments between 80 Republic of Tyrea and the Union of Kitoa concluded on 20 January 2001</td>
</tr>
<tr>
<td>Tyrea-Novada BIT</td>
<td>The Agreement for the Promotion and Reciprocal Protection of Investments between the Republic of Tyrea and the Federation of Novanda concluded on 28 March 2000</td>
</tr>
</tbody>
</table>
STATEMENT OF FACTS

1. This dispute arises out of the unlawful expropriation of CLAIMANTS’ property as a consequence of the breaches of international law, that is of BITs, committed by RESPONDENT.

2. Since the emergence from the civil war, there was a huge political change in Tyrea, which opened up its market for foreign investments. Several different BITs were signed, among the others the ones with Novanda signed on 28 March 2000 and Kitoa signed on 20 January 2001.1 Tyrea also implemented the liberal Media Law and the government on various occasions publicly stated that the change in its policy is constant and will deepen.2 Thus, CLAIMANTS seeing the high business potential decided to invest in Tyrea.

3. CLAIMANTS are all international social networks.3

4. FriendsLook is a social network incorporated in accordance with the laws of Novada, which allows users to share and post short messages, pictures and videos, as well as create virtual groups, pages and meet-ups. Its popularity constantly grows, as it brings together people from all around the world.4

5. Whistler was incorporated in accordance with the laws of Kitoa. It provides users a platform, where they can share short posts. Over the course of the last eight years its popularity has grown significantly.5

6. SpeakUp was also incorporated in accordance with the laws of Kitoa. It is a blog-platform, where users can create blogs with any content they like, which is very popular since it facilitates communication between young people from all over the world.6

7. All three platforms were very successful in Tyrea, as they gained millions of new users with the number continuously increasing.7 Thus, CLAIMANTS invested more in the market, especially in the development of features tailor-made for Tyrean users.8

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1 SoUF, ¶ 2
2 SoUF, ¶ 3, 5
3 SoUF, ¶ 6
4 SoUF, ¶ 7
5 SoUF, ¶ 8
6 SoUF, ¶ 9
7 SoUF, ¶ 10
8 SoUF, ¶ 11
8. In years 2017 and 2018 RESPONDENT began to report the renewed increase in social tensions and blamed it on the use of CLAIMANTS’ social media platforms by instigators.

9. On the basis of the above, RESPONDENT implemented Law No. 0808-L dated 12 January 2018 that aimed to introduce algorithms that, by collecting personal data from users, were intended to halt the potential development of social tensions in Tyrea. The First Decree gave 60 days to make the necessary changes. CLAIMANTS immediately began to cooperate with the authorities on the required changes to exclude the use of their platforms for purposes harmful to public safety.

10. After the initial period of 30 days had passed, RESPONDENT shorted the original 60-days period to 45-days by way of Presidential Decree. This clearly hindered the implementation of the required algorithm, although CLAIMANTS continued its efforts to maintain its operations in Tyrea and provided the algorithm within the new deadline.

11. Despite the assurances of RESPONDENT’s representatives, including the Minister for Telecommunications, Information Technology and Mass Media, who were aware of the negative impact of shortening the deadline on the implementation, CLAIMANTS’ websites were blocked on the basis of Ordinances. Out of all social media platforms operating in RESPONDENT’s territory, only those of CLAIMANTS were blocked.

12. The blockade caused significant damage, in particular by depriving CLAIMANTS of the possibility of generating revenue by means of advertising displayed on blocked sites, which was a key source of revenue.

13. The loss of all users operating in Tyrea resulted in the irretrievable loss of costs incurred in customizing the site to meet the particular needs of local users, as well as costs incurred in the process of maintaining compliance with the national legislation.

14. What more the possibility of further development of CLAIMANTS in the neighboring states of Alcadia and Larnacia has been impaired. Significant costs were made for this project and the development perspective itself was very optimistic. Negotiations were interrupted, however,
for the only reason given was the situation related to the blocking of CLAIMANT’S sites in Tyrea.

15. Considering all the above, CLAIMANTS jointly filed a request for arbitration on 29 June 2018.
SUMMARY OF ARGUMENTS

The Tribunal should not grant provisional measures requested by RESPONDENT.

16. RESPONDENT’S request for provisional measures does not fulfill any conditions for granting them. First, RESPONDENT’S rights in the dispute are not jeopardized. Second, in any case, these rights are not rights in the dispute and thus outside of the Tribunal’s competence. Third, the alleged harm to the propriety rights is not irreparable. Moreover, RESPONDENT’S motion is vague to the extent that it is unenforceable.

RESPONDENT’S denunciation of the ICSID Convention does not influence Tribunal’s jurisdiction over the dispute.

17. All jurisdictional requirements in this case are fulfilled. In particular, there is a valid arbitration agreement. RESPONDENT’s claim that its denunciation of ICSID Convention on January 5, 2018 results in the lack of this Tribunal’s jurisdiction over the dispute cannot be sustained. First, RESPONDENT’s consent to the arbitration stems from the BITs irrespective of whether RESPONDENT is a party to ICSID Convention or not. Second, in any case, pursuant to Article 71 of the ICSID Convention, the denunciation takes effect only six months after receipt of the notice. CLAIMANTS submitted their Request for Arbitration during that six-months window. As such, RESPONDENT’S consent to the jurisdiction of the Tribunal was still valid. Finally, RESPONDENT also agreed to arbitration under additional Facility Rules in case it ceases to be a Contracting State of ICSID.

The claim should be heard by this Tribunal on a multi-party basis.

18. RESPONDENT alleges that it did not agree to a multi-party arbitration. However, the multi-party aspect of the arbitration is not an issue of consent, but rather a question of procedural modalities. As such, the Tribunal should determine whether the proceedings can be conducted on a multi-party basis based on Article 44 and not Article 25 of the ICSID Convention. In the present dispute there are no procedural obstacles to hear the case on a multi-party basis, as the claims are sufficiently connected. They stem from an illegality of an identical nature, the same legal basis and CLAIMANTS seek the same kind of relief. Moreover, hearing the claims in single arbitration will be fair and efficient. In any case, even if the Tribunal finds that consent to a multi-party arbitration is required, the consent given by RESPONDENT is wide enough to cover it.
RESPONDENT breached Article 6 of the BITs.

19. RESPONDENT unlawfully indirectly deprived CLAIMANTS of their investments. Firstly, due to the issuance of the Ordinances CLAIMANTS’ investment was substantially deprived of its value and reasonably expected economic benefits. Also, the enjoyment of the property has been effectively neutralized, even though the legal title to the investment remained untouched. Secondly, RESPONDENT did not prove that its actions were taken in public interest and under due process of law. Thirdly, measures taken by RESPONDENT were discriminatory. Fourthly, RESPONDENT did not pay CLAIMANTS’ any compensation. Finally, the measures taken by RESPONDENT towards CLAIMANTS cannot be recognized as exercise of the right to regulate.

RESPONDENT breached Article 3(1) of the BITs.

20. RESPONDENT did not treat CLAIMANTS in fair and equitable manner. Firstly, RESPONDENT did not respect the legitimate expectations of CLAIMANTS and did not provide stable and predictable legal framework. Secondly, RESPONDENT did not observe the principle of good faith with respect to CLAIMANTS investments. Moreover, measures introduced by RESPONDENT were discriminatory.

The DCF method is the proper method to calculate the due compensation.

21. The only proper method to calculate the due compensation is the DCF method. The damage suffered by CLAIMANTS requires full compensation, since RESPONDENT unlawfully deprived CLAIMANTS’ investments as well as it did not apply for FET. In any case, the application of the genuine value standard also requires full compensation of the damaged caused to CLAIMANTS. Secondly, since the full compensation standard is applicable, only the DCF method is appropriate to fully satisfy it. Finally, the DCF method was duly applied by CLAIMANTS’ Expert.
ARGUMENTS

1. THE TRIBUNAL SHOULD NOT GRANT PROVISIONAL MEASURES REQUESTED BY RESPONDENT.

22. Pursuant to Article 47 of the ICSID Convention, 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. The rights, protection of which party seeks, must be rights in the dispute.\(^{18}\) Moreover, there are certain conditions that must be met in order for the Tribunal to grant provisional measures, in particular the measure must be necessary to prevent irreparable harm.\(^{19}\)

23. RESPONDENT’s request to grant provisional measures has no grounds and should be dismissed. This is at least for four reasons. Firstly, RESPONDENT’s request lacks merits, as the Tyrea’s rights are not jeopardized (1.1.). Secondly, in any event two of the rights RESPONDENT wishes to protect, are not rights in dispute and thus outside of this Tribunal’s competence (1.2.). Thirdly and irrespective of the two above, harm to the propriety rights alleged by RESPONDENT is not irreparable (1.3.). Finally, RESPONDENT’s motion is vague to the extent that it is unenforceable (1.4.).

1.1. Tyrea’a rights are not jeopardized

24. RESPONDENT seeks to prevent the harm to three categories of rights: (1) RESPONDENT’S reputation and position in the internal political dispute,\(^{20}\) (2), the proprietary interests connected with the World Expo 2025 and bond issuance\(^{21}\) and (3) RESPONDENT’S right to the impartial Tribunal.\(^{22}\) These rights cannot be harmed by alleged CLAIMANTS’ actions.

25. Firstly, all CLAIMANTS’ actions such as publishing articles in press, which involve details of the dispute and CLAIMANTS’ positions, are within the scope of their freedom of speech and press independence, thus being within the framework of law, are not capable of jeopardizing RESPONDENT’S personal rights. In particular, Tyrea is a part the ICCPR, Article 19(1) and 19(2) of which confirms the right to hold opinions and to freedom of expression, thus recognises those rights.\(^{23}\) This was also confirmed by the Tribunal in Amco v. Indonesia,

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\(^{18}\) Schreuer p. 798; Plama ¶ 40; Amco ¶ 441

\(^{19}\) Sinclair & Repousis p. 431–446

\(^{20}\) RIPM ¶ 2-6

\(^{21}\) RIPM ¶ 7-8, 10

\(^{22}\) RIPM ¶ 9

\(^{23}\) ICCPR, art. 19
where it was found that the mere publication of a one-sided story does not do any actual harm to the other party, nor aggravate or exacerbate the legal dispute.\textsuperscript{24} Since none of CLAIMANTS’ actions can in fact cause any harm to RESPONDENT’S personal rights, the provisional measures shall not be granted.

26. Secondly, the harm to the proprietary interests connected with the Word Expo 2025 and bond issue is potential and hypothetical. The possibility of its occurrence is also potential and definitely not imminent. Moreover, there is no sufficient causal link between the alleged harm and CLAIMANTS’ actions.

27. Provisional measures should be granted only when it is necessary and urgent to preserve rights of the party.\textsuperscript{25} Necessity was defined by the ICJ in the Separate Opinion in \textit{Aegean Sea Continental Shelf Case} and this definition was adopted by the ICSID Tribunal in \textit{Occidental v. Equador}.\textsuperscript{26} In his Separate Opinion President Jiménez de Aréchaga stated that necessity means that the party’s actions “are capable of causing or of threatening irreparable prejudice to the rights invoked”.\textsuperscript{27} Urgency was explained in \textit{Azurix v Argentina} as being “related to the imminent possibility that the rights of a party be prejudiced before the tribunal has rendered its award”.\textsuperscript{28} Also in \textit{Occidental v. Equador} the Tribunal stressed that “[p]rovisional measures are not meant to protect against any potential or hypothetical harm susceptible to result from uncertain actions” but from imminent harm.\textsuperscript{29} In the present case, CLAIMANTS’ actions alleged by RESPONDENT, do not fulfil those requirements.

28. Since the host of the Word Expo 2025 is chosen based on a lot of different considerations, there are no grounds to claim that on the balance of probabilities had CLAIMANTS` not involved themselves in alleged actions, RESPONDENT would have bigger chance to host the Word Expo 2025. Also, when it comes to the bond issuance, a specific price and specific costs incurred by issuer are factors that always change depending on the circumstances. Moreover, it is highly speculative whether the costs of the bonds` issuance would be higher at all. Consequently, it cannot be argued that CLAIMANTS’ actions caused higher costs of the bonds` issuance.

\textsuperscript{24} Amco ¶ 3
\textsuperscript{25} Schreuer p. 776
\textsuperscript{26} Occidental (Provisional Measures) ¶ 59
\textsuperscript{27} Aegean p. 16
\textsuperscript{28} Azurix (Provisional Measures) ¶ 33
\textsuperscript{29} Occidental (Provisional Measures) ¶ 89
29. Finally, the request for provisional measures is not a right remedy in case of party’s doubts as to the Tribunal’s impartiality. Article 14 of the ICSID Convention sets out the specific standard for arbitrator’s qualities and if a party has any doubt that arbitrators possess those qualities, pursuant to Article 57 of the ICSID Convention, such a party should seek their disqualification. Since RESPONDENT did not move for the disqualification of any of the arbitrators nor raised any specific doubts in this regard, RESPONDENT’s motion for provisional measure is only an attempt to circumvent the law and as such it should be dismissed.

1.2. Two of the rights, protection of which RESPONDENT seeks are not rights in dispute, thus outside of this Tribunal’s competence

30. As explained in ¶ 24, two of the rights, protection of which RESPONDENT seeks are the reputation and position in the political dispute and their proprietary interests. Those rights are not jeopardized and, in any event, provisional measures should protect only rights in the particular dispute between the parties. Those rights are not rights in the dispute at issue.

31. In this case, similarly as in Amco v. Indonesia, the rights in dispute cannot be affected by the newspaper articles. RESPONDENT’s right to good name is not connected to this dispute. In these proceedings CLAIMANTS claim compensation for the breaches of BITs and there is no link between these claims and the alleged harm to RESPONDENT’s good name caused by newspapers articles allegedly published by CLAIMANTS. Also, there is no connection between RESPONDENT’s propriety interest connected with its bid to host Word Expo 2025 and to issue bonds and this dispute. Those are interests outside of the scope of these proceedings and there is no link between them and Respondent’s rights in the dispute at issue.

1.3. Harm to the propriety rights alleged by RESPONDENT is not irreparable

32. Provisional measures may be granted only in order to protect a party from irreparable harm. Irreparability means that the harm cannot be remedied by other means, especially reduced to an award of damages.

33. The alleged harm to the propriety rights that CLAIMANTS’ action would cause, can be repaired by damages, thus is not irreparable. If RESPONDENT did not host Word Expo 2025 or incurred higher costs of the bonds’ issuance, this would all be material harm, which may be redressed by granting damages.

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30 Schreuer, p. 798; Plama ¶ 40; Amco ¶ 441
31 Malintoppi p. 161; Sinclair & Repousis pp. 431–446
32 Occidental (Provisional Measures) ¶ 92; Perenco ¶ 51; Plama ¶ 46
1.4. **RESPONDENT’S motion is vague to the extent that it is unenforceable**

34. **RESPONDENT’S motion is vague to the extent that such provisional measures would be unenforceable. For this reason, RESPONDENT’S motion should be dismissed.**

35. Pursuant to Rule 39 of the ICSID Arbitration Rules, the request for arbitration should specify among the others the measures the recommendation of which is requested. Respondent requests the Tribunal to order CLAIMANTS to “refrain, for the duration of the arbitration proceedings, from taking any steps which might aggravate this dispute or exacerbate Tyrea’s position in it, and in particular that Claimants abstain from promoting, stimulating, or instigating the publication of propaganda, presenting their case selectively outside this Tribunal, or otherwise jeopardizing Tyrea’s rights in this dispute.”

36. For example, the notion “propaganda” is unspecified, and it can be interpreted in various ways depending on the cultural and political background. Moreover, the request is not limited territorially, which would also inhibit its consistent execution.

37. Consequently, granting the provisional measure as requested by RESPONDENT would put CLAIMANTS in unlimited risk. CLAIMANTS could never be certain whether they have breached such injunction or not. It is not even certain whether the Tribunal or any other body could identify that CLAIMANT - for example - "publicized propaganda" and thus breached the injunction. In other words, the provisional measure as requested by RESPONDENT - if issued by the Tribunal - would be useless. RESPONDENT’S motion should be dismissed also for this reason.

2. **THE TRIBUNAL HAS JURISDICTION OVER THE DISPUTE**

38. The Tribunal has jurisdiction over the dispute. Firstly, RESPONDENT’S denunciation of the ICSID Convention does not influence Tribunal’s jurisdiction over the dispute (Section 2.1). The claim should also be heard on a multi-party basis, and there are no procedural obstacles for the Tribunal to do so (Section 2.2).

2.1. **RESPONDENT’S denunciation of the ICSID Convention does not influence Tribunal’s jurisdiction over the dispute**

39. Contrary to RESPONDENT’S allegations, all jurisdictional requirements for the case to be heard by the Tribunal are met. In particular, there is a valid arbitration agreement between the parties. This is, firstly, because RESPONDENT is wrong in its assertion that the denunciation of

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33 RipM ¶ 2
the ICSID Convention resulted in it retroactively taking back the consent to arbitrate. Moreover, all other jurisdictional requirements from Article 25 if the ICSID Convention are met. That is, the dispute arises directly out of CLAIMANTS’ investment in Tyrea, between Tyrea – a Contracting State of ICSID and nationals of another Contracting States – Novanda and Kitoa.

40. RESPONDENT alleges that because it sent the notice of denunciation of the ICSID Convention on 5 January 2018, its offer to arbitrate no longer stands, and therefore the Tribunal does not have jurisdiction over the dispute.34 This is not correct. Firstly, CLAIMANTS’ notice for arbitration was given before the six months period described in Article 71 of the Convention. Consequently, it was given when RESPONDENT was still a Party to it. Therefore, RESPONDENT’S consent to arbitrate was still valid (Section 2.1.1). Secondly, in any case, RESPONDENT has given its consent to submit the dispute to ICSID under Additional Facility Rules (Section 2.1.2).

2.1.1. Respondent’s consent to arbitrate was still valid when Claimants’ submitted their Notice of Arbitration

41. Pursuant to Article 71 of the ICSID Convention, any Contracting State may denounce this Convention by written notice to the depositary of this Convention. However, the denunciation takes effect only six months after receipt of the notice. Moreover, pursuant to Article 72 of the Convention, notice of denunciation does not affect the rights or obligations under the Convention State arising out of consent to the jurisdiction of the Centre given before the notice was received by the depositary.

42. RESPONDENT’S Notice of Denunciation of the Convention was sent on 5 January 2018 and received by the World Bank on the same date.35 Therefore, the six-months period described in Article 72 of the ICSID Convention expired on 5 July 2018. Meanwhile, CLAIMANTS’ Request for Arbitration was filed on 29 June 2018. As such, it was filed in the six-months window between the date the World Bank received the notice of denunciation and the date the notice took effect.

34 Response to the Request for Arbitration at 711
35 Decision on Respondent’s Application under ICSID Arbitration Rule 41(5), at 1422
43. Contrary to that analysis, 

RESPONDENT’s argues that its offer to arbitrate ceased on 5 January 2018. It claims that it never gave consent to arbitration prior to sending the Notice of Denunciation.\(^{36}\) This contention is untrue.

44. First, 

RESPONDENT gave its unconditional consent to arbitration in the BITs. Second, that offer was still valid during the six-months window after sending the notice of denunciation, as 

RESPONDENT was still a Contracting State during that time. Third, a different approach would allow 

RESPONDENT to unilaterally change the BITs and deprive CLAIMANTS of the access to justice.

45. Firstly, 

RESPONDENT gave its unconditional consent to arbitration in Article 8 of the BITs. Section 1 of Article 8 reads:

“Disputes between one Contracting Party and a national of the other Contracting Party concerning an obligation of the former under this Agreement in relation to an investment of the latter, shall at the request of the national concerned be submitted to the International Centre for Settlement of Investment Disputes, for settlement by arbitration or conciliation under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965.”

46. Moreover, Section 3 of Article 8 reads:

“Each Contracting Party hereby gives its unconditional consent to the submission of disputes as referred to in paragraph 1 of this Article to international arbitration in accordance with the provisions of this Article”.

47. As it was confirmed in 1965 in the Report of the Executive Directors on the ICSID Convention, consent to arbitration may be given at any time, including in an investment agreement.\(^{37}\) It is widely accepted that states give their consent to arbitration by entering into investments agreements.\(^{38}\)

48. 

RESPONDENT consent to the arbitration stems from the BITs irrespective of whether 

RESPONDENT is a party to ICSID Convention or not. More importantly, language of the BITs in the present case does not narrow 

RESPONDENT’S consent. To the contrary, each of the said

\(^{36}\) Response to the Request of Arbitration, at 715

\(^{37}\) Report of the Executive Directors, ¶ 24

\(^{38}\) Gaillard, p. 2
treaties speak of the unconditional consent. In particular, RESPONDENT’s consent was not conditioned upon RESPONDENT being a Contracting State of the ICSID Convention in case of all the BITs.

49. RESPONDENT alleges it withdrew its consent to arbitrate investment disputes under BITs by sending the notice of denunciation. However, RESPONDENT omits the fact, that it was still a Contracting State of the Convention when Claimants have sent its request for arbitration.

50. As already mentioned, the denunciation of the Convention only takes effect six months after the notice was received by the depositary. The notice was received by the World Bank on 5 January 2018.³⁹ CLAIMANTS’ Request for Arbitration was sent on 29 June 2018, which is within the 6-months period of notice stemming from Article 71 of the ICSID Convention.

51. Such scenario was already considered by tribunals after Venezuela withdrew from the ICSID Convention in 2012. In Blue Bank, the tribunal confirmed that:

“[a] denunciation of the ICSID Convention takes effect only after the expiry of six months from the date of receipt of the notice of denunciation by the depositary. Any other interpretation of this provision would render the reference to a six-month time period devoid of any meaning, and would run directly contrary to the principle of effet utile (ut res magis valeat quam pereat), which is one of the fundamental tenets of treaty interpretation. If the intention was for the denunciation to take immediate effect, it would have made no sense to specify, in the second sentence of Article 71, that there should be a further waiting period of six months after receipt of the notice before the denunciation becomes effective”.⁴⁰

52. The tribunal based its reasoning on Article 71 of the ICSID Convention. It observed that claimant filed its request on 25 June 2012 and Venezuela’s denunciation only took effect six months following its 24 January 2012 notice of denunciation - i.e. 24 July 2012. As such, the agreement to arbitrate was formed before the expiry of the six-month period during which Venezuela, despite its denunciation, was still party to the ICSID Convention. The tribunals also declared they had jurisdiction over the case based on a similar chronology of events by tribunals in Venoklim⁴¹ and Rusoro Mining.⁴²

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³⁹ Decision on Respondent’s Application Under ICSID Arbitration Rule 41(5) at 1420
⁴⁰ Blue Bank, ¶ 119
⁴¹ Venoklim, ¶ 47-68
⁴² Rusoro, ¶ 260-273
53. The above approach is also supported by the doctrine. As put by Emmanuel Gaillard:

“[w]hen the investor has accepted the state’s general consent prior to the receipt of the notice of denunciation by the centre or within the six-month period set forth in Article 72, the effectiveness of the existing rights and obligations should raise little difficulty as the host state is still a contracting party at those times [...]. In both these situations, the investor is protected by Article 25(1) of the convention, which defines jurisdiction and provides that “[w]hen the parties have given their consent, no party may withdraw its consent unilaterally.”43

54. Also, denunciation should take its full legal effect – exempting the states from the initiation of future ICSID proceedings – at the time it takes full effect, which is after the six-months period.44 It was also noted that Article 72, which requires that consent be given before the notice of denunciation is received by depositary, does not apply to the arbitrations that are entered into during the six-months period.45

55. Finally, the interpretation that investors can file requests for arbitration during the six-months period is also in line with general principles of law, and principles of international investment law.

56. Firstly, RESPONDENT’S will to avoid jurisdiction of a forum it earlier consented to violates the principle of pacta sunt servanda. This principle was invoked in Murphy. In that case, Ecuador has submitted a notice under Article 25(4) of the ICSID Convention two months before Murphy filed its request for arbitration. In the notice, Ecuador stated that it would not consent to arbitrate the class of disputes in which Murphy’s claims falls two months before Murphy filed its request for arbitration.46 The Tribunal ruled that the Article 25(4) notification cannot unilaterally modify the consent given in another treaty. According to the tribunal:

57. “The consent of the State in this case is given in a treaty between two sovereign States (the BIT between Ecuador and the United States of America) granting rights to the investors of both States. The pacta sunt servanda principle requires good faith compliance with all obligations under the BIT.”47

43 Gaillard, p. 2
44 Kownacki, p. 552
45 Tejera, p. 433
46 Murphy, ¶ 43
47 Murphy, ¶ 73
58. The same rationale should be applied in this case.

59. Secondly, BITs and the ICSID Convention should be interpreted so as to ensure that the investor has an opportunity to keep their rights to commence an ICSID arbitration.48

60. Meanwhile, RESPONDENT’s interpretation of Article 72 does not have similar validation in the principles of law or policy. One justification for the idea that the denunciation of the Convention should have immediate effects as to new disputes could be that otherwise states could be potentially flooded by new claims. However, if the window for filing potential new arbitrations’ requests is only open for six months, this risk is non-existent.

61. Finally, the BITs do not provide for any dispute resolution forum other than ICSID. Therefore, if the Tribunal concludes that RESPONDENT has successfully withdraw its consent to the Centre’s jurisdiction, the arbitration clause contained in the BITs would become unenforceable. CLAIMANTS only option to have the claim resolved would be to direct it to national court in Tyrea. This would equal to a depravation of CLAIMANTS’ right to due process, which should be taken into account by the Tribunal when it rules on its jurisdiction.

62. Denouncing the ICSID Convention should not result in an amendment of a BIT that affects investments made up to the date of notice.49 If the BIT only contemplates ICSID arbitration, eliminating such a possibility leaves the BIT without one of its principal rights.50 Interpretation suggested by RESPONDENT allows that an amendment of the BIT that deprives it of one of the most important clauses would be done unilaterally, by a notice of denunciation.

63. CLAIMANTS request the Tribunal to follow a far more reasonable and balanced interpretation of Articles 71 and 72 of the ICSID Convention and decide that it has jurisdiction over the dispute as CLAIMANTS were able to successfully submit a Request for Arbitration.

2.1.2. In any case, RESPONDENT agreed to arbitration under Additional Facility Rules

64. In any case, the present Tribunal has jurisdiction under Additional Facility Rules.

65. Article 8 Section 2 of the BITs reads:

“As long as the Republic of Tyrea has not become a Contracting State of the Convention as mentioned in paragraph 1 of this Article, disputes as referred to in that paragraph shall be

48 Rodner & Estéves p. 437
49 Rodner & Estévez p. 437
50 Ibid.
submitted to the International Centre for Settlement of Investment disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (Additional Facility Rules).”

66. It is CLAIMANTS’ contention that the only logical interpretation of that clause is, that the parties wanted the Additional Facility to operate when Tyrea is not a Contracting State of the Convention.

2.2. The claim should be heard by this Tribunal on a multi-party basis

67. The multi-party aspect of this arbitration was identified by RESPONDENT as an issue of consent the lack of which would follow in the lack of jurisdiction. This is not correct. The multi-party arbitration is not an issue of consent, but of procedural modalities (Section 2.2.1). Since there are no procedural obstacles to hear this case on a multi-party basis (Section 2.2.1(1)), the Tribunal should allow the claim.

68. However, even if this Tribunal finds that the multi-party aspect of this arbitration is an issue of consent, the consent given both in the ICSID Convention and in the BITs was wide enough to cover multi-party claims (Section 2.2.1(2)).

2.2.1. The multi-party aspect of this arbitration is not an issue of consent, but of procedural modalities

69. The basis for the ICSID Tribunal’s jurisdiction is Article 25(1) of the ICSID Convention, which sets out three jurisdictional requirements: the nature of the dispute, particular parties and the parties’ specific consent. First two requirements are not contentious between the parties and they were met. The only RESPONDENT’s contention is whether it agreed to multi-party arbitration. However, contrary to RESPONDENT’s submission, for the following reasons, this is not a jurisdictional issue, thus not an issue of consent.

70. Firstly, all the jurisdictional requirements are set out in art. 25(1) of the ICSID Convention and were met by every Claimant in regard to each of the asserted claims. Consequently, raising several claims by several claimants cannot affect Tribunal’s jurisdiction (section 2.2.1(1)). Secondly and because of the above, the multi-party aspect of this arbitration is a question of procedural modalities and not of jurisdiction. It should be thus assessed based on Article 44 and not on Article 25 of the ICSID Convention (Section 2.2.1(2)).

51 Schreuer p. 82 ¶ 4
52 Response to the Request for Arbitration ¶ 6
The jurisdictional requirements are met by every single claim and raising several claims cannot affect Tribunal’s jurisdiction.

71. The jurisdictional requirements from art. 25(1) of the ICSID Convention are met by each of the claims, since each arises out of an investment, each party is a national of a Contracting State and a Contracting State and there was a specific consent expressed in BITs and in Request for Arbitration. As was correctly pointed out in Abaclat:

“As assuming that the Tribunal has jurisdiction over the claims of several individual Claimants, it is difficult to conceive why and how the Tribunal could lose such jurisdiction where the number of Claimants outgrows a certain threshold.”

72. Thus, the multi-party aspect of arbitration is not a question of jurisdiction, but a question whether within ICSID framework after necessary adaptation, multi-party proceedings can be conducted.

(2) The multi-party aspect of this arbitration is a question of procedural modalities and should be assessed based on Article 44 and not on Article 25 of the ICSID Convention

73. Jurisdiction is the power to decide a dispute of a particular nature between specific parties and it is conferred upon the Tribunal by the consent of the parties. States express their consent to arbitration normally in treaties.

74. In the case at issue the consent was given by RESPONDENT in art. 9(1) of the BITs. The scope of this consent is as follows: disputes ... concerning an obligation of [one Contracting Party] under this Agreement in relation to an investment of [a national of the other Contracting Party]. This is a typical dispute resolution clause, which provides for arbitration in case of a breach of obligations set out in the agreement. It regulates two dimension of jurisdiction – personal jurisdiction and subject-matter jurisdiction. The question, whether this arbitration can be conducted in the form of multi-party arbitration does not relate to any of those dimensions of jurisdiction. Conducting arbitration on a multi-party basis is a purely

53 Abaclat ¶ 490
54 Abaclat ¶ 491
55 Kolb p. 167;
56 Alemanni ¶ 260;
57 Tyrea-Novada BIT, Tyrea-Kitoa BIT, art. 9(1)
58 Schreuer, pp. 191, para 378; Thirlway p. 44
procedural issue, which relates to the conduct of proceedings rather than consent, what has
been repeatedly confirmed by arbitral Tribunals.\(^{59}\)

75. Moreover, until cases of *Abaclat*, *Alemani* and *Ambiente*, the lack of consent to multi-party
arbitration was never even contested by Respondents.\(^{60}\) Such an objection was initially raised
in *Klöckner v Cameroon* but was subsequently abandoned by the Respondent.\(^{61}\) Yet, in those
three cases where, there were dozens of claimants, the contention even though rejected by the
Tribunals was somehow understandable. It is not understandable in the present case.

76. Thus, the multi-party aspect of this arbitration does not fall within any dimension of
jurisdictional sphere. Moreover, the doctrine and jurisprudence of international law is of a
common view that the consent to multi-party arbitration is not required. It is an issue of
procedural modalities and adaptation of the default ICSID procedure.

77. Pursuant to Article 44 of the ICSID Convention if any question of procedure arises which is
not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the
Tribunal shall decide the question. This provision is an authorisation for the Tribunal to fill
any gaps regarding procedural issues by the use of its inherent powers.\(^{62}\)

78. Neither the ICSID Convention nor the Arbitration Rules or BITs regulate multi-party
arbitration. This silence is not conclusive and it cannot be understood as a prohibition of
multi-party arbitration, but it constitutes a gap which should be filled by the Tribunal. This
conclusion was reached by in the *Abaclat*, where the Tribunal concluded that *it would be
contrary to the purpose of the BIT and to the spirit of ICSID to interpret this silence as a
“qualified silence” categorically prohibiting collective proceedings, just because it was not
mentioned in the ICSID Convention.*\(^{63}\)

79. Thus, this Tribunal should consider whether it can conduct these proceedings on a multi-party
basis and how the procedure should be adapted not as a part of its decision on jurisdiction
pursuant to art. 25(1) of the ICSID Convention but as a part of considerations of procedural
modalities pursuant to art. 44 of the ICSID Convention. As will be shown in Section 2.2.2
there are no procedural obstacles to hear those claims in a single arbitration.

\[2.2.2. \text{ There are no procedural obstacles to hear the case on a multi-party basis}\]

\(^{60}\) *Ambiente* para 136, Strong p. 149–154
\(^{61}\) *Ambiente* ¶ 136; Schreuer p. 163
\(^{62}\) Schreuer p. 674; Brown
\(^{63}\) *Abaclat*, ¶ 519
80. There are no procedural obstacles to hear the case on a multi-party basis, in particular there are sufficient legal and factual grounds for this Tribunal to hear these claims in a single arbitration. There are two considerations which may lead to decision that claims should be heard together. Firstly, the claims at issue are sufficiently connected with each other (Section 2.2.2(1)). Secondly, hearing them in a single arbitration would promote efficient dispute resolution (Section 2.2.2(2)).

(1) The claims are sufficiently connected to hear them in a single arbitration.

81. In order for the disputes to be heard in the single arbitration, there need to be a sufficient legal link. The link is sufficient when the following requirements are met. There has to be identical nature of illegality (Section 2.2.2(1)(a)), the same legal basis of the claims (Section 2.2.2(1)(b)) and all the claimants must seek the same kind of relief (Section 2.2.2(1)(c)). Especially no contractual link between the claimants is needed.

(a) There is an identical nature of illegality.

82. The illegal act, which caused the damage suffered by all claimants, was blocking of the websites. This was a single act causing the same kind of damage for all claimants. The nature of illegality was, thus, the same.

(b) The legal basis of all the claims is the same.

83. The legal basis of the claims are Articles 3(1) and 6 of the BITs, which has the same wording for both BITs. The respondent’s contention that claimants base their case on two distinct bilateral investment treaties: the Tyrea-Novanda BIT and the Tyrea-Kitoa BIT and thus they cannot be heard together is ill-founded. It is commonly recognised in the doctrine and judicature that claims based on different BITs can be heard together. This is what happened in OKO Pankki Oyj and others v. Estonia, when Tribunal heard together claims under two BITs raised by one German and two Finnish banks, or in Suez et al. v. Argentina, when claims based on three different BITs were heard together: Argentina-France, Argentina-Spain, Argentina-UK. The fact that this is not an obstacle was so obvious, that it was not even a contentious point.

(c) All the claimants seek the same kind of relief.

64 *Noble Energy* ¶¶ 192, 193
65 Funnekotter
66 Ambiente ¶ 155
67 OKO; Suez
84. The relief sought by CLAIMANTS are stated in the Request for arbitration and in this memorandum below. They are the same for all the CLAIMANTS.

(2) Hearing all the claims in a single arbitration will promote fair and efficient dispute resolution and will be beneficial for judicial economy.

85. International courts and Tribunals have used their inherent powers and declined hearing cases because it would be ineffective on various occasions. It can be exemplified by Nuclear Test case.68 In this case ICJ did not exercise jurisdiction because France already promised to cease nuclear tests and therefore decision would be pointless and ineffective and not contribute to court’s ‘dispute-settlement mission’.69 Courts and tribunals’ considerations may be supported by judicial economy considerations, promoting efficient management of disputes and strengthening legitimacy of the court, all of which aim to increase the general effectiveness of international adjudication.70

86. Hearing three claims in a single arbitration will be more efficient in every respect. The overall costs of the proceedings borne by both CLAIMANTS and RESPONDENT will be lower. Moreover, less administrative actions of the ICSID itself will be needed. Thus, taking into account the overall cost-benefits account, hearing the claims in a single arbitration will promote fair and efficient dispute resolution and will be beneficial for judicial economy.

2.2.3. Even if this Tribunal finds that consent to the multi-party arbitration is required, the consent given by the parties is wide enough to cover multi-party claims.

87. The multi-party aspect of these proceedings is not an issue of consent. However, even if this Tribunal finds that it is, the consent given by RESPONDENT in the ICSID Convention in general (Section 2.2.3(1)), and in BITs in this particular case (Section 2.2.3(2)) is wide enough to cover multi-party arbitration.

(1) The general consent given by RESPONDENT in the ICSID Convention is wide enough to cover multi-party claims.

88. Article 25(1) of the ICSID Convention reads: “a national of another Contracting State”. However, even though a singular form is used, the interpretation of the ICSID Convention in accordance with the VCLT points to the conclusion, that this expression does not imply singularity of the parties.

69 Shany (Questions) p. 157
70 Shany (Assessing) p. 88-89
89. By virtue of Article 31(1) of the VCLT a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose. Interpretation in accordance with this directive leads to the conclusion that ICSID Convention covers multi-party claims.

90. It is common that terms in singular and plural forms in legislation are used interchangeably. The evidence of that is the mere fact that while in Article 25(1) of the ICSID Convention singular form is used, in the title of the convention the drafters used plural form. In the text of the Convention singular form is used 12 times, while plural form 9 times (2 times in the preamble and 7 times in the text). There are no reasonable grounds for implying that next to the word “national” in Article 25(1) of the ICSID Convention, there are additional words ‘but only one’.71

91. Moreover, it is widely accepted in doctrine72 and judicature73 and practice74 of international investment law that that the use of a singular form in art. 25(1) of the ICSID Convention indeed covers multiple parties. It is important to stress that more than 40% of ICSID arbitrations involved multiple claimants.75

92. By virtue of art. 32 VCLT preparatory work of the treaty and the circumstances of its conclusion may be used as supplementary means of interpretation in order to confirm the meaning resulting from the application of art. 31 of the VCLT.

93. The travaux préparatoires of the ICSID Convention shows that the drafters thought of multiparty claims. When the Convention was negotiated, the British expert acknowledged that there may be more than just two parties to a dispute and that he assumed that this was implicit in the draft.76

94. Thus, the general consent for ICSID framework given by the parties in the ICSID Convention covers multi-party arbitration.

(2) The specific consent given by RESPONDENT in BITs is wide enough to cover multi-party claims

71 Alemani ¶ 271
72 Schreuer p. 163
73 Alemani ¶ 259
74 ICSID Working Paper p. 833
75 Ibid.
76 History of the ICSID Convention, Vol. II-1, 400, 413.
95. Article 9(1) of BITs is an expression of RESPONDENT’s consent to submit specific kind of disputes to arbitration. It speaks of a “national of the other Contracting Party”. This consent, however, is wide enough to cover multi-party claims.

96. Here also directives of interpretation in accordance with VCLT should be applied. Interpretation in accordance with art. 31(1) of the VCLT, that is with the ordinary meaning of the terms here also indicates that the use of a singular form of the word “national” in art. 9(1) of BITs is not conclusive.

97. In the text of BITs, the term “national” is used interchangeably with “nationals”. In art. 1(b) of BITs, when the notion is defined, the word in plural form is used, such like in articles 3, 4, 6, 7, while in articles 8 and 9 singular form is used. The use of term “national” and “nationals” is used without any specific purpose. In other words, those terms should be treated as interchangeable and no significance should be ascribed to the singular form.

98. Since the general consent to the ICSID framework given by the states in the ICSID Convention covers multi-party arbitration as was showed in ¶ 2.2.3.1 lub A,\textsuperscript{77} it should be rather excluded by the parties in BITs if they indeed did not consent to multi-party arbitration.

99. Considering above, even if this Tribunal finds that the multi-party aspect of this arbitration is an issue of consent, the consent was given both in the ICSID Convention and in the BITs.

3. **RESPONDENT BREACHED THE BITS**

100. On three consecutive days, starting from 28 February 2018 RESPONDENT issued three Ordinances by which it effectively blocked CLAIMANTS’ platforms in Tyrea. This was possible as on 11 February 2018 the President of Tyrea without any prior notice or reason by the means of the Presidential Decree shortened the deadline for the implementation of the required new algorithm by 25%. The Ordinances resulted in a shutdown of CLAIMANTS’ business operations in RESPONDENT’s territory. The issuance of the Ordinances by RESPONDENT was in breach of the obligations expressed in the BITs. Firstly, RESPONDENT breached Article 6 of BITs, as it deprived CLAIMANTS of their investments (Section 3.1). Secondly, these actions also amounted to breach of Article 3.1 of the BITs (Section 3.2).

3.1. **RESPONDENT breached Article 6 of the BITs**

101. Pursuant to Article 6 of the BITs:

\textsuperscript{77} Przypis do tego gdzie wcześniej to udowadniam
"Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals of the other Contracting Party of their investments unless the following conditions are complied with:

(a) the measures are taken in the public interest and under due process of law;

(b) the measures are not discriminatory or contrary to any undertaking which the former Contracting Party may have given;

(c) the measures are accompanied by provision for the payment of just compensation."

102. By means of this provision, Respondent agreed that it cannot deprive an investor of its investment unless all the requirements from Article 6 of the BITs are met. Otherwise, Respondent’s actions would be nothing but unlawful.

103. In the current case, Respondent unlawfully deprived Claimants of their investments. Firstly, due to the issuance of the Ordinances Claimants’ were deprived of their investments (Section 3.1.1). Secondly, Respondent’s actions were not taken in public interest and under due process of law (Section 3.1.2). Thirdly, they were discriminatory (Section 3.1.3). Fourthly, Respondent did not pay Claimants’ any compensations (Section 3.1.4). Finally, the measures taken by Respondent towards Claimants cannot be recognized as exercise of the right to regulate (Section 3.1.5).

3.1.1. Respondent indirectly deprived Claimants’ of their investments

104. Article 6 of the BITs proscribes a state from directly or indirectly depriving an investment. In the current case, Respondent indirectly deprived Claimants’ of their investments.

105. An indirect deprivation occurs when State’s measures have the same effect as a seizure of an investment, but the legal title to the investment remains untouched. The effects equal to a seizure take place when the affected property is impaired to such extent that it must be seen as „taken“79. This takes place when:

− an investment is substantially deprived of its value, 80 or

− an investment is deprived of its reasonably expected economic benefits, 81 or

− the enjoyment of the property has been effectively neutralized. 82

78 Dolzer & Schreuer, p.102
79 Gami ¶ 126
80 Total ¶ 196
81 CME (Partial Award), ¶ 606
106. In addition, the measure, which is the cause of the above, must be attributable to the state. In this context the conduct of any State organ shall be considered „an act of the State, whether the organ exercise legislative, executive, judicial or any other functions, whether position it holds in the organization of the State, and whether its character as an organ of the central Government or of territorial unit of the State.”

107. The measures should also be permanent. A measure is considered permanent if its effects are irreversible.

108. In the current case, RESPONDENT indirectly deprived CLAIMANTS of their investment.

109. Firstly, RESPONDENT did not take the legal title to CLAIMANTS’ investments from CLAIMANTS. The platforms created by CLAIMANTS’ as well as the offices, equipment and other assets were not physically seized by RESPONDENT. Nevertheless, the result of RESPONDENT’s actions was tantamount to seizure. Due to the Ordinances, CLAIMANTS’ could not continue their operations in Tyrea, as RESPONDENT blocked the CLAIMANTS’ websites. By doing so, RESPONDENT shattered the sole source of the CLAIMANTS’ investments’ profits. This resulted in a plunge in the value of the CLAIMANTS’ investments to zero. As a consequence, CLAIMANTS cannot enjoy their investments anymore.

110. Secondly, there can be no doubt that the issuance of the Ordinances is attributable to RESPONDENT. The Ordinances were issued by the organ of RESPONDENT - the Tyrean Communications Authority (TCA). TCA should be considered as an executive public organ and according to the definition cited above any conduct made by such an organ can be attributed to the State itself. Moreover, RESPONDENT itself emphasized, that the decision to block CLAIMANTS’ websites was made by qualified public officials.

111. Thirdly, the Ordinances’ effect is permanent. First of all, none of the Ordinances did contain any information about duration of the blocking. There is no deadline set for the lifting of the Ordinances. In this respect it is irrelevant that the Law on Media and Information provides

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82 CMS, ¶ 62/ Metalclad ¶ 103
83 Draft articles on Responsibility, Article 4
84Dolzer & Schreuer, p. 124/ Tecmed ¶ 116/ LG&E ¶ 193/ Suez, ¶ 129
85 SoUF, ¶ 21, Claimants’ Exhibit 4
86 SoUF, ¶ 21/ Claimants’ Exhibit 4, 5
87 SoUF, ¶ 7-9, Claimants’ Exhibit 7
88 Claimants’ Exhibit 7
89 See above, Claimants’ Exhibit 5, PO2, ¶ 14
90 Ordinances
91 Response to Request For Arbitration, ¶ 9
Authorities with a possibility to block the websites temporarily.\textsuperscript{92} The same law allows for a permanent blockage of the website. And as the Ordinances have already been in force for over a year and a half,\textsuperscript{93} and there is no basis to assume that they will be lifted any time soon, they should be considered as permanent. Moreover, the effects of the Ordinance are irreversible. The market of social media platforms is very dynamic. Even few months of the absence on the market together with lack of introducing new features based on users constantly changing preferences can result in substantial decrease in popularity and irreversible loss of users. Trying to resume the enjoyment of the property, even after RESPONDENT would unblock the access to CLAIMANTS’ platforms, seems highly impossible. Because of that effect of the measures taken by RESPONDENT should be considered as permanent.

112. In light of the above, it is clear that RESPONDENT indirectly deprived CLAIMANTS’ of their investments. All CLAIMANTS’ benefits from the investments were taken away from them due to the issuance of the Ordinances. Moreover, the issuance of the Ordinances is attributable to RESPONDENT and their effects are permanent. As a result, what has to be considered next is whether the actions of RESPONDENT were in line with the requirements of the BITs.

3.1.2. RESPONDENT’s actions were not taken in public interest and with observance of due process

113. Pursuant to Article 6 (a) of the BITs, for the deprivation to be lawful the measures depriving the investors of their investment have to be “taken in the public interest and under due process of law”. What is important, even if one of these requirements is not met, the deprivation is unlawful.

114. With regard to the “public interest” requirement, the burden to prove that the measure\textsuperscript{94} was taken in public interest is upon the state implementing the measure. What is crucial, a mere, general statements of a state are that there is a public interest that requires protection is not enough, as such far-reaching actions have to be substantiated with convincing facts or legal reasoning.\textsuperscript{95} Moreover, the actions taken by the state have to be proportionate to the aim of the measure.\textsuperscript{96}

\textsuperscript{92} Claimants’ Exibit 2
\textsuperscript{93} Claimants’ Exibit 4
\textsuperscript{94} ADC ¶ 430
\textsuperscript{95} See above
\textsuperscript{96} Azurix (Liability), ¶ 311/LG&E ¶195
115. In respect of due process of law, this requirement does not refer only to compliance with 
domestic law, but also with the minimum standards under customary international law.97 The 
minimum standard under international law requires that the states provide reasonable 
advance notice, a fair hearing and grant an affected investor a reasonable chance within a 
reasonable time to claim its legitimate rights.98

116. In the current case, neither of the above requirements was met.

117. Firstly, nowhere in the Ordinances blocking CLAIMANTS’ websites any public interest was 
articulated or mentioned.99 Also, when the President of Tyrea decreed to shorten the time 
period for the implementation of the new algorithm, no explanation for this change was 
provided to CLAIMANTS.100 It is insufficient that the Presidential Decree refers to a desire to 
“eliminate threat to the public order and national peace and security”.101 RESPONDENT never 
provided any proof that by shortening the time for CLAIMANTS’ to prepare the appropriate 
algorithms it would be able to achieve the aimed “national peace and security”. Quite to the 
contrary, RESPONDENT in order to prove that there was a need to block the webpages of 
CLAIMANTS relies on materials published on CLAIMANTS’ websites in the end of November 
2016 - more than a year prior to the introduction of the law requiring the introduction of the 
new algorithms and the issuance of the Ordinances.102 If the threat to “national peace and 
security” was imminent and amplified by statements published by the users of CLAIMANTS’ 
websites, RESPONDENT could surely provide publications from the time of the introduction of 
its Presidential Decree and Ordinances, that is January or February 2018. Since RESPONDENT 
did not provide any such publications, it must be assumed that none such exist. This proves 
that there was no imminent threat to the public interest that would require the blockage of 
CLAIMANTS’ operations in Tyrea.

118. What is more, the above also confirms that, in any case, RESPONDENT’s actions could not be 
considered proportionate. If since 2016 CLAIMANTS’ webpages were not used 
inappropriately, there was no need to block them. This means that even if there was a public 
interest at stake, the blockage was not proportionate to this aim, as CLAIMANTS’ webpages 
did not have any connection to the threats to national peace and security.

97 Dolzer & Schreuer, p. 100
98 ADC ¶ 435
99 Claimants’ Exhibit 4
100 Claimants’ Exhibit 3
101 See above
102 Respondent’s Exhibit 3
119. Secondly, when introducing the Ordinances and the Presidential Decrees, RESPONDENT did not give CLAIMANTS any advance notice.\(^{103}\) Also, CLAIMANTS were not provided with the possibility to present their position and be heard before RESPONDENT introduced its laws.\(^{104}\) This resulted in the breach of due process of law.

120. As a consequence, RESPONDENT unlawfully deprived CLAIMANTS of their investments. Not only the measures were not introduced in public interest, but also, RESPONDENT did not adhere to the requirements of due process.

3.1.3. **RESPONDENT’s actions were discriminatory**

121. Article 6 (b) of the BITs requires the actions of the state not to be discriminatory. Otherwise, even if there is a public interest and the due process of law is observed, still the deprivation is unlawful. Discrimination takes place when the state measures affect only chosen entities, while the rest remains untouched.\(^{105}\) The most vivid example of discrimination is discrimination based on nationality.\(^{106}\)

122. In the current case, RESPONDENT blocked only CLAIMANTS’ webpages.\(^{107}\) With regard to the webpages of Tyrean entities (Thruthseeker and Wink) RESPONDENT decided only to commence proceedings in order to fine them for incompliance with the Tyrean laws.\(^{108}\) What must be noted, these two entities in 2016 had similar content to the content published by CLAIMANTS’ users.\(^{109}\) This is a visible example of discrimination of foreign entities (CLAIMANTS), which is not acceptable under the BITs.

123. As a consequence, RESPONDENT breached the BITs, as its actions were discriminatory.

3.1.4. **RESPONDENT did not pay due compensation to CLAIMANTS**

124. The last of the requirements under Article 6 of the BITs for the deprivation to be lawful, the measure introduced by the state is accompanied by provisions for payment of proper compensation for the deprivation of the investment. Thus, if the measures do not include

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\(^{103}\) SoUF, ¶ 20-21  
\(^{104}\) See above  
\(^{105}\) ADC ¶ 442  
\(^{106}\) Dolzer & Schreuer, p. 195  
\(^{107}\) SoUF, ¶ 22  
\(^{108}\) PO3, ¶ 11  
\(^{109}\) Respondent’s Exhibit 3
such provisions for the payment of compensation or the required compensation is not paid, the deprivation is unlawful.\textsuperscript{110}

125. In the current case \textsc{Respondent} did not pay \textsc{Claimants} any compensation for its actions.\textsuperscript{111} Moreover, the measures themselves (the Presidential Decree and the Ordinances) did not include any provisions ensuring the payment of just compensation to \textsc{Claimants’}.\textsuperscript{112} This alone also proves that \textsc{Respondent} unlawfully deprived \textsc{Claimants} of their investments.

126. As a consequence, \textsc{Respondent} breached the BITs and should pay due compensation to \textsc{Claimants} for the unlawful deprivation.

3.1.5. \textsc{Respondent}’s measures towards \textsc{Claimants} cannot be recognized as exercise of regulatory powers

127. \textsc{Respondent} cannot rely on the regulatory powers (police powers) doctrine to excuse its actions.

128. First of all a state cannot rely on the police powers doctrine to discharge its liability under an international agreements. This is because the state’s right to regulate has its limits.\textsuperscript{113} As put by the Tribunal in \textsc{ADC v. Hungary},

„when a State enters into a bilateral investment treaty like the one in this case, it becomes bound by it and the investment protection obligations it undertook therein must be honoured rather than be ignored by a later argument of the State’s right to regulate.”\textsuperscript{114}

129. Secondly, even if it was possible for a state to discharge itself of liability by relying on the police powers, the following requirements have to be met: (1) the measure has to be introduced for a public interest;\textsuperscript{115} (2) under due process of law;\textsuperscript{116} (3) cannot be discriminatory;\textsuperscript{117} (4) must be proportionate.\textsuperscript{118}

130. In the current case, \textsc{Respondent} cannot rely on the police powers doctrine. This is because it cannot use this doctrine to discharge its previously undertaken obligations. Moreover, even if it was possible for \textsc{Respondent} to invoke the police powers doctrine, its actions do not meet

\begin{flushleft}
\textsuperscript{110} Mondev, ¶ 72/ Rusoro ¶ 407
\textsuperscript{111} SoUF, ¶ 21
\textsuperscript{112} Claimants’ Exibit 3 and 4
\textsuperscript{113} ADC ¶ 423
\textsuperscript{114} See above
\textsuperscript{115} Methanex, Part IV, Ch D, p. 4, ¶ 7
\textsuperscript{116} See above
\textsuperscript{117} Chemtura ¶ 266
\textsuperscript{118} LG&E ¶ 189, 195
\end{flushleft}
the requirements for the doctrines application. As presented above, RESPONDENT did not introduce the measures for a public interest, nor under due process of law. The laws were discriminatory and not proportionate.

131. As a consequence, RESPONDENT cannot effectively rely on the police powers doctrine to excuse its actions. Therefore, the existence of this doctrine does not change the conclusion that RESPONDENT unlawfully deprived CLAIMANTS of their investment. As a consequence, the relief sought in these proceedings is justified.

3.2. RESPONDENT breached Article 3(1) of the BITs

132. Irrespective of the above, RESPONDENT’s actions also breached the fair and equitable treatment standard (FET standard), as well as the obligation of the state not to act in a discriminatory manner.

133. Pursuant to Article 3(1) of the BITs,

“Each Contracting Party shall ensure fair and equitable treatment to the investments of nationals of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those nationals.”

134. The FET standard in general requires that the state acts in line with the most basic principles of law. In this respect, it is considered that the FET standard encompasses an obligation to respect legitimate expectations of an investor, which also includes the expectation that the legal framework of the state will be stable and predictable, as well as the general obligations to act in good faith. A specific reference to the obligation not to discriminate in the FET standard emphasized that freedom from discriminatory practices is an additional element of this standard.

135. In the current case, RESPONDENT breached Article 3 of the BITs by not respecting the legitimate expectations of CLAIMANTS (Section 3.2.1.). Moreover, the measures were

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119 See above ¶ 94
120 See above ¶ 96
121 See above ¶ 98-100
122 See above ¶ 95
123 BITs, Article 3
124 Tecmed ¶ 154/ Enron ¶ 260/ CMS ¶ 274-277/ Sempra, ¶ 303/ LG&E ¶ 124
126 UNCTAD FET, p. 31
introduced by RESPONDENT without observance of due process of law (Section 3.2.2), and they were discriminatory (Section 3.2.3). Each of these breaches separately would be sufficient to establish the breach of the BITs, let alone - all of them. As a consequence, this Tribunal should find that RESPONDENT breached the BITs.

3.2.1. RESPONDENT breached CLAIMANTS’ legitimate expectations

136. Legitimate expectations are the basic expectations that foreign investors may have towards a state. This includes the expectation for the state to act consistently, in a manner free from ambiguity and totally transparently towards the investors.\(^\text{127}\) In other words, the state must act in a way that creates a predictable legal framework for the investment.\(^\text{128}\) As put by the Tribunal in Saluka v. Czech Republic:

\begin{quote}
"the "fair and equitable treatment" standard should therefore be understood to be treatment which, if not proactively stimulating the inflow of foreign investment capital, does at least not deter foreign capital by providing disincentives to foreign investors."
\end{quote} \(^\text{129}\)

137. Moreover, it may be legitimately expected that a state that acts consistently and reasonably will comply with its international obligations (which form a part of general legal system)\(^\text{130}\), especially such basic once as an obligation to respect human rights, including freedom of speech and right to privacy.

138. In the current case, CLAIMANTS decided to invest in Tyrea only after liberalization of the Law of Media took place.\(^\text{131}\) Before that, they did not consider Tyrea as a potential expansion market, because they were aware of strict control of the media and the press.\(^\text{132}\) Hence, the new Law of Media was a crucial component of their decision.\(^\text{133}\) It is uncontested that RESPONDENT acted in an encouraging manner trying to attract foreign companies and assuring of favourable attitude towards them.\(^\text{134}\) Moreover, prior to January 2018 there was no indication that RESPONDENT would be obligating entities such as CLAIMANTS to introduce new algorithms.\(^\text{135}\) All the more, there was no indication that RESPONDENT (by means of the Presidential Decree) would shorten, without any prior notice, the deadline for the introduction

\(^{127}\) Tecmed \(\ ¶ 154\)

\(^{128}\) Dolzer, p. 21/PSEG, \(\ ¶ 250,253-254/\) Occidental v. Ecuador, \(\ ¶ 183/\) Enron \(\ ¶ 260/\) CMS, \(\ ¶ 274-277\)

\(^{129}\) Saluka, \(\ ¶ 301\)

\(^{130}\) VCLT, Article 26/ Dolzer p. 145

\(^{131}\) SoUF, \(\ ¶\ ¶ 3, 6\)

\(^{132}\) See above

\(^{133}\) See above

\(^{134}\) SoUF, \(\ ¶ 3-5\)

\(^{135}\) SoUF, \(\ ¶\ ¶ 10,11\)
of the new algorithms by 25%, making it impossible for CLAIMANTS to prepare the algorithms in time. Such RESPONDENT’s actions breached the expectation of RESPONDENT’s legal framework to be predictable.

139. Moreover, on 28 January 2018, RESPONDENT explicitly admitted to one of CLAIMANTS (SpeakUp) that it is crucial to allow sufficient time to implement the algorithms. In spite of this specific declaration, RESPONDENT, only days after this, introduced the Presidential Decree without any consultations with the entities affected by thus Decree.

140. In the end, CLAIMANTS had no possibility to comply with this Decree and implement in time a fully tested algorithm. Yet, RESPONDENT instantly after the deadline passed, decided to apply to CLAIMANTS’ investment the most severe penalty and shut down CLAIMANTS’ business operations. This breached the legitimate expectations of CLAIMANTS.

141. What has to be emphasized is that the new law introduced by RESPONDENT in January 2018 can be considered as violating the basic human rights such as freedom of speech and right to privacy. This is because the new law was designed to ensure the control of RESPONDENT over the contents published in the Internet and private correspondence. Introduction of such censorship violates the basic human rights. This was pointed out by the public after the new law was published. RESPONDENT’s measure was unexpected for CLAIMANTS, especially taking into account that RESPONDENT is a party to international instruments on human rights, as well as United Nations. Moreover CLAIMANTS (in particular SpeakUp as a member of Free Journalism League) could not accept the controversial requirement to provide RESPONDENT’s authorities access to Tyrean users’ Personal ID card details and correspondence between users without any objections. CLAIMANTS wanted to comply with the law of Tyrea, but given the controversies, they wanted to renegotiate the new provisions in order to reach a compromise that would ensure the privacy of the CLAIMANTS’ users. Yet, RESPONDENT did not allow such a possibility. What RESPONDENT did was give CLAIMANTS an ultimatum to either comply with its new controversial law, or lose the investments they made. And then, even though CLAIMANTS introduced the untested

136 SoUF, ¶ 16 and 18
137 SoUF, ¶ 18, Claimants’ Exhibit 6
138 SoUF, ¶ 19, Claimants’ Exhibit 3
139 SoUF, ¶ 16 and 19
140 SoUF, ¶ 21, Claimants’ Exibits 4 and 5
141 PO3, ¶ 2
142 PO2 ¶ 10, PO3 ¶ 10
143 SoUF, ¶ 17
144 SoUF, ¶ 17, CLAIMANTS’ Exhibit 6
algorithms in time, RESPONDENT still considered it insufficient and destroyed the CLAIMANTS’ investments. All this resulted in yet another violation of the FET standard.

142. As a consequence, the actions of RESPONDENT breached the FET standard.

3.2.2. RESPONDENT’s actions breached the due process of law principle

143. The FET standard encompasses the obligation of a state to ensure that in its actions it observes the due process requirements. That lack of a fair procedure or serious procedural shortcomings, are considered a breach of due process. As presented above, this principle obliges the state to provide reasonable advance notice, a fair hearing and grant an affected investor a reasonable chance within a reasonable time to claim its legitimate rights.

144. In the present case, RESPONDENT breached these obligations. As already presented, RESPONDENT did not provide CLAIMANTS with an opportunity to present their views on the introduced Decree, let alone - express the obvious - that the new deadline is not realistic. This lack of the opportunity to be heard breached the due process principle. Moreover, neither the Presidential Decree nor the Ordinances included any provisions for a court review. As a consequence, RESPONDENT’s actions breached the FET standard.

3.2.3. RESPONDENT’s actions were discriminatory

145. Article 3(1) of the BITs explicitly prohibits impairing “the operation, management, maintenance, use, enjoyment or disposal” of an investment “by unreasonable or discriminatory measures”. This means, that the state cannot discriminate the investments of the investors. As presented above, discrimination takes place when the state measures affect only chosen entities and the choice is made based due to such features as the nationality of the investor.

146. In the current case, this is exactly what took place. RESPONDENT blocked all operations of CLAIMANTS, while only fining its own entities. There was no other basis than nationality that would explain Respondent’s actions, as the algorithms introduced by both Tyrean companies (Wink and Truthseeker) were equally faulty as those that CLAIMANTS’ managed

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145 Waste Management ¶ 98/Loewen, ¶ 132
146 Dolzer & Schreuer, p. 154/ Metalclad ¶ 91-93, 101
147 See above, ¶ 93
148 See above, ¶ 95
149 SoUF, ¶ 16 and 19
150 BITs, Article 3
151 See above, ¶ 99
152 SoUF, ¶ 21-22/ PO3, ¶ 11
to prepare by the unrealistically short deadline. As a consequence, the actions of RESPONDENT were discriminatory, and, as a result, RESPONDENT breached Article 3(1) of the BITs.

147. Given the above breaches, it is clear that RESPONDENT breached both Article 6 and Article 3(1) of the BITs. RESPONDENT did not comply with the requirements of Article 6 when it deprived CLAIMANTS’ of their investments. RESPONDENT’s measures (Presidential Decree and the Ordinances) were not undertaken for a public purpose, nor were they done under due process of law. They were discriminatory, and there were no provisions for proper compensation included in these measures. These breaches cannot be excused by the police powers doctrine. Irrespective of that, RESPONDENT’s actions also breached Article 3(1) of the BITs, as RESPONDENT breached the legitimate expectations of CLAIMANTS. Moreover, lack of due process and the discriminatory nature of the Ordinances, also prove that RESPONDENT failed to comply with Article 3(1) of the BITs. As a consequence, the claims pursued by CLAIMANT’s in these proceedings are justified.

4. THE DCF METHOD IS THE PROPER METHOD TO CALCULATE THE DUE COMPENSATION

148. In order to compute the amount of the damage incurred by CLAIMANTS, the Tribunal should apply the DCF method. Firstly, the damage suffered by CLAIMANTS due to RESPONDENT’s actions should be fully compensated (4.1). Secondly, the DCF method is appropriate to compute the compensation due to CLAIMANTS in accordance with the applicable standard of full compensation (4.2). Finally, the DCF method was duly applied (4.3).

4.1. CLAIMANTS’ damage should be fully compensated

149. As presented above, RESPONDENT both unlawfully deprived CLAIMANTS’ of their investments and did not apply fair and equitable treatment to CLAIMANTS’ investments. RESPONDENT’s actions amounted to breach of the BITs. Therefore, in order to compensate CLAIMANTS for the damage caused by these breaches, the full compensation standard should be applied (4.1.1). Alternatively, should the Tribunal decide that the full compensation standard is inapplicable, the application of the genuine value standard included in Article 6(c) of the BIT also requires that CLAIMANTS be fully compensated for the damage caused by RESPONDENT (4.1.2).

4.1.1. Full compensation standard is applicable

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153 SoUF, § 22
150. BITs do not provide a standard for damages emerging from unlawful deprivation and breach of fair and equitable treatment. Therefore, the standard of full compensation should be applied, in accordance with the customary international law.

151. According to the provisions of Article 42 of the ICSID Convention Tribunal shall decide a dispute in accordance with rules of international law, which includes customary law. Customary international law provides guidance as to the compensation standards that should be applied in case of unlawful acts of state parties. It is established that in case of wrongful acts, the state in breach should fully repair the damage it caused. This means that the applicable standard is the standard of full compensation. As put in the Chorzow Factory case, under this standard, the compensation should ‘wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.’

152. The rule expressed above is reflected in ILC which are a component of international customary law, binding in the present dispute and following the definition of international law derived from Article 38 of the ICJ Statute.

153. Pursuant to Article 31.2 of Draft Articles on Responsibility is supplied by the Article 36.2 of Draft Articles on Responsibility which specifies that actual quantity of damages due „shall cover any financially assessable damage including loss of profits insofar as it is established”. Such an application of this standard was implemented, among others, in the case of Azurix v Argentina.

154. The general principle of international law codified in Draft Articles on Responsibility stating that the full compensation contains loss profits is widely established and followed in number of high profile cases.

155. Standards of compensation require a reference point to tribunals valuations, so that the Arbitrators can decide whether a condition laid down by an adjective is fulfilled in respect of the quota concerned. Economic value is widely accepted as such a reference point.

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154 Factory at Chorzow p. 47
155 Sasson ¶ 252
156 Azurix (Annulment) ¶¶ 317, 322
157 Karaha ¶ 122; Sapphire ¶ 186
158 Lieblich p. 59 - 80
159 Occidental (Award) ¶ 708
156. In the current case as presented above RESPONDENT unlawfully deprived CLAIMANTS’ investments as well as it did not apply for FET. As a consequence, the Tribunal should apply the full compensation standard in order to establish the quantum of damages due to CLAIMANTS.

4.1.2. **In any case, the application of the genuine value standard also requires full compensation of the damage.**

157. Alternatively, should the Tribunal decide that it would be more appropriate to follow the standard of compensation included in the BITs, CLAIMANTS would still be entitled to full compensation of the damage it incurred. This is because the standard of genuine investment value included in Article 6(c) of the BITs also requires that full compensation be granted.

158. Article 6 (c) of the BITs provides the terms of compensation for lawful depravation of an investment. Pursuant to this provision, the state is obliged to pay ‘just compensation’, which ‘shall represent the genuine value of the investments affected’. The use of the term ‘genuine value’ is an expression of the principle that ‘when a State takes foreign property, full compensation must be paid’. Therefore, under the genuine value standard, full compensation is due.

159. In light of the above, even under the standards included in the BITs, RESPONDENT should pay full compensation to CLAIMANTS for the breaches of the BITs.

160. To conclude, even in a case of an alleged lawful deprivation DCF method would still remain the method most in line with the standard of genuine value of the investment. The use of the DCF method for lawful deprivation has been confirmed in the case of *Starrett v Iran*.

**4.2. The DCF method is appropriate to compute the full compensation due**

161. In order to compute the quantum of damages due for the breach of the BITs, the Tribunal should consider what would have happened if RESPONDENT had not breached the BITs. Thus, the Tribunal should consider a ‘but-for’ scenario, in which it deducts the value of the investments that would have been if not for the breach of BITs from the value of the investments that remains after the breaches. The correct method of valuation in order to establish the value of the investments if the breach of the BITs had not taken place is the DCF method.

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160 CME (Final Award) ¶ 497
161 Rusoro ¶ VIII.1.7
162 Starrett (Award) ¶ 13 - 16
162. The DCF method is an income-based method of valuation that enables establishing the value of an investment had its operations been still ongoing. In general terms, the DCF method allows to calculate the value of an investment if it was still operating by subtracting the investments estimated costs from its estimated cash flows, and applying the appropriate discount rate. These estimations are calculated on the basis of the investment’s historical performance.

163. As in the DCF approach all calculations are based on the historical performance of the investment, it is not speculative. Moreover, in this approach, the risks that may change the value of an investment (such as country risk), are taken into account by means of the discount rate. As put by the Tribunal in *Tenaris v. Bolivia*, the result of application of this method is a ‘reasonable and reliable projection of future free cash flows’. Given this, it is not surprising that this method is recognized as means of establishing the genuine value of an investment.

164. At the same time, it must be noted, that a cost-based approach in order to establish the value of an investment is inappropriate. Firstly, such an approach rather than taking into account the actual value of an investment (the price a willing buyer would pay for the investment at the day before the breach), takes into account only costs that an investor historically incurred. It is inappropriate if at the time of the breach, the investment was an ongoing concern. Secondly, arbitral tribunals do not recognize such method as appropriate.

165. The shortcomings of this approach are visible in RESPONDENT’s Damages Report. In this Report, RESPONDENT’s Expert alleges that the damages awarded to CLAIMANTS’ should amount to the costs CLAIMANTS’ incurred in 2018. These costs amount to: USD 2,654,125 for FriendsLook, USD 1,482,040 for Whistler and USD 1,162,000 for SpeakUp. This is, with regard to each of CLAIMANTS, less than the revenues for 2017 from the least profitable branch of each of CLAIMANTS’ investments (revenues from personalized contents). Taking into account the two more profitable branches of the investments (promotional contents and advertising space) and even assuming no growth in the revenues, still RESPONDENT’S

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163 Kantor p. 131 - 208
164 Lieblich p. 59 - 80
165 Eiser ¶ 441
166 Tenaris ¶ 524.
167 Starrett (Interlocutory Award) ¶ IV (b); CME (Final Award) ¶ 161; CMS ¶ 416; Occidental (Award) p. 708; World Bank Guidelines ¶ IV.6.i.
168 Kuwait ¶ 1781
169 Sistem ¶ 173; Stati ¶ 1731; Crystallex ¶ 884
Expert’s calculations would assess that the value of CLAIMANTS investments in 2018 was almost 5 times lower than their profits from 2017 alone. This difference proves that the cost-based approach simply ignores the actual value of the assets. And while RESPONDENT’s Expert does not explain why she cherry-picks the costs and ignores those from previous years as well as the cost of establishment of the investment, this huge difference in the values presented in this Report uncover the greatest weakness of the cost-based method.

166. In light of the above, the DCF method is appropriate to calculate the damages due to CLAIMANTS. It is based on the historical performance of CLAIMANTS investments and, thus, it is reliable in order to establish the quantum of damages.

4.3. The DCF method was duly applied by CLAIMANTS’ Expert

167. CLAIMANTS Expert correctly applied the DCF method. Thus, the values presented in CLAIMANTS’ Damages Report are correct.

168. Firstly, CLAIMANTS’ investments have historical records of their growth. In order for the DCF method to be applicable it is sufficient that the investment was operating on the market for at least two or three years. 170 Moreover, even if there was no such data at all from the country where the investment was made, the DCF method could be applied based on data from a different, similar state.171

169. In the current case, CLAIMANTS entered the Tyrean market in 2015,172 thus 3 years prior to the breach of BITs. What is more, the data relied upon by CLAIMANTS’ Expert is from two full years of operations (2016 and 2017).173 Thus, this data is sufficient to valuate the investments based on the DCF method. Moreover, CLAIMANTS have been operating for several years in other countries (up to 100 countries).174 This means that even if the data from the Tyrean market was insufficient (which, however, is not the case), the data from other countries could be used to establish the value of CLAIMANTS’ investments both in Tyrea and the neighbouring countries of Tyrea (Larnacia and Alcadia). Therefore, there is sufficient data to apply the DCF method in the damages valuation.

170. What should be noted is the fact that the value of CLAIMANTS’ investment is calculated only based on the expected income of 1 year (2018), even though CLAIMANTS’ draw profits from

170 AAPLL ¶ 120
171 Vivendi ¶ 8.3.4.
172 Request for arbitration ¶ 4
173 Claimant’s exhibit 7
174 Request for arbitration ¶ 4
operating these investments not only in 2018 but also in the following years. The fact that the valuation takes into account only one year confirms the conservative and cautious approach of CLAIMANTS’ Expert’s valuations.

171. Secondly, the WACC applied by CLAIMANTS’ Expert (5%) as the discount rate is appropriate. It must be noted that WACC takes into account not only a country risk, but also other factors. Thus, WACC is only the result and is not equal to the country risk. And Tyrea’s country risk is not higher than the applied WACC. Countries similar to Tyrea (by population and economic situation) have a country risk rates as follows:

- Brazil (4.17%);
- Russia (3.47%);
- Thailand (2.22%);
- Mexico (1.67%)  

172. This means that a WACC of 5% could be reached by applying both the proper country risk rate (similar to those above) and all other factors.

173. Given that, the allegations of RESPONDENT’S Expert that CLAIMANTS’ Expert did not take into account the country risk while calculating the WACC are unfounded. What is worth noting, is that RESPONDENT’S Expert while making this allegation does not provide any numbers or calculations of her own, limiting herself to just stating that the WACC must be incorrect. This additionally proves that RESPONDENT’S Expert’s views are nothing more than an empty statement.

174. In light of the above, the DCF method is not only the most appropriate method of valuation of damages that is in line with the discussed standards. The specific calculations conducted for the purpose of this case also took all of the key circumstances of the current dispute.

**REQUEST FOR RELIEF**

175. In light of the foregoing reasons, CLAIMANTS respectfully request this Tribunal to:

1. Dismiss RESPONDENT’S application for provisional measures.

2. Declare that it has jurisdiction over the claim.

3. Declare that there are no procedural obstacles to hear the claim on a multi-party basis.

4. Declare that RESPONDENT breached Article 6 and Article 3(1) of the BITs.

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175 Country risk
5. Declare that the compensation should be assessed in accordance with the DCF method and in the amount specified by CLAIMANTS’ expert witness.

6. Award to CLAIMANTS from RESPONDENT the full compensation in the amounts no less than:
   i. 69,134,875 USD for FriendsLook
   ii. 26,760,460 USD for Whistler
   iii. 27,094,000 USD for SpeakUp Media

   with pre and post award interest.

7. Order RESPONDENT to pay all costs and fees related to these proceedings.