INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the Proceeding
ICSID Case No. ARB(AF)/20/78

between

Vemma Holding Inc.
(Claimant)

v.

The Federal Republic of Mekar
(Respondent)

Memorial for Respondent

23 September 2021

CONTENTS

LIST OF AUTHORITIES

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LIST OF ABBREVIATIONS

¶	Paragraph
Award	Supreme Arbitrazh Court of Sinnograd Ruling between Vemma Holdings Inc. and Mekar Airservices Ltd.
BMTT	Bonoori Ministry of Transport and Tourism
CBFI Submission	
CCM	Competition Commission of Mekar
CEPTA	Comprehensive Economic Partnership and Trade Agreement
CILS	Centre for Integrity in Legal Service
CPUR Submission	Amicus Submission by External Advisors to the Committee on Reform of Public Utilities
DCF	Discounted Cash Flow
EO9	Executive Order 9-2018
FET	Fair and Equitable Treatment
GDP	Gross Domestic Product
IAS	International Accounting Standards
ICSID	International Centre For Settlement of Investment Disputes
ICSID-AF	ICSID Arbitration (Additional Facility) Rules (Additional Facility Arbitration Rules), entered into force on 10 April 2006.
ICJ	International Court of Justice
i.e.	*Id est*
IICRA	Investment Information and Credit Rating Agency
IMF	International Monetary Fund
IVS	International Valuation Standards
MFN	Most Favored Nation
MV	Market Value
Notice	Notice of Intent to Submit a Claim to Arbitration
NYC	New York Convention
PIA	Phenac International Airport
SOE	State Owned Enterprise
UNCITRAL	UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration, entered into force on1 April 2014
WB	World Bank

SUMMARY OF FACTS

1. Vemma Holdings Inc. (Claimant) is an airline holding company incorporated in th Commonwealth of Bonooru. At the present time, the Bonoori State holds a majority shareholding in Vemma, at around 55% of its capital stock. Its functions vary from commercial aviation to paramilitary exercises.

2. On 5 January 2011, Vemma acquired an 85% stake in Caeli Airways, a State-Owned Enterprise (SOE) airline of the Federal Republic of Mekar (Respondent). The Bonoori company relied on overly optimistic projections, disregarding the volatility of the market and any possible financial downturn. Its offer included Caeli's membership in the Moon Alliance, which was conditioned to a limit in the level of cooperation between its members.

3. Initially, Vemma profited from a favorable market situation, as the low price of the MON, combined with record low fuel prices and a volcanic eruption, which attracted tourists, boosted its revenues during the first years following the privatization process. Vemma leveraged its position, acquiring several planes and taking over the lion's share of the Mekari aviation market, following an unwise business strategy. Moreover, Caeli developed special ties with another Vemma-owned airline – Royal Narnian – working closely with the company, sharing flights, IT platforms and other amenities.

4. Furthermore, Vemma started to receive subsidies from its home country through the "Horizon 2020" scheme. This plan was a part of the Caspian project, a Bonoori funded economic project for the region, which aims to redefine trade patterns and flow of people around the Great Narnian region, concentrating it around Bonooru. These subsidies reached the Mekari market through Vemma, which allowed the Bonoori subsidiary to cut its airfare prices in order to capture a larger market share

5. Following Caeli's astounding growth during the tourist market boom, the Competition Commission of Mekar (CCM) – the Mekari antitrust authority – opened an investigation against Caeli on the grounds that its close ties to Royal Narnian, combined with its incoming subsidies from the "Horizon 2020" scheme allowed Caeli to cut its airfare below its avoidable costs, in a strategy to push away competitors. The company was founded guilty of all charges, being fined, and imposed an airfare cap until its market share was reduced. The Bonoori company recognized the legitimacy of the caps and, at first, abided to its terms.

6. Subsequently, the CCM was requested by Caeli's competitors to start another investigation. They argued Caeli profited from beneficial contracts with Phenac International Airport (PIA) to turn it into a "fortress hub", further cutting its airfares to hurt its competitors. The investigation found Caeli guilty once again, as the company used commercial threats to conclude beneficial contracts with the airport, extracting supra-competitive profits from them.

7. Claimant's overly optimistic projections did not consider the possibility of an economic downturn, which followed the aforementioned boom. All the debts it incurred to expand its business activities during the boom hit it hard during the market bust, hurting its operations. The subsequent Mekari economic crisis further increased the pressure on its finances.

8. Following this economic downturn, the Mekari government offered subsidized credits to airlines, provided they comply with the following requisites: (i) companies that did not have access to proper credit elsewhere; (ii) to provide credit to said company would not skew the market in favor of said company; and (iii) the obligation is sufficiently secured. Caeli was denied said subsidies, as it had access to cheap credit in Bonooru, which it had previously used to refinance Caeli's liabilities at a below-market rate.

9. In the aftermath of its downfall, Vemma decided to sell its stake in Caeli. To extract as much value as possible from the company, it obtained an offer from its fellow Moon Alliance partner Hawthorne Group. However, this offer was not an arms-length negotiation and viewed only to force Mekar Airservices Ltd. to buy it above market value, since the shareholders agreement between Vemma and Mekar Airservices provided the right of first refusal. Pursuing its rights, Mekar Airservices Ltd. received an award from Sinnoh recognizing the offer as inadequate.

10. Subsequently, Mekar Airservices offered to buy Caeli from Claimant and, as the market had demonstrated no interest in the airline, acquired its entirety for USD 400 million.

ARGUMENTS

1. CLAIMANT HAS NO STANDING IN THIS PROCEEDING.

11. This Tribunal lacks jurisdiction *ratione personae* to rule over Claimant's submissions, because Claimant is a *de facto* organ of Bonooru; thus, not qualifying as an investor pursuant to Article 9.1 CEPTA. Consequently, Claimant's contentions constitute a dispute between the Commonwealth of Bonooru and the Federal Republic of Mekar, falling outside the scope of Articles 9.2 CEPTA and 2 ICSID-AF [1.1.]. Furthermore, as of March 2021, Claimant was undeniably a *de facto* organ of Bonooru [1.2.].

1.1. Claimant does not qualify as an investor pursuant to Article 9.1 CEPTA.

12. Claimant is an organ of Bonooru and is not an investor pursuant to Article 9.1 CEPTA. This is because, although Claimant is structured as a SOE, it is controlled by the Bonoori Ministry of Transport and Tourism (BMTT).[1] As such, Claimant serves as a vehicle to exercise governmental functions on behalf of Bonooru, guaranteeing Bonoori citizens their constitutional right of mobility,[2] and promoting Bonooru's diplomatic and military agenda.[3]

13. For these reasons, Bonooru held effective control over Claimant's operations in Mekar. [1.1.1.]. Consequently, Claimant could not initiate a valid arbitral proceeding pursuant to Article 9.16 CEPTA [1.1.2.].

1.1.1. Bonooru held effective control over Claimant's operations in Mekar.

14. In the case at hand, Claimant is not a mere SOE, but a *de facto* organ of Bonooru because it is controlled by the State through the Civil Aviation Authority, a branch of the Bonoori Ministry of Transport and Tourism.[4] Hence, Claimant does not qualify as an investor pursuant to Article 9.1. CEPTA.[5]

15. A SOE is an entity either owned or controlled by a State, which enables the State to take part in commercial ventures different from its public and administrative

[1] Annex IV.
[2] Facts, line 920; Annex III.
[3] Facts, line 1410.
[4] Facts, lines 905-910.
[5] CEPTA article 9(1).

functions,[6] *i.e.*, functionally independent from the State, thus not constituting a *de facto* organ.[7] According to the tribunals in *BUCG v. Yemen* and *CSOB v. Slovakia*, relying on the Broches test, whenever a SOE is indistinguishable from the State, by either acting as its agent or exercising governmental functions, it cannot be classified as a national of another State.[8]

16. Since Claimant is Bonooru's agent and discharges governmental authority, Claimant is not a mere private party, but a *de facto* organ of the State.[9] Consequently, it does not qualify as an investor for the purpose of an investor-State arbitration.[10]

17. Furthermore, as stated in *Servia v. Bosnia*, determining whether an enterprise is acting as the State itself does not require "total dependence" on the State, nor does it require the enterprise to be a SOE under internal law.[11] It is merely necessary to establish the occurrence of the exercise of effective control, or that the State instructed the operations in which the violations of International Law occurred.[12] An investor exercises effective control whenever it owns a considerable percentage of voting stock, even if it amounts to less than 50% and the remaining shares are held by several small investors.[13]

18. Additionally, as demonstrated in *White Industries v. India*, the ICJ "effective control" test is utilized to determine whether an act is attributable to a State, which requires that the State holds both a considerable control over the investor and a "specific control" of the act in question.[14] In this sense, and according to Article 8 ILC Articles, Claimant's conduct is an act of State, since it was carried out under the control and direction of Bonooru.[15]

19. Moreover, in *Devas v. India*, the tribunal ruled over the dispute concerning the cancellation of an agreement between Devas Multimedia Private Ltd., an Indian

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[6] Muchlinski, p. 3.
[7] Abadia, ¶8; ILC Articles, Article 8.
[8] BUCG v Yemen, ¶33; CSOB v. Slovakia, ¶20.
[9] ILC Draft Articles, Article 8; Crawford, p. 37.
[10] CSOB v. Slovakia ¶25.
[11] Servia v. Bosnia, ¶ 400.
[12] Servia v. Bosnia, ¶ 400.
[13] OECD Glossary, p. 31.
[14] White Industries v. India, ¶8.1.15; Jan de Nul v. Egypt, ¶173.
[15] ILC Articles, Article 8.

company, and Antrix Corporation Ltd., a commercial enterprise owned by the Indian government and controlled by its space agency.[16] The tribunal concluded that Antrix's decision to cancel the contract with the respondent was an action of the Indian State.[17] This is because, although Antrix was a SOE, it was not independent from respondent; rather, India gave specific instructions dictating how the company should operate.[18] In particular, it instructed the termination of the agreement between Antrix and Devas through the *force majeure* provision.[19]

20. Likewise, in the case at hand, Claimant is controlled by the Civil Aviation Authority, a branch of BMTT; as such, the State dictates Claimant's actions, enabling it to exercise governmental functions. For instance, Claimant upholds Article 70 of the Bonoori Constitutional Act, guaranteeing Bonoori citizens their mobility rights and prioritizing the Bonooru-Mekar high traffic routes regardless of their profitability for Claimant.[20] Through the "Horizon 2020" Scheme, Bonooru granted subsidies to Claimant with the intent to extend its diplomatic clout over its neighbours.[21] Such subsidies lowered Claimant's operating costs and heightened its advantage over privately-owned enterprises, which hindered competitors in the Mekari market.[22]

21. Moreover, the percentage of ownership and partaking in the capital stock of a company are not the sole indicatives of control, which can be also exercised through voting shares, as well as the participation in decision-making activities and in the management of the company.[23] In this regard, the 2016 evaluation of Mark Zuckerberg's shares in Facebook denotes that control can be exercised by minority holders, as Zuckerberg, upon proceeding with a reclassification plan, would maintain its controlling voting power even if he had sold two thirds of his shares.[24]

22. Similarly, Bonooru is Claimant's largest shareholder, since none of Vemma's other shareholders hold more than 7% of its stake.[25] However, even without the majority

[16] Devas v. India, ¶5.
[17] Devas v. India, ¶288.
[18] Devas v. India, ¶¶286-288.
[19] Devas v. India ¶¶5, 288, 281.
[20] Facts, lines 920-925; Annex VII.
[21] Facts, line 890.
[22] Facts, lines 1145-1155 and 1245.
[23] Schreuer, p. 317-318.
[24] Bebchuk, Kastiel, p. 1-2.
[25] Annex IV; PO3; PO4.

shareholder status,[26] Bonooru exercises its control over Claimant through the frequent and decisive presence of the State in Vemma's Board of Directors meetings.[27] This is because the Company's articles of association define as the minimum quorum for company related decisions the presence of 50% of voting shares, which commonly resulted in Bonooru composing the majority of the voting members.[28]

23. As stated by Ms. Misty Kasumi, former member of BMTT, companies in Bonooru are hardly fully independent from the government, and that the investment in the Bonooru-Mekar routes are seemingly more beneficial to Bonooru than to Claimant.[29] The Bonoori Prime Minister at the time of BA Holdings' privatisation also affirmed that the government would always maintain significant stake in Claimant.[30] Following this statement, Claimant continued to operate the routes to the distant areas of Bonooru's territory,[31] despite Vemma's financial losses during the 2014 oil price worldwide crash, and the Bonooru-Mekar traffic routes, during the low-demand periods of the fall-winter season.[32]

24. Moreover, Bonooru used part of the Caspian Project's funds to update both Mekar's port and PIA; however, in 2019, after Mekar's repurchase of Caeli, Bonooru withdrew all funding from the constructions, leaving them unfinished.[33]

25. Therefore, Claimant is an agent of Bonooru and discharges essentially governmental functions. In this sense, it cannot be classified as a national of a contracting State under CEPTA and this dispute falls outside the scope of the Treaty.

1.1.2. The present dispute constitutes a State-to-State arbitration.

26. Claimant is a *de facto* organ of Bonooru, and, as such, does not qualify as an investor and does not have an investment protected by CEPTA,[34] as treaty-based benefits offered to nationals are not extended to enterprises that act as an *alter ego* of the

[26] Facts, line 930.
[27] Annex IV.
[28] PO3.
[29] Annex VII.
[30] Facts, line 920.
[31] Facts, lines 920-925.
[32] Facts, lines 1110-1115 and 1120-1225; Annex VII.
[33] PO4.
[34] CEPTA, Article 9(2).

Contracting States.[35] Consequently, the dispute constitutes a State-to-State arbitration, falling outside this Tribunal's mandate.

27. Under Article 2 ICSID-AF, the Secretariat of the Centre is only authorized to administer proceedings that fall within the definition of a dispute between a State and a national of another State.[36] Given that Claimant, upon acting under the control of Bonooru, represents the State itself, it is not a national of another State.

28. In this sense, the tribunal in *BUCG v. Yemen* inferred that the ICSID rules are not extended to include State-to-State arbitrations, or SOEs that exercise governmental authority or act as the State itself as claimants.[37] This is because Article 25 ICSID establishes that the jurisdiction of the Centre extends to disputes that originate from investments between a Contracting State and a national of another Contracting State.[38] Article 2 ICSID-AF has a nearly identical wording to such provision,[39] with an intent to bar State-to-State arbitration in its dispute resolution Centre.[40]

29. Moreover, by agreeing to arbitrate disputes arising from CEPTA, Mekar did not give its consent to submit any claims from Bonooru to an arbitral proceeding. Rather, it specifically consented to resolving through arbitration a dispute that arises from an investment made in the territory of the Party by an investor of another Party, according to Article 9.16 CEPTA.[41]

30. Consent is the cornerstone of any international dispute resolution mechanism.[42] For instance, Article 36(1) ICJ Statue infers that the consent of a party is essential to the exercise of jurisdiction.[43] In *Monetary Gold*, the ICJ tribunal ruled it held no jurisdiction to adjudicate over the international responsibility due to the lack of consent given by Albania.[44] Likewise, in *East Timor*, the tribunal, according to Article 36(1) of the ICJ Statue, found that it could not exercise jurisdiction over the dispute concerning Indonesia's conduct, since the State had not consented to it.[45]

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[35] Badia. ¶8.
[36] ICSID-AF, Article 2.
[37] BUCG v. Yemen, ¶31.
[38] ICSID, Article 25.
[39] ICSID-AF, Article 2.
[40] Vienna Convention, Article 31(1).
[41] CEPTA, Article 9(16).
[42] Chaeva, ¶1.
[43] ICJ Statue, Article 36(1).
[44] Monetary Gold, ¶¶32, 34.
[45] East Timor, ¶35.

31. The same rule applies in the realm of ISDS. For instance, in *Metal-Tech v. Uzbekistan*, the tribunal dismissed all of claimant's claims on the grounds that, besides its investment not complying with the BIT in effect, Uzbekistan's consent did not cover that dispute.[46] In *MMEA and AHSI v. Senegal*, the tribunal emphasized that it cannot subject a State to international jurisdiction without its express and unequivocal consent, due to the well-stablished principle of respecting the State's sovereignty.[47] For this reason, the tribunal rejected claimants' claims on the grounds that, due to Senegal's lack of consent to international arbitration, the dispute fell outside its jurisdiction.[48]

32. In the case at hand, this dispute configures a State-to-State arbitration, to which Respondent did not consent to under Article 9.16 CEPTA. Thus, this Tribunal lacks jurisdiction to rule on the merits of the present case.

1.2. After March 2021, Claimant was undeniably a *de facto* organ of Bonooru.

33. Before 17 November 2020, Claimant was already a SOE that exercised governmental authority under the direct control of Bonooru, and as such could not be classified as an investor under Article 9.1 CEPTA.[49] However, *in arguendo*, after March 2021, Bonooru increased its stake in Claimant to 55%, replaced Claimant's board of directors with government employees and expanded its activities to englobe those of military and paramilitary nature, in addition to integrating lawyers from Bonooru's justice department in its legal team.[50]

34. In *Loewen v. USA*, brought under the ICSID-AF rules, claimant's parent enterprise, TLGI, went through a change of corporate structure and nationality after the arbitration had initiated.[51] Even though TLGI was at the time of the notice a Canadian enterprise, during the course of the proceedings, the company ceased to exist as TLGI.[52] It transferred both its assets and obligations to its previous American subsidiary, effectively changing its base to the United States.[53] In doing

[46] Metal-Tech v. Uzbekistan, ¶¶408-410.
[47] MMEA and AHSI v. Senegal, ¶130.
[48] MMEA and AHSI v. Senegal, ¶ 158.
[49] CEPTA Article 9(1); ILC Draft Articles, Article 8; Facts, line 1410.
[50] CEPTA Article 9(1).
[51] Loewen v. USA, ¶¶223,240; Acconci, p.1-2.
[52] Loewen v. USA, ¶¶9, 240.
[53] Loewen v. USA, ¶¶223,240, 242.

so, Loewen no longer met the criterion of national of another contracting Party as required in NAFTA, and the tribunal held no jurisdiction over the dispute as the investor lost one of the requirements to be considered a disputing party.[54]

35. Similarly, shall this Tribunal consider that Claimant was not a *de facto* organ of Bonooru prior to 17 November 2020, it undeniably identified as the State on March 2021, when Bonooru raised its stake in Claimant to 55%, in addition to reorganizing Claimant's infrastructure.[55] Therefore, the change in Claimant's status characterized the present dispute as a State-to-State arbitration. For this reason, this Tribunal has no jurisdiction to decide on the merits of the present case.

36. IN CONCLUSION, Claimant is a *de facto* organ of Bonooru since the State holds effective control over Vemma. Moreover, Claimant has always exercised governmental functions and acted as Bonooru. For this reason, Claimant is not an investor under Article 9.1 CEPTA, because it represents the State itself, and as such, this dispute constitutes a State-to-State arbitration, to which Respondent did not consent to. Furthermore, Bonooru restructured Claimant in March 2021, confirming its control over Vemma. Therefore, this Tribunal lacks jurisdiction.

2. THE EXTERNAL ADVISORS OF THE COMMITTEE ON REFORM OF PUBLIC UTILITIES' AMICUS CURIAE SUBMISSION SHOULD BE GRANTED, WHEREAS THE CONSORTIUM OF BONOORI FOREIGN INVESTORS' AMICUS CURIAE SUBMISSION SHOULD BE DISMISSED.

37. Both CEPTA[56] and ICSID-AF Rules allow for the submission of non-disputing parties as *amicus curiae* to the arbitration. Nonetheless, the permission that non-disputing parties may act as *amici* in the proceedings does not mean that the Arbitral Tribunal should grant[57] *all* the submissions.[58]

38. In this sense, Article 9.19(3) CEPTA allows the tribunal to accept written *amicus curiae* submissions that may assist in the evaluation of the arguments of the disputing parties. For the submission to be consider, it must identify its authorship

[54] Loewen v. USA, ¶¶223,240, 242.
[55] Facts, lines 1405-1410.
[56] CEPTA, Article 9.19(3)

[58] Born, Forrest, p. 643.

and any affiliation with a party to the arbitration.[59] Furthermore, the CEPTA stablishes that the Tribunal shall ensure that the submissions do not unduly burden or prejudice any of the parties.[60]

39. Moreover, Article 41(3) ICSID-AF Rules also stablishes criteria for allowing *amici* submissions.[61] The rule requires that tribunals consider (*i*) if the non-disputing party may assist the tribunal in resolving a factual or legal issue by bringing different knowledge, perspective or insight; (*ii*) if the submission regards a matter within the the dispute[62] and (*iii*) if the applicant has a significant interest in the proceedings.[63]

40. CEPTA also stablishes, in its Article 9.10(6), that the UNCITRAL Transparency Rules must be considered in any proceeding initiated against Mekar, which has already consented to its application.[64] The rules provide that tribunals may allow non-disputing parties to file written submissions.[65] Applicants must, apart from the formal requirements of CEPTA, also describe the nature of the interest in the arbitration and identify the specific issues of fact and law that it wishes to address.[66] As for the acceptance of the submission, the criteria are the same as the ones of the ICSID-AF Rules.[67]

41. In consideration of all the aforementioned criteria, the Arbitral Tribunal should only admit the *amicus curiae* submission by the External Advisors to the Committee on Reform of Public Utilities ("CPUR") [2.1.], and the submission by the Consortium of Bonoori Foreign Investors ("CBFI") should be dismissed [2.2.].

2.1. CPUR should be granted an amicus curiae position in the dispute.

42. The CPUR is a group of investment banking professionals that were selected as external advisors for the restructure of Caeli Airways.[68] It has applied for leave to file a non-disputing party *amicus curiae* submission in complete accordance with

[59] CEPTA, Article 9.19(3).
[60] CEPTA, Article 9.19(3).; Cross, Radbruch, p. 82.
[61] ICSID AF, Article 41(3); Schreuer, p. 704.
[62] ICSID AF, Article 41(3); Schreuer, p. 705; Bastin, p. 216.
[63] ICSID Additional Facilities Rules, Article 41(3); Born, Forrest, p. 644; Schreuer, p. 706.
[64] CEPTA, Article 9.10(6); Mekar's *Amici* Response, lines 771-772.
[65] UNCITRAL, Article 1(1); Balcerzak, p 69.
[66] UNCITRAL, Article 4(2).
[67] UNCITRAL, Articles 4(4), 4(3); ICSID AF, Article 41(3); Balcerzak, p. 69.
[68] CPUR's Submission, lines 616-619.

CEPTA, ICSID-AF Rules and UNCITRAL Transparency Rules, thus, its leave should be granted.

43. In this sense, the CPUR has provided the formal requirements of CEPTA in its application [2.1.1.], its submission can assist the Tribunal to reach the right decision [2.1.2.], while only addressing matters that fall within the scope of the dispute [2.1.3.] and it has a significant interest in the dispute [2.1.4.].

2.1.1. The formal requirements of CEPTA are fulfilled.

44. Article 9.19(3) CEPTA gives tribunals power to accept *amici* submissions.[69] Nonetheless, it stablishes formal requirements for the application of potential *amici*, regarding information that must be disclosed.

45. CPUR filed its submission in an early stage of the dispute – before the oral hearings – as to not disarray the proceedings.[70] It has also disclosed its connection both with Respondent and Claimant, as it once worked as an independent auditor with the government in the preparation of Caeli Airways' stake offer and participated in the committee that lead to Vemma's acquisition of 85% of Caeli's shares[71]. The CPUR signed and disclosed all the information in its application, thus, enabling the Arbitral Tribunal to accept and consider CPUR's file to participate as *amicus curiae* in the dispute[72].

2.1.2. The CPUR is able to assist the Arbitral Tribunal.

46. Article 41(3)(a) ICSID-AF Rules and Art. 4(3)(b) UNCITRAL Transparency Rules determine that *amici* applicants must demonstrate that they can be of assistance to the arbitral tribunal, in legal and/or factual aspects.[73] CPUR has professional expertise, apart from being a witness to the proceeding that led to Claimant's investment in Mekar.[74] Hence, it is qualified to be granted an *amicus curiae* position in the proceedings.

47. A non-disputing party is to be granted a position in the proceedings as *amicus* if it can assist the tribunal with a singular perspective of the case, that differs from the

[69] CEPTA, art. 9.19(3).
[70] CPUR's Submission, lines 599
[71] CPUR's Submission, lines 616-631
[72] CPUR's Submission, lines 664-669.
[73] ICSID AF, art. 41(3)(a); UNCITRAL, art. 4(3)(b); VonPezold, ¶49; Cross, Radbruch, p. 82; Schliemann, p. 371.
[74] CPUR's Submission, lines 626-614.

perspectives of the parties.[75] For this reason, the applicant must be capable of demonstrating to the tribunal its capacity to provide further information and new arguments.[76] In *Bear Creek Mining v. Peru*, the tribunal decided that the fact that the *amicus* applicant had had a particular experience in the development of the investment project entitled it with a new perspective that could be of assistance.[77]

48. CPUR was involved in the bidding process that led to Vemma's acquisition in Caeli Airways, thus it is capable to assist the Arbitral Tribunal in understanding the factual background of the investment, apart from the economic situation at the time of purchase, and the financing model to be followed.[78] Moreover, it has demonstrated its capacity to raise new arguments in relation to the Respondent's jurisdictional objections.[79]

49. For this reason, CPUR can provide new factual and legal arguments that may assist the Tribunal in reaching the rightful decision.

2.1.3. The subject brought by the *amicus curiae* submission regards a matter within the dispute.

50. As both stablished in Articles 41(3)(b) ICSID-AF Rules and 4(4)(d) UNCITRAL Transparency Rules, the *amici* submissions must be related to the scope of the dispute stablished by the parties. The CPUR's application to participate as *amicus curiae* demonstrates that it will only address the Tribunal's lack of jurisdiction,[80] a matter within the borders of the dispute.

51. Respondent challenged the Tribunal's jurisdiction; consequently, the dispute commenced to encompass jurisdictional arguments.[81] CPUR, in its application, only demonstrated that it will supply the Tribunal with new arguments – as it is the role of *amici* – related to bribery and corruption that lead to Vemma's investment in Mekar, a purely jurisdiction matter. Therefore, CPUR will limit its participation to issues that the Tribunal must necessarily consider, by raising crucial corruption concerns that affect the existence of a valid investment.[82]

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[75] Philip M. v. Uruguay ¶26, 30, 31; Biwater v. Tanzania, ¶49-50; Born, Forrest, p. 646.
[76] Bear v. Peru, ¶7, 38.
[77] Bear Creek Mining, ¶54.
[78] CPUR's Submission, lines 625-631.
[79] Response to the Notice of Arbitration, ¶2, CPUR's Submission, lines 650-656.
[80] CPUR's Submission, lines 650-656.
[81] Response to the Notice of Arbitration, ¶2
[82] CPUR's Submission, l. 635-640.

52. *Amici* briefs allow members of the civil society to bring to the dispute new legal and factual assertions that are particularly relevant for them, albeit the parties not raising them.[83] In *Glamis Gold v. USA,* the tribunal considered that allegations regarding the existence of an investment are always within the scope of an investor-State arbitration.[84] This is because the existence of an investment is a necessary condition for an investor to seek compensation through an arbitral proceeding.[85] In this respect, the legality of Vemma's investment is of utmost importance for determining the Arbitral Tribunal's jurisdiction. Corruption allegations may jeopardize the existence of the investment itself,[86] and *amici* have an important role bringing corruption arguments, especially in cases that neither party have done so.[87]

53. In addition, in *Infinito Gold v. Costa Rica*, the tribunal understood that the existence and the definition of an investment pursuant to an investment treaty necessarily falls within the scope of the dispute, and that corruption allegations may affect the existence of an investment. In that case, neither party had raised any corruption allegation, however, the tribunal understood that those issues affected the definition of investment under the treaty, which was a concern within the scope of the dispute[88]. Moreover, the tribunal understood that it could not dismiss *prima facie* corruption related claims as outside the scope of the dispute before the jurisdictional hearings[89].

54. Hence, as the hearings regarding jurisdiction have not taken place yet, it would be premature to dismiss any possible corruption allegation at this point of the proceedings. Respondent has not yet had the opportunity to address all its objections to the Tribunal, though it can be inferred from the evidence that it intends to supply its concerns regarding the bribery that lead to Vemma's investment, as it presented a podcast transcript that raises this discussion[90].

[83] Lone Pine v. Canada, ¶20; Magraw,Amerasinghe, p. 343, 348; Bastin, p. 223; Balcerzak, p. 66; Lin, p. 274.
[84] Friends of the Earth Application, ¶11; Levine, p. 218.
[85] Friends of the Earth Application, ¶11; Levine, p. 218.
[86] Infinito v. Costa Rica, ¶33.
[87] Levine, p. 217.
[88] Infinito v. Costa Rica, ¶33; also, Triantafilou, p. 45.
[89] Infinito v. Costa Rica, ¶33.
[90] Annex VII, lines 1874-1882.

55. Ergo, the CBFI has met the *appropriateness* criterion in its application, and consequently it should be granted an *amicus curiae* position in the dispute.

2.1.4. CPUR has a significant and public interest in the dispute.

56. Articles 41(3)(c) ICSID-AF Rules and4(3)(a) UNCITRAL Transparency Rules state that *amici* must have a significant interest in the dispute. CPUR highlights both its particular interest and the public interest of the dispute for the citizens of Mekar.

57. The citizens of a disputing state necessarily have a public interest in the outcome of an investment-State arbitration.[91] These disputes usually involve a State's sovereign powers to regulate critical sectors of its economy and the concession of public utilities, critical infrastructures, and public services, affecting the life of the citizenry[92]. Henceforth, they have a public interest in disputes that involve their State[93].

58. In the case at hand, the dispute revolves the privatization of a Mekari public enterprise: Caeli Airways[94]. As there is evidence that the process involved bribery and corruption, two issues deeply affect the public interest: the concession of a public utility; and wrongful acts of the government – which should be widely informed and available to the citizens in democracies.[95]

59. Furthermore, the significant interest criterion[96] is met in cases that the legal interest of the *amicus curiae* applicant can be affected by the arbitration[97]. For example, in the *Glamis Gold v. USA*, the tribunal decided that disputes that might affect the field of work from the applicant comply the particular interest criterion.[98]

60. CPUR is a group of advisors that constantly works with future investors in Mekar.[99] Thus, Mekari economic and regulatory issues directly affect CPUR's business, as correct supplication of the treaty benefits future investments.[100] In this sense, the

[91] Vivendi Transparency, ¶19; Vivendi v. Argentina (II), ¶18; Magraw, Ameransinghe, p. 339; Schliemann, p. 372.
[92] Hon-Lin Yu, p. 58.
[93] Levander, p. 512; Lin, p. 274.
[94] Facts, ¶25.
[95] Magraw, Ameransinghe, p. 339.
[96] ICSID AF, Article 41(3); UNCITRAL, Article 4(3)(a).
[97] Cross, Radbruch, p. 84.
[98] Mining Association Application, p.1-2; Schliemann, p. 372.
[99] CPUR's Submission, lines 644-646.
[100] CPUR's Submission, lines 644-646.

present dispute can affect prospective investments in Mekar, and the activities of the CPUR.

61. Thus, the CPUR's submission presents a public interest, and it has its own significant particular interest. In addition, it fulfils all the formal requirements stablished in CEPTA and demonstrates how it can be useful for the Arbitral Tribunal while falling within the scope of the dispute. Therefore, all the criteria have been met by the CPUR's submission, so it should be granted an *amicus curiae* position in the proceedings.

2.2. CBFI should not be granted an *amicus curiae* position in the dispute.

62. CBFI is a private industry association that represents Boonori investors.[101] It has applied for leave to file an *amicus curiae* submission, despite not being able to provide further assistance to the Arbitral Tribunal [2.2.1.], its lack of independence from the disputing parties [2.2.2.] and not having a significant interest in the dispute [2.2.3.].

2.2.1. CBFI is unable to assist the Arbitral Tribunal.

63. The CBFI's application demonstrates that its participation in this dispute only serves to duplicate the Statement of Uncontested Facts.[102] It has failed to demonstrate its capacity to assist the Arbitral Tribunal, hence its submission should be dismissed.

64. *Amici* must provide a different perspective from the one of the parties or have an expertise that goes beyond the one of the parties.[103] Moreover, the assessment of the possible utility of the *amicus* submission must assume that the parties will provide all the necessary facts for the solution of the case and should not be repetitive.[104] In *Apotex v. USA*, the arbitral tribunal ruled that an applicant would not be granted an *amicus* position because its submission only addressed issues fully briefed by the parties,[105] because *amici* submission cannot be duplicative of the parties' statements.[106]

[101] CBFI's Submission, lines 505-506.
[102] Facts, ¶1-10; CBFI's Submission, lines 540-555
[103] Aptx v. USA, ¶ 21; Von Pezold v. Zimbabwe, ¶49; Schliemann, p. 371.
[104] Aptx v. USA, ¶26; Methanex v. USA, ¶30; Resolute Forest v. Canada, ¶2.1-2.4; Schliemann, p. 372.
[105] Apotex v. USA, ¶34.
[106] Philip M. v. Uruguay, ¶26.

65. Both Claimant and Respondent have already made a detailed explanation of Bonoori regulatory framework and business landscape in the Statement of Uncontested Facts for this Arbitral Tribunal.[107] CBFI has indicated that these are the *only* issues that it intends to address[108].

66. Hence, it should not be granted an *amicus* position, because CBFI is not able to further assist the Arbitral Tribunal.

2.2.2. The CBFI lacks independence to become an *amicus curiae.*

67. CBFI is a trade organization of Boonori investors.[109] The present dispute revolves two of its members: Vemma, the Claimant, and Lapras Legal, Vemma's legal advisor in the dispute.[110] In this sense, CBFI is not independent party in this dispute.

68. One of the criteria that *amici* applicants must suffice is that they are independent from the disputing parties,[111] as implicitly stablished in Article 37(2)(a) ICSID-AF Rules.[112] In *Von Pezold v. Zimbabwe*, it was decided that the lack of apparent independence is sufficient to deny the accession of an applicant to an *amicus curiae* position[113]. In the same case, the tribunal also understood that engagement between members of the *amicus* petitioners and the parties lead to lack of impartiality[114]

69. CBFI is an organization that represents two members involved in the present dispute. Moreover, its submission addresses issues that are aligned with Vemma's allegations, *i.e.,* that Claimant is an investor within the terms of CEPTA. Thus, it has not only an apparent lack of independence, as its members are currently litigating with Respondent, but it clearly has a partial point of view towards its members' position.

70. Therefore, CBFI cannot be granted an *amicus curiae* position in the proceedings. Its submission is biased, since it lacks independence from one disputing party, and another interested third-party of the proceeding.

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[107] Facts, ¶3-9.
[108] CBFI's Submission, lines 544-549.
[109] CBFI' Submission, lines 505-509.
[110] CBFI's Submission, lines 520-523.
[111] Eco Oro v. Colombia, ¶30; OECD Transparency, ¶45; Cross, Radbruch p. 82; Schliemann, p. 378.
[112] Von Pezold v. Zimbabwe, ¶49.
[113] Von Pezold v. Zimbabwe, ¶ 56
[114] Von Pezold v. Zimbabwe, ¶56.

2.2.3. CBFI does not have a significant interest in the dispute.

71. Tribunals ruling under ICSID-AF Rules usually require the existence of a public interest to allow *amici* participation.[115] This requirement is consonant with Article 1(4)(a) UNCITRAL Transparency Rules, that demands that the tribunal considers whether there is a public interest involved.[116] The CBFI's submission does not address any public interest,[117] therefore it should not be granted an *amicus* position in the dispute.

72. An *amicus* should not be admitted simply because the dispute involves the provision of fundamental services.[118] The *amici* must demonstrate a concrete correlation between its submissions and the public interest involved.[119] In *Resolute Forest v. Canada*, the tribunal held that even though the dispute's scope revolved objects of public interest, the applicant must show the connection between its submission and the furtherance of the public interest.[120]

73. CBFI has only stated its interest in relation to its members –a business and private interest[121] –, and that its submission only addresses relevant issues for Boonori investors.[122] Even though the civil aviation has a relevant public role in Boonoru, CBFI has not once demonstrated how it would further this public interest.[123] By only stressing interests of its members, the CBFI is highlighting its lack of independence from Vemma.[124] Therefore, the CBFI does not satisfy the significant interest criterion, in accordance with both the ICSID-AF Rules and the UNCITRAL Transparency Rules.[125]

74. IN CONSLUSION, Respondent consents with the participation of the CPUR as an *amicus curiae* in the present dispute, since it has met all the necessary criteria for its submission to be granted, alongside with being able to assist the Tribunal with new knowledge and perspectives. Thus, this Arbitral Tribunal should grant the

[115] Vivendi v. Argentina (II), ¶18; Apotex v. USA, ¶42-43; Resolute Forest v. Canada, ¶4.7; Methanex v. USA, ¶49; Schliemann, p. 373.
[116] UNCITRAL, Art. 1(4)(a); Born, Forrest, p. 651.
[117] CBFI's Submission, p. 18-20.
[118] Vivendi NGOs, ¶18; Magraw, Ameransinghe, p. 339; Levine, p. 205.
[119] Resolute Forest v. Canada, ¶4.7; also, Triantafilou, p. 39.
[120] Resolute Forest v. Canada, ¶4.7; also, Triantafilou, p. 39.
[121] CBFI's Submission, lines 633-636.
[122] CBFI'S Submission, lines 524-533.
[123] CBFI's Submission, p. 18-20.
[124] CBFI's Submission, lines 520-523.
[125] ICSID AF, Article 41(3); UNCITRAL, Article 1(4)(a).

CPUR an *amicus curiae* status. On the contrary, the CBFI has not demonstrate that its submission fulfils the legal requirements, thus, its *amicus curiae* application should be dismissed.

3. BY PERFORMING LAWFULL REGULATORY ACTION, RESPONDENT DID NOT VIOLATE ARTICLE 9.9 CEPTA

75. Respondent did not violate article 9.9 CEPTA, as the CCM's investigations were lawful [3.1.], and the decision to deny Claimant subsidies followed the rules set by the Executive Order 9-2018 [3.2.]. Furthermore, Respondent has the right to shift its economic policy during a currency crisis [3.3.] and Claimant was provided justice by the Mekari courts [3.4.]. At last, the Superior Court of Mekar has a long-standing precedent of enforcing awards set-aside at the seat of arbitration, being therefore a lawful decision under the New York Convention [3.5.].

3.1. The CCM's investigations were lawful

76. The CCM's investigations on Claimant's business activities were lawful because they merely followed Mekari antitrust law [3.1.1.], and CEPTA excludes consumer protection regulation from legitimate expectations claims [3.1.2.].

3.1.1. The investigations followed the legal requisites set out by the Mekari Law

77. The mere fact that the CCM had previously approved Caeli's membership in the Moon Alliance does not transform its investigations in a violation of the FET standard, since (i) the Mekari antitrust law precedes Claimant's investment,[126] requiring Caeli's compliance to its norms during the course of the investment and (ii) there was a change in the commercial situation, as Caeli began to receive subsidies from the Horizon 2020 scheme,[127] requiring CCM's assessment over the newfound scenario.

78. Investors have the responsibility to be aware of the State's legal framework at the time of the investment[128] and cannot argue that their legitimate expectations did not

[126] Annex V title.
[127] Facts, line 1080-1081.
[128] Charanne v. Spain ¶505; Stadtwerke München v. Spain ¶264.

consider the regular operation of Respondent's legal system.[129] In this sense, an investor must carry a rigorous due diligence process prior to its investment.[130]

79. The tribunal in *Glencore v. Colombia (I)* has already decided on this issue. In that case, Glencore argued it had legitimate expectations that the fiscal authority of Colombia would not interfere in its contract.[131] However, as demonstrated in the case, the fiscal authority had a longstanding legal basis for reviewing government contracts and the tribunal recognized that a due diligent investor should have known that.[132]

80. Similarly, Claimant argues that it should not have been investigated by the CCM after the approval of Caeli's membership in the Moon Alliance.[133] However, after this approval, Caeli started to receive subsidies through Vemma,[134] and to engage in preferential secondary slot-trading with its Moon Alliance partners,[135] adopting a monopolistic behavior.[136] Thus, CCM had the duty to initiate the proceedings according to the Mekari Antitrust Law, as Respondent's actions were merely aimed at curbing this newfound scenario from undermining competition in Mekar.[137]

81. In this regard, the Mekari antitrust law, which precedes the investment,[138] presents clear requisites for investigations and those were met by both proceedings Claimant faced in Mekar. This legislation grants CCM the power to initiate an investigation when a company, even with a lower market share, poses a unique threat to market competition, authorizing the First Investigation.[139] In addition, the same law authorizes requested investigations when the targeted company has more than 10% market-share.[140] As the Second Investigation was requested by Caeli's competitors[141] and Caeli had more than 40% market-share at that time,[142] far above

[129] Glencore v. Colombia ¶1415.
[130] Stadtwerke München v. Spain ¶264.
[131] Glencore v. Colombia ¶1408.
[132] Glencore v. Colombia ¶1415; Charanne v. Spain ¶366; ICW v. Czech Republic ¶517; Photovoltaik Knopf v. Czech Republic ¶470; RWE Innogy v. Spain ¶513.
[133] Notice ¶13.
[134] Facts, lines 1080-1081.
[135] Facts, lines 1153-1155.
[136] Facts, lines 1120-1146.
[137] Facts, lines 1155-1159.
[138] Annex V, title.
[139] Annex V, lines 1595 – 1606.
[140] Annex V, lines 1610.
[141] Facts, lines 1170-1182.
[142] Facts, lines 1151, 1289.

the legal requisite for an investigation. Therefore, both investigations were lawfully opened.

82. Furthermore, Claimant may argue it had inherited beneficial contracts with PIA during the privatization process and should not be punished from using it. However, as the Second Investigation duly found, Claimant extracted even greater concessions from the airport, threatening to move its business elsewhere if it did not accept Claimant's demands.[143] Hence, Claimant's behavior was monopolistic and went against Mekari consumer welfare.

83. Thus, as Respondent's actions were lawful, investigating a changing market situation with a pre-existing law, no breach was committed, and no reparation is due.

3.1.2. Claimant did not have any legitimate expectations regarding Respondent's right to protect its market from unfair commercial practices.

84. Claimant cannot argue that its legitimate expectations were broken by Mekari regulatory action, because CEPTA excludes Respondent from liability on regulations with a legitimate public policy objective.[144] As held by the arbitral tribunal in *Charanne v. Spain*, the host State has the sovereign right to regulate in public interest,[145] which must be respected by investors, as the investment treaty is not an insurance against changes in the host country's legal framework[146]. In this regard, the State has the duty to act whenever circumstances change, to deal with the evolving situation.[147]

85. In the case at hand, CEPTA guarantees Respondent's right to enact regulatory policies in order to protect consumers,[148] regardless the investor's expectation of profits.[149] In this sense, the CCM's actions were aimed at curbing Claimant's monopolistic behavior from undermining competition in the Mekari civil aviation market through predatory pricing and price undercutting on specific routes, which

[143] PO3, lines 3175-3177.
[144] CEPTA, lines 2725-2732.
[145] Charanne v. Spain ¶¶535-536; Cavalum SGPS v. Spain ¶¶421-428; Mamidoil v. Albania ¶¶617, 732; Electrabel v. Hungary ¶165.
[146] Charanne v. Spain ¶¶493, 510.
[147] Cavalum SGPS v. Spain ¶428.
[148] CEPTA, lines 2725-2732.
[149] CEPTA, lines 2729-2732.

viewed to push other carriers out of the market.[150] Consequently, CCM's actions achieved consumer protection,[151] a legitimate public policy objective recognized under Article 9.8(1) CEPTA.[152] Therefore, the State's regulatory action through CCM was lawful and did not breach its obligation to protect investments.

86. Thus, as CEPTA clearly excludes any legitimate expectations claims from lawful regulatory action,[153] respondent did not breach the FET standard and no reparations are due.

3.2. Respondent's decision to deny Claimant subsidies was neither discriminatory, nor arbitrary.

87. The Mekari Secretary of Aviation denied subsidies to Caeli because it did not comply with the criteria of Executive Order 9-2018 (EO9).[154] For this reason, the measure was neither arbitrary nor discriminatory.

88. Discrimination occurs whenever a State acts with a discriminatory intent[155] or treats investors in like circumstances without reasonable justification,[156] regardless of any specific motivation to discriminate.[157] Furthermore, arbitrariness arises whenever a State inflicts damage to the investor without an apparent legitimate cause, being based on subjective motives and lacking an adequate legal reasoning.[158] Respondent's actions do not fulfill any of these criteria.

89. For instance, EO9 instated emergency subsidies on credit for airlines operating in Mekar as long as they complied with certain objective requirements.[159] In Section 3101(c)(1)(A), EO9 clearly stablished that subsidy would be denied to any airline that had proper access to credit and funding.[160] In this sense, Caeli had easy access to cheap credit, as Claimant is based in Bonooru,[161] the biggest capital exporter of

[150] Facts, lines 1149-1150; 1176-1178.
[151] Facts, lines 1149-1150; 1155-1158.
[152] CEPTA, lines 2725-2728.
[153] CEPTA, lines 2725-2732.
[154] Facts, lines 1253-1254.
[155] LG&E v. Argentina ¶146; Siemens v. Argentina ¶321; Reinhard Unglaube v. Costa Rica ¶262.
[156] Saluka v. Czech Republic ¶313; SAUR v. Argentina ¶486.
[157]Reinhard Unglaube v. Costa Rica ¶262; Siemens v. Argentina ¶321; LG&E v. Argentina ¶146.
[158] EDF v. Romania ¶303; OIEG v. Venezuela ¶494; Stati v. Kazakhstan (I) ¶1260; Toto v. Lebanon ¶157; ELSI ¶128.
[159] Annex VIII, lines 1916-1925.
[160] Annex VIII, lines 1916-1921.
[161] Facts, lines 932-937.

the region.[162] It also received twice credit at below market rates from the Bonoorian People's Bank in order to refinance its debts and liabilities.[163] For these reasons, Respondent was not bound to provide any subsidies to Caeli.[164] Consequently, Mekari Secretary of Civil Aviation's decision was supported by an objective legal reasoning.

90. Moreover, in *Investmart v. Czech Republic*, the arbitral tribunal held that discrimination only occurs if companies operating in a similar market segment are treated differently, without any reasonable justification.[165] Since Investmart failed to demonstrate that its investment was comparable to other companies that benefited from Czechia's aid package, that tribunal dismissed its claims.[166]

91. In the case at hand, Caeli was the largest carrier operating within Mekari's civil aviation market,[167] and was controlled by a major Bonoori multinational company.[168] In this regard, the companies which benefitted from EO9 subsidies were small carriers, with no more than 5% market share on the routes in which they operated,[169] while Caeli enjoyed a market share of more than 40% throughout most of the investment's timespan.[170] Thus, Caeli was not comparable to any of the other airlines that received credit under EO9, as its sheer scale differentiate Caeli from its smaller competitors,[171] and, for this reason, the discrimination claim is groundless.

92. Hence, as Claimant's situation was not comparable to other carriers operating in the Mekari civil aviation market, and the decision to deny Claimant subsidies was founded on the EO9 criteria in grounds for refusal, no breach of FET was committed, and no reparations are due.

[162] Facts, lines 887-889.
[163] Facts, lines 1024-1026; 1103-1104.
[164] Facts, 1034-1037; 1090-1095; 1108-1116; 1136-1141.
[165] Investmart v. Czech Republic ¶403.
[166] Investmart v. Czech Republic ¶415.
[167] Facts, lines 1150.
[168] Facts, lines 932-937.
[169] PO4, lines 3299-3301.
[170] Facts, lines 1151, 1289.
[171] PO4, lines 3299-3301.

3.3. Respondent has the right to regulate and shift its economic policy with the purpose of rescuing its economy from a currency crisis.

93. Claimant contends that Respondent has breached Article 9.9 CEPTA by requiring Caeli to price its services in MON.[172] However, Article 9.8 CEPTA recognizes that Respondent has the right to regulate to achieve public policy objectives, regardless of the effects it may have in the investor's expectations of profits.[173]

94. For instance, in *Metalpar v. Argentina*, the tribunal concluded for the lack of violation of the treaty, because no legitimate expectation were breached by the State since there was guarantee by Argentina to denominate services in Dollars at the time of the investment.[174] Cases such as *Siemens, LG&E, El Paso* and *Enron* have a different background. [175] The law guaranteeing the convertibility to US dollars was passed prior to their investments, which was part of a liberalization program held by the government. The denomination of tariffs in US dollars was even announced in roadshows throughout United States, Europe and South-East Asia to attract investors.[176] Therefore, regarding the *pesification* arbitral proceedings, the Metalpar's case is the only similar to the present case.

95. In this effect, Mekar acquiesced to the airline's request to denominate airfares in US Dollars only in October 2017,[177] six years after Vemma acquired Caeli,[178] in an attempt to help secure the airlines' profitability during the winter season.[179] Nevertheless, as the currency crisis intensified throughout 2017, the denomination of airline fares in US Dollars became a factor aggravating MON's instability.[180] For this reason, in January 2018, Mekar had to require all carriers to offer services denominated exclusively in MON,[181] as the IMF advised Mekar to establish credibility in the local currency.[182] This reinforces that the measure was legitimate and necessary, according to international standards.[183]

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[172] Notice of Arbitration, lines 85-87.
[173] CEPTA, Article 9.8.
[174] Metalpar v. Argentina, ¶¶65, 186.
[175] Siemens v. Argentina, ¶342; LG&E v. Argentina, ¶51; Enron v. Argentina, ¶41, CMS v. Argentina, ¶65; El Paso v. Argentina, ¶84.
[176] El Paso v. Argentina, ¶84.
[177] Facts, 1197-1199.
[178] Facts, lines 1042-1043.
[179] Facts, lines 1197-1199.
[180] Facts, lines 1208-1210.
[181] Facts, lines 1208-1210.
[182] Facts, lenes 1188-1190.
[183] Facts, lines 1188-1190.

96. Moreover, as stated in the PCIJ decision over *Serbian Loans*, monetary policies fall within the State's sovereignty under international law, preventing investment arbitration tribunals to review them.[184] Since the State has the power to regulate,[185] its regulatory decisions enjoy a presumption of legitimacy.[186] Thus, investment tribunals shall not encompass the role to second-guess the appropriateness of an economic model chosen by a sovereign State.[187]

97. Henceforth, Respondent's actions are general regulatory policies aimed at the protection of its population welfare. As such, they do not constitute a violation of Articles 9.9 CEPTA.

3.4. Respondent did not violate Article 9.9(a) CEPTA related to denial of justice.

98. The alleged delays in judicial procedures and dismissals of claims under Executive Order 5-2014 (EO5) do not constitute denial of justice, since Claimant was not mistreated by the Mekari judicial system.[188] Although Claimant's request was not a criminal procedure, Mekari Courts swiftly decided the matter, providing a satisfying access to justice.[189] Therefore, any claim under Article 9.9(a) CEPTA is groundless.

99. A mere delay in analyzing a judicial claim does not entail denial of justice. This standard is far stricter,[190] requiring a complete failure of the national judicial system as a whole.[191] An international arbitration tribunal is not an appellate court and correcting errors of domestic law is out of its scope.[192] Therefore, a denial of justice only occurs when the host State fails to provide even a minimally adequate justice system.[193] Whether delays constitute denial of justice can only be assessed by a factual analysis based on the complexity of the case, the behavior of the litigants and the courts, the need for swiftness and the interests at stake.[194]

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[184] Serbian Loans, p.42.
[185] Crawford, J, p.624; Brownlie, p. 509; EDF v. Romania, ¶219.
[186] Tza Yap Shum v. Peru, ¶95.
[187] Rusoro Mining v. Venezuela, ¶385.
[188] Facts, lines 1321-1335
[189] Facts, lines 1321-1322.
[190] H&H v. Egipt, ¶405; Toto v. Lebanon, ¶¶155-156, 163-165; Pantechniki v. Albania, ¶94.
[191] Chevron v. Ecuador (II), ¶¶*8.36-8.37*.
[192] RosInvest v. Russia, ¶275.
[193] Pantechniki v. Albania, ¶94.
[194] White industries v. India, ¶10.4.10; Oostergetel v. Slovakia, ¶290; Toto v. Lebanon, ¶160.

100. For instance, in *Oostergetel v. Slovakia*, the tribunal also had to decide if, by subjecting the investor to undue delay, respondent has breached the treaty.[195] As the proceeding took two years, falling within the standard duration found in the country,[196] the tribunal concluded for the absence of denial of justice.[197] In this sense, despite the need to prioritize criminal proceedings, Mekari Courts ruled on Claimant's contention one year faster than the average time for commercial procedures.[198]

101. Moreover, in *Agility v. Iraq*, the investor claimed that Iraq denied the ability to challenge a decision by the National Communications and Media Commission (CMC) to annul Agility's investment, because the Administrative Courts dismissed its claims for lack of jurisdiction.[199] Nevertheless, since the Iraqi law provides judicial recourse against the decisions made by the CMC, the tribunal dismissed claimant's denial of justice allegation.[200] Therefore, when a State provides the adequate internal channels to review its administrative decisions, a mere unfavorable decision does not constitute denial of justice.

102. In the case at hand, Mekari Law grants the possibility of seeking judicial review over CCM's measures.[201] Facing the summit of a crisis, the CCM had to peg the airfare caps to the annual inflation rate stablished by the Central Bank,[202] who has the authority to determine inflation management policies.[203] For this reason, when Claimant requested a revision of the official inflation rates, the Central Bank informed its long-standing policy of not responding to individual corporate requests.[204] However, after the Central Bank denied the appreciation of the matter, Caeli decided to file a judicial claim concerning the airfare caps[205] and even the Mekar's High Court rendered a decision on the matter.[206] Therefore, Mekari Courts

[195] Oostergetel v. Slovakia, ¶274.
[196] Oostergetel v. Slovakia, ¶126.
[197] Oostergetel v. Slovakia, ¶290.
[198] Facts, lines 949-953.
[199] Agility v. Iraq, ¶81.
[200] Agility v. Iraq, ¶251.
[201] Facts, lines 1229-1230.
[202] Facts, lines 1022-1023.
[203] Facts, lines 1022-1023.
[204] Facts, lines 1230-1231.
[205] Facts, lines 1229-1230.
[206] Facts, lines 1321-1322.

appreciated Claimant's request through the formal procedure stablished by Respondent's internal law, releasing a decision in June 2019.[207]

103. Henceforth, Claimant's contention should be dismissed for Respondent has acted accordingly to its internal law and did not deny Claimant's justice, since the Mekari judicial system gave a prompt decision to Caeli's claims.

3.5. The Mekari court's decision to enforce the Award was lawful.

104. Mekari court's decision to enforce the Award did not breach Article 9.9(2) CEPTA. Respondent has an extensive case law against the refusal of enforcing awards that were set-aside at the seat of arbitration[208] and the courts did not perceive any material proof to go against such a consolidated understanding.[209] Therefore, the decision to enforce the Award was lawful, as it is a right of the state according to the New York Convention [3.5.1.] and the standard procedure in Mekari case law [3.5.2.]. Henceforth, Claimant was not denied justice [3.5.3.].

3.5.1. Respondent's decision to enforce the Award was lawful.

105. The seat of an arbitration does not hold a monopoly over the lawfulness and enforceability of an arbitral award[210]. Pursuant to Article V NYC[211], the enforcing state has jurisdiction to analyze the lawfulness of any award regardless of whether the seat ruled it unlawful.[212] Therefore, the enforcing State holds the sole discretionary power of deciding whether it is going to enforce any foreign arbitral award.[213]

106. For instance, preeminent parties of the convention frequently enforce awards that were set aside at the seat of arbitration[214]. Austria[215], France[216], India[217], the Netherlands[218], and the United States of America[219] have all enforced awards in said

[207] Facts, lines 1321-1322.
[208] Annex XIV, lines 2254-2270.
[209] Annex XIV, lines 2277-2285.
[210] Gaillard ¶32.
[211] NYC, Article V (1); Facts, lines 1415-1416.
[212] Gaillard ¶31.
[213] Born I, p.3428-33; Born II, p. 346.
[214] Werkhoven, Duggal ¶2.
[215] Born I, p. 3628-29.
[216] Egypte v. Chromalloy, p.4.
[217] Coal India Limited v. Canadian Commercial Corporation ¶122-124.
[218] Yukos Capital SARL v. OAO Rosneft ¶4.1.
[219] Chromalloy Aeroservs. Inc v. Arab Republic of Egypt.

conditions, in accordance with the Convention. Therefore, Respondent acted in accordance with Article V NYC, not violating Article 9.9(2) CEPTA.

3.5.2. Respondent regularly enforces awards that were set-aside at the arbitral seat

107. Despite Article V NYC clearly conferring upon Respondent the faculty to analyze whether it should enforce any foreign arbitral award, Claimant may argue that Respondent's decision to enforce the Award was arbitrary. It may even state that arbitrariness is a deliberate disregard of due process, a decision that can surprise any impartial viewer.[220] However, the decision to enforce the Award should come as no surprise to Claimant, since the Mekari judiciary has consistently revised decisions in favor of annulling foreign arbitral awards before enforcing them[221].

108. In this sense, Mekari case law traced a clear path towards the enforcement of awards that were set-aside at the seat of arbitration.[222] This precedent was recently reiterated by the Superior Court of Mekar in Alta *Lumina* and *Bey City* rulings[223]. As stated by the High Commercial Court of Mekar, the enforcement of the Award would merely follow Respondent's jurisprudence regarding the matter[224]; thus, this decision was predictable and, consequently, not arbitrary.

109. Claimant may further argue that the CILS allegations of corruption should suffice to set-aside the award under Article 36 Commercial Arbitration Act[225], as it would breach Mekari public policy. However, this thesis is contrary to the stable understanding under Mekari case law. Amongst others, the *PTB Mulaney Services v. Tendler Bank* tribunal stablished that, to set-aside an award due to allegations of corruption in Mekar, there must be a strong case before such a conclusion can be reached.[226] Nevertheless, as expressly stated in the Sinnoh's decision to set-aside the award, the evidence of corruption were merely circumstantial,[227] only taken into

[220] ELSI ¶128.
[221] Annex XV, lines 2328-2332.
[222] Annex XIV, lines 2254-2263.
[223] Annex XV, lines 2328-32; 2350-2371.
[224] Annex XIV, lines 2254-2260.
[225] Annex XIV, lines 2245-2252.
[226] Annex XIV, lines 2254-2260.
[227] Annex XIII, lines 2206-2211.

consideration because of that country's specific case law in the matter,[228] which is different from the Mekari conception of public policy.[229]

110. Thus, as the decision was merely following precedents and benefiting from the discretion granted by Article 5 NYC, Respondent did not breach Article 9.9(a) CEPTA.

3.5.3. Claimant had unrestricted access to Mekari's Courts

111. Claimant may argue that Mekar denied it justice on the enforcement proceedings of the award. However, an arbitral tribunal does not serve as an appellate court for investors dissatisfied with the decisions of the State's courts.[230] Furthermore, for a claim of denial of justice to prosper, investors must either demonstrate a major procedural failure or the enforcement of an arbitrary decision.[231]

112. In the case at hand, Respondent offered Claimant access to its entire judicial system, analyzing its contentions faster than the national average[232] and rendering decisions according to well stablished Mekari case law.[233] Moreover, Mekar offered Vemma access to all of its administrative and judicial instances, including its highest court, the Superior Court of Mekar, which lawfully applied its case law on the matter, rendering a decision with adequate legal reasoning and, thus, not arbitrary. [234]

113. Furthermore, as stated by the arbitral tribunal in *Oostergel v. Slovakia,* general allegations of judicial system's problems and shortcomings do not constitute a breach of the FET *per se*.[235] Rather, claimant must stablish a causal link between said problems and the decision which supposedly constituted a denial of justice.[236] In this sense, even if this Tribunal were to conclude that the Mekari judicial system experienced alleged deficiencies, Claimant would still have failed to establish a

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[228] Annex XIII, lines 2198-2202.
[229] Annex XIV, lines 2254-2260.
[230] Mondev v. USA ¶126; Azinian v. Mexico ¶99; Oostergetel v. Slovakia ¶291; Cortec Mining v. Kenya ¶339.
[231] Infinito Gold v. Costa Rica ¶445; Mondev v. USA ¶126;
[232] Facts, lines 950-953; 1384-1389.
[233] Annex XIV lines 2245-2252.
[234] Annex XIV, lines 2254-2270, 2245-2252, 2277-2285; Annex XV lines 2328-32, 2350-2371; Gaillard ¶¶31-32; NYC, Article V (1); Facts, lines 1415-1416; Gaillard; Born I, p.3428-33, p.3628-29; Born II, p.346; Werkhoven, Duggal ¶2; Egypte v. Chromalloy, p.4; Coal India Limited v. Canadian Commercial Corporation ¶122-124; Yukos Capital SARL v. OAO Rosneft ¶4.1; Chromalloy Aeroservs. Inc v. Arab Republic of Egypt; Alghanim v. Jordan ¶314; Genin v. Estonia ¶367; Philip Morris v. Uruguay ¶390; ELSI ¶128.
[235] Oostergel v. Slovakia ¶296.
[236] Oostergel v. Slovakia ¶296.

causal link between those supposed shortcomings and the decision to enforce the Award, because Vemma had access to a swift and fair judgement, following the Court's precedents[237]. Hence, the mere fact that the Superior Court of Mekar's rulling was contrary to Claimant's interests does not constitute a violation of Article 9.9(a) CEPTA.

114. IN CONCLUSION, Respondent did not breach CEPTA's section D, as its investigations were lawful, and the refusal to grant Claimant subsidies was justified under EO9. Furthermore, Respondent did provide Claimant justice, with rulings according to well stablished case law in the matter. Therefore, FET was accorded to Claimant.

4. ANY COMPENSATION SHALL FOLLOW THE MARKET VALUE STANDARD SET BY CEPTA

115. If the Tribunal finds that Respondent breached the FET clause, it's important to note that Article 9.21(1)(a) CEPTA sets the compensation standard as the market value of the investment.[238] In this sense, since Mekar already paid the market value for the investment, under no circumstances Respondent owes compensation to Claimant. [239]

116. Furthermore, the fair market value raised by Claimant is not applicable, because it is not within the Treaty.[240] Claimant attempts to invoke the MFN clause contained in CEPTA to import the compensation standard from Arrakis-Mekar BIT. However, the ordinary meaning of CEPTA MFN clause encompass matters of treatment of an investment, rather than the process of dispute settlement.[241] For this reason, the MFN cannot be used to replace the compensation standard settled in the treaty.[242]

117. Therefore, Claimant cannot invoke the fair market value standard, and neither the DCF method of valuation is applicable in the present case [4.1.], nor the

[237] Annex XIV, lines 2254-2270, 2245-2252, 2277-2285; Annex XV lines 2328-32, 2350-2371; Gaillard ¶¶31-32; NYC, Article V (1); Facts, lines 1415-1416; Gaillard; Born I, p.3428-33, p.3628-29; Born II, p.346; Werkhoven, Duggal ¶2; Egypte v. Chromalloy, p.4; Coal India Limited v. Canadian Commercial Corporation ¶122-124; Yukos Capital SARL v. OAO Rosneft ¶4.1; Chromalloy Aeroservs. Inc v. Arab Republic of Egypt; Alghanim v. Jordan ¶314; Genin v. Estonia ¶367; Philip Morris v. Uruguay ¶390; ELSI ¶128.
[238] CEPTA, Article 9.21(1)(a).
[239] Facts, lines 1390-1393.
[240] CEPTA, Article 9.21
[241] CEPTA, Article 9.7.
[242] CME v. Czech Republic, Separate Opinion, ¶11.

Hawthorne's bid [4.2.]. Furthermore, any compensation should be reduced considering the Claimant's contributory fault and the ongoing Mekari crises [4.3.].

4.1. Caeli is not a going concern as it has a proven record of unprofitability.

118. The World Bank guidelines[243], and numerous tribunals[244], prescribe that the DCF valuation method can only be applied to companies considered to be going concerns, *i.e.*, companies with a proven track-record of profitability.[245] This track-record has to be substantial and stable, preferably extending for more than 4 years, and can only be measured in a stable business environment, since a rapid economic decline renders the projection of future profits all but impossible.[246]

119. In the case at hand, Caeli only experienced some profitability under a combination of two extraordinary events that created a short term extremely favorable business environment in Mekar. First, the Eldin volcanic eruption of 2012 temporarily attracted more tourists to Mekar.[247] Second, from 2012 until 2017, Caeli benefited from record low fuel prices, substantially reducing its operational costs.[248] These exceptional circumstances caused Caeli's first budgetary surplus since it was privatized, and the Claimant's investment was only capable of sustaining it for the three consecutive years in which the business environment remained unchanged.[249]

120. In addition, Caeli endured huge deficits prior to its privatization, facing several bailouts.[250] In the first years of Vemma's administration, Claimant's business strategy relied on overly optimistic projections[251], leveraging its position[252] in order to increase revenues. After the end of the aforementioned boom in the tourist market of the region, the company was merely brought back to its dire financial status. This situation is a result of bad business decision-making, and an investment treaty should not be taken as an insurance policy against it[253].

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[243] WB Guidelines, Section IV(6).
[244] Quiborax v. Bolivia ¶¶331,344; Rumeli v. Kazakhstan ¶730; Caratube v. Kazakhstan ¶1094; Al-Bahloul v. Tajikistan ¶71; Masdar v. Spain ¶581.
[245] WB Guidelines, Section IV(6).
[246] Tenaris v. Venezuela (I) ¶525,527.
[247] Facts, lines 1089-1090.
[248] Facts, lines 1120-1126.
[249] Facts, lines 1100-1107; 1130-1135; 1191.
[250] Facts, lines 980-984.
[251] Facts, lines 1035-1037.
[252] Facts, lines 1140-1146.
[253] Maffezini v. Spain ¶64.

121. Claimant may argue that Caeli's history before the privatization should not be considered for its financial records. However, the *Vivendi v. Argentina (II)*[254] tribunal considered its entire history, including its recorded losses prior to privatization in order to deny it the going concern status. Both Vivendi's investment and Caeli followed a similar history before privatization: they were indebted, looted by government officials, unable to present a steady stream of profits and reliant on government aid and bailouts.[255]

122. The DCF is a film, not a picture of the company's history. In this sense, it is not possible to ignore neither Caeli's history prior to the privatization[256] nor its shortcomings in the aftermath of Vemma's unwise business strategy[257], to assess its supposed profitability. Furthermore, the ongoing Mekari economic crisis undermines any projection of future profits. Respondent is facing one of the worst economic crises in its entire history, having a negative 8% GDP growth in 2019 and an inflation rate of over 2.600% in 2020.[258] Therefore, any projection of future profits would not have reasonable certainty.[259]

123. Thus, as the investor only reaped profits through its leveraged position in a booming market, its time-limited profitability should not be taken as a going concern, considering the entirety of its record.

4.2. Hawthorne Group's offer does not represent an arms-length negotiation

124. Claimant may argue Caeli's market value is represented by Hawthorne Group's offer of USD 600 million. Nevertheless, the aforementioned bid was not an arms-length negotiation[260], as Hawthorne was related to Vemma through the Moon Alliance and placed a strategic value in Caeli.

125. According to the IVS, an arm's length transaction occurs whenever unrelated parties achieve an agreement at market value[261]. For it to happen, there must be no special relation between the parties possible to artificially inflate its price level[262] nor a

[254] Vivendi v. Argentina (II) ¶8.3.6.
[255] Vivendi v. Argentina (II) ¶8.3.6; Facts, lines 955-975.
[256] Facts, lines 980-984.
[257] Facts, lines 1035-1037.
[258] PO3 lines 3161-3168.
[259] Tenaris v. Venezuela (I) ¶527.
[260] Stan, p. 117.
[261] IVS, p. 14.
[262] IVS, p. 14.

strategic value for the particular buyer[263]. Pursuant to the IAS, parties are related if they are associated to one another[264], that is, if they are involved in a partnership and one of them exercises significant influence over this relationship[265]. Moreover, a strategic value for the buyer is defined as the situation when the acquisition of a certain asset would be more valuable to that specific buyer than to an independent one.[266]

126. First, Hawthorne Group is associated to Vemma through the Moon Alliance.[267] This alliance is a commercial partnership,[268] formed by major global airlines,[269] and Vemma, as the founding member through its Royal Narnian airline,[270] exercised significant influence in its businesses.[271] In this sense, both are related parties, as Vemma had influence over Hawthorne Group through the Moon Alliance.[272]

127. Second, Hawthorne Group placed a strategic value in Claimant's assets, thus not exercising an arms-length negotiation. Caeli had a low-cost contract with PIA,[273] which was exploited by Claimant to extract supra-competitive profits from the Mekari market[274] and to assert the Moon Alliance domination over the area, with preferential secondary slot-trading with its alliance partners[275]. Considering this, Hawthorne Group's bid had a strategic value in maintaining said contract for the Moon Alliance and, therefore, inflated the price above market levels to guarantee its maintenance in the alliance's hands.[276]

128. Hence, Hawthorne Group's proposal was inflated due to its relation with Claimant and the strategic value it attributed to the investment, not being representative of Caeli's market value.

[263] Stan, p. 121.
[264] IAS 24, p.2 – 9 (b) (ii).
[265] IAS 28, p.1 – 2.
[266] Stan, p. 121;
[267] Facts, lines 1345.
[268] Joint US-EU report, p. 10, ¶26-28.
[269] Facts, lines 938-941.
[270] Facts, lines 940.
[271] Facts, lines 940.
[272] Facts, lines 940.
[273] Facts, lines 1026-1028.
[274] Facts, lines 1160-1161.
[275] Facts, lines 1153-1155.
[276] Facts, lines 1026-1028; 1153-1155; 1160-1161.

4.3. Any compensation granted should be reduced due to Claimant's contributory fault and the Mekari economic crisis

129. Should this Arbitral Tribunal consider it appropriate to grant Claimant any compensation, deductions would have to be included due to Claimant's contributory faults to Caeli's downturn[277] and the subsequent economic crisis which ravaged the Mekari economy since 2017[278].

130. An investment treaty must not be taken as an insurance policy against bad business decision making, as they are not designed to protect investors neither from risks inherent to the market, nor from the host country's specific economic situation.[279] Rather, whenever an investor contributes to its investment's failure, it must bear the brunt of its own decisions[280]. For this reason, compensation can only be granted if Claimant establishes a causal link between Respondent's conduct and the investment's downfall[281].

131. Claimant has a contributory fault to its investment's demise, due to its unwise business strategies which relied on overly optimistic projections[282], leveraging its position[283] in order to increase its market share, instead of dealing with previous liabilities it inherited during Caeli's privatization[284]. Respondent, as Caeli's previous owner, even warned Claimant about the market volatility, advising it to adopt a more conservative approach.[285] The IICRA, a major rating agency, assigned Caeli a CCC+ rating, stating that the company's risky strategies and leveraged position were the main reason behind it,[286] while Fitch followed the same reasoning[287]. Thus, Claimant's leverage-reliant strategy exacerbated the effects of the subsequent crisis, as Caeli was unable to service its debts, entering a downward spiral[288]. In this sense, to consider Respondent to be the exclusive reason behind Caeli's downfall is to relieve Claimant of its responsibilities as an entrepreneur and

[277] Facts, lines 1035-1037; 1095-1099; 1104-1116; 1136-1146; 1305-1308; 1314-1320.
[278] Facts, lines 1183-1190.
[279] Gold Reserve v. Venezuela ¶647; IMFA v. Indonesia ¶244; Oxus Gold v. Uzbekistan ¶325; IGB v. Spain ¶186.
[280] UAB v. Latvia ¶1144; Stati v. Kazakhstan (I) ¶1331; Veteran Petroleum v. Russia ¶1600.
[281] Bear Creek Mining v. Peru ¶410.
[282] Facts, lines 1035-1037.
[283] Facts, lines 1140-1146.
[284] Facts, lines 1035-1037; 1095-1099; 1104-1116; 1136-1146; 1305-1308; 1314-1320.
[285] Facts, lines 1095-1099; 1108-1110; 1136-1146; 1305-1308.
[286] Facts, lines 1305-1307.
[287] PO4, 3283-3290.
[288] Facts, lines 1196-1197; 1035-1037; 1095-1099; 1104-1116; 1136-1146; 1305-1308; 1314-1320.

to transform CEPTA in an insurance against bad business decision-making, which is not the goal of an investment treaty[289].

132. Moreover, the existing economic crisis in Mekar entails the adoption of a substantially higher discount rate.

133. In the light of the Mekari economic crisis, with an -8% GDP crash in 2019 and an inflation rate of over 2.600% in 2020[290], any compensation awarded should consider a higher discount rate, similar to those seen in the Venezuelan cases. In this regard, the Mekari economic situation is even worse than the Venezuelan 2015 recession, when the South American nation faced an inflation rate of 121.74%[291] and a negative growth rate of 6.22%[292].

134. In this sense, whenever applying DCF for countries experiencing a period of economic crisis, arbitral tribunals have adopted on average a discount rate of at least 16%, which is substantially increased due to the scale of the economic crisis, as demonstrated by the table below:

Country	Investor	Year	Discount Rate Applied (%)
Argentina	*CMS*	*2005*	*18.0*[293]
Argentina	*Enron*	*2007*	*12.6*[294]
Argentina	*Sempra*	*2007*	*13.77 and 14.12*[295]
Ukraine	*Alpha Projektholding*	*2010*	*12.14*[296]
Ukraine	*Joseph Charles Lemire*	*2011*	*18.51*[297]
Mexico	*Abengoa S.A. y COFIDES S.A.*	*2013*	*15.01*[298]
Venezuela	*Flughafen Zürich*	*2014*	*14.4*[299]
Bolivia	*Guaracachi*	*2014*	*14.33*[300]
Venezuela	*Tidewater*	*2015*	*14.75 + 6,5*[301]

[289] Maffezini v. Spain ¶64.
[290] PO3, lines 3161-3168.
[291] Venezuela 2015 GDP.
[292] Venezuela 2015 Inflation.
[293] CMS v. Argentina ¶452.
[294] Enron v. Argentina ¶411-412.
[295] Sempra v. Argentina ¶431,458.
[296] Alpha Projektholding v. Ukraine ¶483.
[297] Lemire v. Ukraine (II) ¶274.
[298] Abengoa v. Mexico ¶¶719-720.
[299] Flughafen Zürich v. Venezuela ¶910.
[300] Guaracachi v. Bolivia ¶603.
[301] Tidewater v. Venezuela ¶197.

Venezuela	*OI European Group*	*2015*	*23.0*[302]
Venezuela	*Tenaris (II)*	*2016*	*20.47*[303]
Ecuador	*Burlington*	*2017*	*12.5*[304]
Pakistan	*Karkey Karadeniz*	*2017*	*17 and 18*[305]
Venezuela	*ConocoPhillips*	*2019*	*17.25*[306]

135. Hence, as Claimant has a contributory fault to its investment demise and as the Mekari economic collapse does not allow any exorbitant compensation to be paid, an eventual compensation should be reduced accordingly.

136. IN CONCLUSION, in case any breach of FET is recognized, the market value standard should be applied, translated into the value Respondent has already paid Claimant, *i.e.*, USD 400 million. Furthermore, neither the DCF method nor Hawthorne Group's offer are pertinent to the case at hand. Finally, any compensation should be reduced considering Claimant's contributory fault and the ongoing Mekari economic crisis.

[302] OI European Group v. Venezuela ¶817.
[303] Tenaris v. Venezuela (II) ¶703.
[304] Burlington v. Ecuador ¶513.
[305] Karkey Karadeniz v. Pakistan ¶816.
[306] ConocoPhillips v. Venezuela ¶953

PRAYER FOR RELIEF

137. Considering the aforementioned submissions, Claimant hereby respectfully requests the Tribunal to dismiss Claimant's Request to admit CPUR's amicus submission and to disqualify CBFI's non-disputing party submission and to declare that:

a) This tribunal does not have jurisdiction over the claims and Claimant's investments are not protected under CEPTA;

b) Respondent has not breached the FET standard enshrined in Chapter 9 CEPTA;

c) Respondent must not pay Claimant any reparation, as Mekar already bought Claimant's investment at its Market Value;

d) Any additional compensation must be reduced due to Claimant's contributory fault and the Mekari economic crisis; and

e) Order Claimant to reimburse the Respondent for all cost and expenses associated with this arbitration.

Respectfully submitted on 23 September 2021 by

Team Khan

On behalf of The Republic of Mekar.