FDI International Arbitration Moot 2021

Memorial for RESPONDENT

ICSID

Case nº ARB(AF)/20/78

In the Arbitration between

CLAIMANT	RESPONDENT
VEMMA HOLDINGS INC.	**THE FEDERAL REPUBLIC OF MEKAR**
0934, 4 Navalny Drive	C3C 4D4, 1 Parliamentary Blvd
Szeto, Bonooru	Phenac, Mekar

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TABLE OF ABBREVIATIONS

ABBREVIATION	ABBREVIATION FULL TEXT
§/§§	Paragraph/paragraphs cited from authorities
¶/¶¶	Paragraph/paragraphs in the Memorandum
AICPA	Association of International Certified Professional Accountants
Arbitral Tribunal/Tribunal	Arbitral Tribunal at the present proceedings
Art./Artt.	Article/Articles
BIT	Bilateral Investment Treaty
CBFI	Consortium of Bonoori Foreign Investors
CBFI Submission	Amicus Submission by the Consortium of Bonoori Foreign Investors, pp.15-17
CCM	Competition Commission of Mekar
CEPTA/Treaty	Comprehensive Economic Partnership and Trade Agreement Between The Commonwealth of Bonooru and The Federal Republic of Mekar
cf.	Compare
Contracting State	ICSID and its member States, as per ICSID Convention
CPUR	Committee on Public Utilities Reform
CPUR Submission	Amicus Submission by External Advisors to the Committee on Public Utilities Reform, pp.18-20
ed./eds.	Editor/editors
e.g.	For example

FDI	Foreign Direct Investment
FET	Fair and Equitable Treatment
FMV	Fair Market Value
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
i.e.	That is
ILC/ILC Articles/ARSIWA	International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts
IMF	International Monetary Fund
ISDS	Investor-State Dispute Settlement
LPM	Labourers' Party of Mekar
NAFTA	The Free Trade Commission of the North American Free Trade Agreement
Memorandum of Association	Memorandum of Association of Vemma Holdings Inc.
MFN	Most-Favoured-Nation
Notice	CLAIMANT's Notice of Arbitration, pp.2-5
p./pp.	Page/Pages
Parties	Vemma Holdings Inc. and Federal Republic of Mekar
PO1	Procedural Order No 1, pp.10-14
PO2	Procedural Order No 2, pp.25-26

PO3	Procedural Order No 3, pp.85-87
RESPONDENT's Application	Mekar's Application to Bar the Amicus submission by the Consortium of Bonoori Foreign Investors, pp.23-24
Response	RESPONDENT`s Response to the Notice of Arbitration, pp.6-9
SOE	State-owned enterprise
UNCITRAL	United Nations Commission on International Trade Law
Vemma Holdings/CLAIMANT	Vemma Holdings Inc.
Vienna Convention	Vienna Convention on the Law of Treaties (1969)
VCSI	Vienna Convention on Sovereign Immunity

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STATEMENT OF FACTS

1. The Federal Republic of Mekar ("RESPONDENT") is a growing country that faced, throughout its history, difficulties to its development after the independence from Pevensie. Vemma Holdings Inc. ("CLAIMANT") is an airline holding company incorporated in The Commonwealth of Bonooru ("Bonooru").

2. On **17 June 1980**, a scheme was approved to privatize up to 70% of BA Holdings, the holding company of the national carrier airline Bonooru Air, in reason of the 1973 and the 1979 oil shocks.

3. **Between 1995 and 2004**, the two State-owned airlines, Aer Caeli and Caeli Airways, suffered staggered growth under the LPM government. There was an unsuccessful merger in **2003** between both airlines in an attempt to help its financial standings.

4. On **14 February 2004**, Mekar passed Decree F-0056 to increase governmental assistance to Caeli, which failed to assist the airline because of budgetary constraints.

5. In **2009**, Mekari government approved the Emergency Recovery Act, that granted the possibility to large-scale privatization of SOEs. In this context, the CCM, an autonomous agency independent of government influence, was created. In **January 2010**, Caeli Airways' privatization project was taken as priority.

6. In this process, together with four other companies, CLAIMANT was involved and participated in the process of purchasing Caeli Airways. On **5 January 2011**, CLAIMANT acquired a total of 85% stake in Caeli Airways for 800 million USD. The transaction was later approved by the CCM, in addition to and the airline's participation in the Moon Alliance.

7. In order to restore RESPONDENT's clientele, Bonooru approved the Horizon 2020 scheme to maximize tourism and offer resources. Vemma – as well as the other companies involved – received the said subsidies.

8. In **2012**, CLAIMANT began offering low long distance air fares and incurred in a too extravagant approach that could lead to losses given the volatility of the characteristic seasonal air flow. There were several discussions between the representatives of Mekar Airservices regarding the current optimistic and strong investment posture that could be harmful in the long term.

9. In **June 2014**, oil prices fell around the world due to a rising supply from non-CEPO countries. Caeli suffered from the regional competition problem, specifically in the region of the expected traffic routes between Bonooru and Mekar, which significantly hurt the company.

10. On **15 October 2014**, the Comprehensive Economic Partnership and Trade Agreement ("CEPTA"), signed by Mekar and Bonooru, entered into force.

11. At the **end of 2015**, Caeli placed orders for 45 Boeing 737 MAX aircraft and increased flying hours of its older aircraft. In **September of 2016**, the CCM launched an investigation into Caeli activities regarding predatory pricing strategies that hindered competition on the domestic market. As a result, CCM placed caps on Caeli as a provisional measure.

12. In **December 2016**, another complaint was submitted against Caeli before the CCM. The allegations concerned its supposed strategy of launching new flights on specific airlines aiming to push other competitors off these routes, besides taking advantage of undercutting policies and further privileges it possessed at Phenac International Airport

13. In **October 2017**, attending several requests, Mekari authorities approved the denomination of airfare in US dollars for all airlines operating in its territory.

14. On **30 January 2018**, to stabilize its currency, Mekar's government, in opposition to the previous determination, passed a decree demanding all companies operating in the country to offer goods and services exclusively in Mon.

15. Caeli's claim against the CCM was registered on **27 March 2018**. Despite having a high volume of cases, the judiciary system was able to judge the case. By the **end of August 2018**, the CCM concluded its First Investigation into the commercial activities of Caeli Airways, finding that Caeli violated Mekar' antitrust legislation in the form of predatory pricing resulting from low airfares and loyalty programmes. The CCM kept the airline caps in place pending the Second Investigation.

16. On **1 January 2019**, CCM found that Caeli Airways engaged in anti-competitive practices such as taking advantage of its dominant position to obtain certain privileges regarding the Phenac International Airport. Therefore, CCM imposed a monetary penalty of MON 200 million.

17. On **26 January 2019**, the Tribunal denied Caeli's appeal from CCM decisions because it could violate CCM'S rights to a due process of law and, according to Mekari Law, it is not allowed to apply fines during Court review.

18. On **15 June 2019**, an interim decision declined to remove the airfare caps and dismissed the merits of appeal.

19. On **9 December 2019**, CLAIMANT communicated an offer of Hawthorne Group LLP to buy its entire stake to representatives of Mekar Airservices for 600 million USD.

20. On **8 October 2020**, Vemma sold its stakes in Caeli Airways to Mekar Airservices for USD 400 million while filing a notice of arbitration against Mekar. Despite this, Caeli's market share continued to drop below 30% and CCM authorized the Minister of Civil Aviation, based on public interest, to infuse capital in Caeli.

21. With the breaking news that CLAIMANT had a plan to diminish Royal Narnian's services, a series of protests spread through Bonooru aiming to assure rights under Art. 70 Bonooru's Constitution. CLAIMANT then watched an increase of State stakes and a total change of board of directors replaced by government functionaries.

SUMMARY OF ARGUMENTS

PRELIMINARY ISSUES

22. **[ISSUE I]** This Arbitral Tribunal lacks jurisdiction to decide whether RESPONDENT breached Art. 9.9 CEPTA and to determine whether RESPONDENT needs to pay compensation to CLAIMANT as **[A]** CLAIMANT's investment towards Caeli shall be attributable to the State of Bonooru under the applicable law and **[B]** CLAIMANT is the *alter ego* of the State of Bonooru according to the international practice.

23. **[ISSUE II]** CPUR's request for *amicus curiae* should be granted as **[A]** it provides a brand-new perspective for this arbitration which **[B]** is within the scope of this arbitral proceeding. Moreover, **[C]** its contribution enhances the public interest involved in this arbitration.

SUBSTANTIVE ISSUES

24. **[ISSUE III]** RESPONDENT has not violated FET standards since **[A]** no discriminatory or arbitrary conduct was adopted and **[B]** RESPONDENT respected the due process by providing a proper trial to CLAIMANT. Considering the facts of the case, **[C]** RESPONDENT exercised its regulatory powers. At the end of the day, **[D]** CLAIMANT's expectations were simply too optimistic, and any legitimate expectation was frustrated.

25. **[ISSUE IV]** CLAIMANT is not entitled to compensation of USD 700 million, since **[A]** it already received compensation when it sold its stakes of Caeli to RESPONDENT. Moreover, **[B]** CLAIMANT's risky investment choices contributed to its own financial situation and its own fault should be considered when assessing the amount of compensation due. If this Tribunal finds that CLAIMANT is entitled to compensation, CLAIMANT should not receive the USD 700 million requested, once **[C]** the standard of market value should be applied and **[D]** the amount of compensation requested by CLAIMANT would put RESPONDENT's public interest at risk.

PRELIMINARY ISSUES

27. The present dispute covers two preliminary controversies. The first one regards this Arbitral Tribunal's lack of jurisdiction *rationae personae*. The second one, the admissibility of CPUR and CBFI as *amicus curiae* in this proceeding.

28. RESPONDENT objects CLAIMANT's legal standing in these proceedings and submits that it is not entitled to bring claims under the CEPTA and the ICSID Additional Facility Rules to this Arbitral Tribunal. CLAIMANT's investment is attributable to the State of Bonooru and shall not be protected by the Applicable Law since RESPONDENT did not consent to State-to-State arbitration. Therefore, this Tribunal shall find that CLAIMANT is the *alter ego* of Bonooru.

29. Secondly, it should be noted that the participation of CPUR as *amicus curiae* in this arbitration should be granted, since it met all the requirements established by scholarship, case law and applicable law. Meanwhile, the participation of the CBFI should be denied, since it was unable to meet the aforementioned conditions.

30. Therefore, RESPONDENT shall demonstrate that this Tribunal **[ISSUE I]** does not have jurisdiction *rationae personae* and **[ISSUE II]** that the participation of the CPUR must be granted, whilst the one of the CBFI should be denied.

I. THIS ARBITRAL TRIBUNAL LACKS JURISDICTION *RATIONAE PERSONAE* OVER THE DISPUTE

31. Following its investment in the aviation sector of Mekar's economy, CLAIMANT acquired an 85% stake in Caeli.[1] CLAIMANT alleges that RESPONDENT violated Art. 9.9 CEPTA.[2] However, this position is unreasonable.

32. From the outset, the present case falls outside this Tribunal's jurisdiction because this arbitration is held between two States: The Commonwealth of Bonooru and The Federal Republic of Mekar.[3]

33. Through Art. 9.17 CEPTA, RESPONDENT consented to submission of claims to arbitration. However, it never agreed to a State-to-State arbitration. Moreover, as per Art. 2 ICSID Additional Facility Rules, the litigation must be between a State and a national of another State.

34. CLAIMANT, as an SOE, is not an investor entitled to this Tribunal's jurisdiction. Therefore, an SOE does not have the protection granted for investors by the international investment law when exercising a governmental capacity.[4]

35. In this sense, RESPONDENT shall demonstrate that this Arbitral Tribunal does not have jurisdiction *rationae personae* upon the dispute brought up by CLAIMANT neither under **[A]** the applicable law, *i.e.*, CEPTA, ICSID Additional Facility Rules and international customary law nor **[B]** the international practice.

A. CLAIMANT'S ACTS MUST BE ATTRIBUTED TO THE STATE OF BONOORU UNDER THE APPLICABLE LAW

36. At first, within the objectives of the CEPTA, listed in Art. 1.3, the Treaty points out that *"the Parties shall interpret and apply the provisions of this Agreement in the light of its objectives set out in paragraph 1 and in accordance with applicable rules of international law."*[5]

37. Under this standard, the investment of CLAIMANT in Caeli Airways must be attributed to the State of Bonooru. The concept of attribution is relevant to jurisdictional affairs, as it ascertains whether the State is involved in the conduct of the enterprise.[6] For this purpose, as

[1] Uncontested Facts, lines 1050-1051.
[2] PO1, lines 413-414.
[3] Response, lines 183-184.
[4] Dolzer/Schreuer, p. 46; CSOB §17; BUCG §31.
[5] CEPTA, Art. 1.3 §2 (emphasis added).
[6] Hamester §143; Cortesi, p. 114.

asserted by the Tulip tribunal, the ILC Articles contains principles of customary law[7] – which can be used to achieve a conclusion on attribution of the acts of Bonooru.

38. Art. 5 ILC Articles states that an act by a person or entity exercising governmental authority shall be attributed to that State. This article refers to a functional criterion in which the central term is "*governmental authority*".[8] To understand this concept, two different approaches can be used: (i) observing the particular society and its traditions; and (ii) considering an objective and contemporary interpretation of *"governmental authority"* highlighting, however, "*the manner in which the entity is empowered by the State, the contents of the power conferred, and the links between the entity and the State organs"* in the specific context inserted. [9]

39. Moreover, Art. 8 ILC Articles determines that an act "*on the instructions of, or under the direction or control of, that State"* should be considered as an act of State. The criterion used is "*direction or control"*, which can be clarified as being effectively controlled by the State in that individual operation.[10]

40. When faced with the society and traditions of Bonooru, with the specific context of the governmental functions exercised by CLAIMANT, and with the individual operation of CLAIMANT towards Caeli, this Tribunal must find that the relevant acts to this arbitration are attributable to Bonooru.

41. As found by the Constitutional Court of Bonooru, in the case of The National Ferry Workers Union v. Bonooru, Art. 70 of its Constitution grants positive obligations upon the State to assure essential transportation throughout the archipelago.[11]

42. Also, in The People's Council of the Island of Kyoshi v. Bonooru, the court pointed that "*air travel serves a unique purpose in Bonooru compared to other nations around the globe*."[12] In the same case, the Constitutional Court of Bonooru indicated that Bonooru would "*be able to ensure the utilization of Royal Narnian for public benefit*", because it is the flag carrier and because of Bonooru's control through its shareholding.[13]

[7] Tulip §281.
[8] Dolzer/Schreuer, p. 200.
[9] Dolzer/Schreuer, p. 201.
[10] Dolzer/Schreuer, p. 201.
[11] Annex II, lines 1454-1459.
[12] Annex III, lines 1485-1486.
[13] Annex III, lines 1493-1497.

43. Furthermore, the development of the ICSID Convention to create a centre for disputes between an investor and the State host of the investment excluded State-to-State litigations,[14] in the intention of "*depoliticization of investment disputes.*"[15]

44. The determination of jurisdiction *rationae personae* applicable by ICSID Additional Facility Rules is different from the one used by ICSID Convention, once it requires that the claim is not under the jurisdiction of the Centre, establishing "*a modified version of the jurisdictional requirements under Article 25 of the ICSID Convention."*[16] With that in mind, the difference is not extended to the use of the word "*national"*, a term not defined by the Convention. Thus, the concept of "*national"* and its interpretation regarding the admissibility of SOEs as claimant remains untouched.

45. In fact, with respect to the ICSID Convention, Aron Broches *"described the contours of the standing of State Enterprises as ICSID claimants,"*[17] creating a case test which relies upon the concept of attribution determined by Artt. 5 and 8 ILC.[18]

46. According to the Broches test, the SOE shall not exercise governmental functions.[19] Art. 25 ICSID Convention, in its words, does not exclude the investor protection to SOEs, but its rulings must be interpreted with the guidance of the international law.[20]

47. A first analysis made by the Maffezini v. Spain tribunal undertook a formal or structural analysis, questioning the ownership, the control, and the objectives of the enterprise in its functions.[21] Those factors, however, need to be observed in regard of the particular society and its traditions or in the specific context inserted.[22]

48. In a functional test, the same tribunal concluded that even *"a private corporation operating for profit* [can be] *discharging essentially governmental functions."*[23] While CLAIMANT may argue that it was seeking for profit, it does not exclude the possibility of acting in governmental functions, what needs to be analyzed in the specific case of Bonooru.

49. The use of general statements, as the ones in the Broches test, usually reaches ambiguity and debate.[24] The application of this test in the practice finds two primary approaches: (i) the

[14] Mohtashami/El-Hosseny, p. 376.
[15] Feldman, pp. 35-37.
[16] Wehland, p. 238.
[17] Kovács, p. 270.
[18] BUCG §34; Kovács, p. 270.
[19] Dolzer/Schreuer, p. 46; CSOB §17; BUCG §31.
[20] Mohtashami/El-Hosseny, p. 379.
[21] Maffezini §79.
[22] Dolzer/Schreuer, p. 201.
[23] Maffezini §80.
[24] Mcneil/Purisch, pp. 156-157.

analysis of the nature of the investment, whether it is commercial or governmental, used in CSOB v. Slovakia; and (ii) the definition of the true party to the dispute according to the rules of attribution, as used in BUCG v. Yemen.[25]

50. Despite the doubts surrounding the Broches test in this issue, as the Maffezini v. Spain arbitral tribunal stated: *"in any event, a State will not necessarily escape responsibility for wrongful acts or omissions by hiding behind a private corporate veil."*[26] For it to be true in this case, this Tribunal must find that the acts of CLAIMANT are, in fact, attributable to Bonooru, according to the applicable law.

51. However, under both approaches, this Tribunal will find that CLAIMANT's acts shall be attributed to the State of Bonooru, given the circumstances of the country, CLAIMANT's representation of the national interests of the State and regarding the governmental nature of CLAIMANT's investment.

52. Therefore, CLAIMANT cannot be considered an enterprise of a Party, within the definitions of Art. 9.1 CEPTA, in the regard of submitting a claim to this arbitration, as it represents not the enterprise itself, but the State.

53. In light of the above, this Tribunal should find that CLAIMANT is not a national of Bonooru, but its acts shall be attributed to this State by the consideration of the applicable law. Therefore, this dispute cannot be submitted by CLAIMANT and this Arbitral Tribunal does not have jurisdiction for this case.

B. CLAIMANT IS THE ALTER EGO OF THE STATE OF BOONORU UNDER INTERNATIONAL PRACTICE

54. The ICSID Convention excludes State-to-State disputes, due to the clear intention of its drafts to depoliticize any investment disputes.[27] Although the drafters did not exclude the possibility of accepting SOE's claims – which might be alleged by CLAIMANT – these entities are precluded when acting in a governmental capacity,[28] which is exactly the case at hand.

55. Thus, even if the Tribunal decides to rely on the Broches Test, CLAIMANT would still not be qualified as a national from another state and, therefore, would not be contemplated by ICSID Additional Facility Rules proceedings. This is so because it **[1]** has acted as an agent for the government of Bonooru and **[2]** discharged an essentially governmental function.[29]

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[25] Mcneil/Purisch, pp. 156-157.
[26] Maffezini §78.
[27] Mcneill/Purisch, p. 155.
[28] Mcneill/Purisch, p. 155.
[29] Motshami/El-Hosseny, p. 379.

1. CLAIMANT acted as an agent for the government of Bonooru

56. The Tribunal has no jurisdiction to hear CLAIMANT's case due to its activities as an agent for the government of Bonooru in RESPONDENT's state. One of the main concerns about the investment made by SOEs may be driven by non-commercial motivations.[30] As stated by Professor Crawford, although the acts of a SOE, *prima facie*, are not attributable to their home State:

> *"where there was evidence that the corporation was exercising public powers, or that the State was using its ownership interest in or control of a corporation specifically in order to achieve a particular result, the conduct in question has been attributed to the State."* [31]

57. Another concern is related to economic distortions that SOEs may bring due to the advantages and support from their home government.[32] In effect, the State should assume responsibility for its conducts.[33]

58. The first signal that CLAIMANT was acting as an agent of Boonoru's government was on 23 November 2010. The same day that CLAIMANT submitted its bid for the purchase of Caeli, Ms. Sabina Blue, head of CLAIMANT's board of directors, was appointed as the Secretary of Transport and Tourism in a cabinet reshuffle of Bonooru.[34] Even the Chairperson of Mekar's Committee on Reform of Public Utilities stressed that CLAIMANT's ties to Bonooru were an asset.[35]

59. In 2011, Ms Sabina Blue, Bonooru's Minister, unveiled the Horizon 2020 scheme as part of the Caspian Project[36] to "*optimally tap the potential of Bonooru's emerald beaches, its fascinating national parks, and its human, cultural and treasures'*[37], offering subsidies to companies investing in tourism-related infrastructure in Bonooru. Besides, she alleged that *"Caeli Airways would draw more travelers from Mekar and the Greater Narnia to Bonooru's emerging tourism markets"* and the CLAIMANT'S expansion into RESPONDENT's territory would offer substantial benefits not only for CLAIMANT but also to Bonooru.[38]

[30] Shima, p. 7.
[31] Crawford, p. 113
[32] Shima, p. 7.
[33] Crawford, p. 114.
[34] Uncontested Facts, line 1020.
[35] Uncontested Facts, line 1035.
[36] Uncontested Facts, line 890.
[37] Uncontested Facts, line 1075.
[38] Uncontested Facts, line 1089.

60. Furthermore, due to the volatility of demand in the region and the low prices of oil, Mekar Airservices cautioned CLAIMANT's management against its extravagant approach of expansion.[39] CLAIMANT decided to ignore those warnings and continued to project optimism. In an interview for Phenac Business Today, Ms. Misty Kasumi, who is a former high-ranking employee within Bonooru's Ministry of Tourism, when asked why corporations coming from Bonoory *"can be… different"*, stated that:

> *"Different in that corporations tend to not be fully independent. Or sometimes independent at all, from the government. It is a well-known fact that even Royal Narnian receives quite a lot of state aid, which is part of the reason it is so profitable. If you look at Caeli Airways' flight patterns, significant resources are put into flights between Mekar and Bonooru."*[40]

61. A similar case occurred to an Australian mining company, which was acquired by the Aluminium Company of China after its government had provided funding specifically to the company. Further, its chief executive officer was promoted to a State Council position days after the acquisition was negotiated. Subsequently, the promotion-based performance of the executives' stem from financial performance and the furtherance of State goals.[41]

62. Moreover, in the case Maffezini v. Spain, one of the decisive factors used by the tribunal to define that SODIGA was an SOE acting on behalf of Spain was its creation by the highest political organs in Spain with the intent of promoting regional industrial development, which was carried out by providing business subsidies.[42]

63. Therefore, contextualizing CLAIMANT's investment in RESPONDENT's state under Bonooru's Caspian Project and the Horizon 2020 scheme, CLAIMANT acted as an agent of Bonooru. CLAIMANT received subsidies from his home state to privilege routes that are more profitable to Bonooru than to CLAIMANT or Caeli.[43] The subsidies and protection from its home state permitted that CLAIMANT took risky investments despite the conflicting stand of the representatives of Mekar Airservices. Besides, when Bonooru launched the Caspian project in 2010, some neighboring States accused CLAIMANT's home state of using economic leverage as a tool of diplomacy[44] and to have more control in the region.[45]

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[39] Uncontested Facts, line 1090.
[40] Annex VII, line 1860.
[41] Mclaughlin, pp. 27-28.
[42] Mcneill/Purisch, p. 162.
[43] Annex VII, line 1875.
[44] Uncontested Facts, line 890.
[45] Annex VII, line 1875.

2. CLAIMANT was discharging an essential governmental function

64. Furthermore, aviation is an essential governmental function for Bonooru. Due to its unique geography, CLAIMANT's home state channeled its resources towards developing a robust network of domestic airways. Thus, the mobility rights of its population have special attention from the government, which is illustrated by Art. 70 Constitution of Bonooru.[46]

65. For the purpose of determining what is 'governmental', the ILC Commentary proposes to rely on the specific society and its traditions.[47] As stated before,[48] according to Professors Rudolf Dolzer and Christoph Schreuer, *"the manner that in which the entity is empowered by the state, the content of the powers conferred, and the links between the entity and the state organs must be considered in the context of each case."*[49]

66. In this scenario, since its existence, CLAIMANT has acted on behalf of the Bonooru. The privatization of Boonoru Air, a SOE from Boonoru resulted in its split into three airlines. One of these was Royal Narnia, the flag carrier of Bonooru completely owned and operated by Vemma, which Bonooru retains shareholding.[50]

67. Also, as alluded before, the individual operation of CLAIMANT was not only controlled by the state of Bonooru, but on behalf of its interests to the detriment of the CLAIMANT and Caeli.[51] That way Bonooru could develop its own agenda using CLAIMANT as its front company.

68. In Crystallex v. Petroleos de Venezuela, U.S Federal Courts found that – much like Bonooru's hold over airlines – Venezuelan State-owned assets are liable when enforcing arbitration awards. In other words, when a company is controlled by a State Government and an unfavorable arbitral award is handed out against the Government, not only are its own assets – financial and otherwise – liable for the enforcement of a given award, but also the State agent's assets follow under the purview of enforcement, as was found in this instance.[52]

69. In this regard, Cairn Energy, a British oil and gas exploration and development company, filed a lawsuit in May of 2021 in the U.S. District Court for the Southern District of New York[53] to enforce an arbitration award it had won against the Indian Government. The plaintiff seeks to have recognized that Air India, the defendant, is merely an *alter ego* of that nation's government,

[46] Uncontested Facts, lines 895-902.
[47] Dolzer/ Schreuer, p. 200; ¶36.
[48] ¶36.
[49] Dolzer/Schreuer, p. 201.
[50] Uncontested Facts, line 930.
[51] Annex VII, p. 55, line 1875.
[52] Crystallex v. Petroleos de Venezuela.
[53] Cairn Energy v. Air India.

therefore, its assets could be seized when enforcing arbitration awards against the State itself – which is in accordance with Supreme Court precedent.[54]

70. These precedents illustrate what happened in the present case: CLAIMANT's role as a company is as much commercial as it is governmental. Therefore, Bonooru can be held liable under international case law, paving the way for a State-to-State arbitration dispute – for CLAIMANT is but an *alter ego* of Bonooru's government.

71. The popular movement when Bonooru Air was intended to be privatized[55] and when CLAIMANT planned to minimize Royal Narnian's services in Bonooru[56] proves that CLAIMANT represents the national interests of Bonooru. In this sense, it is known that the State directly controls the SOE and their representatives in CLAIMANT's board of directors form the majority necessary to take decisions.[57] That popular importance and the control of the State indicate that CLAIMANT exercises governmental functions, in the context of the society of Bonooru, being the *alter ego* of the State.

72. CLAIMANT's plan to minimize Royal Narnian's services in Bonooru itself proves that the investment made by CLAIMANT in Caeli had total relation to the governmental functions exercised for the State.

73. In accordance with the decision of CSOB v. Slovakia, the activities must be judged by their nature and not by their purpose.[58] Under this reasoning, not only CLAIMANT's alleged goals matter, but also its nature. Given the public interest in aviation and mobility in Bonooru, which resulted in an article in its constitution, CLAIMANT's activity is governmental by nature.

74. Therefore, due to the essential nature and the public interest of CLAIMANT's activity for Bonooru, the interpretation relied on its specific society, and Bonooru's interference in CLAIMANT's activities, this Tribunal should decline to exercise jurisdiction due to the CLAIMANT's status as a SOE.

[54] First National v. Bancec.
[55] Uncontested Facts, lines 918-920.
[56] Uncontested Facts, lines 1405-1408.
[57] PO3, lines 3156-3160.
[58] CSOB §20.

II. THE CPUR FILLING FOR *AMICUS CURIAE* SHOULD BE GRANTED AND THE CBFI MUST BE DENIED

75. Over the years, there has been a trend towards filling for *amicus* in arbitration proceedings.[59] This tendency can be exemplified by the Statement on Non-Disputing Party Participation issued by NAFTA, such as stated in the leading case Methanex Corp. v. United States.[60] Also, Rule 37(2) ICSID Convention, as well as Art. 41(3) ICSID Additional Facility Rules, explicitly included the possibility to submit *amicus* briefs.

76. Although many arbitrations have, in the merits of the dispute, more technical issues and of a more corporate and commercial nature, the relationship between Investor-State can impact the lives of thousands, if not millions of citizens not only of that country,[61] but also of nearby communities. Thus, there is a direct and strong connection on the part of society, especially when there is an *amicus* filling, as in the present case, which can bring *"wider confidence in the arbitral process itself."*[62]

77. As stated by Triantafilou,[63] the aspect of popular interest and impact is a strong argument for active *amicus curiae* participation in investment arbitrations. This aspect is especially relevant when a state faces liability to the tune of several hundred million citizens, becoming a political exercise in the use of public funds – paid ultimately by national citizens, through taxation.

78. Having in mind the importance of the *amicus curiae*, it is also mandatory to evaluate its necessity and effectiveness in the arbitration procedure.[64] An inappropriate participation may disrupt and delay the expected progress, harming the interests of both parties and figuring a complex obstacle to trespass.

79. Art. 41 (3) ICSID Additional Facility Rules sets forth the following requirements for the intervention of *amicus curiae*: **(a)** the non-disputing party submission shall assist the Tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties; **(b)** the non-disputing party submission shall address a matter within the scope of the dispute; and **(c)** the non-disputing party has a significant interest in the proceeding.

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[59] Levine, p 200.
[60] *See* Methanex Corp. v. United States I.
[61] Gómez, p. 528.
[62] Biwater §50.
[63] Triantafilou, pp. 576-577.
[64] Born/Forrest, pp. 652-653.

80. However, added to the conditions listed, Rule 37(2) ICSID Convention states that the *amicus* participation cannot "*cause an undue burden or unfair prejudice to one of the parties*". Under this provision, there is no basis for the CBFI's request to participate, while the CPUR's participation is not only welcome, but essential to the decision, helping to provide not only equity, but justice to the case at hand.

A. CPUR PROVIDES A BRAND-NEW PERSPECTIVE FOR THIS ARBITRATION WHILE CBFI BRINGS NOTHING NEW

81. Firstly, an *amicus* should bring a knowledge or perspective that is relevant to the case at hand, highlighting that its role may affect the transparency of the procedure such as mentioned by Professor Katia Fach Goméz,

> ***"****Amicus submissions aim to protect important public interests such as (…) the fight against corruption, and governmental policies. The significance of these public interests emphasizes the benefits of bringing them to the attention of arbitrators through the amicus submissions****".***[65]

82. With this in mind, RESPONDENT will demonstrate that the public interest found in the CPUR's request is manifest and inherent to the nature of its internal structure.

83. It is noticed that the CPUR candidates are members of a Mekari civil society focused on investment banking[66] and, therefore, have experience in great varieties of financial operations and investments from all kinds. Also, they were engaged as external advisors to the Committee on Reform on Public Utilities created under the Law on Privatization of State Property to assist in the privatization process of Caeli. Hence, CPUR's statement will not only add a unique and indispensable point of view to the dispute from a technical side but also from a representative perspective, since it brings up the, yet silent, voice of Mekari society, which may be widely impacted by this Tribunal's outcome.

84. On the other hand, CBFI is an association which represents Bonoori investors. Despite its expertise, it will not add any point of view substantially new to debate since its views are well aligned to CLAIMANT's and it intends as a strong-arm and unbalance the debate. This is corroborated by the fact that one of its members, Lapras Legal Capital, is advising Vemma Holdings on funding strategies with respect to its claim against the Federal Republic of Mekar. This poses another potential damage to the admission of CBFI as a third party in this arbitration: of allowing a biased party to assume a position that should be neutral.

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[65] Gómez, pp. 543-544.
[66] CPUR Submission, lines 616-617.

85. Apart from the legal criteria, to be admitted as *amicus* curiae, several tribunals have stated that the applicant should also be independent. This criterion has been consolidated by case law[67] since it is "*implicit in Rule 37(2)(a), which requires (...) a perspective, particular knowledge or insight that is different from that of the Parties"*.[68] Also, the participation of the *amicus* allows for a rational and independent view of the parties wishes, a fact that can be observed by the nationality of the petitioners, so that it is in their interest the economic and, consequently, social welfare of their country.

86. However, it cannot be stated that there is a biased performance by the CPUR that prevents them from exercising a technical and precise analysis of the scenario in question. Their point of view is privileged and necessary, as it should be noted, given their participation in the Caeli privatization process. A perspective that, it must be acknowledged cannot be provided by the CBFI, given its completely different nature and distance as a company from the dispute in question, having less familiarity and proximity to the reported events.

87. The history of the CPUR brings to light important information, reporting that the *amicus* has independence from the parties involved, ruling out the possibility of partiality. The group, which the *amicus* consists of, is thoroughly selected after a transparent assortment process, taking into consideration various aspects. It must be emphasized that, in its request for *amicus* participation, it was paramount to the CPUR the anti-corruption feature[69], perceiving the impacts of the financial consequences upon investors and citizens. CPUR was also part of the discussions regarding the acquisition that made CLAIMANT the majority shareholder of Caeli, demonstrating that the petitioner stays within the confines of the debate and allowing the Mekari civil society to have a closer look at the procedure.

88. The same, however, cannot be affirmed about CBFI's application since there would be a conflicted indirect participation of Lapras Legal Capital through the consortium. CBFI's application explicitly informs that Lapras is advising CLAIMANT on funding strategies with respect to its claim against RESPONDENT. In similar cases in which the amici have strong bonds with one of the parties, tribunals have decided to not grant the application, since neutrality could be easily doubted.[70]

89. Therefore, it must be considered that one of the petitioners does check all the requirements needed, while CBFI does not. Therefore, the absence of new perspectives and lack

[67] *See* InterAguas, §49; Philip Morris §55; Iberdrola Energia SA.
[68] Bernhard von Pezold §49.
[69] CPUR Submission, lines 644-646.
[70] Border Timbers Limited.

of independence presented by CBFI is evident, which, by itself, would be sufficient to reject the request. However, even if this were not the case, CBFI does not conform to the other criteria set forth below.

B. CPUR'S BRIEF RESPECTS THE SCOPE OF THIS ARBITRAL PROCEEDING: THE CORRUPTION SCANDAL AS A MATTER OF PUBLIC INTEREST

90. The second requirement provided by Art. 41(3)(b) ICSID Additional Facility Arbitration Rules it that "*the non-disputing party submission would address a matter within the scope of the dispute*". In this regard, CLAIMANT preliminary stated that CPUR did not met the referred criterion since it would raise a new jurisdiction question not previously invoked by the parties.[71]

91. This statement, however, is based on an outdated interpretation of the applicable law. It comes from a strict reading of Art. 41 (3)(b), which assumes that procedural questions are unsuitable content for *amicus* petitions. This interpretation was replaced by the understanding that there is no hard rule that excludes jurisdiction from *amicus* submissions[72]. In this sense, the tribunal in Apotex Inc. v. The Government of the United States of America stated that it is:

> *"perfectly conceivable that issues of jurisdiction might raise matters of public interest in themselves, on which non-disputing parties might be well-placed to provide assistance and perspective or insights beyond those of the disputing parties."*[73]

92. On the same path, many scholars[74] recognize that *amicus curiae* participation in arbitral proceedings have, as one of its main goals, the protection of public interests, especially the measures against corruption. That's when it comes to light the "*evidence that the rights received by Vemma Holdings were procured by means of bribes*"[75]

93. The performance of the CPUR was of great importance in verifying that Mr Dorian Umbridge, Chairperson of the committee, played a suspect and partial role during the bidding process.[76] With his approval, conveniently unencumbered by other questionings against the purchase of 85% of the shares, it was possible for Vemma not only to profit immensely, but also to have strategic control over the airlines and flow of people through the Mekari region.

94. To this end, a corruption scandal concern not only the parties of this arbitration, but the whole population of the Mekari Region, including investors. Hence, the public interest of the

[71] CLAIMANT's application to bar the *amicus*, line 715.
[72] Schliemann, p. 375.
[73] Apotex Inc. v. The Government of the United States of America §33.
[74] Footer, pp. 46-47.
[75] CPUR Submission, lines 635-637.
[76] Uncontested Facts, line 1036.

matter is undeniable and the reason why CPUR admission as *amici* must be granted, whilst CBFI's should be denied.

95. Moreover, this is the sole conclusion to be reached considering the UNCITRAL Rules on Transparency in treaty-based Investor-State Arbitration, which shall apply to any international arbitration proceedings initiated against the Commonwealth of Bonooru. The Federal Republic of Mekar must duly consider the application of the UNCITRAL Rules on Transparency in any international arbitration proceedings initiated against the Federal Republic of Mekar.[77]

96. Artt. 4 and 5 UNCITRAL reinforce the determinations set forth by ICSID Additional Facility Rules. However, in Art. 5 §4 UNCITRAL a relevant caveat is made: the arbitral tribunal ought to ensure that any submission does not disrupt, figure an unduly burden the arbitral proceedings or unfairly prejudice any disputing party. Therefore, CBFI would, indeed, figure a burden for the arbitral procedure, according to the above mentioned.

97. This insight is of great value to the present discussion, since the CBFI's filling clearly violates the principle that an *amicus* must pursue a public interest. As stated in Vivend v Elektri,[78] governmental measures and responsibility of the State such as the welfare of the society can be at stake in certain cases. CBFI, with 38 of their members holding investments in Mekar, has any public interest besides their own profit and earnings for the company.

98. Another aspect that goes in the opposite way to the directions given to *amicus* participation that is notable in the CBFI, is the ability to offer a differentiated point of view. Now, how could this be possible when the participants of this consortium are investors of a similar nature to those of CLAIMANT, so that any point in favor of the latter would bring enormous personal gains to this *amicus* petitioner?

99. The aspect of transparency and legality must be understood as pillars of the law practice, Not only that, the violation of the basic requirements is, once again, tangressed to the extent that independence from the parties in dispute is not observed, since the participation of Lapras Legal Capital through the CBFI brings to the case a very serious conflict of interest that prevents the participation of the latter as a party in the process.

100. As asseverated by Ondrej Svoboda, given the trait of confidentiality and little access of the people to information:

[77] CEPTA, Art. 9.20(6).
[78] *See* George/Voser.

> *"there was a trend toward open and participatory investment arbitrations intensified and consensus that the public should have the right to be informed about a notification of a claim, an access to proceedings and a final award was established in the international community*".[79]

101. One could cite case law such as Cairn v. India, where Respondent points out that there is now a "*widespread recognition of the need for greater transparency in investment treaty arbitration, and the default rule in investment arbitration is transparency*". The party goes on explaining how a greater transparency would enhance the legitimacy in the arbitral process, substantiating the argument put forward by the respondent in the present case.

102. As explained by CPUR's filling, its interests seem to be aligned with the basic principles of investment arbitration, always taking into consideration legality, fair and equitable treatment, among others. Transparency and other requirements listed in the title of this point are undoubtedly in its favor and, unfortunately, against CBFI for the reasons explained herein.

103. To this end, one should return to the initial premise that the admission of an *amicus* should be allowed only when necessary; otherwise, it becomes an unfair burden that only hinders the procedure, the speed of the proceedings and the genuine interest of the parties in resolving the issue. The CBFI, regrettably, fits into the last scenario.

C. CPUR SHOULD BE ADMITTED IN LIGHT OF PUBLIC INTEREST

104. According to the third requirement set forth by Art. 41.3 (c) ICSID Additional Facility Rules, the non-disputing party shall have "*a significant interest in the proceeding*". To prove such condition, CPUR has an interest in promoting fair business practices in Mekar. In addition, it should be noted that it is in the interest of the *amicus* that in negotiations between Investor-State are addressed in a fair way and in an unbiased manner.

105. The very nature of civil society, professionally focused on investment banking shows how its interests relate to those addressed in this scenario. It is notable, therefore, that CPUR has a legitimate interest in the economic and banking aspect of Mekar, but also significantly expresses a negative posture against acts of partiality and corruption in the investment world and in Investor-State relations.

106. These were the proclaimed by the Professor Brownlie's Separate Opinion on the Issues at the Quantum Phase in CME v. Czech Republic:

[79] Svoboda, p. 27.

> *"It would be strange indeed, if the outcome of acceptance of a bilateral investment treaty took the form of liabilities 'likely to entail catastrophic repercussions for the livelihood and economic well-being of the population' of [the host state]"*[80]

107. This highlights that the public aspect is of paramount importance, insofar as arbitral performance that overlooks the rights of the State in the dispute, also overlooks the rights of the citizens who belong to it. Therefore, by the great capacity of affecting the institutional functioning, as well as public policies, the clear social interest on the part of the petitioner for *amicus* is proven.

108. The issue of protecting the social rights of Mekar residents by upholding them through the respective investment arbitration laws should not be overlooked. In such a way, it is possible to understand that the identity of the entity in question presents an argument of significant interest, besides following all the necessary requirements established. In more extreme cases, international organizations with an explicit mandate to protect human rights can require an amicus curiae brief in any arbitration to which a member state is a party. The above statement makes explicit the importance of the defence of public interests in arbitral investments.[81]

109. Distinctively, the significant interest in the other party is not shown to be as poignant as that presented by CPUR. In that matter, CLAIMANT could argue that the significant interest on the part of the CBFI would figure in its intention to strengthen CLAIMANT's side, given its partial alignment with it.

110. However, RESPONDENT acknowledges that discussion around significant interest can be deeply subjective and can be easily diverted by the other party. In good time, it is of paramount importance to point out that in order to participate as amicus in a proceeding, the petitioner does not need to cumulatively fulfill all the requirements and, given that the CBFI expressly and flagrantly deviates from the required conditions, it should have its request denied.

111. It is clear to see, by the arguments brought that the public participation in the form of *amicus curiae* brings up not only a transparency, but also legitimacy to the case at hand, reminding the parties that several lives can and probably will be impacted if not considerate the public interest aspect in this case.

[80] CME v. Czech Republic §78.
[81] Cross/Schliemann, pp. 99-102.

CONCLUSION OF THE PRELIMINARY ISSUES

112. Firstly, this Arbitral Tribunal shall find that it does not have jurisdiction *rationae personae*, since CLAIMANT's acts shall be attributable to the State of Bonooru and it is the alter ego of its home State.

113. Following this line of reasoning, it remains the understanding that, according to the legal basis established in the applicable legal system, the amicus curiae request should be granted to only one of the two petitioners. In view of CBFI's inability to complete the established conditions, its participation in this arbitral proceeding cannot be considered, and its filling should be denied; on the other hand, CPUR is fully capable of fulfilling such aspects, and its request should be granted. The presence of the latter, based on its intrinsic characteristics is not only welcome, but also essential for the advancement of arbitral proceedings in terms of transparency.

SUBSTANTIVE ISSUES

114. As demonstrated, this Arbitral Tribunal has no jurisdiction to decide whether RESPONDENT breached Art. 9.9 CEPTA. Moreover, the participation of CPUR as amicus curiae in these proceedings should be granted, whilst CBFI's submission should be denied.

115. With this in mind, RESPONDENT shall demonstrate that **[III]** RESPONDENT did not breach FET standards as no discriminatory or arbitrary conduct was adopted, it provided a proper trial to CLAIMANT and there was no frustration of legitimate expectations, CLAIMANT's expectations were simply too optimistic. Hence, **[IV]** CLAIMANT is not entitled to any compensation. Even if CLAIMANT is considered entitled to such compensation, this value shall consider the amount of USD 400 million already paid.

III. RESPONDENT'S MEASURES DID NOT VIOLATE THE FAIR AND EQUITABLE TREATMENT STANDARD UNDER ART. 9.9 OF THE CEPTA

116. RESPONDENT did not violate Artt. 9.9 and 9.7 of CEPTA. Acknowledging the relevance of Fair and Equitable Treatment, every action or measure taken, was in bona fide and no transgression of the standard occurred.

117. Pursuant to Art. 9.9 of the CEPTA, *"each Party shall accord in its territory to covered investments of the other Party and to investors with respect to their covered investments fair and equitable treatment and full protection and security".* [82] The FET standard, provided by this provision, cannot be viewed in abstract and *"must depend on the facts of the particular case."* [83]

118. RESPONDENT enacted measures in a scenario of unprecedent economic crisis, therefore it is imperative that the Court assess that context and take into account RESPONDENT's successive attempts to safeguard public order. RESPONDENT did not breach FET standards because **[A]** no discriminatory or arbitrary conduct was adopted and **[B]** RESPONDENT respected the due process by providing a proper trial to CLAIMANT. Considering the facts of the case, **[C]** RESPONDENT exercised its regulatory powers. At the end of the day, **[D]** CLAIMANT's expectations were simply too optimistic, and any legitimate expectation was frustrated

A. RESPONDENT'S MEASURES WERE NON-DISCRIMINATORY OR ARBITRARY

119. Discriminatory treatment occurs when a particular investor is subject to "*different treatment in similar circumstances without reasonable justification, typically on the basis of its nationality or similar characteristics*".[84]According to Arnaud de Nanteuil, discrimination involves "*two complementary elements: a difference in treatment and a lack of objective justification for this difference".* [85] However, to assess the alleged differential treatment, it is important to identify comparators that make it possible to investigate whether a supposed favored company is in "like circumstances" with the alleged discriminated investor.[86]

120. An arbitrary measure takes place when there is a lack of policy justification, which is often associated with reasonableness and proportionality.[87] In SD Myers v. Canada, the tribunal decided that:

[82] Art. 9.9.1 CEPTA.
[83] Mondev §118.
[84] Crystallex §615-616.
[85] Nanteuil §9030.
[86] Bjorklund §21-22.
[87] Bonnitcha *et al*, p. 110.

> *"tribunal does not have an open-ended mandate to second-guess government decision-making. Governments have to make many potentially controversial choices. In doing so, they may appear to have made mistakes, to have misjudged the facts, proceeded on the basis of a misguided economic or sociological theory, placed too much emphasis on some social values over others and adopted solutions that are ultimately ineffective or counterproductive. The ordinary remedy, if there were one, for errors in modern governments is through internal political and legal processes, including elections."*[88]

121. Arbitrary and discriminatory conducts are forbidden in light of Art. 9.9 CEPTA. RESPONDENT did not adopt such conduct considering that **[1]** the investigations on Vemma Holdings were due to the fact that it had a series of anticompetitive practices; **[2]** the refusal of CLAIMANT's application for subsidies under Executive Order 9-2018 does not qualify as an arbitrary or discriminatory measure.

1. The investigations on Vemma Holdings

122. The CCM was created to inspire investor's trust, as an independent form of investigation. Although its creation was a result of Ministry of Finance's reforms, Ms. Moira Rose alleged since the beginning of the Commission that it was "a*n autonomous body independent of government influence*"[89].

123. Firstly, the reason why only Vemma Holdings was investigated was based on its anticompetitive practices, mainly as result of the facilities of the contracts with Phenac International Airport. On this matter, a Member of Vemma's board of directors affirmed in an Interview to Goomberg on 2010: "*This opportunity offers unparalleled access to Mekar's airline market to Vemma, one we are keen to take advantage of*".[90]

124. Nonetheless, the airport's location and its facilities were not only the favorable conditions that turned CLAIMANTS's practices anticompetitive, but also the cooperation with other Moon Alliance members[91]

125. Besides these matters, it was also alleged that the Horizon 2020 program has had an impact on the market, since it provided subsides to tourism related companies in order to optimize tourism in the country,[92] becoming a source of income that allowed the adoption of CLAIMANT's predatory pricing.[93]

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[88] S.D. Myers v. Canada §261.
[89] Uncontested Facts, lines 997-998.
[90] Uncontested Facts, lines 1029-1021.
[91] Uncontested Facts, lines 1068-1072.
[92] Uncontested Facts, lines 1076-1081.
[93] Uncontested Facts, lines 1155-1157.

126. As a result of the investigation, CCM placed airfare caps which were not contested by the holding until 2018 and there's no evidence that its profitability was harmed in 2016 due to the caps.[94]

127. Notwithstanding, the first and second investigations were due to the circumstances that led Caeli's rapid expansion and a complaint made by a consortium of small regional airlines in Greater Narnia.

128. According to Art. 1 of the Chapter III of the Monopoly and Restrictive Trade Practice Act, *"the CCM has the sole competence to initiate an investigation concerning potentially anticompetitive behavior."*[95] The conditions established by the provision in order to authorize such investigations are (i) a market share greater than 50%, with greater discretion by the commission in special industries, such as the airline alliances; (ii) when a corporation poses a unique threat to the competition in a particular market, as was the case of Caeli regarding Phenac Airport, a fact reported not only by government authorities but also specialists; (iii) when there is evidence the corporation's actions have, or are likely to in the near future, push competitors out of the market, as was reported regarding Caeli and regional airlines on domestic route.

129. The airfare caps and fines were simply a direct result of those investigations, which proved that CLAIMANT was really adopting anticompetitive conducts.

2. The refusal of CLAIMANT's application for subsidies under Executive Order 9-2018

130. CLAIMANT may allege that the refusal of its application for subsidies under Executive Order 9-2018[96] qualifies as discriminatory and arbitrary treatment against Vemma, since Caeli's competitors received such aid.

131. Larry Air and Caeli Airways were the only two airlines owned in any significant part by a foreign government operating in Mekar, and neither received subsidies[97]. Since consistency and predictability are key fact when analyzing FET standards,[98] it is safe to say that no discriminatory or arbitrary conduct was adopted. The incomes were simply denied because "*it would be unfair to grant certain State-owned companies even more of an advantage in our airline market to the detriment of our people*".[99] Besides, CLAIMANT already received incomes from Bonooru. An approval under the Executive Order 9-2018 scheme would clearly give advantages to Vemma Holdings.

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[94] Uncontested Facts, lines 1168-1169.
[95] Annex V, line 1596.
[96] Uncontested Facts, lines 1255-1260.
[97] Uncontested Facts, line 1265.
[98] Diehl, p. 471.
[99] Uncontested Facts, lines 1264-1265.

132. *"In order to demonstrate inconsistency, either a showing of deviation from a conduct practiced over a long time or a sequence of events that are not rationally related to each other is necessary".*[100] Hence, not only RESPONDENT's acts were a result of a sequence of events and practices by CLAIMANT that had relation to each other, but also Mekar's consistency can be proved when noticing that Larry Air was not honored with revenues from the Executive Order 9-2018.

133. JetGreen and Star Wings are both owned by holding groups from Arrakis[101] which received subside under the Executive Order. However, it is clear that Caeli and companies such as JetGreen and Star Wings are not in "*like circumstances*", a necessary threshold to meet the discriminatory standard.[102] Given the advantage State-owned companies enjoy, such as pointed out by the Minister of Transportation,[103] they are not in "*like circumstances*" when compared to Caeli. Thus, the difference in treatment is reasonably justified by valid policy reasons.

134. Furthermore, differential treatment must also be assessed between investors that enjoy the same conditions of competition.[104] In order to compare different airlines in direct competition, different factors are distinguishable, leading to different areas of competition such as: competition on a single route, competition between networks, for infrastructure and between access/egress points.[105] By June 2016, Caeli was the only consistently profitable carrier on over half the routes to and from Phenac International Airport.[106]

135. In December of 2016, a group of small regional airlines in Greater Narnia stated that Caeli's actions made it nearly impossible for them to penetrate the market linked to Phenac International, which became a "*fortress hub*" for Caeli.[107] It would be than impossible to consider other airlines operating regional routes comparable to Caeli, inasmuch as they were not in direct competition.

B. RESPONDENT AFFORDED CLAIMANT DUE PROCESS

136. CLAIMANT may argue that there was a breach of due process, which is one of the most elementary guarantees of judicial procedure.[108] Moreover, the relevance of this principle is

[100] Diehl, p. 81.
[101] Uncontested Facts, line 1255.
[102] Rusoro Mining §563; Bayindir §389; Occidental Exploration and Production Company v. Ecuador §170.
[103] Uncontested Facts, lines 1261 - 1265
[104] Pope & Talbot Inc. v. Canada §77; Bjorklund §21.22.
[105] Mandel, p. 6.
[106] Uncontested Facts, line 1145.
[107] Uncontested Facts, line 1175.
[108] Ferrari et al, p.1.

unquestionable since it is *"a fundamental pillar of the arbitration framework."*[109] Nonetheless, it will be demonstrated that such breach has never occurred.

137. After an enormous population growth, Mekari judicial system faced difficulties on keeping up with the new demands.[110] Thus, it was necessary to establish priorities and, as an attempt to appreciate fundamental rights, liberty above all, RESPONDENT chose to prioritize criminal cases.[111]

138. The treatment given within the judicial system RESPONDENT was not inconsistent. On the contrary, it was so concerned with CLAIMANT that a final decision was provided in 16 months, even though the average time to receive a final decision in commercial matters in Mekar is 27 months.[112]

139. CLAIMANT may argue that the duration of the trial has caused damages due to caps and fines. However, as the Court Registrar alleged, "*the Court does not have the resources to make this [immediate redressal] possible*".[113]The so-called delay was simply a consequence of a lack of resources and not an attempt of harming Vemma Holdings.

140. In Chevron v Ecuador, it was affirmed: *"the test for establishing a denial of justice sets, (…) a high threshold."* [114] In Toto v. Lebanon, the tribunal found that "*international law has no strict standards to assess whether court delays are denial of justice.*" [115]

141. On this sense, in White Industries v India, even though the Indian courts took more than nine years since the commencement of the set aside and the enforcement proceedings to provide a decision, the tribunal understood that:

> *"the duration of the proceedings overall, as well as the delay by the Supreme Court in hearing and determining the jurisdiction appeal, is certainly unsatisfactory in terms of efficient administration of justice, neither has yet reached the stage of constituting a denial of justice."*.[116]

142. Furthermore, as stated by Professor Jan Paulsson *"The dismissal of a claim of right under national law by the properly constituted national authority (…) does not give rise to an international delict"*. [117]

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[109] Ferrari *et al*, p. 1.
[110] Uncontested Facts, lines 949-952.
[111] Uncontested Facts, lines 949-952.
[112] Uncontested Facts, line 952.
[113] Uncontested Facts, lines 1240-1241.
[114] Chevron Corporation and Texaco Petroleum Corporation v. Ecuador I §244.
[115] Toto Costntzioni §155.
[116] White Industries Australia Limited v. The Republic of India §10.4.22.
[117] Paulsson, p. 7.

143. Nevertheless, RESPONDENT was so concerned that the delay could harm CLAIMANT, that provided a summary judgement. On this matter, it is important to highlight that although CLAIMANT did more than one appeal, the Court affirmed that after analyzing the circumstances and the pieces of evidence collected by CCM's investigations, it could not foresee any other decision, hence the merits were dismissed. Not only that but also to save resources and avoid the parties waiting in anticipation.[118] That explained, it is notable that (i) a decision was taken under Mekari judicial system's average; (ii) there were no resources to provide immediate redressal and (iii) the merits were dismissed as a combination on not being able to foresee different results on the matter, as well as to safe resources and avoid parties waiting in anticipation.

C. RESPONDENT'S MEASURES CONSTITUTED A VALID EXERCISE OF ITS REGULATORY POWERS

144. Art. 9.8 (1) of the CEPTA states that the contracting parties preserve their right to regulate in order to achieve legitimate public policy. The second paragraph reiterates that the mere fact that a party regulates, including in a manner which negatively impacts the investor, does not amount to any violation of the investment protection section.[119]

145. By the end of 2016 and beginning of 2017, Mekar started experience a major currency crisis[120] that quickly aggravated to an economic crisis with increasing inflation and reduced consumer spending power[121]. The government was forced to take urgent measures to stabilize the currency and guarantee the continuity of essential services. All of those measures amounted to a legitimate exercise of sovereign powers justified by valid, reasonable and necessary policy.

146. Measures such as requiring companies operating in the country to offer goods and services denominated in the local currency[122], authorizing bailouts and re-nationalizing enterprises in key sectors constitute an exercise of RESPONDENT'S **(1)** right regulate, **(2)** were adopted in good faith and **(3)** CEPTA shall not constitute a regulatory chill in Respondent's landscape.

[118] Uncontested Facts, lines 1321- 1335.
[119] CEPTA, lines 2725.
[120] Uncontested Facts, lines 1185.
[121] Uncontested Facts, lines 1195.
[122] Uncontested Facts, lines 1210.

1. Requiring companies to operate on MON was vital to face the currency crisis

147. The economic crisis in Mekar started out as a currency crisis[123]. The International Monetary Fund stated that the most urgent measure should be to stablish credibility in the local currency to avoid aggravating the situation.[124]

148. International investment tribunals have long recognized that States enjoy considerable discretion when implementing and analyzing policy options to protect public interest.[125] It is not the tribunals competence to *"second-guess government decision-making"*.[126]

149. Requiring companies to operate in the local currency is a common practice among States trying to reduce the flow of dollars in the economy in order to recuperate their own currency value. In El Paso v. Argentine, the tribunal found that without the de-dollarization of the economy, prices in the energy sector would triple, besides concluding that no violation of FET standards might be concluded from such measures.

2. All measures enacted by the State were enacted in Good Faith

150. A State measure shall not be disguised as a legitimate action only to directly attack an investor. The principle of good faith that "permeates the whole approach" to investor protection in the field of investment law.[127] In the Occidental case[128] the tribunal found that the state's actions must be based on objective reasons and facts. CLAIMANT could not speak for any ulterior motive for RESPONDENT'S actions other than public policy, even agreeing with the caps imposed by the CCM.

151. There's no doubt that the economic crisis that hit Mekar had its origins in a currency crisis, as reported by the IMF, thus rendering mandatory for the government to stabilize its currency and reduce the flow of dollar running inside RESPONDENT's economy. There's no doubt that all three requisites for launching an investigation were carefully assessed by the CCM and that the threshold was objectively met, with information not only collect by the Commission but also reported by specialists and media outlets. It is, thus, absurd that CLAIMANT might argue that such measures were enacted in bad faith, given the factual background and the objective intention.

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123 Uncontested Facts, lines 1185.
124 Uncontested Facts, lines 1190.
125 Teinver §985.
126 S.D. Myers §263.
127 Sempra §299.
128 Occidental §162–163.

3. CEPTA shall not constitute a regulatory chill in Respondent's landscape

152. RESPONDENT submits that all measures taken by the State in this case were proportional, necessary and legitimate, aiming to protect public interest. In El Paso v. Argentina the court considered that no violation of the FET might originate from the de-dollarization of the economy. It also noted that a number of public policies might be enacted aiming to equalize the competition field by sharing the burden of the economic crisis.

153. The risk of regulatory chill depending on the result of arbitral awards is highly recognized[129], inasmuch as FET Standards, such as those stipulated in the CEPTA, may not be interpreted as an obstacle that freezes the regulatory framework of the host state[130].

154. If CLAIMANT's allegations prevail, this case would send the wrong message to the international arbitral community by showcasing how harmful investment arbitrations could be depriving the State of its inherent and fundamental autonomy in conducting its own economic policies.

D. RESPONDENT'S CONDUCT DID NOT GIVE RISE TO LEGITIMATE EXPECTATION

155. Art. 9.9 (3) CEPTA states that when applying FET obligations the Tribunal may consider specific representations made to an investor that created a legitimate expectation.

156. Investiment Tribunals have found that[131] legitimate expectation may rise from contractual clauses such as stabilization clauses or specific representation by the State and that[132] investors may rely on rules that are enacted with a specific aim to induce foreign investments and on which the foreign investor relied in making his investment.[133]

157. There was no stabilization clause in the CEPTA that could amount to any indication of an unchangeable regulatory framework regarding investment and commercial law in Mekar.

158. Furthermore, the lack of specific representation renders unreasonable expectations nurtured by CLAIMANT that the economic and political context would remain unchanged. There was no indication that the privatization projects enacted by the RESPONDENT were to be unchangeable even in the face of alterations of the political and economic context. As stated in the *Parkerings*[134] tribunal, investors cannot expect domestic laws to remain stagnant over time.

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[129] Spears, p. 1040.
[130] Tienhaara, p. 166.
[131] *See* Methanex Corporation v. United States of America II.
[132] *See* W. Reisman/Arsanjani.
[133] Glamis Gold, Ltd. v. United States §627.
[134] Parkerings §332.

159. Moreover, the overly optimist and aggressive approach taken by Caeli's board was denounced by the State and Mekar Airservices in more than one occasion, rendering unfeasible any expectation of unchangeability nurtured by CLAIMANT.

IV. CLAIMANT IS NOT ENTITLED TO COMPENSATION

160. As demonstrated, RESPONDENT did not violate Art. 9.9 CEPTA. However, even if this Tribunal finds that there was any kind of Treaty violation, even so **[A]** CLAIMANT is not entitled to compensation, as it already received the proper amount of USD 400 million based on the market value.[135]

161. Besides, the principle of investor's contributory fault shall apply to this proceeding, since CLAIMANT's irresponsible investment behavior contributed to the alleged losses. With this in mind, **[B]** CLAIMANT's poor judgment decisions contributed to its losses and should be considered when assessing the amount of compensation.

162. Moreover, even if this Tribunal finds that CLAIMANT is entitled to compensation, CLAIMANT should not receive the USD 700 million requested, once **[C]** the standard of market value should be applied and **[D]** the amount of compensation requested by CLAIMANT would put RESPONDENT's public interest at risk.

A. RESPONDENT COMPENSATED CLAIMANT FOR ITS MARKET VALUE

163. The compensation criteria adopted on Art. 9.2.1 (a) CEPTA is clear when setting that the final award may grant "monetary damages at a market value". The USD 400 million value paid by RESPONDENT for Caeli is the adequate amount for compensation, as market value is the correct standard for such analysis.

164. The standard proposed by CLAIMANT, the Fair Market Value, is not applicable because it does not consider economic conditions that intervene in valuation of the enterprise. This method considers the value that a willing buyer would pay to a willing seller immediately before the unlawful actions of the state.[136] However, in this case these losses occurred during in an economic crisis that severely affected the company's ability to generate profit, which combined with mismanagement led the company to its collapse.

[135] Uncontested Facts, pp. 1390 - 1393.
[136] Beharry, p. 123.

165. The FMV would not consider other important factors and imply that RESPONDENT was the only responsible for situation of the company. This unfairly benefit CLAIMANT as it would benefit from its own negligence and implicate in an overvaluation of the company.

166. CLAIMANT in its Notice invoked the most favourable clause to import the concept of FMV existent in another treaty. According to Art. 13 Arrakis-Mekar BIT, the compensations shall be paid in accordance with the FMV of the company. However, this contradicts what is already defined by the treaty and, therefore, the clause is not applicable.[137]

167. CEPTA establishes that MFN clause should not be applied in order to import onerous types of obligations. Art. 9.9 CEPTA prohibits the inclusion of clauses that involves "substantive issues". This limits the application of the clause to marginal issues, which is not the case of a central subject as compensations.

168. Tribunals have also considered this understanding by ruling that some obligations central to the issues that are to be negotiated in a contract. [138-139] These tribunals have reached the decision that substantive issues cannot be imported by MFN Clause given their importance to legal protections existence in a contract they are essential to the acceptance or not of the treaty by the state, therefore cannot be just assumed. Therefore, if it was the desire of the parties to include the FMV standard in the treaty this would be explicit in text of the treaty and not be left to be argued.

B. CLAIMANT'S RISKY INVESTMENT CHOICES CONTRIBUTED TO ITS BANKRUPTCY AND OTHER LOSSES

169. CLAIMANT alleges that RESPONDENT's "unlawful" behavior and apparent violation of Art. 9.9 CEPTA is due to compensation under Art. 9.12 CEPTA. However, CLAIMANT fails to recognize its own fault in bankruptcy and other financial losses.

170. "Bold", "risky" and "ill-advised": these were the words used by Aviation Analytics, a leading international quarterly, to describe CLAIMANT's business decisions.[140] Caeli has maintained flights to Bonooru regardless of the low profitability of these routes,[141] continued to make optimistic projections of the company's profits[142] and, against all sort of advices,143 expanded its aircraft during an economic and oil prices crisis.[144] These examples evidence that

[137] CME v. Czech Republic §11.
[138] Maffezini, §§25-26, 62-63.
[139] Tecnicas Medioambientales Tecmed §69.
[140] ANNEX IX, lines 1948-1960.
[141] Uncontested Facts, lines 1073-1081.
[142] Uncontested Facts, lines 1108-1116.
[143] ANNEX IX, lines 1948-1960.
[144] Uncontested Facts, lines 1136-1146.

CLAIMANT has recognizably adopted controversial investment strategies and is now attempting to blame RESPONDENT for its poor business decisions.

171. Art. 31 (2) ARSIWA provides that the responsible State must fully repair the damages it caused, requiring a causality link between the damages and the state wrongful actions.[145] In the present case, CLAIMANT attributes the losses incurred to RESPONDENT's behaviour. By doing that, CLAIMANT completely ignores that it was its own actions that led the company to financial difficulties.

172. CLAIMANT may try to argue that its own high-risk actions were a result of unexpected economic factors, as oil-prices or regulatory measures, and that all of the events that eventually led to its failure were unforeseeable.[146] Nevertheless, the so called "*investment strategies*" were negligent and foreseeable, since, in many occasions, it was offered guidance regarding the controversy of these approaches.[147]

173. Therefore, RESPONDENT requests this Tribunal to find that CLAIMANT contributed to the alleged losses under the principle of investor's contributory fault, a principle which has been recognized and applied by arbitral tribunals.[148] Accordingly with Professors Jean-Michel Marcoux and Andrea K. Bjorklund, the principle of contributory fault or negligence:

> "*[…] could assist tribunals to address foreign investors' responsibilities when deciding an investment claim more holistically. Under international law, there is broad acceptance that a victim's wilful or negligent conduct that has materially contributed to the injury caused by an internationally wrongful act should be taken into account when determining compensation. […]*"[149]

174. Investor's poor judgment and decisions as the ones present in this case cannot be compensated, as this would mean an attempt to use the CEPTA as an insurance mechanism.[150] In MTD Chile S.A. v. Chile, ICSID Case No. ARB/01/7, the Tribunal defined that *"it is not any contribution by the injured party to the damage which it has suffered which will trigger a finding of contributory negligence. The contribution must be material and significant"*.[151]

175. Since CLAIMANT's faulty activities were material, significant and the only ones responsible for low profitability and other damages, RESPONDENT also requests the dismissal of all compensation claims. Despite that, if the Tribunal finds that RESPONDENT has incurred

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[145] ILC Articles, Article 31.
[146] Sabahi *et al*, pp. 326-332.
[147] Sabahi *et al*, pp. 326-332.
[148] MTD Chile S.A. §§242-243; Occidental.
[149] Marcoux/Bjorklund, p. 878.
[150] Sabahi, pp. 326-328.
[151] *See* MTD Chile S.A.

in negligence of some kind, RESPONDENT pleads that CLAIMANT's unacceptable and evidently negligent measures are taken into consideration regarding the amount of compensation.

176. The causation principle can be synthetized as a necessity to demonstrate the cause between unlawful and wrongful actions to the damages caused [152] and *"not only a requirement for the recovery of damages, but also has implications on the amount or extent of damages to be recovered"*. [153]

177. In this case, CLAIMANT has failed to point out an appropriate link between RESPONDENT's actions and its damages. Added to that, if any State is to be considerate guilty and in obligation to compensate, it should be Bonooru.

178. Bonooru has played an essential role on CLAIMANT's investment choices. Since the privatization of Bonooru Air, State representatives have publicly stated that the following enterprise would have to maintain flights even to Bonooru's most remote islands,[154] which was a huge cause for the loss of profitability.[155] Bonooru's Prime Minister's speech on 10 November 1980 should now be more remembered than ever: the government always will maintain a significant interest in Bonooru Air.[156]

179. CLAIMANT also states that RESPONDENT incurred in a violation of Art. 9.9 CEPTA because it did not provide financial subsides to its recovery during the devaluation of MON.[157] Although RESPONDENT did not provide financial subsides, CLAIMANT received these incentives from Bonooru due to the Horizon 2020 scheme,[158] that actually maintained the non-profitable flight routes to Bonooru.

180. Besides Bonooru's monetary influence, it also contributed to investor's risky decisions, since there was a mutual assurance that the company would be "saved" in case anything went wrong.[159] Other than that, Bonooru's representatives are present in every board decision and sometimes take actions in the absence of CLAIMANT's representatives.[160]

181. Under the influence of protests throughout Bonooru, CLAIMANT's board of Directors was completely re-arranged with government functionaries and lawyers assisting in this arbitral case.[161] This not only makes compensation claims questionable since it was influenced by the State

[152] Wöss/San Román, pp. 108-115.
[153] Wöss/San Román, p. 109.
[154] Uncontested Facts, lines 922-926.
[155] Uncontested Facts, lines1120-1126.
[156] Uncontested Facts, lines 922-926.
[157] Notice, lines 90-96.
[158] Uncontested Facts, lines 1073-1081.
[159] ANNEX IX, lines 1948-1960.
[160] PO3, lines 3156-3160.
[161] Uncontested Facts, lines 1394-1414.

that effectively caused the damage, but it evidences that Bonooru contributed enormously for CLAIMANT's losses.

182. Therefore, all compensation claims ought to be released. Besides having no causation between RESPONDENT's actions and the alleged damages, Bonooru's influence and its expropriation of CLAIMANT were the ones responsible for it. RESPONDENT also requests, if found to be guilty on compensation claims, a reduction of the value considering the responsibility of another State.

C. THE APPLICATION OF THE FMV STANDARD WOULD NOT RESULT IN THE AMOUNT DEMANDED BY CLAIMANT

183. In the hypothesis of considering FMV the adequate standard of compensation, the amount demanded by CLAIMANT should be rejected. CLAIMANT's data of assessment for the damages is immediately before the alleged unlawful behavior. Setting the date of assessment, as intended by CLAIMANT, would be equivalent to consider all losses suffered by Caeli, regardless of its cause, as being responsibility of RESPONDENT or not. This is the contrary to the "but-for premise", a recognized principle of law.

> "*The but-for premise considers the question of what would have happened in the absence of the breach. To find an answer, the but-for premise compares the hypothetical situation without the breach and the actual situation with the breach. However, limitations under the applicable law such as causality, culpability, foreseeability, the duty of mitigation and contributory negligence have to be considered.*"[162]

184. It is necessary that CLAIMANT proves that its losses were caused by RESPONDENT to grant compensation. However, the request for FMV of the investment before the State's actions, that coincide with a severe economic crisis, goes in the opposite way. In practice, RESPONDENT is asking for losses that would probably occur independently of CLAIMANT's actions, due to the severe economic crisis.

185. Considering the date of assessment as the date of the award, the FMV of the company is the USD 400 million that were paid by RESPONDENT considering that CLAIMANT were unable to secure a larger offer from a third party in bona fide. Subsidiarily, if the offer proposed by Hawthorne Group of USD 600 million is valid, RESPONDENT agrees to pay the difference of USD 200 million between Hawthorne's offer and the RESPONDENT's.

[162] Wöss/San Román, pp. 108-109.

D. THE COMPENSATION VALUE WOULD PUT PUBLIC INTEREST AT RISK

186. The definition of "public interest" is a controversial matter and can arise profound debates regarding its content and application in concrete cases. Although these divergences are certainly relevant in many fields including International Law, they will not be particularly addressed. Despite this, no matter what significancy this Tribunal chooses to define public interest, it shall find that CLAIMANT's compensation claims would harm Mekari interests and rights.

187. RESPONDENT has been facing severe economic struggles since the devaluation of its currency MON,[163] besides facing new regulatory and financial measures since the LPM election.[164] According to an IMF report on 2019, RESPONDENT may still have some severe economic growth challenges in the next years.[165]

188. Alongside the financial impossibilities, a compensation due to USD 700 million would not only aggravate that crisis but put the public interest at risk. A Mekari official stated that the damage costs would consist in transferring twice of public annual spending to CLAIMANT.[166] The Superior Court of Mekar even allowed an infusion of funds to pursue public interest under Chapter IV of Monopoly and Restrictive Trade Practice Act. [167]

189. In Azurix v.Argentina, the Tribunal considered not only the financial struggles faced by the State Respondent at the time of the award, but also the recklessness of investor's business decisions to reduce the final amount of compensation from USD 112 million by USD 7.9 million.[168]

190. Using the same criteria, this Tribunal shall find that RESPONDENT's actions were not negligent in any aspect and that it followed its duty to mitigate its own losses. As argued in the preceding topics, all the regulatory measures taken aimed only the best interest of RESPONDENT's own citizens and foreign investors.

191. Considering the discussed precarious financial situation of Mekar alongside with the fact that Caeli is its only airway, the payment of the amount demanded cannot occur. The compensation value requested not only will not restore CLAIMANT's financial state before the alleged violations of FET but will surely endanger millions of lives of Mekari citzens.

[163] Uncontested Facts, pp. 1184-1190.
[164] Uncontested Facts, pp. 1200-1207.
[165] PO3, pp. 3161-3169.
[166] PO3, pp. 3161-3169.
[167] PO3, pp. 3186-3192.
[168] *See* Azurix Corp.

CONCLUSION OF THE SUBSTANTIVE ISSUES

192. As demonstrated above, RESPONDENT enacted measures in a scenario of unprecedent economic crisis, under the prerogatives of its regulatory powers and always aiming to safeguard public order. Moreover, RESPONDENT did not breach FET standards as no discriminatory or arbitrary conduct was adopted, it provided a proper trial to CLAIMANT and there was no frustration of legitimate expectations, CLAIMANT's expectations were simply too optimistic.

193. Hence, RESPONDENT respectfully requests this Tribunal to dismiss CLAIMANT's compensation claims on USD 700 million, given that it did not violate FET parameters and due to the unreasonableness of the value requested. Even if CLAIMANT is considered entitled to compensation, that this value shall consider the amount of USD 400 million paid and not trespass the one of USD 600 million, since it was the one CLAIMANT was willing to accept from Hawthorne Group.

REQUEST FOR RELIEF

194. In light of the above, RESPONDENT respectfully requests this Tribunal to find that:

(i) this Tribunal has no jurisdiction *rationae personae*;

(ii) the participation of the CPUR must be granted, whilst the one of the CBFI should be denied;

(iii) RESPONDENT did not violate the FET standard under Art. 9.9 CEPTA; and

(iv) CLAIMANT is not entitled to compensation of 700 million USD under the Fair Market Value standard.

(*signed*)

TEAM TARAZI G