

E-mail from Dr Santiago Torres Bernárdez sent to the Arbitral Tribunal and Gonzalo Flores on 25.09.2012.

Dear President,

Herewith my Statement of Dissent to be annexed to the new P.O.Nº 13

" Statement of Dissent of Santiago Torres Bernárdez

I vote against the operative part of Procedural Order Nº 13 for the following motifs:

Paragraph 63 (A): The Italian Criminal Proceedings

In this paragraph a majority of the Tribunal finds that the Respondent has committed a breach of Tribunal's Procedural Order Nº 3 (Confidentiality Order) dated on January 27, 2010, while the criminal proceedings in Italy concerned where instituted by the Respondent on 30 July 2009. This retroactive application of the said Order is in my opinion contrary to the criteria which should preside the instant arbitral proceedings, for the following reasons:

(i) The Order does not explain or justify the retroactiveness applied and does not invoke any ICSID Rule or legal principle in that respect, beyond references to Procedural Order Nº 3 itself.

(ii) The declaration of the breach is made without sufficient elements of evidence as to its existence and without listening to both Parties at a hearing, in spite of the fact that the Respondent had requested to organize a hearing on a disputed related matter (letter of 17 September 2012).

(iii) The Claimants' last requests on the issue of the criminal proceedings in Italy (letter of 21 September 2012, last paragraph) did not request the Tribunal to declare a breach by the Respondent of any provision of Procedural Order Nº 3, but the production of relevant information and documents and the discontinuance of all outside proceedings.

It follows that the breach declared by the present Order is a decision taken motu proprio by the majority of the Tribunal which is, in my opinion, procedural defective and materially unjustified.

Paragraph 63 (B): The next procedural steps

(i) I have always considered, and continue to consider, that the Claimants are entitled to deal with pending jurisdictional issues in their Memorial on Phase 2, but providing that the entitlement given to them in Procedural Order Nº 12 of submitting a

"Rejoinder Memorial on Jurisdiction" be dropped, because the accumulation of both entitlements are in my opinion contrary to the paramount principle of the equality of the parties in the proceedings. The present Order having failed to make that consequential adjustment of Procedural Order N° 12, I was obliged to vote against this sub-paragraph.

(ii) I consider that the Claimants are entitled to submit new or additional Database in the form of computer-searchable spreadsheets, but not amendments to the existing Database which is part and parcel of the documentation before the Tribunal (defining the Claimants' parties to the case) and that, according to the mandate in Procedural Order N° 11, should not be altered by the Claimants. I vote against this sub-paragraph therefore because its text allows the Claimants to amend the Database at present before the Tribunal.

(iii) I vote in favour of this subparagraph on dates for submission of the Parties' Memorials on Phase 2, but without prejudice of the respecting procedural right of each Party to request an extension of the time limits to the Tribunal.

(iv) I vote against this subparagraph because Procedural Order N° 12 has already been superseded by events as well as by subsequent decisions of the Tribunal, including the present Order, and therefore is in need to be revised as a whole. It is not only a question of timetable or of the specific timeline and scope of the Database Verification process. The sequences of Parties' pleadings and its articulation with the Database Verification (which is a Tribunal's undertaking process) are indeed in need to be adjusted to each other."

Best regards

Santiago Torres Bernárdez