

International Centre for Settlement of Investment Disputes
Washington, D.C.

In the proceedings between

International Company for Railway Systems (ICRS)
(Claimant)

and

Hashemite Kingdom of Jordan
(Respondent)

(ICSID Case No. ARB/09/13)

Order of the Tribunal
Taking Note of the Discontinuance of the Proceeding

Members of the Tribunal

Judge Patrick L. Robinson (President)
Mr Stanimir A. Alexandrov (Co-Arbitrator)
Professor Bernard Audit (Co-Arbitrator)

Secretary to the Tribunal

Ms Milanka Kostadinova

Assistant to the Tribunal

Prince Neto DCB Waite

Date of dispatch to the Parties

February 22, 2011

1. On June 12, 2009, the Claimant, International Company for Railway Systems (hereinafter “ICRS”) and Privatization Holding Company (hereinafter “PHC”) filed a joint Request for Arbitration with the International Centre for the Settlement of Investment Disputes (hereinafter “ICSID”) against the Hashemite Kingdom of Jordan. ICRS, the Hashemite Kingdom of Jordan and the Public Transport Regulatory Commission of Jordan entered into an Implementation Agreement (hereinafter “IA”) under which ICRS undertook to build, operate and transfer a light railway system (the LRS Project) connecting the Jordanian cities of Amman and Zarqa. ICRS and PHC asserted that the Respondent, the Hashemite Kingdom of Jordan, “unlawfully and in bad faith terminated the IA, thereby depriving the Claimant of the profits, privileges and the commercial opportunities they would have enjoyed had the IA continued to be performed in accordance with its terms.”¹ The Secretary-General registered the Request for Arbitration on July 16, 2009.
2. The Tribunal was constituted on December 28, 2009; its members being Judge Patrick L. Robinson, as President, Mr Stanimir A. Alexandrov and Professor Bernard Audit, as arbitrators.

(a) Withdrawal of Privatization Holding Company

3. On February 26, 2010, the Tribunal held its first meeting in Paris where a provisional agenda for the proceedings was adopted. At that meeting, the Respondent indicated its intention to file objections to the Tribunal’s jurisdiction. On that same day, pursuant to PHC’s Request for Withdrawal under Rule 44 of the Arbitration Rules, the Tribunal issued Procedural Order No. 1 by which the proceedings with respect to PHC were discontinued, but would continue in all other respects.
4. On April 30, 2010, pursuant to the schedule for filing submissions agreed to at the first meeting of the Tribunal, ICRS filed its Memorial on the Merits.

¹ Request for Arbitration, paragraph 86.

(b) Respondent's Request to Stay the Proceedings

5. On June 4, 2010, the Respondent filed with the Tribunal a Request to Stay the Proceedings in which it requested that “the Tribunal stay these proceedings until the resolution of the first-instituted and now nearly identical ICC arbitration,² which Jordan and the Public Transport Regulatory Commission filed against the International Company for Railway Systems concerning the same contract dispute at issue in these ICSID proceedings.” Pursuant to an order of the Tribunal, the Claimant filed its Answer to Respondent’s Request for Stay, in which it opposed the Request. On July 9, 2010, the Tribunal issued Procedural Order No. 2 in which it denied the Respondent’s Request for Stay.

6. On June 30, 2010, pursuant to the schedule for filing submissions agreed to at the first meeting of the Tribunal, the Respondent filed its Memorial on Jurisdiction. On August 31, 2010, the Claimant filed its Counter-Memorial on Jurisdiction.

(c) Claimant's Requests for Provisional Measures

7. On August 16, 2010, the Claimant filed with the Tribunal a Request for Provisional Measures in which it requested “an urgent recommendation of provisional measures in accordance with Article 47 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and ICSID Arbitration Rule 39,[...] that the Hashemite Kingdom of Jordan stay proceedings before the International Chamber of Commerce (“ICC”), which have resulted in concurrent arbitration proceedings in this matter.”³

8. On August 18, 2010, by letter from the Secretary, the Tribunal informed the Respondent that it fixed a time limit of September 2, 2010 at 10:0A.M. CET for the filing of its observations. By letter of August 25, 2010, the Respondent requested (1) an extension of time for the filing of its observations to Claimant’s Request and (2)

² See Request to Stay, paragraph 14; The Respondent and PTRC jointly submitted a Request for Arbitration before the ICC on May 27, 2009.

³ See Request for Provisional Measures, paragraphs 1 and 2.

that the Tribunal fix a date for oral argument. On August 31, 2010, by letter from the Secretariat, the Tribunal informed the Parties that the Respondent's request for extension to file its observations was granted; accordingly, a time limit of September 16, 2010 at 10:00 A.M. CET was set for the Respondent to file its observations on the Claimant's Request. The Tribunal also informed the Parties that it would decide the question of an oral hearing after it had received the last filing regarding the Claimant's Request.

9. On September 16, 2010, the Respondent filed its Response to Claimant's Provisional Measures Request. By letter from the Secretariat on September 22, 2010, the Parties were informed that the Tribunal decided that "it was neither necessary to have a second round of written submissions nor to hold an oral hearing" concerning the Claimant's Request.

(d) Withholding Decisions on Pending Applications and Claimant's Default in Advance Payment

10. On October 6, 2010, the Respondent notified the Tribunal of the Claimant's communications to the ICC Secretariat indicating that it would withdraw jurisdictional objections in the ICC proceedings and also that it would submit a counter-claim in those proceedings. Therefore, the Respondent requested that the Tribunal set "a prompt deadline to confirm that, in light of its recent communications to the ICC, Claimant will agree to seek the immediate discontinuance of the present ICSID proceedings with prejudice." The Respondent reserved the "right to seek recovery of its attorney[s] fees and costs as well as its arbitration costs from ICRS."
11. In response to a letter from the Tribunal of October 14, 2010, on October 21, 2010 the Claimant submitted its comments on the Respondent's October 6, 2010 letter. The Claimant stated that its communications to the ICC "are not to the effect that the Claimant has accepted the jurisdiction of ICC under the IA." The Claimant further stated that "Claimant, without conceding that ICSID is the tribunal of first resort, has in the interest of an expeditious resolution of the dispute and not having to be put through the financial strain of pursuing two arbitrations in the very same

matter, for the time being abstained from pursuing its remedy before ICSID, as set out in the IA. The same cannot be seen to be an agreement by the Claimant that ICSID does not have jurisdiction under the IA but merely suspension of the proceedings of ICSID in [favour] of the ICC arbitration.” The Claimant also reserved the “right to claim from the Respondent all costs and expenses incurred by it in pursuing the claim before ICSID....”

12. In response to letter from the Tribunal on October 26, 2010, on October 29, 2010 the Respondent submitted its comments on the Claimant’s October 21, 2010 letter. The Respondent stated, *inter alia*, that “for the time being it simply does not oppose Claimant’s request to suspend the ICSID proceedings so that the dispute may be heard before the ICC tribunal.” The Respondent further stated its expectation that the “Tribunal issue an order immediately suspending these ICSID proceedings in [favour] of the ICC arbitration, including a cancellation of the jurisdictional hearing scheduled for December 2010.”
13. By letter of November 4, 2010, however, the Respondent, invoking the Claimant’s “disregard [of] its duty to pay its share of ICSID costs pursuant to Financial Regulations 14,” requested that “ICSID take all appropriate steps under Financial Regulation 14 to discontinue these proceedings.” The Respondent then stated that it could “no longer acquiesce to a suspension of the proceedings” and that it opposed the suspension unless and until the Claimant funds its share of the advance on costs. Further, the Respondent requested that in light of the pending default “the Tribunal not rule on the Claimant’s pending Provisional Measures Request nor undertake any further activity in connection with the pending jurisdictional objections.”
14. On November 9, 2010, the Centre informed the Parties, in accordance with Administrative and Financial Regulation 14(3)(d), of the default of the Claimant and invited either Party to pay the outstanding amount of [...] within 15 days of the date of that letter.

15. Having notice of the Centre's November 9, 2010 letter to the Parties, the Tribunal on November 15, 2010 communicated to the Parties its intention to "withhold its decisions on all pending applications for the present time and defer the jurisdictional hearing set for December 2010 to a later date." The Tribunal then invited the Parties to "provide their comments in that regard, if any, by Friday, November 19, 2010." By letter of November 19, 2010, the Respondent informed the Tribunal that it was "in agreement with the intention expressed by the Tribunal in this regard." The Tribunal received no comments from the Claimant. On November 26, 2010, the Tribunal issued Procedural Order No. 3 in which it withheld its decision on all pending applications and deferred the December 2010 jurisdictional hearing to a date to be determined later.

(e) Agreement to Discontinue Proceedings

16. By letter of December 22, 2010, the Respondent informed the Tribunal that the "Parties have agreed to discontinue the present proceedings" and requested that the Tribunal "issue an order taking note of the discontinuance pursuant to ICSID Arbitration Rule 43." Further, the Respondent informed the Tribunal that the Parties did not require the Tribunal to make any decision with respect to the apportionment of the arbitration cost or attorneys' fees incurred in this proceeding. By letter of December 27, 2010 the Tribunal invited the Claimant to comment on the Respondent's December 22, 2010 letter by January 7, 2011. On January 6, 2011, the Tribunal received a letter from the Claimant dated December 24, 2011 indicating that the Claimant had "no objection to discontinuance of the proceedings pursuant to the ICSID Arbitration Rule 43 on the terms set out in the Respondent letter."

(f) Decision

17. ICSID Arbitration Rule 43(1) provides as follows:

If, before the award is rendered, the parties agree on a settlement of the dispute or otherwise to discontinue the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall, at their written request, in an order take note of the discontinuance of the proceeding.

18. Therefore, the Tribunal takes note of the agreement of the Respondent and the Claimant in their respective letters of December 22, 2010 and December 24, 2010 that these proceedings be discontinued and that the Tribunal not make any order as to arbitration costs and attorneys' fees.
19. Accordingly, the Tribunal orders that the proceedings in the present ICSID Case No. ARB/09/13 be discontinued pursuant to Rule 43(1) of the ICSID Arbitration Rules and enters no order as to arbitration costs and attorneys' fees.

[Signed]

President of the Tribunal
Judge Patrick L. Robinson

[Signed]

Mr. Stanimir Alexandrov

[Signed]

Professor Bernard Audit