

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Ipek Investment Limited**

**v.**

**Republic of Turkey**

**(ICSID Case No. ARB/18/18)**

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**PROCEDURAL ORDER No. 12  
on the Computer of Mr Hamdi Ipek**

***Members of the Tribunal***

Professor Campbell McLachlan QC, President of the Tribunal  
The Hon. L. Yves Fortier PC, CC, OQ, QC, Arbitrator  
Dr Laurent Lévy, Arbitrator

***Secretary of the Tribunal***

Ms Jara Mínguez Almeida

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Date of dispatch to the Parties: 5 March 2020

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**Whereas:**

- (1) On 22 November 2019, further to paragraph 10 of PO No 8, which decided on the Parties' respective applications for production of documents, the Respondent applied for further relief in relation to the production of documents, and of relevance to this order, the Respondent requested 'the computer(s) and/or any other electronic devices' ('the Electronic Devices') be made available for inspection;
- (2) On 10 December 2019, after hearing from both Parties, the Tribunal issued initial directions on the Respondent's other requests, and decided that it would rule on the Respondent's request to inspect the Electronic Devices after the document production had been completed;
- (3) On 16 December 2019, the Respondent renewed its application for forensic examination of Mr Hamdi Akin Ipek's computer;
- (4) Pursuant to the Tribunal's directions, the Claimant submitted its comments on the Respondent's renewed application on 18 December 2019;
- (5) By paragraph 7 of PO No 9, the Tribunal decided to reserve its decision on the Respondent's application for forensic examination of the computer of Mr Hamdi Ipek for subsequent order;
- (6) On 3 January 2020, the Respondent filed a new application for the forensic inspection of the Electronic Devices of Mr Hamdi Ipek, Witness 1 and of the Claimant's 'directors, employees, agents, advisors and shareholders, including but not limited to Selman Turk, Mehmet Erdogan of Regnum Solicitors and Cafer Tekin Ipek' (together the **Other Named Individuals**); and
- (7) After considering two rounds of comments from the Parties, on 8 February 2020, the Tribunal issued PO No 10 on Electronic Devices. For the reasons given in the Order, the Tribunal found that it had no power to order one Party to provide to the other electronic devices for the latter's forensic examination by a party-appointed expert, and also noted that it had no power to call for evidence from third parties. Accordingly, the Tribunal rejected the Respondent's application.
- (8) With regard to Mr Hamdi Ipek, the Tribunal observed that the same concerns applied with regard to forensic examination by an expert appointed by the Respondent. However, noting that Mr Hamdi Ipek is the sole director and directing mind of the Claimant, the Tribunal considered that the following special procedural direction was warranted:

The Tribunal further proposes on its own initiative in exercise of its power under Article 47 of the ICSID Convention and Rule 39(3) of the Arbitration Rules, to recommend that the computer itself be delivered into escrow under the safe keeping of the solicitors to the Claimant not to be tampered with and to be held subject to the further order of the Tribunal.<sup>1</sup>
- (9) In accordance with Rule 39(4), the Tribunal gave each party an opportunity to present any observations that it may wish to make on this proposal by simultaneous filing on 13 February 2020;

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<sup>1</sup> PO No. 10, paragraph 28.

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- (10) Pursuant to the Tribunal's directions, the Parties filed their observations on the Tribunal's proposal on 13 February 2020;
- (11) The Claimant informed the Tribunal that Mr Ipek's computer was already securely held in the London offices of the Claimant's counsel, Latham & Watkins, and that Mr Ipek did not object to the computer remaining securely held by Latham & Watkins as proposed by the Tribunal. The Claimant however suggested that the Tribunal's recommendation should expire upon the Tribunal's decision on the Respondent's Preliminary Objections;
- (12) The Respondent for its part confirmed that it had no objection to the Tribunal's proposal. Notwithstanding this, the Respondent considered that the safekeeping of Mr Ipek's computer would be best achieved if the device was delivered into escrow under the control of the ICSID Secretariat.

**The Tribunal, having deliberated, now decides as follows:**

**Pursuant to its powers under Article 47 of the ICSID Convention and Rule 39(3) of the Arbitration Rules, the Tribunal recommends that the computer of Mr Hamdi Akin Ipek be held in escrow under the safe keeping of the solicitors to the Claimant not to be tampered with and to be held until the conclusion of the proceedings, subject to the further order of the Tribunal; costs reserved.**



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Professor Campbell McLachlan QC  
President of the Tribunal  
5 March 2020