

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Ipek Investment Limited

v.

Republic of Turkey

(ICSID Case No. ARB/18/18)

**DRAFT PROCEDURAL ORDER No. 21
on the Organization of the Hearing**

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

Date of dispatch to the Parties: 8 July 2021

I. PROCEDURAL BACKGROUND

1. Pursuant to Section 19.1 of Procedural Order No. 1, the Tribunal's direction of 27 April 2021 and the Tribunal's communications of 19 and 24 May 2021, a pre-hearing organizational meeting between the Parties and the Tribunal was held by Zoom on 28 June 2021, 2021 at 20:00 BST (the "**Pre-Hearing Conference**"). Participating were:

Arbitral Tribunal:

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

ICSID Secretariat:

Jara Mínguez Almeida, Secretary of the Tribunal

On behalf of the Claimant:

Mr. Charles Claypoole, Latham & Watkins
Ms. Sophie Lamb QC, Latham & Watkins
Mr. Isuru Devendra, Latham & Watkins
Ms. Michelle Taylor, Latham & Watkins

On behalf of the Respondent:

Mr. Viren Mascarenhas, King & Spalding
Mr. Sajid Ahmed, King & Spalding
Ms. Charity Kirby, King & Spalding
Ms. Pui Yee (Lisa) Wong, King & Spalding
Mr. Eyüp Kul, Lexist
Mr. Murat Erbilin, Lexist
Mr. Turgut Aycan Özcan, Lexist
Ms. Alya Yamakoğlu, Lexist
Ms. Hayrunnisa Ravlı, Lexist

2. During the Pre-Hearing Conference, the Parties and the Tribunal discussed the draft Procedural Order circulated to the Parties on 19 May 2021, and the Parties' submissions of 14 June 2021 advising the Tribunal of any agreements reached on the various items, as well as their respective positions where no agreement was reached.
3. A recording of the Pre-Hearing Conference was made and deposited in the archives of ICSID, and it was made available to the Members of the Tribunal and the Parties on 29 June 2021.

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4. Further to the discussions during the Pre-Hearing Conference, on 2 July 2021, each Party submitted on 2 July 2021 a revised Annex A, no agreement having been reached between them as to the Hearing schedule.
 5. The Tribunal has considered the Parties' positions and, in the present Order, sets out the procedural rules that the Parties have agreed upon or, failing agreement, that the Tribunal has determined will govern the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT OF THE HEARING

6. A Hearing on jurisdiction (“**Hearing**”) will take place virtually through Zoom from 19–23 and 26–27 July 2021 at: 18.00–22.30 London time (being 19.00–23.30 in Geneva; 20.00–00.30 in Ankara; 13.00–17.30 in Montreal and 05.00–09.30 in Wellington), including 30 minutes for short adjournments.
7. The Tribunal will sit again at the same time on Monday 27 September 2021 in order to hear oral closing submissions from both Parties.
8. As agreed between the Parties and the Tribunal, FTI Trial Services (“FTI”) will be the virtual Hearing host and manage the presentation of documents during the Hearing.

B. ORDER OF PROCEEDINGS AND SCHEDULE

9. In order to accommodate the multiple time zones of all Hearing participants, every Hearing day will start at 18.00 BST, and be expected to conclude at 22.30 BST.
10. The order of proceedings and structure of the Hearing will be as indicated in the agenda incorporated as **Annex A**.
11. The Tribunal reserves discretion to adjust the schedule in the course of the Hearing as necessary to accomplish the agenda and accommodate any technical disruptions.

C. TIME ALLOCATION

12. Paragraph [20.4] of PO No 1 provides:

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Allocation of time at the hearing shall be agreed upon by the Parties, or alternatively, decided by the Tribunal in consultation with the Parties after the Pre-Hearing Organizational Meeting. The principle of equality of time shall be applied with flexibility and proportionality in light of the circumstances of the case. The amount of time available to each side for use at the hearing will be set by the Tribunal after consultation with the Parties during the Pre-Hearing Organizational Meeting.

13. During the Pre-Hearing Conference, the Parties were unable to agree on the amount of time available to each side for use at the hearing. The Respondent sought additional time on the ground that it had more fact witnesses to cross-examine. The Tribunal heard submissions from both Parties as to the most equitable division of time.
14. The Parties agreed (for the purpose of the present Hearing only) to shorten the time provided in paragraph [18.5] of PO No 1 within which expert witnesses may make a presentation in lieu of direct examination from 60 minutes to 30 minutes.
15. The President indicated that:
 - a. Each Party would have equal time on Day 1 to present their opening submissions;
 - b. Pursuant to PO No 19, Mr Tekin Ipek is to be treated as the Tribunal's witness. Each Party would in principle have equal time to examine him, subject always to the Tribunal's own right to ask questions of him at any time.
 - c. The Tribunal would set aside an additional sitting day, subsequent to the evidentiary part of the hearing, in order to hear the Parties' oral closing submissions (each Party to have equal time to do so), without prejudice to paragraph [22.1] of PO No 1.
 - d. The Tribunal saw merit in allowing more time to hear the oral testimony of Claimant's fact witnesses, in view of the number of these witnesses and the materiality of their evidence. The Parties were invited to seek to agree this in revising Annex A. In the absence of agreement between the Parties, the Tribunal would decide on the balance of time to be provided between the Parties.
 - e. The hearing schedule remained an indicative schedule; the Tribunal would maintain flexibility in light of the circumstances of the case as it developed.

16. The total hearing time available is 32 hours, which is indicatively allocated as follows:

- a. Opening submissions: 3 hours
- b. Closing submissions: 3 hours
- c. Expert presentations:
 - i. Claimant: 1 hour 30 minutes
 - ii. Respondent: 1 hour
- d. Mr Tekin Ipek (Tribunal's witness):
 - i. Claimant: 1 hour 30 minutes (direct and re-examination)
 - ii. Respondent: 1 hour 30 minutes (cross-examination)
 - iii. Tribunal: 30 minutes
- e. Tribunal:
 - i. House-keeping: 1 hour
 - ii. Tribunal questions (to counsel and witnesses): 3 hours

17. In light of the above, the time remaining to the Parties for the cross and re-examination of other witnesses is 16 hours.

18. As set out more particularly below:

- a. Claimant presents for oral testimony at the request of Respondent: 4 fact witnesses and 3 experts;

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- b. Respondent presents for oral testimony at the request of Claimant: 2 fact witnesses and 2 experts¹

The Tribunal allocates 9 hours to the Respondent and 7 hours to the Claimant.

19. Opening and Closing Statements shall not exceed 1 hour and 30 minutes. The Parties are free to allocate the remainder of their allocated time to their direct examination, cross-examination and reexamination in accordance with PO 1, section 18.5 as they see fit.
20. The Secretary of the Tribunal shall keep a chess clock account of time and advise the Parties of the time remaining upon request. At the end of each Hearing day, the Secretary will circulate a record of the total time used by and remaining to each Party.
21. The Tribunal may ask questions at any moment, including during the Parties' presentations.
22. Time used for housekeeping, to resolve technical difficulties, and questions from the Tribunal and answers to those questions shall not be counted against the Parties' time.
23. Procedural applications shall be treated as submissions, and allocated to the Party making the application.
24. The Parties agree to use the Hearing day efficiently and to avoid unnecessary slippage.

D. DOCUMENTS FOR USE AT THE HEARING

1. Electronic Hearing Bundle

25. There shall be a single Electronic Hearing Bundle (PC and Mac compatible), to be prepared jointly by the Parties. The Electronic Hearing Bundle shall contain a copy of the entire case file, and be organized as follows:

01. Pleadings

- A. Claimant
B. Respondent

02. Witness Statements

- A. Claimant

¹ The Respondent's legal experts, Abuzer Kendigelen and Ali Paslihowever, have presented a joint report. For the purposes of this analysis, the Tribunal considers them as one expert.

B. Respondent

03. Expert Reports

A. Claimant

B. Respondent

04. Exhibits submitted by the Parties, witnesses and the experts²

A. Claimant

B. Respondent

05. Legal Authorities

A. Claimant

B. Respondent

06. Tribunal's Rulings

07. Correspondence

08. Transcripts

09. Demonstrative exhibits

10. Hearing summary documents (paragraph 19 below)

26. The Electronic Hearing Bundle was provided to FTI by **30 June 2021** so that FTI can upload it to the portal page. The Parties will update the FTI portal page as necessary until the commencement of the Hearing.

27. The Electronic Hearing Bundle was shipped by **3 July 2021** in a USB to the members of the Tribunal and the Secretary of the Tribunal to the addresses to be communicated separately by the Secretary of the Tribunal. The USB shall contain the hyperlinked version of the index.

2. Hearing summary documents

28. In addition, on 2 July 2021, the Parties filed (in word and pdf format) and upload to the Electronic Hearing Bundle finalized copies of the following documents that, pursuant to PO No 1 Section 19.2 are to be prepared in draft on a collaborative basis between them prior to the Pre-Hearing Conference, *viz.*:

“19.2.1. A List of Issues (see § 14.2);

19.2.2. A chronology of key events and *dramatis personae*;

19.2.3. A pre-reading list of no more than 20 contemporaneous documents from each Party

² Exhibits and legal authorities should maintain the same numbering they already have on the record. References during the hearing to any exhibits or legal authorities will be made by referring to their current numbering (e.g. C-001, R-001, CL-001, RL-001).

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19.2.4. A chronological list of all factual exhibits; and,

19.2.5. A core bundle of key factual exhibits (or relevant extracts thereof) in chronological order numbering no more than 500 pages.”

3. Demonstrative Exhibits

29. Demonstrative exhibits shall be used in accordance with Sections 16.8 of PO1 (reproduced below), with certain adjustments indicated in paragraph 21 *infra*:

“16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each Party shall number each of its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The Party submitting such demonstrative exhibits shall provide them in electronic and hard copy to the other Party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting. Following the hearing, each Party shall submit by email to the Tribunal Members, the Tribunal Secretary and the opposing Party an electronic version of the demonstrative exhibits used at the hearing and upload the exhibits to the file sharing platform.”

30. To account for the virtual nature of the Hearing, PO1 Section 16.8 is amended as follows: (i) the hard copy submission of demonstratives is not required; and (ii) an electronic copy of each demonstrative shall be distributed by the Party intending to use it *via* email sent at least one hour before it is used to the entire distribution list, including the Members of the Tribunal, the Secretary of the Tribunal and, for the purposes of the Hearing, the court reporter, the interpreters and FTI.

31. In addition, promptly after the conclusion of the Hearing day in which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform, designating each with the corresponding CD-__ or RD-__ number.

4. Electronic Presentation of Documents

32. Demonstrative exhibits and clean, unannotated electronic copies of documents on the record may be displayed to all Hearing participants via the Zoom videoconference platform. Documents that do not form part of the record may not be presented at the Hearing.

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33. The electronic presentation of documents, including evidence, legal authorities and demonstrative exhibits, shall be handled by FTI. In addition, any Hearing participant shall have the technical ability to display a document to all Hearing participants via Zoom, and such person need not be an active speaker. While doing so, the Hearing participant displaying the document will be the only one with the ability to scroll through the document being displayed. The Hearing participant may equally allow FTI to control the documents and give instructions in real-time to the operator as to how the document will be presented/scrolling during the Hearing.
34. As a further precautionary measure, Hearing participants are advised to have the Electronic Hearing Bundle and any demonstrative exhibit previously distributed in accordance with paragraph 17 *supra* downloaded into their own devices and available for access offline.

E. WITNESS AND EXPERT EXAMINATION

35. The rules set out in Section 18 of Procedural Order No. 1 regarding witnesses and experts appearing at the Hearing are confirmed, save to the extent of the modifications set out below necessary to account for the virtual nature of the Hearing.
36. On 7 May 2021, pursuant to the Tribunal's direction of 27 April 2021, the Parties gave notice that the following witnesses and experts are required for cross-examination at the Hearing (subject to any modifications arising from procedural applications that were then pending):

a. Claimant's witnesses

Hamdi Akın İpek

Ayhan Yurttaş

Selman Turk

Ellen Radley

Savaş Bozbel

Thomas Moore

b. Respondent's witnesses

Alpaslan Kumas

Melek Kureeminoglu

Abuzer Kendigelen

Ali Pasli

Valery Aginsky

37. Pursuant to the agreement between the Parties (Respondent 28 June 2021; Claimant 30 June 2021), Witness 1, a witness for the Claimant, will give his/her evidence anonymously in accordance with the modalities set forth in the Tribunal's directions of 5 July 2021.
38. By PO No 19 dated 30 May 2021, the Tribunal decided that Mr Tekin Ipek would give evidence as the Tribunal's witness pursuant to Article 43(a) of the ICSID Convention and ICSID Arbitration Rule 34(2)(a). The Tribunal dispensed with prior service of a witness statement and provided that his evidence would be taken orally by way of direct examination by Claimant, cross-examination by Respondent and re-examination by Claimant. The Tribunal retains its right to ask questions of the witness at any time.
39. As the Parties have been unable to agree the modalities for Mr Tekin Ipek to give his oral testimony, the Tribunal has on 7 July 2021 issued separate directions governing the taking of his evidence.
40. The Parties were invited to agree on the order of witnesses, taking account of the following general indications: (i) it is for the Party tendering the witness to determine the order in which its witnesses are presented; (ii) Party representatives should testify first; (iii) all evidence of fact for both Parties should be completed prior to hearing expert evidence; and (iv) the expert evidence should be heard by discipline.
41. As the Parties were unable to agree, the Tribunal has determined the following order:
- (1) Melek Küreeminoğlu [*testifies in Turkish*]
 - (2) Alpaslan Kumas [*testifies in Turkish*]
 - (3) Hamdi Akin Ipek
 - (4) Ayhan Yurttas [*testifies in Turkish*]
 - (5) Selman Turk

(6) Tekin Ipek

(7) Witness 1

(8) Valery Aginsky

(9) Ellen Radley

(10) Thomas Moore

(11) Ali Pasli + Abuzer Kendigelen [*testify in Turkish*]

(12) Savas Bozbel [*testifies in Turkish*]

42. Each Party shall be responsible for providing to its witnesses a clean copy of that witness's statement or report, with its exhibits (if any). Otherwise, the witness shall have no other documents or notes in the room in which they are examined. The President will ask each witness to confirm that the hard copy of his statement or report is clean and unmarked. FTI shall display documents from the case file that are required for purposes of examination electronically to the witness.
43. Each Party shall ensure, in consultation with FTI, that the electronic set-up in the location from which the witness will give evidence is sufficient to enable the witness to see and be seen and to hear and be heard by counsel and the Tribunal, as well as to view documents to be displayed from the arbitration file.
44. The witnesses and experts will be prompted by the President to read the corresponding ICSID Arbitration Rule 35 declaration, which will be projected by FTI on the screen in English and Turkish as necessary depending on the language in which the witness or expert will testify.
45. Counsel may not communicate with fact or expert witnesses, including party representatives who are also witnesses, during their examination by any means other than communication on the record. This restriction to communicate with an expert or fact witness during their testimony includes breaks and will remain in place overnight if the hearing is adjourned and the witness or expert's testimony must continue the following day.
46. Subject to §18.7 of Procedural Order No. 1 (as amended by paragraph 30(5) of Procedural Order No. 18), other than a fact witness who is the representative of a Party, fact witnesses may not

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attend, watch recordings or read the transcripts of the Hearing before it is their turn to provide testimony. Fact witnesses may not discuss their testimony with other witnesses until both the former and the latter have provided their testimony.

47. Expert witnesses shall be allowed to be present in the Hearing Room before and after their examination.
48. The Tribunal shall ask witnesses/experts giving remote testimony to make the following affirmation:
- a. Do you affirm that there is no unauthorized person in the room with you, that no unauthorized person can communicate with you, that you have turned off all electronic communication devices on or near your person other than the device being used to connect to the hearing, and that you have no other software applications open that would enable you to communicate with anyone outside the room?
 - b. Factual witnesses only (excluding Party representatives): Do you affirm that you have not attended, watched a recording, or read the transcripts of this hearing prior to this moment?
49. In addition, 360-degree cameras will be installed in each location from which a witness or expert is testifying.
50. The witnesses and experts shall remain visible at all times during the examination. The witnesses and experts will be connected to the Hearing Waiting Room 30 minutes before their examination to ensure that they are available in time to be brought into the Hearing Room.
51. The witnesses and experts shall not use a “virtual background”, filter, or in any way prevent or limit the recording of them or the remote venue from which they are testifying. The witnesses and experts shall be able to view the Tribunal Members, counsel conducting the examination, and the documents referred to by the examining Party through the Zoom platform.
52. In order to avoid lost time during the Hearing, as a general rule, each witness/expert shall be available for examination half a hearing day before and after the time at which his/her examination is scheduled.

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53. In view of the fact that experts Ali Pasli and Abuzer Kendigelen have submitted a joint report for which they each take joint responsibility for the whole, the Tribunal directs that subject always to the control of the President as to the examination of all witnesses pursuant to ICSID Arbitration Rule 35(1) and without prejudice to the Respondent's right of re-examination:
- a. The two experts may testify together;
 - b. The Claimant may direct its questions in cross-examination to either expert as it sees fit;
 - c. The expert to whom the question is addressed shall give his answer to the question without consultation with the other expert;
 - d. If the expert considers that the other expert has additional expertise to offer in answer to the question, he may so state in his answer;
 - e. The Claimant may then decide whether it wishes to put a question to the other expert;
 - f. The Tribunal retains the right to ask questions of either expert at any time.

F. AUDIO RECORDING

54. The provision of Section 21.1 of PO1 concerning sound recordings (reproduced below) apply, with the adjustments included in paragraphs 41–42 *infra*.

“21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.”

55. The Hearing shall be recorded by FTI. An audio recording will be shared with the Parties and the Tribunal at the conclusion of the Hearing.
56. The Tribunal and the Parties agree that, with the exception of the audio recordings made by the court reporter for the purpose of the transcript, the participants will not otherwise record, *via* audio, video or screenshot the Hearing or any part of it.

G. TRANSCRIPTION

57. The provisions of PO1, Sections 21.2 and 21.3 concerning transcription (reproduced below) apply, with the adjustments indicated below:

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- “21.2. Verbatim transcript(s) in the English language shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 21.3. The Parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the Parties in the transcripts (“revised transcripts”). The President shall decide upon any disagreement between the Parties and any correction adopted by the President shall be entered by the court reporter in the revised transcripts.”
58. Real-time court reporting in English shall be made available to the Hearing participants *via* an online link connection to be provided by the court reporter, that will also be accessible from the FTI portal page. Hearing participants shall connect to the transcript by opening a link in a separate browser window.
59. The link and instructions to connect to the streamed transcript shall be provided by the Secretariat to the Hearing participants before the start of the Hearing.
60. Transcription services will be provided by Ms. Anne Marie Stallard (the “court reporter”). The court reporter may seek to clarify the record from time to time during the course of the hearing.
61. The Parties should, insofar as possible, circulate any speaking notes to the court reporter prior to the start of each intervention. These notes should be emailed directly to the court reporter (see the List of Participants for their email addresses) and are to be treated as confidential information.

H. INTERPRETATION

62. The provisions of PO1, Section 11 concerning interpretation apply with the adjustments indicated below.
63. The Parties were directed to notify the Tribunal by **31 May 2021**, which witnesses or experts, if any, require interpretation from any language other than English or Turkish. No such notification was received.

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64. ICSID has arranged simultaneous interpretation services in English and Turkish, throughout the Hearing. The interpreters will provide their interpretation services remotely using the Zoom platform.
65. Each Participant should select a language channel when connecting to the Hearing. Once a language selection is made, it is highly recommended that the Participant only use that language and avoid switching interpretation channels. Participants should speak slowly, one person at a time, and pause briefly when handing the floor to another Participant.
66. Each Active Participant should, insofar as possible, circulate any speaking notes to the interpreters prior to the start of each intervention. These notes should be emailed directly to the interpreters (see the List of Participants for their email addresses) and are to be treated as confidential information.

I. POST-HEARING SUBMISSIONS AND STATEMENTS OF COSTS

67. The provisions of Procedural Order No. 1, Section 22 apply.

J. CLOSED HEARING

68. The Hearing shall be closed to the public.

K. VIRTUAL HEARING ARRANGEMENTS

69. The following procedures shall be followed in order to ensure the good conduct of the virtual hearing:

1. Testing

70. FTI will conduct technical tests with the Tribunal and each Party in advance of the Hearing to test connectivity to the Zoom video conference platform and to the transcription service. The Secretariat recommends a minimum of two tests for each site that will connect to the Hearing.

There will be one general test available to those members of the Tribunal who require it, the Parties, the court reporter and the interpreters on 15 July 2021 at 20:00 BST. Each participant should join the tests with the same device(s) and internet connection and from the same physical location that they intend to use for the Hearing. Participants

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71. Each Party shall provide its respective list of participants for the Hearing by completing and submitting a schedule to be circulated to them by the Tribunal Secretary with this Order. Any revisions should be submitted by Monday, 12 July 2021.
 72. Each Party shall designate those participants that will have an active speaking role (“**Active Participants**”), and those who will be passive attendees (“**Passive Participants**”).
 73. When connecting to the Zoom platform, all participants shall identify themselves with their name as it appears in the corresponding list prefaced, as appropriate, by [T], [C], [R], etc. Should there be Participants joining from a common conference room, the conference room connection may be identified as “[C] [R] Conference Room #” as appropriate. Persons not included in the list of participant shall not be admitted to the Hearing or the Pre-Hearing Conference without the Tribunal’s approval.
 74. Participants will join the videoconference through a waiting room to be managed by the FTI.
 75. Participants shall join the videoconference 30 minutes in advance of the start on each day to facilitate the identification and to address any technical contingencies.

2. Connectivity

76. The Parties shall ensure that each of their representatives, witnesses and experts will connect to the videoconference through a stable internet connection offering sufficient bandwidth and using a camera and microphone/headset of adequate quality.
77. If available, Participants are advised to use a wired Ethernet connection instead of Wi-Fi. Participants are also encouraged to keep a smartphone or tablet, having a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the Hearing.
78. To improve operation of the Zoom platform, Participants are advised to connect through a computer using the Zoom application, and to keep the number of video connections to a minimum.
79. All Hearing participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interfering with the recording. The Zoom platform host may also mute and unmute all or some Hearing participants to avoid background noise.

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80. The videoconference platform will also offer a dial-in telephone audio connection as a backup option should a Participant experience a temporary technical difficulty. The Parties are advised that the dial-in back up telephone connection provides access to the floor audio channel only, not to the interpretation channels.

3. Equipment and Set Up

81. For optimum sound quality, especially for the audio recording and the transcription, speakers are recommended to use an external microphone connection such as a headset or a microphone connected through the USB or mic jack of the computer or laptop that they use for the Zoom videoconference.
82. Hearing participants are advised to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of devices including tablets) to facilitate simultaneous viewing of: (i) the Zoom video connection; (ii) the online Real-time transcript; and (iii) offline documents.

4. Videoconference Etiquette

83. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, the Tribunal and at least lead counsel for each side shall remain connected and on camera throughout the Hearing day.
84. The Parties are advised to keep the number of video connections to a minimum (Active Participants only). Passive Participants shall not connect their videos and shall remain muted.
85. Participants shall use the mute microphone function when not speaking to reduce background noise and to avoid interference with the audio recording. FTI shall have the ability to mute Participants if needed to avoid background noise, under the Tribunal's control.
86. Participants are advised to join the Hearing from a location without background noise and with adequate lighting. Participants joining via video shall avoid sitting with a window or source of light behind them.

5. Breakout Rooms

87. FTI will create breakout rooms for use during the Hearing. Hearing participants will be assigned to their corresponding breakout room according to the designations provided in the List of participants for the Hearing (“[T]”, “[C]”, “[R]”). Should there be a break in the course of a given witness or expert examination, the testifying witness/expert will remain in the main Hearing Room.
88. Each Party shall make the necessary arrangements for a separate channel to handle their team’s internal communications while the Hearing is ongoing, which shall be separate from the Zoom virtual Hearing room. The Zoom built-in chat function will be disabled, except for communications with FTI.

L. OTHER MATTERS

1. Data Privacy

89. The List of Participants for the Hearing will contain personal data provided to ICSID in the context of the remote Hearing, including names and contact information, such as business email addresses and telephone numbers. This data is processed for the purpose of the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and Hearing arrangements are properly communicated to the Parties, their legal representatives, the Members of the Tribunal and other participants providing services for the Hearing.

2. Technical Issues

90. If a Participant experiences any technical issue during the Hearing, they may (i) use the chat function in Zoom to communicate with the dedicated technician of FTI; (ii) send an email to the technician of FTI with copy to the ICSID Secretariat. In addition, FTI will create a Whatsapp group with each Party to quickly address any technical problems that may arise during the Hearing.
91. If a participant experiences connectivity issues, Zoom will automatically prioritize the audio feed and may disconnect the video feed. For best connectivity, it is recommended that participants (i) use an ethernet connection if available; (ii) avoid streaming during the Hearing; and (iii) close all unnecessary browser tabs/windows. Download speed should ideally be higher than 15 Mbps (for testing, go to www.speedtest.net).

Ipek Investment Limited v. Republic of Turkey

(ICSID Case No. ARB/18/18)

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For and on behalf of the Tribunal,



Professor Campbell McLachlan QC

President of the Tribunal

Date: 8 July 2021

ANNEX A
Hearing Agenda

The schedule of appearances of witnesses is indicative only. Section II C above applies.

Day 1 – Monday, 19 July 2021

18:00 London / 19:00 Geneva / 20:00 Ankara / 13:00 Montreal / 05:00 Wellington	Opening (10 minutes)	Opening of session Housekeeping
18:10 London / 19:10 Geneva / 20:10 Ankara / 13:10 Montreal / 05:10 Wellington	Hearing time (90 minutes)	Respondent's Opening
19:40 London / 20:40 Geneva / 21:40 Ankara / 14:40 Montreal / 06:40 Wellington	Break (20 minutes)	
20:00 London / 21:00 Geneva / 22:00 Ankara / 15:00 Montreal / 07:00 Wellington	Hearing time (90 minutes)	Claimant's Opening
21:30 London / 22:30 Geneva / 23:30 Ankara / 16:30 Montreal / 08:30 Wellington	Break (10 minutes)	
21:40 London / 22:40 Geneva / 23:40 Ankara / 16:40 Montreal / 08:40 Wellington	Hearing time (50 minutes)	Melek Küreeminoğlu
22:30 London / 23:30 Geneva / 00:30 Ankara / 17:30 Montreal / 09:30 Wellington	Adjourn	

Day 2 – Tuesday, 20 July 2021

18:00 London / 19:00 Geneva / 20:00 Ankara / 13:00 Montreal / 05:00 Wellington	Hearing time (60 minutes)	Melek Küreeminoğlu
19:00 London / 20:00 Geneva / 21:00 Ankara / 14:00 Montreal / 06:00 Wellington	Break (5 minutes)	
19:05 London / 20:05 Geneva / 21:05 Ankara / 14:05 Montreal / 06:05 Wellington	Hearing time (60 minutes)	Melek Küreeminoğlu
20:05 London / 21:05 Geneva / 22:05 Ankara / 15:05 Montreal / 07:05 Wellington	Break (20 minutes)	
20:25 London / 21:25 Geneva / 22:25 Ankara / 15:25 Montreal / 07:25 Wellington	Hearing time (60 minutes)	Alpaslan Kumas
21:25 London / 22:25 Geneva / 23:25 Ankara / 16:25 Montreal / 08:25 Wellington	Break (5 minutes)	
21:30 London / 22:30 Geneva / 23:30 Ankara / 16:30 Montreal / 08:30 Wellington	Hearing time (60 minutes)	Alpaslan Kumas
22:30 London / 23:30 Geneva / 00:30 Ankara / 17:30 Montreal / 09:30 Wellington	Adjourn	

Day 3 – Wednesday, 21 July 2021

18:00 London / 19:00 Geneva / 20:00 Ankara / 13:00 Montreal / 05:00 Wellington	Hearing time (60 minutes)	Hamdi Akin Ipek
19:00 London / 20:00 Geneva / 21:00 Ankara / 14:00 Montreal / 06:00 Wellington	Break (5 minutes)	
19:05 London / 20:05 Geneva / 21:05 Ankara / 14:05 Montreal / 06:05 Wellington	Hearing time (60 minutes)	Hamdi Akin Ipek
20:05 London / 21:05 Geneva / 22:05 Ankara / 15:05 Montreal / 07:05 Wellington	Break (20 minutes)	
20:25 London / 21:25 Geneva / 22:25 Ankara / 15:25 Montreal / 07:25 Wellington	Hearing time (60 minutes)	Ayhan Yurttas
21:25 London / 22:25 Geneva / 23:25 Ankara / 16:25 Montreal / 08:25 Wellington	Break (5 minutes)	
21:30 London / 22:30 Geneva / 23:30 Ankara / 16:30 Montreal / 08:30 Wellington	Hearing time (60 minutes)	Selman Turk
22:30 London / 23:30 Geneva / 00:30 Ankara / 17:30 Montreal / 09:30 Wellington	Adjourn	

Day 4 – Thursday, 22 July 2021

18:00 London / 19:00 Geneva / 20:00 Ankara / 13:00 Montreal / 05:00 Wellington	Hearing time (60 minutes)	Tekin Ipek
19:00 London / 20:00 Geneva / 21:00 Ankara / 14:00 Montreal / 06:00 Wellington	Break (5 minutes)	
19:05 London / 20:05 Geneva / 21:05 Ankara / 14:05 Montreal / 06:05 Wellington	Hearing time (60 minutes)	Tekin Ipek
20:05 London / 21:05 Geneva / 22:05 Ankara / 15:05 Montreal / 07:05 Wellington	Break (20 minutes)	
20:25 London / 21:25 Geneva / 22:25 Ankara / 15:25 Montreal / 07:25 Wellington	Hearing time (60 minutes)	Tekin Ipek
21:25 London / 22:25 Geneva / 23:25 Ankara / 16:25 Montreal / 08:25 Wellington	Break (5 minutes)	
21:30 London / 22:30 Geneva / 23:30 Ankara / 16:30 Montreal / 08:30 Wellington	Hearing time (60 minutes)	Tekin Ipek
22:30 London / 23:30 Geneva / 00:30 Ankara / 17:30 Montreal / 09:30 Wellington	Adjourn	

Day 5 – Friday, 23 July 2021

18:00 London / 19:00 Geneva / 20:00 Ankara / 13:00 Montreal / 05:00 Wellington	Hearing time (60 minutes)	Witness 1
19:00 London / 20:00 Geneva / 21:00 Ankara / 14:00 Montreal / 06:00 Wellington	Break (5 minutes)	
19:05 London / 20:05 Geneva / 21:05 Ankara / 14:05 Montreal / 06:05 Wellington	Hearing time (60 minutes)	Witness 1
20:05 London / 21:05 Geneva / 22:05 Ankara / 15:05 Montreal / 07:05 Wellington	Break (20 minutes)	
20:25 London / 21:25 Geneva / 22:25 Ankara / 15:25 Montreal / 07:25 Wellington	Hearing time (60 minutes)	Witness 1 Valery Aginsky
21:25 London / 22:25 Geneva / 23:25 Ankara / 16:25 Montreal / 08:25 Wellington	Break (5 minutes)	
21:30 London / 22:30 Geneva / 23:30 Ankara / 16:30 Montreal / 08:30 Wellington	Hearing time (60 minutes)	Valery Aginsky
22:30 London / 23:30 Geneva / 00:30 Ankara / 17:30 Montreal / 09:30 Wellington	Adjourn	

Day 6 – Monday, 26 July 2021

18:00 London / 19:00 Geneva / 20:00 Ankara / 13:00 Montreal / 05:00 Wellington	Hearing time (60 minutes)	Ellen Radley
19:00 London / 20:00 Geneva / 21:00 Ankara / 14:00 Montreal / 06:00 Wellington	Break (5 minutes)	
19:05 London / 20:05 Geneva / 21:05 Ankara / 14:05 Montreal / 06:05 Wellington	Hearing time (60 minutes)	Ellen Radley
20:05 London / 21:05 Geneva / 22:05 Ankara / 15:05 Montreal / 07:05 Wellington	Break (20 minutes)	
20:25 London / 21:25 Geneva / 22:25 Ankara / 15:25 Montreal / 07:25 Wellington	Hearing time (60 minutes)	Thomas Moore
21:25 London / 22:25 Geneva / 23:25 Ankara / 16:25 Montreal / 08:25 Wellington	Break (5 minutes)	
21:30 London / 22:30 Geneva / 23:30 Ankara / 16:30 Montreal / 08:30 Wellington	Hearing time (60 minutes)	Thomas Moore
22:30 London / 23:30 Geneva / 00:30 Ankara / 17:30 Montreal / 09:30 Wellington	Adjourn	

Day 7 – Tuesday, 27 July 2021

18:00 London / 19:00 Geneva / 20:00 Ankara / 13:00 Montreal / 05:00 Wellington	Hearing time (60 minutes)	Ali Pasli + Abuzer Kendigelen
19:00 London / 20:00 Geneva / 21:00 Ankara / 14:00 Montreal / 06:00 Wellington	Break (5 minutes)	
19:05 London / 20:05 Geneva / 21:05 Ankara / 14:05 Montreal / 06:05 Wellington	Hearing time (60 minutes)	Ali Pasli + Abuzer Kendigelen
20:05 London / 21:05 Geneva / 22:05 Ankara / 15:05 Montreal / 07:05 Wellington	Break (20 minutes)	
20:25 London / 21:25 Geneva / 22:25 Ankara / 15:25 Montreal / 07:25 Wellington	Hearing time (60 minutes)	Savas Bozbel
21:25 London / 22:25 Geneva / 23:25 Ankara / 16:25 Montreal / 08:25 Wellington	Break (5 minutes)	
21:30 London / 22:30 Geneva / 23:30 Ankara / 16:30 Montreal / 08:30 Wellington	Hearing time (60 minutes)	Savas Bozbel
22:30 London / 23:30 Geneva / 00:30 Ankara / 17:30 Montreal / 09:30 Wellington	Adjourn	