

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

In the proceedings between

Aguas Argentinas S.A. Suez, Sociedad General de Aguas de Barcelona S.A.
and Vivendi Universal S.A.
(Claimants)

and

The Argentine Republic
(Respondent)

ICSID Case No. ARB/03/19

**Procedural Order No. 1 Concerning the Discontinuance of Proceedings with
Respect to Aguas Argentinas S.A.**

Whereas the Claimant Aguas Argentinas S.A. (AASA) by letter of 9 February 2006, informed the Tribunal that the Claimant Shareholders were in the process of selling their interests in AASA to third parties and that "... in order to facilitate the required approval by the Republic of Argentina of such sale, AASA has decided to withdraw its claim in the above-referenced arbitration" but that such withdrawal was expressly without prejudice to the Claimant Shareholders' claims in this proceeding;

Whereas the Respondent, in response to the Tribunal's request for its observations on this matter, did not object to AASA's withdrawal but requested by letter of 15 February 2006, that the Claimant AASA provide the Respondent with copies of the minutes of AASA's shareholders' meeting (*Asamblea de Accionistas de AASA*) with respect to the decision authorizing such withdrawal;

Whereas the Respondent, after having been provided copies of such documents, informed the Tribunal by letter of March 31, 2006, para. 9, that "... the Argentine Republic does not oppose the proposed cessation by the Concessionaire...AASA..." in ICSID arbitration ARB/03/19 ("*... la República Argentina no se opone al desistimiento planteado por la[s] Concesionaria[s] AASA...en [el] arbitraje[s] CIADI/03/19*"), but argued that such withdrawal had legal consequences with respect to the Tribunal's jurisdiction over the Shareholder Claimants and their claims;

Whereas ICSID Arbitration Rule 44 provides:

If a party requests the discontinuance of the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall in an order fix a time limit within which the other party may state whether it opposes the discontinuance. If no objection is made in writing within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal, or if appropriate the Secretary-General, shall in an order take note of the discontinuance of the proceeding. If objection is made, the proceeding shall continue.

Whereas neither ICSID Arbitration Rule 44, nor any other ICSID Arbitration Rule, nor the ICSID Convention specifically provides for the withdrawal of one party from an arbitration proceeding that is to continue thereafter;

Whereas Article 44 of the ICSID Convention provides: "...If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question.";

Whereas discontinuance of the proceedings with respect to one of the parties at its request and in the absence of objection from other parties is in accordance with the basic

objective of the ICSID Convention of facilitating the settlement of investment disputes, of which ICSID Arbitration Rule 44 is a manifestation;

Whereas the continued participation of AASA in this proceeding under the conditions stated above would serve no useful purpose in bringing about a fair and correct resolution of the present arbitration;

Whereas the legal consequence of such discontinuance on the jurisdiction of the Tribunal over the other Claimants and their claims is a matter that is more appropriately to be considered in the Tribunal's conclusions on the question of jurisdiction now in the process of deliberation, rather than in the present order;

Now, therefore the Tribunal composed of Jeswald W. Salacuse (president), Gabrielle Kaufmann-Kohler, and Pedro Nikken after deliberation makes the following order:

1. The proceedings in the present ICSID Case No. ARB/03/19 with respect to the Claimant Aguas Argentinas S.A are hereby discontinued and the said Claimant Aguas Argentinas S.A shall cease to be a party to the present case with effect from today.
2. The proceedings in the present ICSID Case No. ARB/03/19 shall continue in all other respects.

[Signed]

Jeswald W. Salacuse
President of the Tribunal
Medford, MA

[April 14, 2006]