

In the matter of an arbitration under the UNCITRAL Arbitration Rules

between

OOO MANOLIUM-PROCESSING

Claimant

v.

THE REPUBLIC OF BELARUS

Respondent

DECISION ON BIFURCATION

ARBITRAL TRIBUNAL

Juan Fernández-Armesto (Chairman)

Stanimir Alexandrov

Brigitte Stern

ADMINISTRATIVE SECRETARY

Krystle M. Baptista Serna

1. On June 11, 2018, Respondent filed its Application for Bifurcation on Quantum [the “**RfB**”]. Respondent alleges that its RfB meets the criteria for granting bifurcation, based on three arguments¹:
 - 1) Bifurcation will reduce the number of issues to be considered in the quantum phase²; the Republic of Belarus is confident that it has a strong case on both jurisdiction and liability and believes that its objections will dispose of the claim³; even if the Tribunal does not dismiss the claim at the first stage, the Tribunal’s decision on liability will significantly narrow the scope of the issues to be addressed at the quantum stage⁴;
 - 2) The facts and issues relevant to jurisdiction and liability are distinct from the facts and issues relevant to the quantum proceedings⁵; thus, there would be a benefit in having the Tribunal’s findings of fact before instructing the experts⁶;
 - 3) Bifurcation will foster fairness, economy and efficiency in managing these proceedings⁷; the quantification of Claimant’s damages claims will be a complex and time consuming exercise, thus Respondent would be prejudiced if it had to invest substantial time and resources into quantifying claims that may fall away at the jurisdiction and liability phase⁸.
2. Claimant submitted its Observations on the Application for Bifurcation on Quantum [the “**Answer**”] on June 25, 2018. Claimant opposes bifurcation and demands that the quantum be heard together with the merits of the dispute⁹ because:
 - Bifurcation will cause undue delay and additional cost to the Parties¹⁰; and
 - The quantification of damages in this arbitration is not complicated and the record is not as voluminous as to warrant a bifurcation of the proceedings on quantum¹¹.
3. The procedural calendar allocates one month after Claimant’s Answer for the Tribunal to issue a decision on bifurcation. On July 24, 2018, the Tribunal sent a letter to the Parties informing them that deliberations were still ongoing and that it would issue a decision in the course of the following week¹². Therefore, this decision is rendered within the time period announced in communication A8.

¹ RfB, paras. 9, 86.

² RfB, paras. 62-76.

³ RfB, paras. 59, 62-67

⁴ RfB, paras. 59, 68-74.

⁵ RfB, paras. 77-80.

⁶ RfB, para. 23.

⁷ RfB, paras. 81-85.

⁸ RfB, paras. 81, 85.

⁹ Answer, para. 14.

¹⁰ Answer, paras. 15-18.

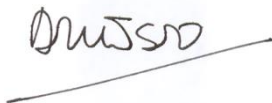
¹¹ Answer, para. 13.

¹² Communication A8.

4. The Tribunal has carefully examined the Parties' arguments and, on balance, sees advantages in not bifurcating the proceedings:
5. The Tribunal acknowledges that, if the dispute were to be bifurcated, Respondent would in the first phase avoid the need for an expert report; and that if Respondent were successful on jurisdiction or merits, no expert report would ever be required. But this advantage is off-set by the contrary scenario: if the Tribunal were to grant bifurcation and then find for Claimant on jurisdiction and merits (even if partially), the procedure would continue into a second phase, devoted exclusively to the calculation of damages. Such second phase would cause unnecessary delay and unwarranted increase in costs.
6. The Tribunal is also not convinced by Respondent's argument that the facts and issues relevant to jurisdiction and liability are distinct from the facts and issues relevant to the quantum proceedings; as the case has been pleaded, the Tribunal sees a close relationship between both sets of facts and issues.
7. Respondent also asserts that bifurcation will foster fairness, economy and efficiency in managing these proceedings, the quantification of Claimant's damages claims being a complex and time-consuming exercise. The Tribunal is unpersuaded: the expert report submitted by Claimant is not overly complex, and is based on straightforward methodology for the calculation of damages and lost profits.

8. For the above reasons, and considering the principles of procedural economy and cost efficiency, the Tribunal decides not to bifurcate the proceedings.
9. Consequently, the procedural calendar established in Timetable B.1 will be followed, adding one week to each Parties' deadline to submit their main pleadings, in order to compensate for the Tribunal's delay in rendering this decision. The Tribunal hereby reissues Annex I to Procedural Order No. 1, which is attached.

On behalf of the Arbitral Tribunal,



Juan Fernández-Armesto
Chairman of the Arbitral Tribunal

PROCEDURAL ORDER NO. 1 - ANNEX I

TIMETABLE B.1

The following timetable shall apply in the event that objections to jurisdiction are raised in response to the Statement of Claim, and there is a request for bifurcation which is DISMISSED.

Date / [Period of Time]	Party / Tribunal	Description
Wednesday, August 1, 2018 [+3 weeks from Observations on Request for Bifurcation]	Tribunal	Decision refusing bifurcation
Thursday, November 1, 2018 [+3 months and one week from decision refusing bifurcation]	Respondent	Statement of Defense
Tuesday, January 15, 2019 [+2,5 months and one week from Statement of Defense]	Claimant	Statement of Reply
Friday, March 29, 2019 [+2,5 months and one week from Statement of Reply]	Respondent	Rejoinder on the Merits
Wednesday, May 22, 2019 [+2 months before the Hearing]	Claimant & Respondent	Witness notification
Monday, June 24, 2019 [+5 weeks before the Hearing]	Parties	Parties to agree on the index of hearing bundles
Monday, July 1, 2019 [+4 weeks before the Hearing]	Parties and President of the Tribunal (unless full Tribunal is requested by either Party)	Pre-Hearing Organizational Meeting
Monday, July 29 – Aug. 2, 2019 [+4 months from Rejoinder on the Merits]	All	Hearing