

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Sodexo Pass International SAS
Claimant

v.

Hungary
Respondent (Applicant on Annulment)

(ICSID Case No. ARB/14/20)
Annulment Proceeding

PROCEDURAL ORDER NO. 2
On the Organization of the Hearing

Members of the ad hoc Committee

Mr. Andrés Jana Linetzky, President of the *ad hoc* Committee
Dr. Ucheora Onwuamaegbu, Member of the *ad hoc* Committee
Dr. Jacomijn van Haersolte-van Hof, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Leah W. Njoroge

October 6, 2020

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I. PROCEDURAL BACKGROUND

1. On July 20, 2020, the Committee invited the Parties to confer and use their best efforts to agree on a joint proposal for a contingency plan to convene a virtual hearing, in the event that it could not be feasible to convene physically for the hearing scheduled to take place, in-person, on November 17 and 18, 2020 in Washington, D.C. (“**Hearing**”).
2. On August 3, 2020, the Parties informed the Committee that they were agreeable to a virtual hearing in order to maintain the set hearing dates. The Parties agreed that, in the event of a virtual hearing: (i) the provision of two days would be adequate for the hearing; and (ii) the hearing day could be shortened to 4-5 hours. The Parties also proposed that hybrid options for the hearing could be considered whereby, if both Parties were able to travel to one location, one or more members of the Committee could also attend in-person, with the remaining members joining via video link. The Parties considered that this hybrid arrangement would minimize the number of video connections and reduce technological disruptions. The Parties agreed that it would be inappropriate for one Party to be present at an in-person hearing with one or more members of the Committee where the other Party cannot also be physically present in the hearing room. The Parties requested the Committee to revert concerning the above proposals.
3. By its letter of September 1, 2020, the Committee advised that it welcomed the Parties’ agreement to a virtual hearing on the scheduled dates, with shortened hearing days of 4-5 hours, in the event the hearing were to take place virtually. The Committee informed the Parties that it was content with the Parties travelling to a common venue to attend the hearing in one location for the purpose of minimizing the number of video connections, but was less in favor of the hybrid arrangement in which one or more members of the Committee attend the hearing venue in-person with the Parties while the other member(s) join remotely via a video link. The Committee also informed the Parties that, should the travel restrictions due to COVID-19 continue, Mr. Jana and Dr. van Haersolte-van Hof would face significant difficulties in attending an in-person hearing in Washington, D.C., in November. The Committee invited the Parties to submit their observations and indicate availability for a conference call on September 14, 2020.

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4. On September 2 and 3, 2020, the Parties informed the Committee that they had agreed that a virtual hearing would be appropriate in the circumstances and each Party confirmed availability to attend the conference call on September 14, 2020.
5. On September 10, 2020, the Committee confirmed that, in light of the Parties' agreement to hold the Hearing virtually by video conference, the Committee would postpone the September 14 session and instead convene a pre-hearing organizational meeting, pursuant to Section 17.1 of Procedural Order No. 1., to address the logistics and schedule of the Hearing. The Parties were asked to confirm availability to attend the pre-hearing organizational meeting on September 30, 2020 beginning at 10:00 a.m. Washington, D.C. time.
6. On September 14, 2020, the Claimant's counsel advised that due to prior commitments, they could not attend the pre-hearing organizational meeting on September 30, 2020 but indicated availability during the week of October 5, 2020. On September 15, 2020, counsel for the Applicant confirmed availability to attend the pre-hearing organizational meeting on October 5 and 7, 2020. On the same day, the Committee confirmed that the pre-hearing organizational meeting would take place on October 5, 2020.
7. Pursuant to Section 17.1 of Procedural Order No. 1, a pre-hearing organizational meeting between the Parties and the Committee was held via WebEx video and audio on October 5, 2020 (the "**Pre-Hearing Conference**"), to discuss any outstanding procedural, administrative, and logistical matters in preparation for the Hearing. Participating were:

Members of the Committee

Mr. Andrés Jana Linetzky, President of the Committee

Dr. Ucheora Onwuamaegbu, Member of the Committee

Dr. Jacomijn van Haersolte-van Hof, Member of the Committee

ICSID Secretariat:

Ms. Leah W. Njoroge, Secretary of the Committee

Ms. Ekaterina Minina, Paralegal

Participating on behalf of Sodexo Pass International SAS:

Mr. Philippe Cavalieros, Simmons & Simmons LLP

Ms. Christina Mangani, Simmons & Simmons LLP

Participating on behalf of Hungary:

Mr. Ben Sanderson, DLA Piper

Ms. Zsofia Deli, DLA Piper

Mr. David Kohegyi, DLA Piper

8. During the Pre-Hearing Conference, the Parties and the Committee discussed the draft Procedural Order circulated to the Parties on September 25, 2020, and the Parties' joint statement of October 2, 2020 advising the Committee that they had reached agreement on all the various procedural items and that they had no contentious items to present to the Committee.
9. An audio 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 Committee and the Parties on October 6, 2020.
10. The Committee has considered the Parties' joint proposals and, in the present Order, sets out the procedural rules that the Parties have agreed upon and/or the Committee has determined will govern the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT

11. The Hearing will take place virtually through ICSID's video conference platform **WebEx** on **Tuesday, November 17** and **Wednesday, November 18, 2020**. The details to join the WebEx session will be shared by the ICSID Secretariat in advance of the Hearing. The Secretariat will conduct tests of the WebEx system with the parties and the Committee prior to the Hearing, and it will also endeavor to arrange and test a back-up system.

B. ORDER OF PROCEEDINGS AND SCHEDULE

12. To accommodate the multiple time zones of all Hearing Participants, the Hearing will start at 8:00 am Washington, D.C. time on both Hearing days. It is expected to conclude by 1:00 pm Washington, D.C. time each day.

13. On the first Hearing Day, there will be two breaks, one of 15 minutes and another of 30 minutes. On the second Hearing Day, there will be three breaks, two of 15 minutes each and a third of 30 minutes.
14. The order of proceedings and structure of the Hearing will be as indicated in the agenda incorporated as **Annex A**.
15. The Committee reserves discretion to adjust the Hearing schedule as needed to accomplish the prescribed agenda and to accommodate any technical disruptions.

C. TIME ALLOCATION AND TIME KEEPING

16. The Hearing will proceed on the principle that the Parties should have equal time to present their case within the time allocation agreed upon for each phase of the Hearing, subject to the following limitations:
 - (a) Opening statements: Each party shall be allowed a maximum of 100 minutes for its opening statement on the first Hearing day.
 - (b) Closing statements: Each party shall be allowed a maximum of 45 minutes for its closing statement on the last Hearing day.
17. Time attributable to the Committee's questions to counsel shall not be counted against the Parties' time.
18. The Committee emphasizes that the Parties are expected to use the Hearing day efficiently and avoid unnecessary slippage (*e.g.*, delays in returning from breaks). In the event of excessive slippage, the Committee may revisit the length of the sitting day or, in unusual circumstances, the time allocated to the Parties, bearing in mind principles of predictability, equal treatment and a fair opportunity for the Parties to be heard.

D. DOCUMENTS FOR USE AT THE HEARING

1. Electronic Hearing Bundle

19. There shall be a single Electronic Hearing Bundle (PC and Mac compatible), to be prepared by the Applicant. The Electronic Hearing Bundle shall contain all pleadings, exhibits, legal authorities and Committee orders or decisions on file to date, and shall have a consolidated hyperlinked index. It shall not contain any document not previously filed. It shall be organized as follows:

Electronic Hearing Bundle

01. Pleadings

- A. Applicant
- B. Claimant

02. Exhibits

- A. Applicant
- B. Claimant

03. Legal Authorities

- A. Applicant
- B. Claimant

04. Committee Orders and Decisions

20. The Electronic Hearing Bundle shall be uploaded by the Parties to a designated sub-folder in the BOX filesharing platform no later than November 6, 2020. On the same date, the Parties shall courier USB sticks containing the Electronic Hearing Bundle to each Member of the Committee, and, if requested, the Secretary of the Tribunal, and the court reporter.

21. To ensure proper operation of the hyperlinked index, the entire Electronic Hearing Bundle shall be housed within one folder and then uploaded to BOX as a single zip file. Should the size of the zip file make the upload to BOX impossible, the Parties shall upload the organized Electronic Hearing Bundle to a designated sub-folder on to the BOX filesharing platform, in sub-folder using the structure indicated at paragraph 19 *supra*, and including a consolidated (non-hyperlinked) index.

22. Prior to the Hearing, the Members of the Committee, the Secretary of the Committee and the Parties shall download the Electronic Hearing Bundle from BOX into their own devices

to have access to it offline during the Hearing. The Court Reporter will also be provided a copy of the Electronic Hearing Bundle via the ICSID Secretariat.

2. Demonstrative Exhibits

23. Demonstrative exhibits (including any Power Point or other slide presentations) shall be used in accordance with Section 15.6 of Procedural Order No. 1 (reproduced below), with certain adjustments indicated in paragraphs 24 and 25 below:

15.6 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 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 exhibits shall provide them in electronic and hard copy to the other party, the Committee Members, the Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

24. To account for the virtual/remote nature of the Hearing, Section 15.6 of Procedural Order No. 1 above is amended such that: (i) 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 to the entire case email distribution for each Party, the Secretary of the Committee, the Members of the Committee, to the court reporter, no later than 1 hour prior to its use.
25. In addition, promptly after the conclusion of the Hearing day in which a corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative exhibit to the case folder in the BOX filesharing platform, designating each by the party filing it and a unique document number.

3. Electronic Presentation of Evidence

26. Hearing Participants are advised to have the Electronic Hearing Bundle and any demonstrative exhibit previously distributed in accordance with paragraph 24 above downloaded into their own devices and available for access offline.

27. Demonstrative exhibits and electronic copies of documents on the record may be displayed to all Hearing Participants via the WebEx videoconference platform. Any Hearing Participant has the technical ability to display a document to all Hearing Participants via WebEx, and such person need not be an active speaker. The Hearing Participant displaying the document will be the only one with the ability to scroll through the document being displayed. The Parties should be aware that overuse of this function will increase pressure on the Internet bandwidth and stability of the connection.

28. Documents that do not form part of the record, other than demonstrative exhibits, may not be displayed at the Hearing, absent a contrary order of the Committee.

E. AUDIO/VIDEO RECORDING

29. The provisions of Procedural Order No. 1, Section 19.1, concerning audio recording (reproduced below) apply.

19.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Committee Members.

30. The audio recording shall be made by the ICSID Secretariat, and it will be shared with the parties and the Members of the Committee at the conclusion of the Hearing. Hearing participants shall not otherwise record the Hearing or any part of it via audio, video or screenshot.

F. TRANSCRIPTION

31. The provisions of Procedural Order No. 1 concerning transcription (reproduced below) apply, with the adjustments indicated in paragraph 32 below.

19.2. Verbatim transcripts in the procedural 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 Committee, 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 Committee on a same-day basis.

19.3. The parties shall agree on any corrections to the transcripts within 14 days of the later of the dates of receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Committee shall decide upon any disagreement between the parties and any correction adopted by the Committee shall be entered by the court reporter in the revised transcripts.

32. 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. Hearing participants shall connect to the transcript by opening the link in a browser window separate from the WebEx browser window. The details (link, password) and instructions to connect to the streamed transcript shall be provided by the ICSID Secretariat to the Hearing participants before the start of each Hearing day.

G. POST-HEARING SUBMISSIONS

33. In accordance with Section 20.1 of Procedural Order No. 1, at the end of the Hearing, the Committee will determine, in consultation with the Parties, the need for Post-Hearing Submissions.

H. STATEMENTS OF COSTS

34. The parties shall submit statements of costs following the Hearing. The timing and form of these statements will be discussed at the Hearing

I. CLOSED HEARING

35. In accordance with Section 18.6 of Procedural Order No. 1, the Hearing shall be closed to the public.

J. VIRTUAL HEARING ARRANGEMENTS

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

1. Testing

37. The Secretariat will conduct technical tests with the Committee and each Party in advance of the Hearing, to test connectivity to the video conference platform (WebEx) and to the real-time transcription. The date of each test and the access details will be communicated in due course.

2. Participants

38. Each Party shall provide its List of Participants (“**Hearing List of Participants**”) for the Hearing no later than November 6, 2020, using the format provided in **Annex B**. Each Party shall designate the participants that will have an active speaking role (“**Active Participants**”) and those who will be passive attendees (“**Passive Participants**”). The Parties shall provide the Secretary of the Committee the direct contact telephone numbers for all Active Participants.

39. All Hearing Participants shall clearly denote their names when connecting to the WebEx platform on the day of the Hearing. Any name appearing on the WebEx List of Participants shall also appear on the Hearing List of Participants. Should there be any discrepancy at any point during the Hearing, the Secretary of the Committee will alert the Committee, and the Committee will promptly address the matter.

3. Connectivity

40. To improve operation of the WebEx platform, the Parties are advised to keep the number of video connections to a minimum and to Active Participants only. Passive Participants should preferably join the meeting through their computer but connecting only their audio (*i.e.* not broadcasting their own video).

41. All Hearing Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The WebEx video host at the ICSID Secretariat may also mute and unmute all or some Hearing Participants if needed to avoid background noise.

4. Equipment and Set Up

42. For optimum sound quality, especially for the audio recording and the transcription, ICSID highly recommends that the main speakers use a headset equipped with a microphone and connected through the USB or “mic” jack of the computer or laptop that they use for the WebEx videoconference. Internal microphones do not give as good a sound quality as external microphones. If not available, Active Participants are asked to speak close to the microphone of the computer or laptop from which they are connected to the WebEx session.
43. While not indispensable, 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 WebEx video connection; (ii) the online real time transcript; and (iii) offline documents.
44. Hearing Participants joining via video shall avoid sitting with a window or source of light behind them because this darkens their image on screen.

5. Break-Out Rooms

45. Each Party shall itself directly arrange for a separate channel to handle their team’s internal communications during breaks, which shall be separate from the WebEx virtual Hearing Room. The Secretariat will similarly make arrangements for use of a separate channel for the Committee’s use.

For and on behalf of the Committee,

[signed]

Name: Andrés Jana Linetzky
President of the Committee
Date: October 6, 2020

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ANNEX A

Sodexo Pass International SAS

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HEARING ON NOVEMBER 17-18, 2020

Video Conference

ESTIMATED HEARING SCHEDULE

DAY 1 - NOVEMBER 17, 2020

| | |
|----------------------|----------------------------------------|
| 8:00 – 8:05 | Introductory remarks |
| 8:05 – 9:45 | Applicant’s Opening Statement |
| | <i>30-minute break</i> |
| 10:15 – 11:55 | Claimant’s Opening Statement |
| | <i>15-minute break</i> |
| 12:10 – 1:00 | Potential questions from the Committee |

DAY 2 - NOVEMBER 18, 2020

| | |
|----------------------|-------------------------------------------------------------|
| 8:00 – 8:45 | Applicant’s Closing Statement |
| | <i>15-minute break</i> |
| 9:00 – 9:45 | Claimant’s Closing Statement |
| | <i>15-minute break</i> |
| 10:00 – 10:30 | Applicant’s response to the Committee’s potential questions |

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|----------------------|-----------------------------------------------------------------------------------------------|
| 10:30– 11:00 | Claimant’s response to the Committee’s potential questions |
| | <i>30-minute break</i> |
| 11:30 – 12:45 | Potential additional questions from the Committee and the Parties’ response to such questions |

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ANNEX B

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HEARING ON NOVEMBER 17-18, 2020

Video Conference

LIST OF PARTICIPANTS

| <u>Name</u> | <u>Role/Affiliation</u> | <u>Time zone</u> | <u>Active or Passive Participant</u> | <u>Email address/ Phone number</u> |
|-------------------------------------------|-----------------------------------|--------------------------------|----------------------------------------------|------------------------------------|
| COMMITTEE | | | | |
| <u>Mr. Andrés Jana Linetzky</u> | <u>President of the Committee</u> | <u>10:00 am CLST (UTC - 3)</u> | | |
| <u>Dr. Ucheora Onwuamaegbu</u> | <u>Committee Member</u> | <u>8:00 am EST (UTC -5)</u> | | |
| <u>Dr. Jacomijn van Haersolte-van Hof</u> | <u>Committee Member</u> | <u>1:00 pm GMT (UTC +0)</u> | | |
| ICSID SECRETARIAT | | | | |
| <u>Ms. Leah W. Njoroge</u> | <u>Secretary of the Committee</u> | <u>8:00 am EST (UTC -5)</u> | | |
| APPLICANT | | | | |
| <u>Counsel</u> | | | | |

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| <u>[Name]</u> | <u>[Firm]</u> | <u>[time]</u> <u>[time zone]</u> | | |
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CLAIMANT

Counsel

| <u>[Name]</u> | <u>[Firm]</u> | <u>[time]</u> <u>[time zone]</u> | | |
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