

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Neustar, Inc.

v

Republic of Colombia

(ICSID Case No. ARB/20/7)

PROCEDURAL ORDER NO 2

Members of the Tribunal

Professor Julian D M Lew QC, President of the Tribunal

Professor Yves Derains, Arbitrator

Professor Dr Kaj Hobér, Arbitrator

Secretary of the Tribunal

Veronica Lavista

6 May 2022

1. Pursuant to paragraph 15 of Procedural Order No 1 (PO1) and the agreed procedural calendar (as last amended on 18 October 2021), the Parties filed their respective requests for document production (Redfern schedules) on 16 April 2022.
2. The Tribunal's decisions and orders regarding the Parties' document production requests are set out in the attached Annex A for Claimant's Document Production Application and Annex B for Respondent's Document Production Application.
3. For the purposes of this Procedural Order and as stated in paragraph 15 of PO1, the Tribunal notes that the document production process is governed by Article 43(a) ICSID Convention, Rules 24 and 33-36 ICSID Arbitration Rules and the Procedural Rules set forth in PO1. Further, as provided in paragraph 15.2 of PO1:

The Tribunal and the Parties shall be guided by the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) in relation to document production.

4. In this regard, Article 9.2 of the IBA Rules provides the standard to be followed when considering Parties' requests for production of document. It states:

The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection for any of the following reasons:

(a) lack of sufficient relevance to the case or materiality to its outcome;

(b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable;

(c) unreasonable burden to produce the requested evidence;

(d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;

(e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;

(f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or

(g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.

5. Accordingly, in determining the Parties' document production requests in this Arbitration, the Tribunal has taken into account these standards including in particular:
- (a) whether the Parties' requests identified each document or category of documents with sufficient precision, or whether they have been overly broad.
 - (b) whether the Parties' request demonstrated the relevance and materiality of the document or category of documents sought to the case and its outcome.¹
 - (c) whether the requested documents are within the possession, custody or control of the requested party.

The Tribunal's Specific Directions

6. The Tribunal reminds the Parties that the burden is on each Party to prove the allegations and statements on which they rely in this Arbitration and to submit the evidence on which their contentions are based. Where relevant evidence is not produced the Tribunal may draw appropriate inferences for non-production of documents.²
7. The Parties need to produce all relevant and material documents responsive to the specific requests in the other Party's Redfern Schedule, as ordered by the Tribunal, to the extent that those documents are in the possession, custody or control of the producing Party. They should be produced in full and in their original format to the extent possible.
8. If, following reasonable and proportionate searches, no documents are found, the searching Party shall advise the other Party accordingly with details of what searches were undertaken.
9. If a Party claims legal privilege as grounds for not producing documents which should otherwise be produced, that Party shall provide a legal privilege log stating: (i) the nature and subject-matter of the document, (ii) the date on which it was produced, (iii) the origin of the

¹ PO 1 paragraph 15.4

² PO 1 paragraph 15.5

document (who issued it), (iv) to whom it was addressed, and (v) the basis on which privilege is claimed.

10. If a Party claims commercial confidentiality with regard to any documents ordered to be disclosed, that Party shall seek to agree with the other Party the terms and conditions necessary to preserve their confidentiality and under which the documents concerned would be produced. If no agreement is reached, the claiming Party shall provide a commercial confidentiality log stating: (i) the nature and subject-matter of the document, (ii) the date on which it was produced, (iii) the origin of the document (who issued it), (iv) to whom it was addressed, and (v) the basis on which commercial confidentiality is claimed.

11. Each Parties shall produce to the other Party the documents as ordered by the Tribunal within 28 days of this Procedural Order, as indicated in the agreed procedural schedule.

Place of Proceedings: Washington, DC

Date: 6 May 2022

On behalf of the Tribunal

[SIGNATURE]

Professor Julian D M Lew QC
President of the Tribunal

Attachments: Annex A and Annex B