

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ESPÍRITU SANTO HOLDINGS, LP AND L1BRE HOLDING, LLC
Claimants

v.

UNITED MEXICAN STATES
Respondent

(ICSID Case No. ARB/20/13)

PROCEDURAL ORDER NO. 5

Members of the Tribunal

Mr. Eduardo Zuleta, President of the Tribunal

Mr. Charles Poncet, Arbitrator

Mr. Raúl Emilio Vinuesa, Arbitrator

Secretary of the Tribunal

Ms. Elisa Méndez Bräutigam

24 August 2022

I. INTRODUCTION

1. On 22 July 2022, in accordance with the procedural calendar set forth in Annex A of Procedural Order No. 2, the Parties submitted their completed Redfern Schedules to the Tribunal.
2. On 4 August 2022, the Tribunal issued Procedural Order No. 4 in which it ruled on the Parties' respective objections to the requests for production of documents.
3. In Procedural Order No. 4, the Tribunal further invited the Parties to:
 - i) agree on a confidentiality protocol for the disclosure of documents identified under the Claimants' Requests Nos. 26 and 31, and to inform the Tribunal on their agreement, or points of disagreement, no later than 22 August 2022;¹ and
 - ii) agree on a protocol for the simultaneous exchange and review of the source codes of the "Libre" and "Mi Taxi" systems, and to inform the Tribunal on their agreement, or points of disagreement, no later than 22 August 2022.²
4. On 22 August 2022, the Parties submitted to the Tribunal their agreed confidentiality protocol. The protocol (i) covers all materials and documents to be produced by any Party to this Arbitration in response to the other Party's document production requests; (ii) particularly applies to documents ordered by the Tribunal to be produced in Procedural Order No. 4 related to the production of the source codes for the "Libre" and "Mi Taxi" systems and documents responsive to the Claimants' Requests Nos. 26 and 31; and (iii) governs the use and disclosure of all material designated by any Party as confidential during the course of this Arbitration.³

¹ Procedural Order No. 4, para. 21(e).

² Procedural Order No. 4, para. 21(g).

³ Agreed Confidentiality Protocol, Section 1 ("**Annex A**").

5. Further, on the same day, the Parties submitted their agreed protocol for the simultaneous exchange of the source codes and informed the Tribunal that the simultaneous exchange will take place on 9 September 2022 at 4 pm (Mexico City time).⁴
6. In their correspondence of 22 August 2022, the Parties requested that the Tribunal confirm the above-mentioned protocols by means of a procedural order.⁵

II. DECISION OF THE TRIBUNAL

7. In light of the foregoing, the Tribunal issues the present Order confirming the Parties' agreed protocol of confidentiality (attached as **Annex A** to this Order) and their agreed protocol for the simultaneous exchange of the source codes (attached as **Annex B** to this Order).

[Signed]

Mr. Eduardo Zuleta Jaramillo
President of the Tribunal
Date: 24 August 2022

⁴ The Respondent's letter to the Tribunal, 22 August 2022, p. 1.

⁵ Emails of the Parties to the Tribunal Secretariat and the Members of the Tribunal, 22 August 2022.

ANNEX A: PARTIES' AGREED CONFIDENTIALITY PROTOCOL OF 22
AUGUST 2022

I. MATERIALS COVERED

1. This Agreed Confidentiality Protocol covers all materials and documents to be produced by any “Party” to the Arbitration, which includes The United Mexican States (“**Mexico**” or “**Respondent**”) or Espiritu Santo Holdings, LP. and Libre Holding, LLC (“**Claimants**,” and together with Mexico the “**Parties**”), in response to the other Party’s document production requests. Specifically, this Agreed Confidentiality Protocol will apply to the documents ordered by the Tribunal to be produced by the Parties in section II.12 and II.15 to its Procedural Order No. 4, dated August 4, 2022, related to the production of (i) the source codes for the “Libre” and “Mi Taxi” systems by the Claimants and Mexico, respectively; and (ii) documents responsive to requests Nos. 26 and 31 by Claimants.
2. This Agreed Confidentiality Protocol also shall govern the use and disclosure of all material designated by any Party as confidential (collectively, the “**Confidential Material**”), during the course of the above-captioned arbitration proceeding (the “**Arbitration**”).

II. DESIGNATION OF CONFIDENTIAL MATERIAL

3. Documents and information may be designated by any Party as Confidential Material by adding the designation “Confidential” to the first page of each document or if not possible because of the format of a document, then a slip sheet added as the first page to that document.

III. USE OF CONFIDENTIAL MATERIAL

4. Confidential Material shall be used solely for purposes of the Arbitration and shall not be used for any other purposes, unless otherwise required by law.

Annex A – Agreed Confidentiality Protocol
Procedural Order No. 5

5. Confidential Material marked as “Confidential” shall be disclosed only to the following individuals:
- i) Any Party’s counsel of record in these proceedings, including other attorneys employed by such counsel’s law firm, and other persons regularly employed by such counsel as are necessary to perform secretarial, paralegal, law clerk, document production services or other similar functions.
 - ii) Any Party after being advised of the terms of this Agreed Confidentiality Protocol and agreeing in writing to abide by its terms to not disclose any Confidentiality Material to any persons not included in this Agreed Confidentiality Protocol.
 - iii) Any expert or consultant retained by any Party to assist in the Arbitration, after being advised of the terms of this Agreed Confidentiality Protocol.
 - iv) The Arbitral Tribunal.
 - v) The ICSID Secretariat and persons employed by the ICSID Secretariat, including counsel, secretaries, paralegals, transcribers, translators, and any clerical or administrative personnel.
 - vi) Any person noticed as witnesses in the Arbitration to the extent reasonably necessary in order to prepare them to testify in the Arbitration and after being advised of the terms of this Agreed Confidentiality Protocol.
 - vii) Any testifying fact or expert witnesses in the Arbitration after being advised of the terms of this Agreed Confidentiality Protocol.
 - viii) Such other persons agreed to by the Parties or as ordered by the Arbitral Tribunal.

**IV. DURATION AND TERMINATION OF THE AGREED CONFIDENTIALITY
PROTOCOL**

6. This Agreed Confidentiality Protocol shall be valid during the Arbitration proceedings and after the Arbitration terminates, or until the Parties agree to modify or terminate it in writing.

**ANNEX B: PARTIES' AGREED PROTOCOL FOR THE EXCHANGE OF
SOURCE CODES OF 22 AUGUST 2022**

**I. CARACTERÍSTICAS DEL SISTEMA DE ENVÍO QUE SERÁ UTILIZADO
POR LAS PARTES**

1. El envío de los códigos fuente se realizará a través de un sitio seguro de intercambio de datos (*e.g.*, sharefile, kiteworks, FocalPoint) en el que se permita el acceso y descarga a un número limitado de representantes de las Partes. Para tales efectos, las Partes establecerán una lista de los nombres y correos electrónicos a los que se deba autorizar el acceso a más tardar el 8 de septiembre de 2022.
2. En este sentido, la Demandada proporciona el listado correspondiente:

Nombre	Correo electrónico
Orlando Pérez Gárate	orlando.perez@economia.gob.mx
Alan Bonfiglio Rios	alan.bonfiglio@economia.gob.mx
Rosalinda Toxqui Tlaxcalteca	rosalinda.toxqui@economia.gob.mx
Geovanni Hernández Salvador	geovanni.hernandez@economia.gob.mx
Pamela Hernández Mendoza	pamela.hernandez@economia.gob.mx
Ellionehit Sabrina Alvarado Sánchez	sabrina.alvarado@economia.gob.mx
Jorge Luis Andrés José	jorge.andres@economia.gob.mx
Stephan E. Becker	stephan.becker@pillsburylaw.com
Alejandro Barragan	abarragan@tradeisds.com

3. Por su parte, la Demandante proporciona el listado correspondiente:

Nombre	Correo electrónico
Richard Lorenzo	richard.lorenzo@hoganlovells.com
Mark Cheskin	mark.cheskin@hoganlovells.com
Catherine Bratic	catherine.bratic@hoganlovells.com
Juliana de Valdenebro	juliana.devaldenebro@hoganlovells.com
Nigel Blackaby	nigel.blackaby@freshfields.com
Lee Rovinescu	lee.rovinescu@freshfields.com

Maria Paz Letisdo	mariapaz.letisdo@freshfields.com
Marta Urra	marta.urra@hoganlovells.com

4. La liga de acceso al sitio de descarga que sea generada por las Partes será inhabilitada en los 5 días hábiles siguientes a la fecha acordada para la producción simultánea de los códigos fuente.

II. INSTRUCCIONES PARA EL INTERCAMBIO SIMULTÁNEO

5. Para asegurar que los códigos fuente sean recibidos por las Partes en igualdad de condiciones y evitar cualquier inconveniente o desfase en la recepción y/o envío de los mismos, cada Parte remitirá por correo electrónico a la Secretaria del Tribunal, la liga de acceso al sitio de descarga en la fecha y hora establecidas. Una vez que la Secretaria haya recibido ambas comunicaciones, se encargará de transmitir las de manera simultánea a las Partes.

III. MANEJO Y REVISIÓN DE LOS CÓDIGOS FUENTE

6. Las Partes y los expertos que sean contratados por las Partes para la examinación de los códigos fuente¹ no podrán realizar modificaciones, alteraciones o cualquier otra sustitución a dicho código, a fin de garantizar la conservación del lenguaje de programación original.

IV. CONFIDENCIALIDAD

7. Los códigos fuente intercambiados conforme a este Protocolo estarán sujetos al Protocolo de Confidencialidad acordado por las Partes y aprobado por el Tribunal Arbitral.

¹ Esto incluye cualquier persona que tenga acceso al código fuente con motivo del arbitraje.

8. Las Partes² se obligan a mantener la confidencialidad de los códigos fuente durante el procedimiento de arbitraje y después de su conclusión.

V. RESOLUCIÓN PROCESAL

9. Debido a la alta relevancia de este Protocolo, las Partes solicitan al Tribunal Arbitral que sea emitido como una Resolución Procesal.

² Ídem.