

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

UNICREDIT BANK AUSTRIA AG AND ZAGREBAČKA BANKA D.D.

Claimants

and

REPUBLIC OF CROATIA

Respondent

ICSID Case No. ARB/16/31

**ORDER OF THE TRIBUNAL TAKING NOTE OF THE
DISCONTINUANCE OF THE PROCEEDING**

Members of the Tribunal

Ms. Lucinda A. Low, President of the Tribunal
Mr. Klaus Reichert SC, Arbitrator
Mr. Miloš Olík, Arbitrator

Secretary of the Tribunal

Ms. Anna Holloway

Date of dispatch to the Parties: July 14, 2021

REPRESENTATION OF THE PARTIES

Representing UniCredit Bank Austria AG and Zagrebačka banka d.d.:

Mr. Mark Levy
Ms. Lucia Raimanova
Ms. Sarah Morreau
Mr. Jack Busby
Allen & Overy LLP
One Bishops Square
London E1 6AD
United Kingdom

and

Ms. Marie Stoyanov
Allen & Overy LLP
52 avenue Hoche
Paris 75008
French Republic

Representing Republic of Croatia:

Mr. Boris Koketi, Deputy Attorney General
Ms. Marijana Bertović, Senior Advisor
Državno odvjetništvo Republike Hrvatske
(Office of the Attorney General of the
Republic of Croatia)
Gajeva 30a
Zagreb
Republic of Croatia

and

Mr. Robert Volterra
Mr. Graham Coop
Mr. Govert Coppens
Volterra Fietta
8 Mortimer Street
Fitzroy Place
London W1T 3JJ
United Kingdom

TABLE OF CONTENTS

I. INTRODUCTION AND PARTIES 1
II. PROCEDURAL HISTORY..... 1
III. ORDER..... 20

I. INTRODUCTION AND PARTIES

1. This case concerns a dispute submitted to the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”) on the basis of the Agreement Between the Republic of Austria and the Republic of Croatia for the Promotion and Protection of Investments, which entered into force on November 1, 1999 (the “**BIT**” or “**Treaty**”) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, dated October 14, 1966 (the “**ICSID Convention**”).
2. The claimants are UniCredit Bank Austria AG (“**Bank Austria**”), a joint-stock company incorporated under the laws of Austria, and Zagrebačka banka d.d. (“**ZABA**”), a joint-stock company incorporated under the laws of Croatia (together, the “**Claimants**”).
3. The respondent is the Republic of Croatia (“**Croatia**” or the “**Respondent**”).
4. The Claimants and the Respondent are collectively referred to as the “**Parties**.” The Parties’ representatives and their addresses are listed above on page (i).

II. PROCEDURAL HISTORY

5. On September 6, 2016, ICSID received a request for arbitration dated September 6, 2016 from UniCredit Bank Austria AG and Zagrebačka Banka d.d. against the Republic of Croatia (the “**Request**”), together with Exhibits C-001 through C-040 and Legal Authorities CL-001 through CL-013.
6. On September 16, 2016, the Secretary-General of ICSID registered the Request in accordance with Article 36(3) of the ICSID Convention and notified the Parties of the registration. In the Notice of Registration, the Secretary-General invited the Parties to proceed to constitute an arbitral tribunal as soon as possible in accordance with Rule 7(d) of ICSID’s Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings.

7. By letter of December 8, 2016, the Claimants informed ICSID that they had chosen the formula for the constitution of the Tribunal provided in Article 37(2)(b) of the ICSID Convention. Article 37(2)(b) provides that the Tribunal shall consist of three arbitrators, one arbitrator appointed by each Party, and a presiding arbitrator appointed by agreement of the Parties.
8. The Tribunal is composed of Ms. Lucinda Low, a national of the United States of America, President, appointed by agreement of the Parties; Mr. Klaus Reichert SC, a national of Ireland and Germany, appointed by the Claimants; and Mr. Miloš Olík, a national of the Czech Republic, appointed by the Respondent.
9. On June 13, 2017, the Acting Secretary-General, in accordance with Rule 6(1) of the ICSID Rules of Procedure for Arbitration Proceedings (the “**Arbitration Rules**”), notified the Parties that all three arbitrators had accepted their appointments and that the Tribunal was therefore deemed to have been constituted on that date. Ms. Anna Holloway, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.
10. In accordance with ICSID Arbitration Rule 13(1), the Tribunal held a first session with the Parties by video conference on July 14, 2017.
11. Following the first session, on August 3, 2017, the Tribunal issued Procedural Order No. 1 recording the agreement of the Parties on procedural matters. Procedural Order No. 1 provided, *inter alia*, that the applicable Arbitration Rules would be those in effect from April 10, 2006, that the procedural language would be English, and that the place of proceeding would be London, United Kingdom. Annex A of Procedural Order No. 1 also set out the agreed procedural timetable.
12. On August 9, 2017, the Claimants filed a Confidentiality Application, together with: Exhibits C-041 through C-052 and Legal Authorities CL-014 through CL-024. The Respondent filed a Response on August 21, 2017, together with: Legal Authorities RL-001 through RL-027.
13. On August 31, 2017, the Tribunal issued Procedural Order No. 2 concerning confidentiality.

14. On September 15, 2017, in accordance with the timetable set forth in Annex A of Procedural Order No. 1, the Claimants filed their Memorial on the Merits (“**Claimants’ Memorial**”), together with: Exhibits C-053 through C-165; Legal Authorities CL-025 through CL-121; Witness Statement of [REDACTED] dated September 14, 2017; Witness Statement of [REDACTED] dated September 14, 2017; Witness Statement [REDACTED] dated September 14, 2017; Expert Report (Quantum) of Prof. James Dow and Mr. Richard Caldwell of The Brattle Group dated September 15, 2017, with Exhibits BQR-001 through BQR-056; and Expert Report (Regulatory) of Dr. Elaine Buckberg of The Brattle Group dated September 15, 2017, with Exhibits BBR-001 through BBR-090.
15. On January 4, 2018, the Tribunal issued Procedural Order No. 3 concerning confidentiality.
16. On January 16, 2018, in accordance with the timetable set forth in Annex A of Procedural Order No. 1, the Respondent filed a Request for Bifurcation, together with: Exhibits R-006 through R-020 and Legal Authorities RL-028 through RL-094.
17. On February 13, 2018, the Claimants filed a Reply on Bifurcation, together with: Exhibits C-166 through C-178 and Legal Authorities CL-022 (updated), and CL-122 through CL-138.
18. On March 16, 2018, following the March 6, 2018, issuance by the Grand Chamber of the Court of Justice of the European Union (the “ECJ”) of its judgment in the *Achmea* case (the “**Achmea Judgment**” or “*Achmea*”), and in accordance with the Tribunal’s instructions, the Respondent submitted its Observations on *Achmea* (as it pertained to the Respondent’s request for bifurcation), together with Legal Authority RL-095. The Claimants submitted their Response on *Achmea* (as it pertained to bifurcation) on March 26, 2018, together with Legal Authorities CL-139 and CL-140.
19. Following its review of the Parties’ written submissions and subsequent correspondence, on April 25, 2018, the Tribunal issued Procedural Order No. 4 containing its Decision on Bifurcation. Therein, the Tribunal decided that it would address as a preliminary question the issue of whether the consent of the Respondent to arbitration under Article 9 of the BIT has been, in the Respondent’s terms, “vitiating” by virtue of the *Achmea* Judgment, whether

by operation of implicit conditionality, or on some other basis, particularly in light of Article 11(2) of the BIT (the “**Article 9 Objection**”). The Tribunal ordered that the Respondent’s remaining jurisdictional objections be joined to the merits. Annex A to Procedural Order No. 4 set forth the schedule regarding the Parties’ pleadings on the Article 9 Objection, as well as their pleadings on the joined Merits and Jurisdiction phase of the proceeding.

20. Pursuant to the timetable as set forth in Annex A of Procedural Order No. 4, on May 16, 2018, the Respondent filed its Submission on Article 9, together with: Exhibit R-021, Legal Authorities RL-096 through RL-117; and Expert Report of Professor Paul Craig with Exhibits PC-001 through PC-023.
21. On June 5, 2018, the Tribunal issued Procedural Order No. 5 concerning the organization of the hearing concerning the Article 9 Objection.
22. On June 6, 2018, the Claimants filed their Response on Article 9, together with Legal Authorities CL-095 (resubmitted) and CL-142 through CL-164.
23. On June 20, 2018, the Respondent submitted Legal Authorities RL-118 through RL-125.
24. A Hearing on the Article 9 Objection (the “**Article 9 Hearing**”) took place on June 27, 2018 at the International Dispute Resolution Centre in London, United Kingdom. In addition to the Members of the Tribunal and the Secretary of the Tribunal, the following persons were present at the Article 9 Hearing:

For the Claimants:

Ms. Marie Stoyanov
Ms. Lucia Raimanova
Mr. Raphael Chabaneix
Mr. Jack Busby
Ms. Lucia Dulovicova

[REDACTED]
[REDACTED]

Allen & Overy LLP
Allen & Overy Bratislava, s.r.o.
Allen & Overy LLP
Allen & Overy LLP
Allen & Overy Bratislava, s.r.o.

[REDACTED]
[REDACTED]

Sir Alan Dashwood

Expert

For the Respondent:

Mr. Robert G. Volterra

Volterra Fietta

Mr. Graham Coop

Volterra Fietta

Mr. Robert Kovacs

Volterra Fietta

Mr. Govert Coppens

Volterra Fietta

Ms. Charlotte Bocage

Volterra Fietta

Mr. Yuri Lette

Volterra Fietta

Mr. Paul Craig

Expert

Court Reporters:

Ms. Audrey Shirley

Briault Reporting

Ms. Sarah Edwards

Briault Reporting

25. On August 22, 2018, the European Commission (the “**Commission**”) filed an application to make a written submission in this proceeding pursuant to ICSID Arbitration Rule 37(2) (“**EC Application**”). In accordance with the Tribunal’s directions, the Parties submitted their observations on the EC Application on August 29, 2018. On September 11, 2018, the Tribunal issued Procedural Order No. 6, denying the Commission’s application. The Commission was informed of the outcome of the Tribunal’s decision by letter of the same date.
26. Pursuant to the procedural timetable, on September 7, 2018, the Respondent filed its Counter-Memorial on the Merits and Memorial on Jurisdiction (“**Respondent’s Counter-Memorial**”), together with: Exhibits R-022 through R-087; Legal Authorities RL-130 through RL-240; Witness Statement of [REDACTED] dated September 6, 2018; Witness Statement of Mr. Boris Lalovac dated September 7, 2018; Witness Statement of [REDACTED] dated September 6, 2018; Witness Statement of [REDACTED] dated September 6, 2018; Witness Statement of [REDACTED] dated September 6, 2018; Witness Statement of [REDACTED] dated September 7, 2018; Witness Statement of [REDACTED] dated September 6, 2018; Witness Statement of Ms. Ivana Ravlić Ivanović dated September 7, 2018; Legal Opinion of Prof. Dr. Silvija Petrić and Assoc. Prof. Dr. Emilia Mišćenić dated September 6,

2018, with Exhibits PM-001 through PM-202; Expert Report of Mr. Philip Haberman and Ms. Vikki Wall of Haberman Ilett LLP dated September 7, 2018, with Appendices and Exhibits HI-001 through HI-029; and Expert Report of Mr. Patrice Muller of London Economics dated September 7, 2018, with Exhibits LE-001 through LE-157.

27. On October 12, 2018, the Tribunal issued its Decision on the Respondent's Article 9 Objection (the "**Article 9 Decision**"). Therein, the Tribunal dismissed the Respondent's Article 9 Objection, concluding that "that there was no incompatibility as between Article 9 of the BIT and the EU *acquis* as of the date of the registration of this case."¹
28. On October 29, 2018, the Tribunal issued Procedural Order No. 7 concerning document production.
29. By letter of December 18, 2018, the Respondent alleged that the Claimants had shared the Article 9 Decision with a similarly situated claimant in another ICSID case (brought under the same Treaty against Croatia with respect to the same measures). In its letter, the Respondent requested that the Tribunal (a) censure the Claimants; (b) order the Claimants not to disseminate the Tribunal's Article 9 Decision until the Tribunal has finally determined all pending objections to jurisdiction; and (c) take the alleged conduct into account in determining costs.
30. Upon invitation from the Tribunal, on December 21, 2018, the Claimants filed a response to the Respondent's December 18 letter. The Claimants argued, *inter alia*, that the Article 9 Decision is not covered by any confidentiality obligations and the Respondent's request to censure the Claimants should therefore be dismissed.
31. Also on December 21, 2018, the Tribunal issued Procedural Order No. 8 concerning confidentiality.
32. On December 22, 2018, the Claimants filed their Reply on the Merits and Counter-Memorial on Jurisdiction ("**Claimants' Reply**"), together with: Exhibits C-179 through C-231; Legal Authorities CL-165 through CL-237; Witness Statement of [REDACTED]

¹ Article 9 Decision, ¶ 137.

██████████ dated December 21, 2018; Witness Statement of ██████████ dated December 19, 2018; Witness Statement of ██████████ dated December 21, 2018; Second Witness Statement of ██████████ dated December 21, 2018; Second Expert Report (Quantum) of Prof. James Dow and Mr. Richard Caldwell of The Brattle Group dated December 21, 2018 with Exhibits BQR-057 through BQR-094; Second Expert Report (Regulatory) of Mr. Phillip Swagel of The Brattle Group dated December 21, 2018 with Exhibits BRR-0091 through BRR-130; and Legal Opinion of Prof. Dr. Sc. Marko Baretić and Prof. Dr. Sc. Igor Gliha dated December 21, 2018 with Exhibits BG-001 through BG-034.

33. By letter of December 28, 2018, transmitted by the Secretary of the Tribunal, the Tribunal addressed the Respondent's request of December 18, 2018. The Tribunal denied the Respondent's request that the Tribunal order the Claimants not to disseminate the Article 9 Decision.
34. By letter of January 17, 2019, the Secretary of the Tribunal wrote to the Parties on behalf of the Tribunal to inquire whether the Parties would agree to the appointment of an Assistant to the Tribunal. Each Party submitted its observations on the proposal on January 25, 2019. The Claimants informed the Tribunal that they had no objection to the appointment; the Respondent requested further information.
35. By letter of January 30, 2019, the Secretary of the Tribunal wrote to the Parties to communicate the Tribunal's answers to the Respondent's request of January 25, 2019 for further information concerning the proposed appointment of an Assistant to the Tribunal. By email of February 1, 2019, the Respondent declined to agree with the Tribunal's proposal to appoint an Assistant to the Tribunal.
36. By further email of February 1, 2019, the Respondent informed the Tribunal that, due to the long-term illness of its quantum expert, Mr. Philip Haberman, the Respondent had retained Mr. Chudozie Okongwu of NERA as its new quantum expert. The Respondent stated that this change would not prejudice the Claimants as Mr. Okongwu would expressly endorse the Respondent's first quantum expert's report and would be prepared to be cross-examined on its contents.

37. By email of February 4, 2019, the Claimants responded to the Respondent's February 1, 2019 message concerning its quantum expert and requested that the Respondent make certain clarifications.
38. By letter of February 8, 2019, transmitted by the Secretary of the Tribunal, the Tribunal wrote to the Parties (a) concerning document production; (b) requesting that the Respondent respond to the Claimants' email of February 4 concerning the new quantum expert; and (c) requesting that the Respondent confirm that Mr. Okongwu would be in a position to address on cross-examination questions regarding methodology, assumptions, and other similar topics, or otherwise identify any particular topics that Mr. Okongwu would not be in a position to address.
39. By letter of February 12, 2019, the Respondent provided clarifications as requested by the Claimants' email of February 4 and the Tribunal's February 8, 2019 letter concerning the new quantum expert.
40. On February 15, 2019, the Respondent filed an Application for the Reversal of the Decision on the Respondent's Article 9 Objection to Jurisdiction of October 12, 2018 (the "**Application for Reversal**"), together with Exhibit R-088 and Legal Authorities RL-241 through RL-268. In its Application, the Respondent invoked the January 17, 2019 declarations published by the EU Member States (including the BIT Contracting Parties) concerning the legal consequences of the *Achmea* Judgment (the "**EU Member Declarations**" or "**Declarations**", and individually, a "**Declaration**"), and requested that the Tribunal either (a) "reverse its Article 9 Decision and issue an award to the effect that the Centre does not have jurisdiction in the present case"; or (b) "suspend the proceedings on the merits and establish a procedural timetable for the Parties to make written and oral submissions regarding the Respondent's [Application] for Reversal."²
41. On February 18, 2019, the Respondent filed its Rejoinder on the Merits and Reply on Jurisdiction ("**Respondent's Rejoinder**"), together with: Exhibits R-089 through R-108; Legal Authorities RL-259 through RL-297; Second Witness Statement of [REDACTED]

² Resp. Application for Reversal, ¶ 131.

dated February 18, 2019; Second Witness Statement of [REDACTED] dated February 18, 2019; Second Witness Statement of [REDACTED] dated February 18, 2019; Second Witness Statement of [REDACTED] dated February 18, 2019; Second Witness Statement of Ivana Ravlić Ivanović dated February 18, 2019; Second Witness Statement of Boris Lalovac dated February 18, 2019; Expert Opinion of Paul Craig dated February 18, 2019, with Legal Authorities PC-024 through PC-049; Expert Report of Chudozie Okongwu of NERA Economic Consulting dated February 18, 2019; Second Expert Report of Patrice Muller of London Economics dated February 18, 2019; and Second Expert Opinion of Silvija Petrić and Emilia Mišćenić dated February 18, 2019, with Exhibits PM-203 through PM-224.

42. By letter of February 19, 2019, the Secretary of the Tribunal wrote to the Parties on behalf of the Tribunal concerning the hearing on jurisdiction and the merits scheduled for April 2019. The Parties were requested to confer on the duration of the hearing and to provide comments on a Draft Procedural Order No. 9 concerning hearing logistics.
43. By email of February 21, 2019, the Claimants requested permission from the Tribunal to address “certain threshold issues” that would arise with respect to the Respondent’s Application for Reversal. By letter of February 25, 2019, transmitted by the Secretary of the Tribunal, the Tribunal invited the Claimants to clarify what they meant by “certain threshold issues” by February 26, 2019. The Tribunal also noted that it was at that stage inclined to request the Claimants to provide its substantive written response to the Respondent’s Application for Reversal in their upcoming Rejoinder on Jurisdiction, and to provide the Parties the opportunity to address the Application orally at the April 2019 hearing.
44. By letter of February 26, 2019, the Claimants clarified the “certain threshold issues” identified in their email of February 21 and confirmed that they would make any responsive arguments in their upcoming Rejoinder on Jurisdiction.
45. Following exchanges between the Parties, on February 26, 2019, the Tribunal confirmed the Parties’ agreed changes to the procedural timetable.

46. By emails of February 27, 2019, the Parties responded to the Tribunal's letter of February 19, 2019 concerning the hearing, noting that they could not come to an agreement as to the start date and duration.
47. On March 15, 2019, the Claimants filed their Rejoinder on Jurisdiction ("**Claimants' Rejoinder**") as well as the Claimants' Response to Croatia's Reversal Application ("**Response to Reversal Application**"), together with: Exhibits C-232 through C-242; Legal Authorities CL-238 through CL-261; Second Witness Statement of [REDACTED] [REDACTED] dated March 15, 2019; Second Witness Statement of [REDACTED] [REDACTED] dated March 15, 2019; Second Witness Statement of [REDACTED] [REDACTED] dated March 11, 2019; Third Expert Report (Regulatory) of Mr. Phillip Swagel of The Brattle Group dated March 15, 2019, with Exhibits BRR-130 through BRR-139; Second Legal Opinion of Prof. Dr. Sc. Marko Baretić and Prof. Dr. Sc. Igor Gliha dated March 15, 2019 with Exhibits BG-035 through BG-046.
48. On March 18, 2019, the Respondent submitted a letter alleging that the Claimants' Rejoinder addressed matters outside of the scope of responding to the Respondent's jurisdictional objections and constituted a "impermissible further response to the Respondent's Rejoinder on the Merits" ("**Application to Strike**"). The Respondent requested that the Tribunal (1) "strik[e] out the Claimants' delinquent Rejoinder on Jurisdiction and supporting materials in toto"; or (2) "strik[e] out the Claimants' Second [REDACTED] Statement, Second [REDACTED] Statement, Second [REDACTED] Statement and Third Brattle Regulatory Report *in toto*, together with their supporting documents, and direct[] that the Claimants re-file their Rejoinder on Jurisdiction with all references to those materials and all other non-responsive submissions and evidence struck." The Respondent further requested that the Tribunal "take the Claimants' conduct into account in its ultimate decision in relation to the costs of this arbitration" and it "reserve[d] its right to make further submissions in this regard at the appropriate point in these proceedings."
49. Further to the directions of the Tribunal, the Claimants submitted their observations to the Respondent's Application to Strike on March 26, 2019, the Respondent responded on April

- 3, 2019, and the Claimants submitted a further response on April 5, 2019. The Tribunal denied the Respondent's Application on April 8, 2019.
50. On March 27, 2019, the Tribunal confirmed that the hearing dates would be April 24 through May 3, 2019.
 51. On April 1, 2019, the President of the Tribunal held a pre-hearing organizational meeting with the Parties by telephone conference. Thereafter, on April 7, 2019, the Tribunal issued Procedural Order No. 9, addressing the organization of the hearing.
 52. Also on April 1, 2019, the European Commission submitted a Second Application for Leave to Intervene ("**Second EC Application**"). Further to the Tribunal's directions, the Parties submitted their respective Observations on the Second EC Application on April 9, 2019; with its Observations, the Respondent filed Exhibit R-109 and Legal Authority RL-298.
 53. On April 7, 2019, the Claimants requested leave to submit four new fact exhibits into the record. Following observations by the Respondent on April 8, 2019, the Tribunal, on April 22, 2019, granted the Claimants' request and invited the Claimants to submit the new exhibits by April 23, 2019.
 54. On April 19, 2019, the Tribunal issued Procedural Order No. 10 granting the European Commission's Second Application, subject to certain conditions, and invited the European Commission to file its written submission by April 26, 2019.
 55. On April 23, 2019, the Claimants filed Exhibits C-243 through C-246, pursuant to the Tribunal's directive of April 22, 2019.
 56. On April 27, 2019, the European Commission filed an *Amicus Curiae* Brief ("**EC Submission**").
 57. A Hearing on Jurisdiction and the Merits was held at the International Dispute Resolution Centre in London, United Kingdom, from April 24, 2019 to May 3, 2019 (the "**Hearing**"). In addition to the Members of the Tribunal and the Secretary of the Tribunal, the following persons were present at the Hearing:

For the Claimants:

Counsel:

Mr. Mark Levy QC	Allen & Overy LLP
Ms. Marie Stoyanov	Allen & Overy LLP
Ms. Lucia Raimanova	Allen & Overy LLP
Ms. Stephanie Hawes	Allen & Overy LLP
Ms. Olga Owzcarek	Allen & Overy LLP
Mr. Sebastian Mejia	Allen & Overy LLP
Ms. Sarah Morreau	Allen & Overy LLP
Mr. Matej Kořalko	Allen & Overy LLP
Mr. Jack Busby	Allen & Overy LLP
Ms. Lucia Dulovicova	Allen & Overy LLP
Mr. Andrew Seow	Allen & Overy LLP
Mr. Tom Abbasi	Allen & Overy LLP
Ms. Ema Vukic	Allen & Overy LLP

Parties:

[REDACTED]

[REDACTED]

Witnesses:

[REDACTED]

Experts:

Prof. Dr. Marko Baretic	University of Zagreb
Prof. Dr. Igor Gliha	University of Zagreb
Prof. Phillip Swagel	The Brattle Group
Prof. James Dow	The Brattle Group
Mr. Richard Caldwell	The Brattle Group

For the Respondent:

Counsel:

Mr. Robert G. Volterra	Volterra Fietta
Mr. Graham Coop	Volterra Fietta
Ms. Jessica Pineda	Volterra Fietta
Ms. Angela Ha	Volterra Fietta
Mr. Govert Coppens	Volterra Fietta

Mr. Alessandro Rollo	Volterra Fietta
Mr. Jehad Mustafa	Volterra Fietta
Ms. Anastasia Choromidou	Volterra Fietta
Mr. Corentin Baslé	Volterra Fietta
Ms. Lucie Monot	Volterra Fietta
Ms. Eva Paloma Treves	Volterra Fietta
Ms. Patricija Biškupić	Volterra Fietta

Parties:

Mr. Boris Koketi	State Attorney's Office
Ms. Marijana Bertović	State Attorney's Office
Mr. Tomislav Ridzak	Croatian Financial Services Supervisory Agency
Ms. Jasmine Killen	Freelance interpreter
Ms. Nada Davis	Freelance interpreter

Witnesses:

[REDACTED]

Mr. Boris Lalovac
Ms. Ivana Ravlić Ivanović

Experts:

Dr. Chudozie Okongwu	NERA Economic Consulting
Ms. Erin McHugh	NERA Economic Consulting
Mr. Patrice Muller	London Economics
Mr. Martin Kábrt	London Economics
Prof. Paul Craig	University of Oxford, Faculty of Law
Prof. Dr. Silviya Petrić	University of Split, Faculty of Law
Prof. Dr. Emilia Mišćenić	University of Rijeka, Faculty of Law

Court Reporter:

Ms. Anne-Marie Stallard	The Court Reporter Ltd.
-------------------------	-------------------------

Interpreters:

Mr. Toni Luburic	English-Croatian
Ms. Kristina Kruhak	English-Croatian
Ms. Nata Hajdu	English-Croatian

58. During the Hearing, the following persons were examined:

On behalf of the Claimants:

[REDACTED]



Prof. Dr. Marko Baretić
 Prof. Dr. Igor Gliha
 Prof. Phillip Swagel
 Prof. James Dow
 Mr. Richard Caldwell

University of Zagreb
 University of Zagreb
 The Brattle Group
 The Brattle Group
 The Brattle Group

On behalf of the Respondent:

Ms. Ivana Ravlić Ivanović
 Mr. Boris Lalovac



Prof. Paul Craig
 Prof. Dr. Silvija Petrić
 Prof. Dr. Emilia Mišćenić
 Mr. Patrice Muller
 Dr. Chudozie Okongwu

University of Oxford, Faculty of Law
 University of Split, Faculty of Law
 University of Rijeka, Faculty of Law
 London Economics
 NERA Economic Consulting

59. Also during the Hearing, with the leave of the Tribunal, the Claimants filed Exhibits C-247 and C-248 and the Respondent filed Exhibits R-110 through R-114.
60. By letter dated May 10, 2019, sent in accordance with the Tribunal’s instructions at the Hearing, the Respondent requested leave to file a supplemental report to address the data that Respondent had received from the Claimants during the sampling exercise undertaken in response to the Respondent’s document production requests. The Respondent contended that it did not have the opportunity to process and comment on the data covered by the sampling exercise with its last written submission (*i.e.*, its Rejoinder on the Merits and Reply on Jurisdiction of 18 February 2019).
61. Having received the Claimants’ comments to this request on May 15, 2019, the Tribunal, on May 28, 2019, granted the Respondent leave to file a Supplemental NERA Report to be strictly limited to issues relating to the data that the Respondent received from the Claimants during the sampling exercise and was not to exceed 25 pages. The Claimants were also granted leave to file a responsive report, strictly limited to the issues raised in

the Supplemental NERA Report, and subject to the same 25-page limitation, to be submitted within 10 business days of the submission of the Supplemental NERA Report.

62. On May 17, 2019, also in accordance with the Tribunal's instructions at the Hearing, both Parties filed letters regarding outstanding evidentiary issues. In Respondent's letter of May 17, 2019, the Respondent submitted that Claimants had failed to comply with certain document production obligations. It sought an order that the Claimants produce these documents, requested that the Tribunal draw adverse inferences should the Claimants fail to produce said documents, and asked that any non-compliance be accounted for in costs allocation.
63. In the Claimants' May 17, 2019 letter, the Claimants confirmed that they maintained their earlier application for adverse inferences to be drawn. They also alleged that the questioning of Respondent's witnesses at the hearing demonstrated additional document production failings on the part of the Respondent, warranting additional adverse inferences to be drawn.
64. At the Tribunal's invitation, on May 31, 2019 the Parties each submitted a response to the other's May 17, 2019 letter. Thereafter, on June 11, 2019, the Tribunal sent a letter addressing the Parties' respective applications. With regard to the Claimants' requests for adverse inferences, the Tribunal noted that the Respondent had indicated it had found further responsive documents and would soon be disclosing these to the Claimants; it invited the Respondent to update the Tribunal regarding the status of these endeavors by June 14, 2019. It also invited the Claimants to thereafter indicate whether they withdrew any of their requests for adverse inferences. With regard to the Respondent's application for orders for further document production, the Tribunal declined to make any such order, and deferred any ruling on adverse inferences sought by the Respondent until such time as it could address Claimant's similar requests.
65. On June 14, 2019, in accordance with the Tribunal's June 11 invitation, the Respondent provided an update on its disclosure.

66. On June 17, 2019, the Respondent submitted the Supplemental NERA Report, accompanied by Exhibits NE-001 through NE-051.
67. On June 28, 2019, in accordance with the Tribunal's June 11 invitation, the Claimants filed a letter responding to the Respondent's latest disclosure and its June 14, 2019 letter addressing this. In their letter, the Claimants confirmed that they maintained all their open requests for adverse inferences, notwithstanding the Respondent's additional disclosure.
68. On July 5, 2019, the Claimants submitted the Supplemental Brattle Report, accompanied by Exhibits BQR-095 through BQR-113.
69. With the Tribunal's leave, on July 12, 2019 the Respondent submitted a response to the Claimants' June 28 letter.
70. The Parties filed simultaneous Post-Hearing Briefs on July 17, 2019. The Respondent's Post-Hearing Brief was accompanied by Exhibits originally numbered R-112 through R-114, and Legal Authority RL-299. (As noted below, on October 23, 2019, the Respondent resubmitted the same documents renumbered as Exhibits R-115 through R-117.)
71. On July 22, 2019, the Claimants sought leave to comment on the new documents that had been filed with the Respondent's Post-Hearing Brief. They were granted leave to do so by August 2, 2019.
72. On July 25, 2019, the Respondent sought leave to submit a "brief report" to respond to "out-of-scope" aspects of the Supplemental Brattle Report. With the leave of the Tribunal, the Claimants responded to this request on July 31, 2019.
73. That same day, the Claimants also provided its comments on the new documents filed with the Respondent's Post-Hearing Brief.
74. The Parties filed their respective Statements of Costs on August 1, 2019.
75. The Tribunal wrote to the Parties on August 19, 2019, to address three matters. First, regarding the Claimants' application that the Tribunal draw adverse inferences with respect

to the Respondent's document production and alleged failings therein, the Tribunal informed the Parties that it was premature to rule on the requests for adverse inferences at this stage and, to the extent necessary, the Tribunal would address these requests where relevant in its Award. Second, with respect to the Respondent's request that it be granted leave to submit a brief report addressing allegedly out-of-scope elements of the Supplemental Brattle Report, the Tribunal granted the Respondent leave to submit a brief report in response, strictly limited to those parts of the Brattle Supplemental Report to which it had not previously responded based on scope objections. Third, the Tribunal referred to Procedural Order No. 8, wherein it ordered the "continued maintenance of interim confidentiality and limited use over the unagreed items for which confidentiality designations has been sought, absent further agreement of the [P]arties" and indicated the process it intended to follow for the final determination of any unagreed confidentiality requests at the end of the case. In accordance with that process, the Tribunal asked the Claimants to make an amended submission on confidentiality, and noted that the Respondent would have the opportunity to make a responsive submission. The Tribunal thus invited the Parties to agree on an appropriate timetable for these steps.

76. The Parties communicated their agreed timetable regarding final confidentiality submissions on September 4, 2019.
77. On September 9, 2019, the Respondent submitted the Third NERA Expert Report.
78. In accordance with the Parties' agreed timetable, on September 20, 2019, the Claimants submitted their Consolidated Confidentiality Application, and on October 10, 2019, the Respondent submitted its Response.
79. On October 1, 2019, the Respondent sought leave to introduce to the record as a new exhibit a Judgment of the Supreme Court of the Republic of Croatia dated September 3, 2019. Having received the Claimants' comments on October 4, 2019, the Tribunal granted the Respondent leave to submit the document (as Exhibit R-300) on October 7, 2019.
80. On October 23, 2019, the Respondent notified the Tribunal of a clerical error in the numbering of the exhibits to the Respondent's Post-Hearing Brief, and submitted the

affected exhibits renumbered as R-115, R-116 and R-117. At the Tribunal's request, the Respondent resubmitted its Post-Hearing Brief with the references to these documents corrected on October 29, 2019.

81. On October 31, 2019, the Parties submitted their updated Statements on Costs.
82. On November 1, 2019, the Claimants submitted a letter asserting that the Respondent's Updated Statement of Costs was in breach of the Tribunal's instructions, in that it included submissions on the admissibility of a portion of the Claimants' costs. The Claimants requested that the Respondent's Updated Statement of Costs be struck from the record and that the Respondent be ordered to file a compliant Updated Statement of Costs. The Claimants requested in the alternative that they be given permission to file a responsive submission.
83. In response to the Tribunal's invitation, the Respondent submitted comments to the Claimants' November 1, 2019 request on November 8, 2019. It opposed the Claimants' principal request, but stated that it did not oppose the Claimants' alternative request for permission to respond to the Respondent's observations on the admissibility of the Claimants' success fee.
84. On November 27, 2019, the Tribunal ruled on the Claimants' November 1 request. The Tribunal declined to strike the Respondent's Updated Statement of Costs dated October 31, 2019, as the Claimants had requested, but allowed the Claimants an opportunity to make a responsive submission to address the Respondent's submissions on the admissibility of the Claimants' success fee, by no later than December 4, 2019, and allowed the Respondent to, should it wish, submit a response thereto by December 11, 2019.
85. On December 2, 2019, the Respondent sought leave to submit into the record a press release of the European Commission, dated October 24, 2019, announcing the agreement among EU Member States on a new treaty to terminate intra-EU bilateral investment treaties (the "**Termination Treaty**"), and to make brief submissions regarding it. On December 4, 2019, the Tribunal granted leave to submit the new exhibit, but declined to allow the Parties

leave to submit comments thereto. In accordance with the Tribunal's directions, the Respondent submitted the new exhibit as R-118 on December 6, 2019.

86. On December 4, 2019, in accordance with the Tribunal's directions, the Claimants submitted their responsive submission addressing the admissibility of their claim for a success fee. The Respondent's response was submitted in December 11, 2019.
87. On March 24, 2020, the Tribunal issued its Decision on the Respondent's Application for Reversal of the Article 9 Decision and Decision on Jurisdiction and Admissibility ("**Jurisdictional Decision**").
88. By letter of March 25, 2020, the Respondent submitted an application to introduce a new authority into the record: the Judgment of the Supreme Court of the Republic of Croatia of March 4, 2020 ("**2020 SCC Judgment**").
89. On March 27, 2020, the Tribunal confirmed that the document could be admitted to the record, and invited the Claimants to make any observations on the portion of the Respondent's letter addressing the relevance of the document to the case. The same day, the Respondent submitted the 2020 SCC Judgment as Legal Authority RLA-304.
90. On April 3, 2020, the Claimants submitted their comments on the Respondent's letter of March 25, 2021.
91. On April 13, 2020, the Tribunal gave the Respondent leave to comment on the Claimants' letter of April 3; the Respondent did so on April 18, 2020.
92. By joint letter of June 18, 2020, the Parties requested that the proceeding be suspended until July 17, 2020. The suspension was confirmed by the Tribunal on June 18, 2020.
93. The Parties subsequently agreed, by several communications, each confirmed by the Tribunal, to extend the suspension until June 30, 2021.
94. By letter of June 30, 2021, the Parties informed the Tribunal that they had resolved their dispute and formally requested that the Tribunal takes note, in an order, of the discontinuance of the proceeding pursuant to Rule 43(1) of the ICSID Arbitration Rules.

They requested that the Tribunal provide advance notice of the date of the intended issuance of the order, which the Tribunal provided on July 14, 2021.

95. Rule 43(1) of the ICSID Arbitration Rules provides:

If, before the award is rendered, the parties agree on a settlement of the dispute or otherwise to discontinue the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall, at their written request, in an order take note of the discontinuance of the proceeding.

III. ORDER

96. THEREFORE, in accordance with the Parties' request, and pursuant to Rule 43(1) of the ICSID Arbitration Rules, the Tribunal hereby takes note of the discontinuance of the proceeding.

Dated as of July 16, 2021:

[signed]

Mr. Miloš Olík
Arbitrator

[signed]

Mr. Klaus Reichert
Arbitrator

[signed]

Ms. Lucinda A. Low
President of the Tribunal