

Case CCJA (OHADA) No. 001/2011/ARB

Getma International

VS

The Republic of Guinea

Hearing of May 28th, 2013

Version 1 (to be read over by the Parties)

6 **Mr. Fischer** - Your difference of opinion was with the economic, industrial choice, if I may say
7 of the operator?

8 **Mr. Camara** - From all points of view, yes.

9 **Mr. Fischer** - Your differences of opinion had nothing to do with the legal conditions of
10 the review of offers, or of the organization of the call for tender?

11 **Mr. Camara** - No, it is the result. After...

12 **Mr. Fischer** – Just about the result. Do you think that Maersk...

13 **Mr. Camara** - When the work was done, the minister asked...

14 **Mr. Fischer** - Was the work well done?

15 **Mr. Camara** - When it was finished, the minister asked me: "What do
16 you want? What kind of advice can you give me?" I said: "I prefer
17 that we choose Maersk." If we have to get someone else, let's get Maersk. From my point
18 of view, Maersk would have been the more important for the port of Conakry than all of the ones that
19 are (...inaudible).

20 **Mr. Fischer** - From a strictly procedural point of view, did everything go
21 normally?

22 **Mr. Camara** - Yes, but...

23 **Mr. Fischer** - Can you please read document C 28 under tab 2? Go to
24 the end of page 2. It is an interview with Mr. Cheick Touré. It is October
25 2008, if I am not mistaken.

26 **Judge** - Are you going to supply the magnifying glass?

27 **Mr. Fischer** - I can, even for my sake, Your Honor!

28 Can the witness manage to read the next to last line and the
29 last line without a magnifying glass? Could you read just the end?

30 **Mr. Camara** - Where?

31 **Mr. Fischer** - The journalist asks a question: "Now let's talk about the third port
32 project (container terminal) that is using up a lot of ink and chatter right
33 now. What are the circumstances that preceded reversal of this deal, and
34 if you believe the press, which were not transparent?" Can you read
35 starting with: "I think"? It is tab 2. At the bottom, on the left.

36 **Mr. Camara** - "It is good that you are bringing up this subject so that I can say a few
37 words about it and shed some light on the whole campaign of denigration
38 and poisoning lead in regards to this project. I think it is a shame and absolutely
39 scandalous! I am all the more at ease that the management of this case has adhered to all of
40 the rules and procedures established by the public markets."

41 **Mr. Fischer** - Do you agree with this assessment?

42 **Mr. Camara** - It is the minister's opinion. But I had my own personal point of view.

43 **Mr. Fischer** - You told us that the procedure had been normal, so that
44 confirms... you confirm... I am not talking about the industrial and economic choice. We

1 do agree on that. You very clearly told us that you believe, surely for
2 good reasons, that it should have been Maersk.

3 **Mr. Camara** - That was my point of view.

4 **Mr. Fischer** - It was your point of view, no ambiguity about that. But about the
5 normalcy of the procedure, the minister who signed says that it was normal and you, you
6 told us, just a moment ago, if I understood correctly, that you agreed, that it had been
7 normal. Do you confirm that the procedure was normal?

8 **Mr. Camara** - Yes, the way things developed, it's normal.

19 **Mr. Fischer** - Confronted with a supplier failure, what was planned for the
20 Concession Agreement that you had negotiated?

21 **Mr. Camara** - The plan was to write, six months after, that during the six months, to see if
22 necessary. We could not commit to that procedure because, first of all, I told you
23 what the port represents for the Guinean economy. We cannot commit.

24 **Mr. Fischer** - You were thus aware that, in order to reach the termination, there was a
25 legal procedure?

26 **Mr. Camara** - Yes, but we thought that at that level, we should not just commit
27 because the port's operations would be blocked. It was responsible. The
28 Board of Directors said: since there was a call for tender, an evaluation that
29 was done, we must stick to the conclusions of the evaluation of the bids previously
30 submitted in order to make a decision. That is what was done!

31 **Mr. Fischer** - So, in full knowledge of the facts that the Port, the Authority, made
32 the decision not to respect the Concession Agreement and to terminate without
33 prior notice?

34 **Mr. Camara** - And stick to the conclusions of the evaluation of the bids submitted. It was
35 more responsible to act in that manner.

36 **Judge** - Wait. Mr. Camara, you said, if I understood correctly, that
37 the Board of Directors decided to stick to the conclusions from the evaluations that
38 had been done and to terminate without going through the legal procedure.

39 **Mr. Camara** - Yes.

40 **Judge** - Does that mean that the Board of Directors terminated Getma's
41 concession with the idea that it would attribute it to Bolloré?

42 **Mr. Camara** - Yes.

43 **Judge** - Did the Board of Directors take the time to verify that
44 Bolloré was still ready for this concession?

1 **Mr. Camara** - Yes.

2 **Judge** - Thank you.

3 **Mr. Fischer** - Was the Board of Directors aware of the
4 consequences of non-compliance with the Concession Agreement?

5 **Mr. Camara** - The Board of Directors was aware.

6 **Mr. Fischer** - So, it was with full awareness of the facts that the Board
7 of Directors decided to make its decision and take the risk?

8 **Mr. Camara** - Absolutely.

9 **Mr. Fischer** -So, for you, the arbitration proceedings, the request for indemnification from
10 Getma is therefore not a surprise.

11 **Mr. Camara** -No. The arbitration reviews the offers from both sides and shall
12 see, this is why we are talking about arbitration.

13 **Mr. Fischer** -When you made this decision to terminate and attribute to another
14 agent, were you aware that Getma International would
15 demand the application of the Agreement and its indemnification?

16 **Mr. Camara** -We were aware. We shall explain the damages
17 they caused us.

18 **Mr. Fischer** -Getma International caused you damages?

19 **Mr. Camara** -Because they delayed us in the implementation of the project. I told
20 you that we had decided on granting a concession for the container terminal because
21 we were not in agreement with the financial backers. We believed
22 that by using public-private partnership, we would save time, we did not
23 have any conditionalities to satisfy or anything else.

