

Huawei Technologies Co., Ltd.

Claimant

v.

Kingdom of Sweden

Respondent

(ICSID Case No. ARB/22/2)

PROCEDURAL ORDER NO. 7
Hearing organization

Tribunal

Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Prof. Jane Willems, Arbitrator
Prof. Zachary Douglas KC, Arbitrator

Secretary of the Tribunal
Ms. Jara Mínguez Almeida

Assistant to the Tribunal
Mr. Lukas Montoya

26 October 2024

I. PROCEDURAL BACKGROUND

1. Pursuant to Paragraph 20.1 of Procedural Order No. 1 (“**PO1**”), the pre-hearing organizational meeting between the Parties and the Tribunal was held by video conference on 21 October 2024 at 16:00 CET (the “**PHC**”), to discuss procedural, administrative, and logistical matters in preparation for the forthcoming hearing (the “**Hearing**”).
2. The following participants joined the conference:
Members of the Tribunal:
Prof. Gabrielle Kaufmann-Kohler, President of the Tribunal
Prof. Jane Willems, Arbitrator
Prof. Zachary Douglas KC, Arbitrator
Assistant to the Tribunal:
Mr. Lukas Montoya
ICSID Secretariat:
Ms. Jara Mínguez Almeida, Secretary of the Tribunal
Mr. Carlos Molina Esteban, ICSID Legal Analyst
Participating on behalf of the Claimant:
Dr. Yas Banifatemi, Gaillard Banifatemi Shelbaya Disputes
Mr. Anders Junker-Nilsson, Gaillard Banifatemi Shelbaya Disputes
Mr. Ashish Mitter, Gaillard Banifatemi Shelbaya Disputes
Ms. Arianna Rosato, Gaillard Banifatemi Shelbaya Disputes
Ms. Maria Tsarova, Gaillard Banifatemi Shelbaya Disputes
Ms. Patricia Tobias, Gaillard Banifatemi Shelbaya Disputes
Mr. Ohmane Benlafkih, Gaillard Banifatemi Shelbaya Disputes
Mr. Emmanuel Jacomy, A&O Shearman
Mr. Ed Taylor, A&O Shearman
Mr. Yu Rui, Huawei Director of Regional Legal Affairs Department
Mr. Xiong Mingtao, Huawei Senior Legal Counsel of Regional Legal Affairs Department
Participating on behalf of the Respondent:
Ms. Maria Chedid, Arnold & Porter Kaye Scholer LLP
Mr. David Reed, Arnold & Porter Kaye Scholer LLP
Ms. Sally Pei, Arnold & Porter Kaye Scholer LLP
Mr. Timothy Smyth, Arnold & Porter Kaye Scholer LLP
Mr. Bart Wasiaak, Arnold & Porter Kaye Scholer LLP
Mr. Joel Dahlquist, Arnold & Porter Kaye Scholer LLP
Mr. Peter L. Schmidt, Arnold & Porter Kaye Scholer LLP
Mr. Ernesto Hernandez, Arnold & Porter Kaye Scholer LLP
Ms. Anna Falk, Office of the Chancellor of Justice of Sweden

Ms. Pernilla Smith, Office of the Chancellor of Justice of Sweden
Mr. Jonas Hallberg, Office of the Chancellor of Justice of Sweden
Ms. Frida Bogenkrans, Office of the Chancellor of Justice of Sweden

3. During the PHC, the Parties and the Tribunal discussed the draft of this Procedural Order that had been circulated to the Parties on 14 October 2024 and the Parties' comments on the draft.
4. A recording of the PHC was deposited in the archives of ICSID. It was made available to the Members of the Tribunal and the Parties on 23 October 2024.
5. In the present Order, the Tribunal sets out the procedural rules which have been agreed by the Parties or determined by the Tribunal in respect of the conduct of the Hearing.

II. ORGANIZATION OF THE HEARING

A. DATE AND FORMAT OF THE HEARING

6. The Hearing will be held in person at the International Arbitration Centre ("IAC") located at 190 Fleet Street, London EC4A 2AG, United Kingdom, from 25 November to 5 December 2024, excluding the weekend.

B. ORDER OF PROCEEDINGS AND SCHEDULE

7. Subject to any adjustments required, the Hearing shall commence at 9:00 on the first day and at 9:30 on subsequent days. In principle, it will proceed until approximately 18:00 (subject to the first day when it may end later), with a one-hour lunch break and at least two 20-minute breaks each day.
8. The order of proceedings and structure of the Hearing will follow the schedule set out in Annex A (the "Hearing Schedule"). The Hearing Schedule is indicative only and shall not limit how the Parties apportion their allocated time over the entire Hearing, including time for oral arguments and for witnesses and experts.
9. The Hearing Schedule shall be subject to any modifications the Tribunal may deem necessary or appropriate during the Hearing.
10. The Parties are expected to use the Hearing days efficiently and avoid unnecessary slippage (e.g., delays in returning from breaks). In the event of excess slippage, the Tribunal may revisit the length of the sitting day or, in exceptional 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.

C. ORAL STATEMENTS

11. The Parties may present opening statements of up to 3.5 hours each, during which they are not expected to address matters of international law. The time spent in addressing questions that the Tribunal may raise during opening statements shall be counted towards the Parties' time. In lieu of oral closing statements, the Parties will have two hours each to answer questions, if any, put by the Tribunal at the close of the previous day or on the spot, and make oral closing remarks.
12. The Parties may use slide presentations in support of their opening statements and answers to the Tribunal's questions/closing remarks. They shall send electronic copies of such presentations before the start of each presentation to the opposing Party, the Tribunal Members, the Secretary, the Assistant, and the court reporter.

D. TIME ALLOCATION

13. The Claimant shall have 24 hours and the Respondent 20 hours to be used over the entire Hearing, including for making oral opening statements and answering Tribunal questions and presenting possible closing remarks.¹ If the circumstances so require and the remaining time until the end of the Hearing so permits, the Tribunal may grant short extensions as necessary.
14. Time spent on direct (including expert presentations) and re-direct examination shall be counted toward the time of the Party presenting the witness or expert. Time spent on cross-examination shall be counted toward the time of the Party conducting the cross-examination.
15. Time spent on short interventions by the Tribunal during examinations or oral statements shall be counted against the time of the Party then conducting the examination or making the oral argument. All other time used by the Tribunal shall not be counted against a Party's time. Time spent dealing with objections from a Party shall not be counted against that Party's time, unless the Tribunal determines otherwise.
16. The Secretary of the Tribunal shall keep a record of each Party's use of time in accordance with the chess clock method and report the total daily time used at the end of each Hearing

¹ The calculation is based on approximately 6.5 hours of Party time for the first day. For the remaining days, based on sitting hours from 9:30 to 18:00, the total time available for Parties (after accounting for housekeeping, procedural discussions, Tribunal questioning, technical difficulties, and breaks) will be approximately 5 hours per day. 5 hours per day times 7.5 days, plus 6.5 hours, amounts to 44 hours, which the Tribunal allocates between the Parties as specified. It gives the Claimant more time because it has a larger number of cross-examinations to conduct, while at the same time not applying a strict proportion because presenting/defending a case cannot be reduced to counting minutes.

day.

E. ATTENDANCE

17. Each Party shall provide the Tribunal and the ICSID Secretariat with its List of Participants by **31 October 2024** and may amend it by no later than **18 November 2024**.
18. ICSID will make arrangements for Participants entered on the list just mentioned to observe the Hearing remotely. The List of Participants shall specify which individuals will participate remotely for all or parts of the Hearing. Such remote Participants shall undertake not to allow any person who is not entered on the List of Participants to observe the Hearing.

F. DOCUMENTATION

19. The use of documents during the Hearing is governed by Paragraph 17.7 of PO1, subject to any different rule in this Order.
20. To the extent the record is uploaded on the BOX file-sharing platform, it is not necessary, contrary to Paragraph 14.4 of PO1, that the Parties provide USB drives and a consolidated hyperlinked index of all documents.
21. At the start of each cross-examination, the cross-examiner shall provide a cross-examination bundle (i) in electronic format to the opposing Party, each member of the Tribunal, the Secretary, the Assistant, and the court reporter(s), via the BOX file-sharing platform, and (ii) in paper copy to the witness or expert and the interpreter(s). For the avoidance of doubt, the cross-examiner may refer the witness or expert to documents that are not included in the cross-examination bundle, which will be displayed to the witness or expert electronically, and the witness or expert shall have the right to request that he or she be provided with a paper copy of the document that is being displayed.
22. Each Party may use demonstrative exhibits (such as graphs, tables, etc. compiling information on the record but not in such form), provided that they (i) identify the source in the record from which the information is derived; and (ii) are distributed via email to the opposing Party, the Members of the Tribunal, the Secretary, the Assistant, the court reporter(s), and the interpreter(s), by 24 November 2024 at 23:59 UTC if their use is intended during opening statements, or otherwise one hour before their use.

23. For the avoidance of doubt, PowerPoint slides are not demonstrative exhibits, unless they contain graphs, tables, etc. compiling information on the record but not in such form. Timelines are not demonstrative exhibits. Therefore, subject to the rules on demonstrative exhibits above, the Parties may use PowerPoint slides during their oral statements and shall distribute them in electronic format before their statements. The same rule applies *mutatis*

mutatis to expert presentations.

24. In addition, promptly after the conclusion of the Hearing day on which a demonstrative exhibit or PowerPoint presentation is used, the Parties shall upload such demonstrative exhibit and PowerPoint presentation to the case folder in the BOX file-sharing platform, designating each with the corresponding CD-[...] or RD-[...] designation for demonstrative exhibits and with CP-[...] or RP-[...] for PowerPoint slides.
25. Documents that do not form part of the record may not be used at the Hearing, unless otherwise agreed by the Parties or authorized by the Tribunal. For the avoidance of doubt, communications between the Parties and the Tribunal form part of the record and can be relied on.

G. WITNESS AND EXPERT EXAMINATION

26. Witness and expert examinations shall be governed by Sections 18 and 19 of PO1, subject to any different rule in this Order.
27. As anticipated in Paragraph 18.15.2 of PO1, cross-examination questions shall refer to matters which are (i) within the direct knowledge of a witness and (ii) relevant to the issues in dispute, without however being limited by the scope of the witness statement.
28. Pursuant to Paragraph 19.5 of PO1, experts, including legal experts, shall give a presentation summarizing their methodology and conclusions in lieu of direct examination, which shall not last longer than 30 minutes, except for [REDACTED] presentation, which may last up to 45 minutes. [REDACTED] may address the difference-in-differences analysis, as that analysis is covered in his reports. For their presentation, experts may use PowerPoint slides, provided they are distributed before their use, and demonstrative exhibits comply with Paragraphs 22-24 above.
29. Witnesses and experts will be grouped by category and topic, those of the Claimant coming before those of the Respondent, and will appear in the following order:

29.1. 5G Auction:

Fact witnesses:

- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]
- iv. [REDACTED]
- v. [REDACTED]

vi. [REDACTED]

Legal experts:

vii. [REDACTED]

viii. [REDACTED]

29.2. Technology:

Fact witnesses:

ix. [REDACTED]

x. [REDACTED]

Technical experts

xi. [REDACTED]

xii. [REDACTED]

29.3. Chinese law:

xiii. [REDACTED]

xiv. [REDACTED]

29.4. Valuation experts

xv. [REDACTED]

xvi. [REDACTED]

xvii. [REDACTED]

30. In principle, witnesses and experts shall be available one day before and after the time they are scheduled to be examined. Depending on the needs of the Hearing conduct, the examination of a witness or expert may start on one day and continue on the following day, with the witness or expert being sequestered overnight.

31. In accordance with Paragraph 18.17 of POI, fact witnesses shall not be present in the hearing room during oral testimony and arguments, read transcripts of oral testimony or argument, or discuss the content of any other witness's oral testimony with anyone prior to their examination. This limitation shall not apply to expert witnesses. Party representatives who are also fact witnesses may be present during opening submissions and shall be heard

first out of the relevant Party's witnesses.

III. LOGISTICS

A. INTERPRETATION

32. The Parties informed ICSID on 7 October 2024 which witnesses and experts require interpretation. As set forth in Paragraph 12.7 of POI, interpretation shall be simultaneous.

33. The World Bank's Interpretation Division shall identify qualified interpreters and the Parties shall confirm their approval of the candidates' *curricula vitae* shared with the Parties in advance of the Hearing.

34. The Hearing Participants being interpreted should speak slowly, one person at a time, and should pause briefly when handing the floor to another Hearing Participant.

B. TRANSCRIPTS AND SOUND RECORDING

35. Transcripts and sound recording shall be governed by Section 22 of POI.

36. Real time court reporting services are to be provided by Ms. Claire Hill, with same day transcript delivery to the Tribunal and the Parties via email. The verbatim transcripts will be available in real-time, including to testifying witnesses and experts, using LiveNote or similar software. The real time transcript shall also be available via an online link connection to be provided by the court reporter for remote Participants. Such remote Participants shall undertake not to allow any person who is not entered on the List of Participants to access the transcript.

37. The ICSID Secretariat shall arrange for sound recording and for court reporting services and shall liaise with the Parties accordingly.

38. Except for the court reporter(s), who will make their own recording of the Hearing for purposes of preparing the transcript, Hearing Participants will not record the Hearing or any part of it, including via audio, video or screenshot methods of recording.

C. ACCESS TO HEARING

39. As the Parties have not agreed otherwise, in accordance with Paragraph 21.2 of POI and Procedural Order No. 2, the Hearing shall not be accessible to the public.

D. OTHER LOGISTICAL ASPECTS

40. The Parties will ensure that the electronic presentation of evidence is handled efficiently.

41. The ICSID Secretariat will liaise with the Parties on other logistical aspects (set up,

catering, etc.).

E. POST-HEARING BRIEFS AND STATEMENTS OF COSTS

- 42. Pursuant to Paragraph 23.1 of PO1, the Parties will provide post-hearing briefs.
- 43. The number, sequence, time limits, length, format, and content of the post-hearing briefs shall be determined by the Tribunal at the end of the Hearings, in consultation with the Parties. No new evidence may be produced together with the post-hearing briefs, except with leave from or on request of the Tribunal.
- 44. In consultation with the Parties, also at the end of the Hearing, the Tribunal will give appropriate directions in respect of the statement of costs.

F. DATA PRIVACY

- 45. The List of Participants may contain personal data provided to ICSID, including names and contact information, such as business email addresses and telephone numbers. This data will be processed for the legitimate interests of the Parties in resolving efficiently their dispute and, in particular, to ensure that procedural documents and Hearing arrangements are properly communicated to the Hearing Participants.

[Signed]

Gabrielle Kaufmann-Kohler
President of the Tribunal
Date: 26 October 2024

ANNEX A
Hearing Schedule

Day 1: Monday, 25 November 2024

TIME	PROCEDURAL STEP
9:00-	Tribunal's opening remarks / housekeeping matters
	Claimant's Opening Statement (3.5 hours max)
	Respondent's Opening Statement (3.5 hours max)

Day 2: Tuesday, 26 November 2024

TIME	PROCEDURAL STEP
9:30-	[REDACTED]
	[REDACTED]
-18:00	[REDACTED]

Day 3: Wednesday, 27 November 2024

TIME	PROCEDURAL STEP
9:30-	[REDACTED]
	[REDACTED]
-18:00	[REDACTED]

Day 4: Thursday, 28 November 2024

TIME	PROCEDURAL STEP
9:30-	(continued if necessary)
	[REDACTED]
-18:00	[REDACTED]

Day 5: Friday, 29 November 2024

TIME	PROCEDURAL STEP
9:30-	[REDACTED]
	[REDACTED]
-18:00	[REDACTED]

Day 6: Monday, 2 December 2024

TIME	PROCEDURAL STEP
9:30-	[REDACTED] (continued if necessary)
	[REDACTED]
	[REDACTED]
-18:00	[REDACTED] (start if possible)

Day 7: Tuesday, 3 December 2024

TIME	PROCEDURAL STEP
9:30-	[REDACTED] (continued if necessary)
	[REDACTED]
	[REDACTED]
-18:00	[REDACTED] (start)

Day 8: Wednesday, 4 December 2024

TIME	PROCEDURAL STEP
9:30-	[REDACTED] (continued if necessary)
	Questions by Tribunal (if any) to be answered the following day
	Recess for parties to prepare Day 9 presentations
-18:00	

Day 9: Thursday, 5 December 2024

TIME	PROCEDURAL STEP
9:30-	[REDACTED]
	Parties' answers to Tribunal's questions and final observations
	Procedural discussion
-18:00	End of Hearing