

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER ARTICLE 8(2)(A) OF THE AGREEMENT  
OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT  
OF THE CZECH AND SLOVAK FEDERAL REPUBLIC FOR THE PROMOTION AND PROTECTION OF  
INVESTMENTS AND THE UNCITRAL ARBITRATION RULES (1976)**

**A11Y LTD.**

**v.**

**CZECH REPUBLIC**

**(ICSID Case No. UNCT/15/1)**

---

**PROCEDURAL ORDER NO 4  
Decision on Claimant's Request for Endorsement of its Right to Amend its Memorial**

***Tribunal***

Yves Fortier, PC, CC, OQ, QC, Presiding Arbitrator  
Stanimir Alexandrov, Arbitrator  
Anna Joubin-Bret, Arbitrator

***Secretary to the Tribunal***

Jara Mínguez Almeida

***Assistant to the Tribunal***

Annie Lespérance

---

February 1<sup>st</sup>, 2016

Having considered:

- the Claimant's Request for Endorsement of its Right to Amend its Memorial of 11 January 2016 (the "**Request**");
- the Respondent's response of 20 January 2016; and
- the Claimant's comments of 26 January 2016;

and deliberated, the Tribunal decides as follows.

1. The Tribunal notes that the Claimant, in its Request, seeks the Tribunal's confirmation that it may make amendments to its Memorial filed on 30 May 2015 pursuant to Article 20 of the 1976 UNCITRAL Rules.
2. The Respondent, in its letter of 20 January 2016, objects to the admission of new claims and requests, should the Tribunal admit the Claimant's new claims, an opportunity to be heard in a further submission following the Claimant's comments to the Respondent's jurisdictional objections arising from the Claimant's new claims.
3. The Claimant, in its letter of 26 January 2016, maintains its Request and "*proposes that the Respondent articulate any new jurisdictional objections that the Respondent can conceive in the Respondent's Reply on Jurisdiction, which is scheduled for 25 April 2016. Thereafter, the Tribunal can decide whether additional round(s) of pleadings are necessary in the circumstances.*"
4. Article 20 of the 1976 UNCITRAL Rules provide as follows:

*During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.*

5. The Claimant submits that Article 20 of the 1976 UNCITRAL Rules gives the parties the right to amend a statement of claim or defence, unless the arbitral tribunal finds that this would be

inappropriate. The Tribunal agrees.

6. The Tribunal notes that the Claimant's amendments concern the insertion of claims for breach of Article 5(1) of the UK-Czech Republic BIT (the "**BIT**") (concerning expropriation) and for breach of Article 2(3) of the BIT (the observance of undertakings clause). The arbitration agreement in Article 8 of the BIT provides: "*disputes between an investor of one Contracting Party and the other Contracting Party concerning an obligation of the latter under Articles 2(3), 4, 5 and 6 of this Agreement in relation to an investment of the former... shall... be submitted to arbitration ...*".
7. In the view of the Tribunal, the Claimant's amendments are not inappropriate. Arguably, they fall within the scope of the arbitration agreement.
8. The Tribunal also notes that the Respondent, in its letter of 20 January 2016, says:

*[...] [A]rticle 20 UNCITRAL Rules does not allow for the introduction of new claims if such claims fall outside the scope of the arbitration agreement. Respondent reserves all rights to raise jurisdictional objections to the new claims in its next submissions [...].<sup>1</sup>*
9. The conclusions of the Tribunal, at this stage, are of course without prejudice to the right of the Respondent to raise jurisdictional objections to the new claims in its Reply on Jurisdiction including whether the amended claims fall outside the scope of the arbitration agreement.
10. The Tribunal also finds that the Claimant's Request, having been made five (5) weeks after Withers became counsel of record and eight (8) months prior to the Hearing on Jurisdiction, was made in a prompt manner.
11. Finally, the Tribunal is of the view that the Request, if granted, would not prejudice the Respondent, as the procedural calendar can accommodate, if necessary, a further round of submissions on any additional jurisdictional objections.
12. Accordingly, the Tribunal decides as follows:
  - a) The Claimant's Request is granted.

---

<sup>1</sup> Respondent's letter of 20 January 2016, page 2.

Procedural Order No. 4

- b) The Claimant's Amended Memorial is admitted into the record.
- c) In its Reply on Jurisdiction to be filed on 25 April 2016, the Respondent may, in addition to replying to the Claimant's Counter-Memorial on Jurisdiction, include any additional jurisdictional objections arising from the Claimant's amended claims.
- d) In its Rejoinder on Jurisdiction to be filed on 25 July 2016, the Claimant may respond to the Respondent's Reply on Jurisdiction, including any additional jurisdictional objections arising from its amended claims.
- e) No later than one week following the filing of the Claimant's Rejoinder on Jurisdiction, the Respondent may seek leave from the Tribunal to file a brief reply submission limited to the Claimant's response to the Respondent's additional jurisdictional objections arising from the Claimant's amended claims. Should the Respondent file such a request and should the Tribunal accede to it, the Tribunal will afford the Claimant with an opportunity to comment on the Respondent's further reply submission.

Paris, this 1<sup>st</sup> day of February 2016

Signed on behalf of the Arbitral Tribunal

*[signed]*

---

L. Yves Fortier, PC, CC, OQ, QC  
President