

RESPONSES TO 2ND CLARIFICATION REQUESTS 6 AUGUST 2010

We have only responded to some of the requests for clarification.

While most requests asked good, relevant questions, some appeared to query matters outside the narrow ambit of the current tribunal (and competition). Some repeated questions already asked or sought information already provided in the uncontested facts or in the previous round of clarifications; nevertheless we decided to be generous *in most instances* and pointed out where we believed this information could be found.

In a few cases, several questions were asked in a single request, exceeding, under a strict interpretation, a team's quota; sometimes these might have been formulated as a single question, and we did not apply the quota strictly then.

269

JV Agreement - IP rights

Is there a provision in the JV Agreement re exploitation of IP rights by SAT Connect and Beritech respectively?

According to the JV Agreement, all the IP rights transferred by Televative are to belong and be exploited by SAT Connect.

[Redacted]

268

Directors of SAT Connect

Are there any directors of the board members of SAT Connect appointed by the government of Beristan?

No board members of SAT Connect are appointed by the government of Beristan directly.

[Redacted]

266

Telecommunications Act

Does the Telecommunications Act confer any special powers on Beritech?

Beritech was not mentioned in the Telecommunication Act specifically

[Redacted]

265

Participation at BoD meeting

Why was Alice Sharpeton in Beritech's board of directors meeting?

Alice Sharpeton was on the Sat Connect board of directors.

[Redacted]

262

Personnel

Was replacing seconded Televative personnel with Beristian personnel a motivating factor in displacing Televative, or was it instead all about the breach of contract and essential security issues?

The question calls for legal interpretation of the facts

[Redacted]

258

Is Beristan a party to other BITs or investment treaties? Has it ever been dragged into investor arbitration? If so, has it paid out any awards?

See answer to Request 177 in 1st Requests for Clarifications

256

ISSUES 1 AND 2: JURISDICTION

1. Clause 17 of the JV agreement provides that any dispute shall be settled by arbitration governed by the laws of Beristan. If that is the case, why didn't Televative pursue its at least colorable breach of contract claim first?

It was Televative's strategic decision not to initiate arbitration under Clause 17 of the JVA out of fear to lose its standing in ICSID arbitration

255

Clarification #8

According to the controlling quorum requirement (be it established by Beristan law or another entity), is there any situation in which quorum can be lost (by virtue of a reduction in the number of members present) after having been established? If so, what is it?

Neither Beristan law nor Sat Connect's bylaws regulate the loss of quorum once established

254

Clarification #7

In the event that domestic arbitration is initiated in violation of the terms of the underlying contract that is its subject, what remedies does Beristan law make available to the aggrieved party?

See answer to Request 130 in 1st Requests for Clarifications: Responses

253

Clarification #6

At any time prior to Televative's decision to invest in Sat-Connect, were there any representations and/or assurance made by Beristan and/or Beritech (to Televative) concerning the investment? If so, what were they? If not, on what basis did Televative learn of Sat-Connect, and on what information did it decide to invest in it?

No specific assurances on the part of Beristan were made to Televative.

249

Clarification #2

Is there a third-party bilateral investment treaty to which Beristan is party that lacks the "it considers necessary" language found in Article 9(2) of the Beristan-Opulentia BIT?

No

248

Clarification #1

Did Televative's seconded staff at any point fear for their safety or well-being, and if so what causes contributed to that fear? Why were they evacuated and who evacuated them?

No. Televative was given 14 days to withdraw its seconded staff from all Sat Connect facilities. Those Televative employees who still remained thereafter were asked by the Civil Works Force to leave the

facilities immediately on 11 September 2009.

[REDACTED]

247

Spender 8

Did the reported leak from Televative to Opulentian government actually occur?

No other proof of the leak than as presented in the Uncontested Facts and Responses is available.

[REDACTED]

244

Spender 5

Are there any regulations in the law of Beristan concerning the buyout procedure?

No. The JVA buyout provisions and Sat Connect bylaws are in conformity with Beristan law.

[REDACTED]

243

Spender 4

Was there another meeting of the Board of Directors held after August 27th (see Clarification 138)?

Yes

[REDACTED]

242

Spender 3

Was an approval by the Sat-Connect's Board of Directors required for the the Buy-out?

Yes

[REDACTED]

236

Waldock 5

Are the expelled personnel nationals of Opulentia? Is there a visa system between Beristan and Opulentia? If so was the personnel present in Beristan on legal basis? (did they comply with all applicable requirements). In case they did was there any legal basis for expelling them from the country?(are they suspected of leaking the information?)

Televative's personnel seconded to Sat Connect included Opulentian as well as third-country nationals who entered and worked in Beristan in full conformity with Beristan law.

[REDACTED]

234

Waldock 3

Has Televative made any filings (e.g. statements of defense) in the arbitral proceedings commenced by Beritech?

See Paragraph 13 of the Uncontested Facts

[REDACTED]

233

Waldock 2

What is the current status of domestic arbitration proceedings commenced by Beritech? Has the arbitral tribunal ruled on its competence? Were there any hearings in this case? Alternatively have the dates for hearings, submission of written pleadings been fixed by the tribunal?

See answer to Request 118 in 1st Requests for Clarifications: Responses

232

Waldock 1

In what sphere of business does Beritech operate (military or civil telecommunications)? Does it supply anything to Beristian Government or its agencies? Is it a commercial legal entity? Who are its main customers?

See answer to Request 161 in the 1st Request for Clarifications: Responses

231

Leaking of Information

Was there any other prove about the leaking of information beside the testimony in The Beristan Times, like testimony or investigation of some governmental body?

Besides the article and the rumors in the Beristan military circles there is no other evidence of the leak.

229

Beritech directors

Were the all directors who voted for buyout appointed by Beritech?

Yes

228

Appeal

Was there any possibility to appeal to a court or some other authority under the law of Beristan in regard to the executive order? Did Televative use that option?

The Executive Order could not be appealed

227

Beritech activity

Is there any other business activity beside the one in regard to the JV Agreement that Beritech is carrying out?

See answer to Request 161 in the 1st Request for Clarifications: Responses

226

JV Agreement

What are the responsibilities of guarantor according to the law of Beristan? Was the state of Beristan regarded as the party to the JV agreement under the Beristan law, bearing in mind that it signed the JV agreement in the capacity of a guarantor?

See answer to Request 152 in the 1st Request for Clarifications: Responses

222

Erskine 7.

Is there any substantial/credible evidence indicating that the Sat-Connect project had been compromised due to leaks by Televative personnel?

No

218

Erskine 3.

Did Beristan committed any other (material or not)breach against JV agreement or BIT between Opulentia and Beristan?

The question asks for a legal conclusion.

217

Erskine 2.

What was the main reason of the military interference? Was the Civil Works Force sent into the site as a follow-up of the buyout process, or as the government's individual measure to ensure national security?

The Civil Works Force acted on the basis of and in accordance with, the Executive Order.

215

Elias 1 - Material breach

What are the consequences of a material breach of the JV Agreement by Beritech? Is a material breach with respect to Beritech addressed or anticipated by the JV Agreement?

In case of fundamental breach of the JVA by Beritech, Televative is entitled to terminate it and claim damages, including loss of profit.

211

Notification of the upcoming meeting

Was there any notification concerning the agenda of the upcoming meeting made during the Sat-Connect board of directors Meeting of August 21, 2009?

No official notification of the agenda for the following meeting was made.

209

Evidence of the information leak

Are there any objective evidence accessible to Respondent concerning the leak of information or it relies merely on the article in The Beristan Times of 12 August 2009?

There was no other evidence of the leak of information.

208

Evidence of the information leak

Did the rest of the board of directors fail to participate in the meeting of August 27, 2009 due to the lack of notification or due to any personal reasons? If due to the lack of notification, does it prevent BD decision from being enforceable under Beristan law?

All the directors of Sat Connect were informed about the date of the meeting. No agenda was distributed among them. Some directors appointed by Televative speculated that the buyout would be discussed and decided not to attend the meeting and thus deprive it of the necessary quorum.

207

Respondent's notice of arbitration or misprint?

In the summary of parties contentions Respondent argues that "Claimant should respond to Respondent's notice of arbitration...that Respondent has already commenced pursuant to the dispute settlement clause in the JV Agreement". Was there such a notice? Or was it a misprint and Claimant should respond to Beritech's notice of arbitration?

It was a misprint. Claimant should respond to the Beritech's notice of arbitration.

204

Guerrero - Details about evacuation

Please clarify whether the personnel of Televative was evacuated (Uncontested facts, para. 11) or expelled (Response to request no. 160), i.e. whether they left the country as a result of their own and/or Televative decision, or as a result of decision of Government of Beristan.

See answer to the Request 248. The Televative's seconded personnel left Beristan voluntarily.

203

Guerrero - Information leak

Did the leak of information concerning the Sat-Connect project actually occur?

See answer to the Request 231

202

Guerrero - Beristan Arbitration Law

What are the rules governing the arbitration commenced by Beritech in a situation when one of the parties refuse to participate in arbitration proceedings (in the light of the due process principle)?

See answer to Request 130 in 1st Requests for Clarifications: Responses

200

Guerrero - Beristan Commercial Code

What, under the Beristan company law, are the consequences of improper procedure during issuing the resolution by board of directors? What time, in the scope of invoked law, is crucial in evaluating the quorum during the meeting of board of directors - the moment of opening the meeting, voting on the resolution or other?

According to Beristan law, a decision of the board of directors of a company issued in violation of the company's bylaws is null and void. The quorum is required at the moment of voting.

197

Compensation on other criteria

Apart from the 47 million worth of capital investments and the 100 million worth of intellectual property rights, has Claimant requested compensation on other criteria? Such as going concern and/or lost profits?

Claimant also claims compensation for potential future profits. Let us remind teams that at this stage the Tribunal is not considering issues of quantum.

196

Provisional measures

Has the domestic arbitral tribunal ordered provisional measures of any sort?

No.



195

Decision over Jurisdiction

Has the domestic arbitration tribunal decided over its jurisdiction?

See answer to Request 118 in 1st Requests for Clarifications: Responses



194

Duration of JV Agreement

For the purpose of calculating compensation, how long was the JV agreement supposed to last?

See answer to question to the Request 183



193

Notification of content of agenda

What is the legal effect under Beristian Law of a resolution adopted at a BOD meeting when it addresses certain points that were not included in the agenda that was notified, such as the enforcement of the buy out clause? Would the decisions concerning the buy out clause be null and void?

According to the Beristan law, decisions of a board of directors should be adopted in accordance with the procedure as stipulated by the company's bylaws



191

Beritech's Board of Directors

How is the composition of the Board of Directors of Beritech? In particular, is the Minister of Telecommunications of Beristan the Chairman of Beritech?

See answer to Request 135 in 1st Requests for Clarifications: Responses

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190

Appointment of the directors

Were all the five directors of Sat-Connect that were present while invoking the Buyout Clause appointed by Beritech?

See Paragraph 10 of the Uncontested Facts



187

Police and CWF

Is it common practice in Beristan that the CWF acts as a kind of police force and carries out acts like the expulsion of Televative's personnel?

The Civil Works Force acts upon orders of the Beristan government.



186

The term obligation

Is the term “obligation” in the JV- Agreement (Beristan co-signed the JVA as guarantor for Beritech’s obligations) identical with the term “obligation” in Art 10 BIT?

This is a legal question and a matter for interpretation



184

Situation in Opulentia

Between October 18, 2007 and August 12, 2009, were there any kind of significant changes in the political, economic, social or cultural climate of Opulentia or any change in attitude of Opulentia in its dealings with the Respondent ? Apart from denying the story published in the Beristan Times, how else has Opulentia reacted to the developments taking place in Beristan especially, post September 11, 2009?

There was no political climate change in Opulentia nor did Opulentia change its attitude to Beristan. See answer to Request 147 in 1st Request for Clarifications: Responses



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Duration of JVA

What is the exact time duration, if any, of the JV Agreement / Sat-Connect project ?

The JVA contained no duration clause.