

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED PURSUANT TO
ARTICLE 7 OF THE AGREEMENT BETWEEN THE GOVERNMENT OF
THE REPUBLIC OF FRANCE AND THE GOVERNMENT OF THE UNITED SOVIET
SOCIALIST REPUBLICS ON THE RECIPROCAL PROMOTION AND
PROTECTION OF INVESTMENTS DATED 4 JULY 1989
AND
THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW, 1976
(the “UNCITRAL Rules”)**

-between-

MR. SERGEI VIKTOROVICH PUGACHEV

(the “Claimant”)

-and-

THE RUSSIAN FEDERATION

(the “Respondent”, and together with the Claimant, the “Parties”)

PROCEDURAL ORDER NO. 2

The Arbitral Tribunal

Dr. Eduardo Zuleta Jaramillo (Presiding Arbitrator)
Professor Thomas Clay
Dr. Bernardo M. Cremades

7 July 2017

1. Introduction

- 1.1. On 26 May 2017, the Tribunal sent a letter to the Parties whereby it (i) ordered specific measures for purposes of preserving the integrity and efficiency of the arbitration, and (ii) submitted a proposal to the Parties to balance confidentiality and transparency concerns in this arbitration (the “26 May 2017 Order”). The Tribunal invited the Parties to submit joint or separate comments to the proposal on or before 5 June 2017.
- 1.2. The Tribunal further announced that, once the Parties submitted their comments, it would take all appropriate measures to balance confidentiality issues and transparency concerns in this arbitration, including the issuance of a procedural order on this matter.
- 1.3. Accordingly, after reviewing the applications submitted by each Party, this Tribunal hereby issues this Procedural Order No. 2.

2. Position of the Parties

- 2.1. On 6 June 2017, Respondent submitted its comments to the proposal put forward by the Tribunal on the 26 May 2017 Order. In particular, Respondent alleged that Claimant breached the specific orders made in the 26 May 2017 Order and requested the Tribunal to take such steps as it considers necessary to ensure the Claimant’s compliance with its orders, including in particular the 26 May 2017 Order.
- 2.2. In this regard, Respondent argued that, in the event Claimant complies with the Tribunal’s orders, Respondent would be willing to consider, at such time, the publication of certain documents relating to this arbitration. Accordingly, Respondent submitted that the Russian Federation would be willing to agree on the disclosure of the Tribunal’s awards and decisions.
- 2.3. In addition, Respondent expressed the view that, until the Claimant indicates willingness to comply with the Tribunal’s orders in this arbitration, it should not be required to incur further time and expense in defending itself, including in relation to agreeing logistics for the publications of documents relating to the arbitration.
- 2.4. On 9 June 2017, Claimant provided its comments to Respondent’s letter dated 6 June 2017. Claimant stated that he complied with the 26 May 2017 Order and removed 103 pages from his website that contained publications concerning this arbitration. In consequence, Claimant argued that Respondent failed to point out to any article, post or any publication, for the simple reason that Claimant removed from his website all articles and publications as per the Tribunal’s direction.
- 2.5. Furthermore, Claimant objected to several characterizations made by Respondent in its Letter dated 6 June 2017. In particular, Claimant submitted that it sent a letter to Respondent informing that he was in agreement with the proposal submitted by the Tribunal within the 26 May 2017 Order and that Respondent did not acknowledge receipt of the said letter. Hence, Claimant stated that Respondent had no intent to enter

into constructive discussions in order to organize for transparency in the ongoing arbitration.

- 2.6. Accordingly, Claimant urged this Tribunal to (i) acknowledge that Claimant complied with the Tribunal's 26 May 2017 Order; (ii) order full transparency, in exchange for its extremely strict confidentiality provision set forth in the 26 May 2017 Order; and (iii) decide on the body that should be designated to administer the website in order to avoid further obstructive attitude from Respondent in that respect.
- 2.7. On 12 June 2017, Respondent submitted a letter to the Tribunal alleging Claimant's further breaches of the 26 May 2017 Order. Respondent maintained that, in breach of the 26 May 2017 Order: (i) as of 2 June 2017 multiple publications and documents in respect of the arbitration had not been removed from Claimant's website; (ii) it was only after the Respondent's letter dated 6 June 2017 that Claimant started to remove such materials; and (iii) that, as of 12 June 2017, a number of such materials remained on Claimant's website. Finally, Respondent confirmed its request made in the letter dated 6 June 2017, *i.e.*, that the Tribunal takes whatever measures it deems necessary to ensure the Claimant's compliance with its orders.
- 2.8. On this same date the Tribunal issued an Interim Award deciding on other pending matters, which include the alleged breaches to the orders of the Tribunal on confidentiality and publication of documents related to this arbitration.

3. The Tribunal's Analysis

- 3.1. As mentioned in the 26 May 2017 Order, the Tribunal considers that transparency may enhance the integrity of this arbitration to the extent it contributes significantly to the fair and efficient resolution of this dispute. In this same regard, the Tribunal is also mindful of the fact that transparency may be necessary to address public interest concerns arising from investor-State arbitration.
- 3.2. Moreover, the Tribunal understands that the Parties have significant disagreements with regard to the Tribunal's proposal submitted in the 26 May 2017 Order. In particular, the Parties disagree as to which information should be available to the public in this arbitration and on the means for publicizing such information.
- 3.3. In this regard, this Tribunal further notes that the Parties have failed to discuss and reach an agreement on the conditions for setting up a website in accordance with the proposal within the 26 May 2017 Order. The Tribunal submitted such proposal under the assumption that both Parties would jointly agree on a third party administrator for the website and on all matters necessary to preserve the website during the course of this arbitration. This is precisely why the Tribunal stated that it would not be involved in the administration of the website nor will it be responsible for any arrangements or agreements made between the Parties and the administrator.
- 3.4. Consequently, and given the Parties' failure to discuss and agree on this proposal, the Tribunal will not set forth any rules concerning a third party website

administrator. Each Party will be free to disclose or publish such Available Documents (as will be defined in Section 4 below) using the means it deems appropriate but under the strict rules provided in this Procedural Order No. 2.

4. Available Documents

4.1. The Parties may only disclose and make available to third parties the following documents (the “Available Documents”):

4.1.1. Procedural Orders issued by the Tribunal in this arbitration, including Orders to Produce Documents;

4.1.2. Interim or Partial Awards issued in this arbitration;

4.1.3. Final Award issued in this arbitration;

4.1.4. The following memorials already filed in this arbitration: (i) Claimant’s Notice of Arbitration; (ii) Claimant’s Request for Interim Measures; (iii) Respondent’s Response to Request for Interim Measures; (iv) Respondent’s Security for Costs Application; and (v) Claimant’s Reply to Respondent’s Security for Costs Application;

4.1.5. Subject to the conditions set forth below in Section 4.5, the following memorials: (i) Claimant’s Statement of Claim; (ii) Respondent’s Statement of Defence; (iii) Claimant’s Reply; (iv) Respondent’s Rejoinder; (v) Respondent’s Memorial on Jurisdiction -if applicable-; (vi) Claimant’s Counter-Memorial on Jurisdiction -if applicable-; (vii) Respondent’s Reply on Jurisdiction -if applicable-; and (viii) Claimant’s Rejoinder on Jurisdiction -if applicable-; and

4.1.6. Any other document jointly agreed by the Parties or determined by the Arbitral Tribunal in consultation with the Parties.

4.2. A Party is authorized to disclose or publish an Available Document after ten (10) days following the date of submission to or issuance by the Tribunal of the corresponding document. For purposes of the memorials listed in Section 4.1.4., the ten (10) day term will start as of the date of this Procedural Order.

4.3. The Available Documents will be disclosed in their original version, without comments, additions, amendments or redactions. The Available Documents may be translated by either Party.

4.4. If a Party considers that an Available Document must be redacted prior to being disclosed or published to prevent the disclosure of any confidential or protected information, such Party may request the Arbitral Tribunal to order that the corresponding document is published in a redacted version and propose the corresponding redaction within six (6) days following the date of submission to or

issuance by the Tribunal of the corresponding document. For purposes of the memorials listed in Section 4.1.4., the six (6) day term will start as of the date of this Procedural Order.

4.5. Each of the memorials identified in Section 4.1.5 above shall only be disclosed or published by a Party after the opposing Party has submitted before the Tribunal its response to the said memorial. Therefore:

4.5.1. Claimant's Statement of Claim shall only be disclosed or published after the submission to the Tribunal of Respondent's Statement of Defence. Accordingly, the time periods provided for under Sections 4.2 and 4.4 above for purposes of the disclosure or publication of these memorials will start as of the date of submission to the Tribunal of Respondent's Statement of Defence;

4.5.2. Claimant's Reply shall only be disclosed or published after the submission of Respondent's Rejoinder to the Tribunal. Accordingly, the time periods provided for under Sections 4.2 and 4.4 above for purposes of the disclosure or publication of these memorials will start as of the date of submission to the Tribunal of Respondent's Rejoinder;

4.5.3. Respondent's Memorial on Jurisdiction, if applicable, shall only be disclosed or published after the submissions of Claimant's Counter-Memorial on Jurisdiction. Accordingly, the time periods provided for under Sections 4.2 and 4.4 above for purposes of the disclosure or publication of these memorials will start as of the date of submission to the Tribunal of Claimant's Counter-Memorial on Jurisdiction.

4.5.4. Respondent's Reply on Jurisdiction, if applicable, shall only be disclosed or published after the submissions of Claimant's Rejoinder on Jurisdiction. Accordingly, the time periods provided for under Sections 4.2 and 4.4 above for purposes of the disclosure or publication of these memorials will start as of the date of submission to the Tribunal of Claimant's Rejoinder on Jurisdiction.

4.6. Any final determination as to whether the information contained in the Available Documents is confidential or protected and thus needs to be redacted shall be solely made by the Tribunal after consultation with the Parties. Accordingly, if a Party submits a request to redact an Available Document within the six (6) day term mentioned in Section 4.4 above, such document shall only be published or disclosed after the Tribunal's final determination.

5. Confidential Information

5.1. The following information is and shall be deemed confidential (the "Confidential Information"):

- 5.1.1. Factual and legal exhibits, witness statements, expert reports and other evidence submitted by the Parties to the Tribunal;
 - 5.1.2. Any correspondence or application or cross-application submitted by the Parties to the Tribunal;
 - 5.1.3. Correspondence submitted by the Tribunal to the Parties; and
 - 5.1.4. The memorials listed in Section 4.1.5. above before they are published or made available in strict compliance with the conditions set forth in Section 4.5.
- 5.2. Accordingly, each Party and their respective counsel shall abstain from publishing or disclosing any Confidential Information regarding this arbitration without prior authorization from the Tribunal. The Parties are only allowed to publish or disclose the Available Documents in accordance with the specific terms and provisions of this Procedural Order.
- 5.3. The Tribunal has the power to, and in its discretion, may allow the disclosure of Confidential Information at the request of a Party to the extent such disclosure: (i) is necessary to pursue and protect a Party's legal right or is necessary in order for a Party to comply with a legal duty; (ii) does not hinder a Party's right to be treated equally and does not undermine its opportunity to fully present its case; and (iii) does not jeopardize the integrity and efficiency of this arbitration.
- 5.4. Accordingly, any final determination as to whether any Confidential Information is published or disclosed shall be solely made by the Tribunal after consultation with the Parties.

6. Statements to the Press or Media

- 6.1. The Tribunal is also mindful of the fact that the integrity and efficiency of this arbitration may be hindered in the event the Parties or their respective counsel are inclined or forced to submit statements to the press or media. Accordingly, pursuant to the terms set forth in the 26 May 2017 Order and in light of the substantive differences expressed in the applications submitted by the Parties, this Tribunal orders that, without prejudice of the publication of the Available Documents, each Party and their respective counsel shall refrain from commenting or making any public statement to any third party (including reporters, news organizations or media networks) on any matter or fact regarding this arbitration, including any matter addressed in the Available Documents, without prior authorization from the Tribunal.

7. Conclusion

- 7.1. The confidentiality provisions of Procedural Order No. 1 and the orders made herein shall remain in place with respect to the documents that are not Available Documents.
- 7.2. The Tribunal reserves the right to issue any relief or remedy it deems appropriate in the event a Party breaches the terms set forth in this Procedural Order No. 2.

So ordered by the Tribunal.



Dr. Eduardo Zuleta Jaramillo
Presiding Arbitrator

On Behalf of the Tribunal