

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

Astracommex Regional Satellite Communication Inc.

(Claimant)

and

The Republic of Celestria

(Respondent)

REQUEST FOR ARBITRATION

9 September 2022

For the Claimant:

Ms. Astrid Stellaris
AstroJuris Arbitration
3 Saturn St., 48798 Stelaria
Nebuland

I. INTRODUCTION

1. Astracommex Regional Satellite Communications Inc. hereby submits a request to initiate arbitration (the “**Request**”) in a dispute with the Republic of Celestria (“**Celestria**”) in accordance with Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 14 October 1966 (the “**ICSID Convention**”), Rules 1 and 2 of the 2022 ICSID Institution Rules, and Article 10 of the Agreement on Reciprocal Promotion and Protection of Investments between the Kingdom of Nebuland and the Republic of Celestria, which entered into force on 1 February 2021 (the “**BIT**”).
2. The Claimant confirms that it has obtained all necessary internal authorizations to file the Request.

II. THE PARTIES

3. The Claimant is Astracommex Regional Communications Inc. (“**Astracommex Regional**” or the “**Claimant**”), a company organized under the laws of the Kingdom of Nebuland (“**Nebuland**”) with its principal place of business in Stelaria, Nebuland. Astracommex Regional operates as a wholly-owned subsidiary with all of its shares held by its parent company, Astracommex Global Satellite Communication Inc. (“**Astracommex Global**”), which is also organized under the laws of Nebuland.
4. Astracommex Regional is represented in the arbitration by AstroJuris Arbitration.¹ Correspondence in this matter should be addressed to:

Ms. Astrid Stellaris
AstroJuris Arbitration
3 Saturn St., 48798 Stelaria
Nebuland
Tel: 019679876
Email: astellaris@astrojuris.glob
5. The Respondent is Celestria, an ICSID member State since 20 July 1986. To the best of the Claimant’s knowledge, the Respondent is represented in the arbitration by:

¹ The power of attorney is intentionally omitted.

Dr. Janis Pletnik
CosmoLex
5 lunar Blvd., 98479 Starvalis
Celestria
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III. SUMMARY OF THE DISPUTE

6. The Claimant, along with its parent company, focuses on non-terrestrial communication technologies. It delivers affordable internet access globally and especially targets unserved and underserved populations in rural and remote areas. Leveraging cutting-edge telecommunications technology, Astracommex Global has pioneered the revolutionary concept of a low-Earth-orbit (“**LEO**”) satellite mega-constellation. This concept involves deploying a vast network of 5,000 satellites across various altitudes - 400, 450, 500, and 600 kilometers above Earth - to establish a high-speed, high-quality, and cost-effective non-terrestrial communication network. A standout feature of this network is the utilization of inter-satellite optical links, enhancing speed and efficiency.
7. The Claimant was attracted to Celestria primarily by its digitalization agenda. The Respondent has consistently affirmed its dedication to advancing digitalization projects in rural areas since 2010. An example is the flagship digital health project which the Respondent promoted in 2015, creating a promising market for internet service providers like the Claimant.²
8. In 2016, the Respondent inaugurated the Rural Digitalization Fund (“**RDF**”) with a substantial grant of USD 1 billion, reiterating its commitment to narrowing the gap between rural and urban areas by ensuring universal access to internet communication services across its territory. The Respondent actively encouraged foreign investors, such as the Claimant, to invest in its territory. To that end, the Respondent invited bids from both foreign and domestic internet service providers for the allocation of the RDF funds and the necessary radio frequencies.
9. On 15 February 2016, the Claimant submitted its application in the auction organized by the Respondent, presenting a LEO satellite mega-constellation (named the “**Astra System**”).³ The Claimant won the bid in August of the same year.

² Exhibit C-1, Press Release from the Rural Development Agency, 2 June 2015.

³ Exhibit C-2, RDF Application, 1 February 2016.

- 60 10. The Respondent's National Frequency Agency ("NFA") and Rural Development Agency
("RDA") subsequently entered into a contract with the Claimant on 1 October 2016 (the "**RDF
Agreement**"), providing the Claimant with USD 500 million and allocating the necessary Ka-
band frequencies for a ten-year period.⁴ Since then, the Claimant has been conscientiously
developing and installing the Astra satellites as well as the ground stations on the territory of
65 the Respondent, in order to deliver the promised quality of internet services.
11. However, in January 2020, following the change in the Respondent's Government, the
Respondent began to slowly backtrack on its commitments, taking a multitude of measures
that ultimately stripped the Claimant of its investment.
12. As a first step, the Respondent enacted the National Environmental Protection Act (the
70 "**NEPA**").⁵ The NEPA, despite stating that it would not apply retroactively, was interpreted
broadly in practice in terms of what constitutes "future agency actions." This interpretation
opened the door to a series of wide-ranging measures against the Claimant that caused the
Claimant's eventual loss of all of its operations in relation to the territory of Celestria.
13. On 1 June 2020, the Celestrian Space Agency established radio silence zones which *de facto*
75 reduced the communication reach of the Astra System from covering 100% of Celestria's
territory to covering only 40%. Even though the Celestrian Space Agency relied on scant
scientific evidence to make its decision, the Claimant cooperated in good faith and offered new
plans to mitigate any potential impact on astronomy. The new plan obliged the Claimant to
apply for a new Ku-band spectrum to operate. The Claimant was optimistic that the plan would
80 be simple to execute because Article 6 of the RDF Agreement allows for the modification of
support from the NFA and RDA under specific conditions.⁶
14. However, during the NFA's processing of the Claimant's request for the new Ku-band
frequencies, the NFA requested the Claimant to submit supplementary materials to facilitate
an environmental impact assessment regarding the reentry of the satellites. The Claimant
85 refused to submit further documents and such refusal resulted in a long silence from the NFA.
The application was kept pending and was finally rejected on 15 December 2020.

⁴ Exhibit C-3, RDF Agreement, 1 October 2016.

⁵ Exhibit C-5, National Environmental Protection Act, 1 April 2020.

⁶ Exhibit C-3, RDF Agreement, 1 October 2016.

15. On 1 January 2021, an unfortunate collision happened between one of the Claimant's satellites, AS100, and a cubesat owned by Valinor, a private company, and sponsored by the Respondent's Department of Defense ("**DoD**"). Based on the Claimant's engineers' post-collision assessment of its proprietary software, the collision was due to an electronic malfunction induced by an unusual solar radiation storm.⁷
16. On 5 January 2021, the DoD initiated an investigation and suspended the Claimant's operations on Celestria's territory.⁸
17. On 1 March 2021, the DoD abruptly ordered the Claimant to reposition of all of its 400km altitude satellites to new orbits below 350km. To add salt to the injury, the DoD also ordered a continuing suspension of the Claimant's operation on the territory of Celestria until the reposition was completed.⁹
18. The orbits and plans of all the 5,000 satellites in the current Astra System were deliberately and carefully engineered. While the Claimant possesses the technical capacities to reposition of the 400km satellites, such action will cost the Claimant USD 1 billion. In addition, the Claimant will need an authorization from the NFA to use the new spectrums due to the adjusted configuration. The Claimant recalls, however, that the NFA rejected its request for Ku-band frequencies on 15 December 2020. Chances of the NFA accepting another request are slim.
19. Moreover, the Claimant's 400km satellites were launched from the Kingdom of Cosmosis ("**Cosmosis**") before the diplomatic relationship between the Respondent and Cosmosis broke down following the climate migration crisis.¹⁰ According to the Outer Space Treaty of 1967 and the Registration Convention of 1974, Cosmosis has quasi-territorial jurisdiction over the 400km satellites. The Respondent thus has no authority to enforce such an order.
20. Due to the series of the Respondent's measures, the Claimant's business activities in Celestria have ceased entirely. Although the Claimant retains ownership of its assets, including the ground stations within the Respondent's jurisdiction and the Astra satellites in outer space, it has been rendered incapable of conducting any business activities within the Respondent's

⁷ Exhibits C-6, Press Report on AS100 Collision, 2 January 2021; Exhibit C-7, Press Report on Solar Radiation Storm, 5 January 2021.

⁸ Exhibit C-8, DoD Decision to Investigate AS100 Collision and Suspend Operation, 5 January 2021.

⁹ Exhibit C-9, DoD Order to Adjust Orbits of 100 Satellites and Continue to Suspend Operation, 1 March 2021.

¹⁰ Exhibit C-4, News Article from Cosmosis Gazette, 15 October 2016.

territory. The multi-agency actions amount to a comprehensive and permanent prohibition on the Claimant's provision of internet services within the Respondent's territory.

115 21. Consequently, the Respondent's measures effectively deprived the Claimant of the enjoyment and operations of its investment, and clearly represent a breach of Article VII of the BIT.

IV. JURISDICTION OF THE ARBITRAL TRIBUNAL

A. Under the ICSID Convention

22. Article 25(1) of the ICSID Convention provides that:

120 The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.

125 23. The Claimant satisfies the requirements of Article 25(1) of the ICSID Convention.
[the remaining arguments on jurisdiction under the ICSID Convention are intentionally omitted]

B. Under the BIT

24. The Claimant equally meets the requirements of the BIT for the initiation of an ICSID arbitration. The Claimant recalls that prior to the entry into force of the BIT, Celestria and Nebuland were Contracting States to a Free Trade Agreement (the "FTA") along with Cosmosis. The FTA was in force between 2003 and 2017. Following the termination of the FTA in 2017,¹¹ Celestria and Nebuland negotiated, signed and ratified the BIT.

135 25. Article 2 of the BIT does not limit its temporal application. Article 2 is drafted in broad terms and provides that "[t]his Agreement shall apply to legal disputes in relation to investments that existed at the time of entry into force as well as to investments made or acquired thereafter." Article 2 thus provides that the BIT applies to all legal disputes, as long as they relate to an investment.

[the remaining arguments on jurisdiction under the BIT are intentionally omitted]

¹¹ Exhibit C-10, Free Trade Agreement between the Governments of Nebuland, Celestria and Cosmosis, 2 December 2003.

140 **V. CONSTITUTION OF THE TRIBUNAL**

26. Pursuant to Article 11(1) of the BIT, the Tribunal is to be constituted in accordance with the method provided in Article 37(2)(b) of the ICSID Convention.

27. In accordance with Rule 16 of the ICSID Arbitration Rules, the Claimant appoints Dr. Nika Havendale, a national of Gerheimburg, as its arbitrator.

145 28. Dr. Havendale's contact information is the following:

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VI. REQUEST FOR RELIEF

29. In light of the foregoing, Astracommex Regional requests that the Tribunal:

- i. **DECLARE** that the dispute is within the competence of the Centre and the jurisdiction of the Tribunal;
- 155 ii. **DECLARE** that Celestria has violated Article VII of the BIT;
- iii. **ORDER** Celestria to pay to the Claimant damages in an amount that will be determined later in the proceeding but in any event not inferior to USD 1,000,000,000; and
- iv. **ORDER** Celestria to bear the entire costs of the proceeding including the Claimant's representation fees.

160 30. Astracommex Regional respectfully requests the Secretary-General to register this Request for Arbitration against Celestria pursuant to Article 36(3) of the ICSID Convention.

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For the Claimant,



AstroJuris Arbitration