

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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In the arbitration proceeding between

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Astracommex Regional Satellite Communication Inc.

(Claimant)

and

The Republic of Celestria

(Respondent)

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ICSID Case No. ARB/22/99

PROCEDURAL ORDER NO. 3

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Members of the Tribunal

Mr. Jackson Cole, President of the Tribunal

Dr. Nika Havendale, Arbitrator

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Prof. Brynn Sterling, Arbitrator

Secretary of the Tribunal

Mr. Dapo Olasibi

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28 June 2024

- 1780 1. Pursuant to ICSID Arbitration Rule 27, this third Procedural Order sets out the conduct of the proceedings of this arbitration.
2. Parties have agreed upon a Statement of Uncontested Facts, as produced below. The Tribunal appreciates the effort made by the Parties to work together amicably to provide the Tribunal with uncontested facts.
- 1785 3. Upon consultation with the Parties on video conference held on 25 June 2024, the Parties agreed:
- i. To conduct the proceedings in good faith - without any prejudice to the issue of third-party funding raised by Celestria and the jurisdiction of the Tribunal.
 - ii. To limit the first phase of the proceedings to questions listed below addressing the Tribunal's jurisdiction, the request for security for costs, whether Celestria breached the BIT by way of expropriation, and whether the Tribunal can draw an adverse inference from the alleged non-compliance with the document production and/or order the repetition of the search.
 - 1790 iii. To limit themselves to one round of written submissions before the hearing as follows: the Claimant shall file its Memorial on 11 September 2024 and the Respondent shall file its Counter-Memorial on 18 September 2024.
- 1795 4. In their submissions and at the hearing to be held on 1-4 November 2024 in Berlin, the Parties shall address the following issues:
- i. Whether the Tribunal has jurisdiction *ratione temporis* under the BIT to hear the Claimant's claims;
 - 1800 ii. Whether Marcial Ventures Ltd and Platonial Investments are third party funders and whether the Tribunal should order security for costs;
 - iii. Whether the Respondent has breached Article VII of the BIT:
 - a. Whether the Respondent's measures amount to creeping expropriation;
 - b. Whether the Respondent's measures are justified under applicable international law; and
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iv. Whether the Tribunal has the power to draw adverse inference from a non-compliance with document production order and/or order Astracommex to repeat the search and produce any newly identified responsible documents.

1810 5. The Tribunal is aware that the various questions are closely connected to each other. Thus, the Parties are free to decide in which order they address the various issues.

6. **No further** questions going to the merits of the claims and jurisdiction of the Tribunal should be addressed at this stage of the proceedings. Parties should **not** argue whether the Tribunal should draw adverse inference in the present case – at this point the Tribunal is solely interested in whether it has the power to do so.

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On behalf of the Tribunal,



1820 Mr. Jackson Cole
President of the Tribunal
28 June 2024