

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

ICSID Case No. ARB/20/9

South32 SA Investments Limited

Claimant

-v-

Republic of Colombia

Respondent

CLAIMANT'S REQUEST FOR THE PRODUCTION OF DOCUMENTS

30 SEPTEMBER 2021

 Freshfields Bruckhaus Deringer US LLP

700 13th Street, NW, 10th Floor
Washington, DC 20005-3960

 | **Dechamps**
International Law

10 Bloomsbury Way, London,
United Kingdom, WC1A 2SL

**POSSE
HERRERA
RUIZ** 

Carrera 7 No 71-52, Torre A
Piso 5, Bogotá Colombia

1. Pursuant to paragraph 16 of the Tribunal’s Procedural Order No 1 of 29 December 2020, Claimant hereby submits its Request for the Production of Documents (*Request*). This Request is submitted in the form of a Redfern Schedule following the model attached to the Tribunal’s Procedural Order No 1 as Annex C, and is consistent with the IBA Rules on the Taking of Evidence in International Arbitration (2010) (the *IBA Rules*).¹
2. The Requested Documents, as defined below, are relevant to the case and material to its outcome, for the reasons explained below.
3. The Requested Documents are not within Claimant’s possession, custody, or control. Claimant reasonably assumes that the Requested Documents exist and are within the possession, custody, or control of Respondent, because the Requested Documents were created by or for Respondent, and/or provided to Respondent (and not to Claimant), and/or should be kept and maintained by Respondent in the ordinary course of business. To the extent that the Requested Documents did exist but are said to no longer exist and/or be in Respondent’s possession, custody, or control, Respondent should identify such Documents and the circumstances in which they are said to have been lost and/or destroyed and/or to have left Respondent’s possession, custody, or control. To the extent that the Requested Documents ought to have been generated by Respondent in the ordinary course of business, but were not so generated, Respondent should identify such Documents and the reasons why they were not so generated.
4. Documents in Respondent’s possession, custody, or control include documents in the possession, custody, or control of Respondent, State organs, and/or State-owned entities, parent entities, holding companies, affiliates, subsidiaries, and any company or other entity or person controlling, under common control and/or controlled by, managed by or otherwise affiliated with such organs and companies, including their respective State organs, principals, officers, directors, employees, representatives, or agents during the time periods relevant to this Request.
5. Claimant requests that responsive documents be numbered by Respondent and produced in an electronic form sufficient to identify each separate document, document families (*eg*, e-mails and their attachments) and the relationship between documents within a family (*eg*, multiple attachments to an e-mail). In addition, in the event that the native files of the Requested Documents exist (*eg*, files with Microsoft Excel or Microsoft Outlook format), Claimant requests that Respondent produce said files in their native format.
6. Claimant reserves the right to amend or supplement this Request in light of the documents produced (or not produced) by Respondent. Claimant also reserve the right to amend or supplement this Request should Respondent seek to raise any new allegations or produce any additional evidence.

¹ IBA Rules, Articles 3(2) and 3(3).

DEFINITIONS

7. As used in this Request:

“**1994 Royalties Law**” means Law No 141 of 28 June 1994.

“**1985 Agreement on Royalties**” means the agreement between CMSA and the Ministry of Mines of 23 August 1985.

“**2011 Agreement on Royalties**” means the agreement between CMSA and the National Mining Agency of 30 August 2011 amending the 1985 Agreement on Royalties.

“**BDO**” means BDO Colombia S.A.S.

“**Claimant**” means South32 SA Investments Limited.

“**CMSA**” means Cerro Matoso S.A.

“**Colombia**” or “**Respondent**” means the Republic of Colombia.

“**Concession 866**” means concession contract 866 of 1963.

“**Concession 1727**” means concession contract 1727 of 1971.

“**Concessions**” or “**Concessions 866 and 1727**” mean jointly Concession 866 and Concession 1727.

“**Contract 51**” means exploration and exploitation contract 051-96M of 1996.

“**Counter-Memorial**” means Respondent’s Counter-Memorial, dated 9 September 2021.

“**Document**” means a writing or recording of any kind, whether recorded on paper, electronic means, audio or visual recordings, or any other mechanical or electronic means of storing or recording information under Colombia’s possession, custody or control, including, but not limited to, e-mails, faxes, correspondence, memoranda, working drafts, loose and pad notes, presentations, internal files, guidelines, charts, advertising or reporting material, contemporaneous meeting notes, minutes and analyses, advice or recommendations, records of discussions or deliberations, draft decisions or assessments, orders or instructions, however retained, and whether or not prepared by Respondent. Documents recorded on “electronic means” include Documents that are readily accessible from computer systems and other electronic devices and media, Documents stored on servers and back-up systems, and electronic Documents that have been software deleted. Any reference to “Documents” includes drafts of those Documents.

“**Government**” means the government of Colombia, including its political subdivisions, entities, departments, agencies and organs.

“**Memorial**” means Claimant’s Memorial, dated 23 April 2021.

“National Mining Agency” means the *Agencia Nacional de Minería*, Colombia’s mining authority since 2012.

“Requested Documents” means the Documents requested by Claimant pursuant to this Request.

“Treaty” means the Bilateral Agreement for the Promotion and Protection of Investments between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of Colombia, which entered into force on 10 October 2014.

SOUTH32 SA INVESTMENTS LIMITED v. THE REPUBLIC OF COLOMBIA

CLAIMANT’S REQUEST FOR THE PRODUCTION OF DOCUMENTS

30 SEPTEMBER 2021

Request No 1	
Document or category of documents requested	Minutes of meetings and correspondence that either refers to or discusses the National Mining Agency’s monetary targets with respect to the collection of royalties and/or any other payment from CMSA alone (ie not other mining companies) for the years 2015 through 2021, and in particular the meeting minutes of the National Mining Agency’s Board of Directors (“ <i>Consejo Directivo</i> ”) and/or of the National Mining Agency’s Group of Coercive Collection (“ <i>Grupo de Cobro Coactivo</i> ”), and the correspondence, reports or memoranda from and to the members of that Group relating to this issue.
Relevance and materiality according to Requesting Party	<p>Claimant asserts that Colombia violated its obligations under the Treaty by repeatedly and retroactively reassessing royalties already levied by Colombia and paid by CMSA, by demanding additional royalties since 2015 through an arbitrary methodology for calculating royalties, and by demanding payment based on the iron content in ferronickel. All of these measures have served to extract significant additional payments from CMSA over the last six years in a manner that is incoherent and unjustified.</p> <p>In the 2016 annual report of the National Mining Agency submitted by Colombia with its Counter-Memorial (Exhibit R-47), the National Mining Agency explained that it had established a “specific monetary target” for 2016 for the collection payments from mining companies, stating that the target was met due “to the effort of the Group [of Coercive Collection of the National Mining Agency] to improve the collection figures from the prior years” (Exhibit R-47, p. 91, unofficial translation). The National Mining Agency also acknowledged that the amounts collected in 2016 decreased in respect to those collected in 2015 (Exhibit R-47, p. 50).</p> <p>The requested Documents are relevant to the case and material to its outcome as they will show that the National Mining Agency sought to reassess the historic payment of royalties by CMSA and seek additional royalty payments with the purpose of meeting its collection targets. In particular, the requested documents are material to Claimant’s arbitrariness claim (Memorial, paras 210-211) as they will show how Colombia sets collection targets and compels its entities to abide by them (potentially causing state entities to reopen past assessments of royalties to achieve such targets), evidencing motives for Colombia’s measures both (a) different from those put forward in Colombia’s Counter-Memorial and (b) in breach of international law applicable through the Treaty.</p>
Documents not in the Requesting Party’s possession	Claimant has reason to believe that the requested Documents exist and Colombia has them in its possession, custody or control because Exhibit R-47 : (i) expressly refers to National Mining Agency’s collection targets for 2016, which makes it reasonable to assume that collection targets were also set by the Agency for the years 2015 to 2021; (ii) mentions the efforts deployed by a specific working group of the National Mining Agency, of which a written record presumably exists and/or should be kept and

	<p>maintained by the National Mining Agency in the ordinary course of business; and (iii) the collection targets ought to have been set or approved in written means by either the National Mining Agency’s Board of Directors (“<i>Consejo Directivo</i>”) and/or the National Mining Agency’s Group of Coercive Collection (“<i>Grupo de Cobro Coactivo</i>”), given the regulated nature of the authorities’ functions.</p> <p>To the extent that the requested Documents did exist but are said no longer to exist and/or be in Colombia’s possession, custody, or control, Colombia should identify such Documents and the circumstances in which they are said to have been lost and/or destroyed and/or to have left Colombia’s possession, custody, or control. To the extent that the requested Documents were not so generated, Colombia should explain how the collection targets were set and evaluated and how the National Mining Agency was kept informed regarding the efforts deployed by its Group of Coercive Collection, specifically regarding CMSA.</p> <p>Claimant clarifies that the requested Documents do not include copies of the annual reports of the National Mining Agency, but rather the documents supporting and explaining the collection targets referenced in those annual reports.</p>
<p>Responses / objections to document request</p>	<p>The Respondent objects to the Claimant’s request.</p> <p><i>First</i>, Article 3.3(a)(i) of the IBA Rules requires that “[a] <i>Request to Produce shall contain [...] a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents</i>”. This request must be rejected because it is vague and overbroad.</p> <p>The request refers to “<i>correspondence, reports or memoranda from and to the members of [the Grupo de Cobro Coactivo]</i>”. This description is so broad as to be unworkable for the purposes of a search. This request would require the Republic of Colombia to review the records of <u>every single document produced, sent or received</u> by any of the members of the <i>Grupo de Cobro Coactivo</i> over a period of seven years, and thus to navigate millions of documents in order to identify those—if any—which discuss the ANM’s target recovery of outstanding royalties from CMSA specifically.</p> <p>Further, the Claimant’s request for documents regarding amounts due by CMSA for obligations other than royalties (e.g. surface canon payments or other taxes not in dispute in this arbitration) is inappropriate. Indeed, the present dispute concerns CMSA’s obligation to pay mining royalties. Any other debts or obligations of CMSA are entirely irrelevant to the dispute and thus immaterial to its outcome. The Claimant has not provided any explanation in this regard.</p> <p><i>Second</i>, the information sought by the Claimants is in the public domain. This request must therefore be dismissed pursuant to Article 3.3(c)(i) of the IBA Rules.</p> <p>The ANM publishes its royalty collection targets annually.² The Claimant does not contend that these collection targets were established in order to increase CMSA’s royalty obligations. Quite to the contrary, the Claimant argues that “<i>the National Mining Agency sought to reassess the historic payment of royalties by CMSA and seek</i></p>

² As it did in the 2016 report to which Claimant refers in the context of this request (R-47), *see, e.g.*, <https://www.anm.gov.co/?q=content/informes-de-gestion>.

additional royalty payments with the purpose of meeting its collection targets". Therefore, any document containing the ANM's *Grupo de Cobro Coactivo*'s collection targets—as opposed to documents discussing why the targets were established—is sufficient to respond to this request. And these documents are publicly available.

Moreover, Law 1712 of 2014,³ relative to transparency and access to public national information, provides a framework through which the Claimant can access the information it here requests. Yet the Claimant makes no reference to Law 1712 nor why it would be unreasonably burdensome for the Claimant to obtain the documents it requests through the mechanism provided by Law 1712.

Third, the requested documents are not relevant to the case and material to its outcome. This request therefore fails to comply with Art. 9.2(a) of the IBA Rules.

The allegations which the requested documents would purportedly prove are entirely new. This request is therefore a *fishing expedition* and should be denied in full:

- i. The Claimant alleges that the requested documents are material and relevant because they will purportedly show that the ANM “*sought to reassess the historic payment of royalties by CMSA and seek additional royalty payments with the purpose of meeting its collection targets*”. This novel assertion is conspicuously absent from either the Memorial or the Request for Arbitration. The allegation that CMSA has suffered as a result of the ANM's royalty collection targets is unfounded and unexplained. Nor does the allegation find any justification in the factual exhibit (**R-47**) to which the Claimant refers, the ANM's 2016 management report (*Informe de Gestión*). The report provides a high-level overview of all of the ANM's functions and activities during 2016. Claimant points to two general statements contained in the report, neither of which supports its allegations. First, that royalty payments were lower in 2016 than in 2015 (p. 50 of **R-47**). It is not clear what implication the Claimant suggests should be drawn. The report (on the same page) explains that this reduction is due, among others, to a decrease in mineral prices, particularly coal. Second, Claimant points to the fact that the *Grupo de Cobro Coactivo* sought to increase the amount of outstanding ANM debts it collected in 2016 as opposed to previous years (p. 91 of **R-47**). The report contains no suggestion that a specific segment of the Colombian mining industry was targeted, much less a specific company. For the avoidance of doubt, there is no mention of CMSA in **R-47** other than a single reference to the existence of the present dispute, in the *Controversias Internacionales Originadas En Contratos Mineros* sub-section.⁴ Therefore, nothing in **R-47** supports the Claimant's contention that the attacked measures were triggered by the ANM's collection targets.
- ii. Equally, the vague assertion that the requested documents will prove that “*Colombia sets collection targets and compels its entities to abide by them*” finds no echo in either the Memorial or the Request for Arbitration. The assertion is murky. One is left to guess which entity is allegedly setting targets or doing the compelling and which entity is allegedly being compelled. Neither

³ http://www.secretariasenado.gov.co/senado/basedoc/ley_1712_2014.html

⁴ p. 96, **Exhibit R-47**.

	<p>does this assertion find any support in the factual exhibit to which the Claimant refers.</p> <p>Further, the requested documents cannot possibly have a bearing on the outcome of the case. The notion that the ANM “sought to reassess the historic payment of royalties by CMSA and seek additional royalty payments with the purpose of meeting” the <i>Grupo de Cobro Coactivo</i>’s “collection targets” is misconstrued and cannot form the basis of a request for the production of documents. There can be no link between the ANM’s collection targets and Colombia’s alleged breaches of international law. The request must be denied because it is logically untenable:</p> <p>i. The <i>Grupo de Cobro Coactivo</i>’s “collection targets” relate only to outstanding debts owed to the ANM for which there are “<i>títulos ejecutivos</i>”.⁵ The Claimant seeks to elide the cardinal difference between the collection and assessment of debts owed to the ANM. The <i>Grupo de Cobro Coactivo</i> is in no way involved in the assessment of whether CMSA owed a debt to the ANM. Indeed, the determination of whether CMSA owes royalties, and, if so, their quantification, is the prerogative of the ANM’s <i>Vicepresidencia de Seguimiento, Control y Seguridad Minera</i>.⁶ The <i>Grupo de Cobro Coactivo</i>’s sole function is to collect due and unpaid debts on behalf of the ANM, through a specific administrative procedure.⁷</p> <p>In other words, the assessment and collection of royalties are different prerogatives carried out by different organs within the ANM. This organic and functional separation is illustrated by the ANM’s Resolution 576 (which Claimant purports is in breach of international law). This resolution, which was issued by the <i>Vicepresidencia de Seguimiento, Control y Seguridad Minera</i>, clearly states that, if CMSA were to default on its payment obligations, the <i>Grupo de Cobro Coactivo</i> would become competent to ensure the collection of CMSA’s debt.⁸</p> <p>ii. None of Colombia’s impugned measures in any way relate to the <i>Grupo de Cobro Coactivo</i> or the ANM’s collection targets. There is no evidence on the record, and the Claimant does not contend that CMSA has ever been subject to a <i>cobro coactivo</i> procedure or has ever made a payment as a result of the <i>Grupo de Cobro Coactivo</i>’s actions. CMSA complied—albeit under protest—with all but two of the ANM’s measures under examination in the present arbitration.⁹ With respect to the payments made under protest, the <i>Grupo de Cobro Coactivo</i></p>
--	---

⁵ ANM’s 2018 *Reglamento Interno del Recaudo de Cartera* (“RIRC”), Art. 2.1, available at: https://www.anm.gov.co/sites/default/files/manual_cobro_coactivo_vf.docx

⁶ As evidenced by the documents on the record, including the royalties invoices presented by the Claimant, which were issued by the *Vicepresidencia de Seguimiento, Control y Seguridad Minera* (C-50, pp. 247-255) and the payment orders and requests for documents issued by the ANM (C-26, pp. 3-5; C-124, p. 6; C-129, pp. 1, 15).

⁷ The ANM’s *cobro coactivo* procedures, which aim at collecting debts owed to the ANM, are managed exclusively by the *Grupo de Cobro Coactivo* pursuant to the RIRC. The *cobro coactivo* procedure begins when the *Grupo de Cobro Coactivo* receives a *título ejecutivo*. This procedure may lead to the *Grupo de Cobro Coactivo*’s appraisal and auction of the debtor’s seized assets. As discussed below, CMSA was never subject to a *cobro coactivo* procedure.

⁸ Art. 3, C-35.

⁹ Order VSC-026 (C-26) and Resolution No. 576 (C-35).

	<p>had no reason to, and did not, intervene. As to the two outstanding measures, CMSA never made any payment to the ANM, which means that the <i>Grupo de Cobro Coactivo</i> did not collect any royalties from CMSA.</p> <p>iii. The annual “collection targets”¹⁰ to which Claimant refers are incommensurate with the sums in dispute. For example, in 2016, the <i>Grupo de Cobro Coactivo</i>’s collection target for <u>the whole Colombian mining industry</u> (of which nickel represents 2.54%¹¹) was 750 million COP. CMSA, on the other hand, paid close to 18 billion COP in royalties in Q2 of 2016 alone.¹² In that same quarter, the increase of CMSA’s royalty payments due to ANM Resolution 293 (which Claimant also alleges is illegal under international law) allegedly was 3.8 billion COP.¹³ In the context of this dispute, the quanta of the ANM’s collection targets are thus insignificant.</p> <p><i>Finally</i>, the Respondent objects to the Claimant’s request that the Republic of Colombia explain or justify if any responsive documents (i) do not exist or (ii) no longer exist. Such request is unreasonably burdensome and does not conform with the general practice in international arbitration. Further, the Claimant has not provided any explanation or justification of how or why the requested information would be relevant. They have thus failed to establish that the balance of equities weigh in their favor. This additional request therefore fails due to compelling considerations of procedural economy, proportionality, fairness and equality of the Parties (Article 9.2(g) of the IBA Rules).</p>
<p>Reply to Objections to the document request</p>	<p>Colombia’s objections are meritless and should be dismissed for the following reasons:</p> <p><i>First</i>, Claimant’s request is both narrow and specific, in accordance with Article 3.3(a) of the IBA Rules, and is, moreover, consistent with the terms of the production order made by the ICC Tribunal. Claimant requests specific documents (minutes of meetings and correspondence) prepared by one Government body (the National Mining Agency, including in particular the <i>Consejo Directivo</i> and the <i>Grupo de Cobro Coactivo</i>), relating to a single topic (monetary targets with respect to the collection of royalties or other payments from one entity, CMSA), and within a defined period of time (2015 to 2021). This is exactly what is required by the IBA Rules.</p> <p>Colombia asserts that Claimant’s request “would require the Republic of Colombia to review the records of <i>every single document produced, sent or received</i> by any of the members of the <i>Grupo de Cobro Coactivo</i> over a period of seven years” (emphasis added) to identify the requested documents. Colombia’s complaint is an objection to the process of document production, not to Claimant’s particular request (the sole request Claimant makes in this proceeding). By its nature, the document production process entails the review of documents other than those that are ultimately produced to identify responsive documents. As Colombia is undoubtedly aware, this process generally</p>

¹⁰ P. 91, **R-47**.

¹¹ Per p. 49, ANM, *Informe de Gestión 2016 (R-47)*, Nickel royalties constituted 2.54% of all royalties collected by the ANM in 2016.

¹² Cerro Matoso Nickel Royalty Payment Receipts Q3 2015 - Q4 2020 (CLEX 12), slide 5.

¹³ CLEX-12, slide 5.

involves the use of document review platforms and search terms to make that process more efficient. This is a process that Claimant has already *voluntarily* undertaken in response to Colombia's own requests.

Moreover, the contention that the request is "vague and overbroad" is curious in light of the breadth of Colombia's own document requests made in this proceeding, which in many instances encompass documents dating to 1982. Indeed, several of Colombia's requests not only cover periods of seven years or more (*ie*, Colombia's Requests Nos. 1-4), but date back more than a decade (*ie*, Colombia's Requests Nos. 1-2 and 4). In contrast, Claimant's Request No. 1 entails the review of documents prepared over the past seven years, and over a predetermined period (*ie*, the months of each year during which the Mining Agency typically prepares and approves its collection targets, of which Claimant is unaware).

Colombia's objection that the request encompasses collection targets relating to revenue other than royalties ignores the fact that the collection targets do not distinguish between types of revenue, as the annual report cited by Colombia shows.¹⁴ Accordingly, to separate out only specific references to royalties would result in few responsive documents.

Regarding Colombia's objection to the temporal scope of the request, documents from 2015 to 2021 are relevant and material to the outcome of the case due to the timing and continuing nature of Colombia's measures taken to extract additional royalty payments from CMSA, which began in 2015 and continue to the present day.

Second, Colombia argues that the Requested Documents are in the public domain. This is simply not the case. With respect to the claim that the collection targets themselves are published annually, the point is irrelevant: the Requested Documents – minutes of meetings and correspondence – relate to the considerations and decision-making process behind the targets. Colombia also suggests that Claimant should initiate a request for access to public records through Law 1712. This is an administrative process subject to government claims of privilege that takes months to complete – assuming the Requested Documents are ever received – and that often results with the petitioner seeking a compulsory order from a court. As the Tribunal is aware, Claimant's Reply submission is due in a matter of months, on February 25, 2022. The same argument could be made for practically any document request the Claimant might make. Colombia's position is also illogical in that it does not relieve it of any obligation to produce such documents, it merely adds a further bureaucratic step and removes the time limits established in the Procedural Order. The document production phase in an arbitration exists precisely so that Claimant can obtain documents not in its possession that are relevant and material to the case directly from the Respondent without having to seek them through a separate legal proceeding.

Third, Colombia argues that the Requested Documents are not relevant to the case or material to its outcome given that "[t]here can be no link between the ANM's collection targets and Colombia's alleged breaches of international law". This is unpersuasive. Under international law, arbitrary measures include those that are founded on prejudice or discretion or that are adopted for reasons that are different from those put forward by

¹⁴ See, e.g., ANM, *Informe de Gestión 2016 (R-47)*, p. 91.

	<p>the State (<i>see</i> Memorial, paras 166-72, 211). The Requested Documents are material to Claimant’s arbitrariness claim as they will show how Colombia sets collection targets and compels its entities to abide by them (potentially causing State entities to reopen past assessments of royalties to achieve such targets), evidencing motives for Colombia’s measures different from those put forward in Colombia’s Counter-Memorial.</p> <p>In addition, Colombia’s response relates only to the role of the <i>Grupo de Cobro Coactivo</i>, and fails to contest the materiality of the requested meeting minutes of the <i>Consejo Directivo</i> even though, according to the ANM’s public organizational chart, all authority flows through the Board,¹⁵ including questions of budgetary performance and revenue collection. Colombia’s response moreover suggests that the constituent parts of the ANM operate in a vacuum, and do not communicate or coordinate their efforts to achieve the overall objectives of the ANM. The reality is that the assessment and collection of royalties are inherently linked, and collection targets will necessarily relate to the amounts assessed, as the Requested Documents will show. Indeed, Colombia’s claim that collection is within the exclusive domain of the <i>Grupo de Cobro Coactivo</i> and that the quantification of royalties owed is an independent exercise performed by the <i>Vicepresidencia de Seguimiento, Control y Seguridad Minera</i> is directly contradicted by the ANM’s 2016 Annual Report (Colombia’s Exhibit R-47), which states at page 58 that “[l]a <i>Vicepresidencia de Seguimiento, Control y Seguridad Minero</i> con apoyo de los grupos misionales de Seguimiento y Control y de Regalías y Contraprestaciones Económicas realizó un importante trabajo durante la vigencia 2016 a fin de lograr unas cifras de recaudo y causación lo más altas posibles, en aras de dar cumplimiento a los objetivos trazados por la Agencia Nacional de Minería y la Vicepresidencia” (emphasis added).</p> <p>Finally, Colombia suggests that the request is improper because Claimant did not raise the issue in its Request for Arbitration or Memorial. Yet it was through Colombia’s submission of its Exhibit R-47 with its Counter-Memorial that Claimant became aware of the concept of “collection targets”.</p>
<p>Tribunal’s decision</p>	<p>Request No. 1 is granted, as it meets requirements R1 to R3:</p> <ul style="list-style-type: none"> - The request is sufficiently narrow and specific; - The request appears to be <i>prima facie</i> relevant and material for Claimant’s arbitrariness claim; - The Tribunal takes note of Claimant’s declaration that the requested documents are not available in the public domain, and are not in its possession, custody or control. <p>Regarding Respondent’s “public domain” argument, the Tribunal takes note of Claimant’s declaration that “the Requested Documents – minutes of meetings and correspondence – relate to the considerations and decision-making process behind the targets”, not to the publication of the “collection targets themselves” – which indeed are in public domain.</p>

¹⁵ Available at <https://www.anm.gov.co/sites/default/files/DocumentosAnm/organigrama-anm-11-octubre-2021.pdf>.

	<p>Finally, the Tribunal considers that the requested documents would not impose an unreasonable burden on Respondent, as they relate to a single topic (monetary targets with respect to the collection of royalties or other payments from CMSA), and within a defined period of time (2015 to 2021). Moreover, the requested documents (if any exist) are typically prepared, discussed and approved within a specific time of the year, which smooths the search to be conducted by Respondent.</p>
--	---

	<p>Therefore, Respondent should deliver the relevant documents (if any exist) by the date established in the procedural calendar set out in Procedural Order No. 1.</p>
--	---