



12 November 2020

Mr. Alexis Mourre
President of the International Court of Arbitration of
the International Chamber of Commerce
33-43 avenue du Président Wilson
75116 Paris
France

Re: ICC Case No. 20910/ASM/JPA (C-20911/ASM) – (1) Grupo Unidos por el Canal, S.A., (2) Sacyr, S.A., (3) Webuild, S.p.A, (4) Jan De Nul, N.V. v. Autoridad del Canal de Panamá

ICC Case No. 22466/ASM/JPA (C-22967/JPA) – (1) Grupo Unidos por el Canal, S.A., (2) Sacyr, S.A., (3) Webuild, S.p.A, (4) Jan De Nul, N.V. v. Autoridad del Canal de Panamá

Dear Mr. Mourre,

We write to you in our capacity as CEOs of global construction companies Sacyr, Webuild (formerly Salini-Impregilo) and Jan De Nul, each a repeat and long-time user of the ICC Dispute Resolution Services.

We were beyond troubled by the practices of the members of the tribunal in ICC Cases No. 20910/ASM/JPA (C-20911/ASM) and No. 22466/ASM/JPA (C-22967/JPA) that were recently disclosed to the parties, only after the claimants submitted disclosure requests to the arbitrators.

These belated disclosures are fully detailed in the submissions made to the Court, and include:

- one arbitrator enabling himself to sit alone (to the exclusion of the other arbitrator) with the president by nominating him to another unrelated panel;
- another arbitrator sitting with counsel for one of the parties; and
- mutually beneficial appointments so that the presidents of two tribunals on this project sat together outside the confines of the above proceedings, with all the risks and doubts that necessarily arise, especially when one of the presidents has already formed his views on issues that the second president is in the process of considering.

Such practices undermine the users' confidence in the system.

These newly discovered facts left us with no choice but to bring challenge applications against all three members of the tribunal in the above two cases. We can assure you that, had we known the truth at the time of nomination, we would have objected to the appointment of the arbitrators, and had we known about matters arisen since, we would have challenged the arbitrators then.

The world of users would expect the Court to review and decide these challenges with proper, objective and disinterested detachment to ensure that the interests of all users are upheld. Arbitrators cannot be allowed to take advantage of ICC users' cases to advance their arbitral careers furthering relationships with other arbitrators and so prejudicing the integrity – and proper independence – of the decision-making process. Not only are the instances of providing for their co-arbitrator's remuneration deeply troubling, but equally the opportunity for two arbitrators to spend time together, developing a bond by sitting on another tribunal outside the presence of the third arbitrator, or for an arbitrator to spend time sitting with counsel to one the parties, or with the president of another tribunal who already issued a relevant decision in a related case, raises a serious concern about how arbitrators build their views and opinions on issues of central importance to the case, outside the boundaries of the tribunal's collective deliberations. This is a fundamental issue of policy for the ICC Dispute Resolution Services.

Members of the business community turn to ICC arbitration precisely to avoid arrangements that give rise to suspicions and risks as to the arbitrators' independence and impartiality and freedom of judgment. This is even more so when billions of dollars are at stake. Users cannot accept any risk that the outcome of a dispute of fundamental importance to them may have been influenced by improper considerations. Transparency is the only way to preserve the trust that the users place in the integrity of the ICC arbitration system.

We are confident that the ICC Court will consider the challenge applications in these arbitrations with the careful attention required, taking into account the reputation of the ICC Dispute Resolution Services.

Yours faithfully,



Manuel Manrique Cecilia, Sacyr



Pietro Salini, Webuild



Jan-Piet De Nul, Jan De Nul