

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
WASHINGTON, D.C.**

ELECTRABEL S.A.

(Claimant)

v.

REPUBLIC OF HUNGARY

(Respondent)

(ICSID Case No. ARB/07/19)

Procedural Order No. 6

Dated: 11 November 2009

The Tribunal refers to the Claimant's application by letter dated 11 September 2009 and to the Parties' subsequent correspondence dated 18 September 2009, 2 October and 5 October 2009.

The Claimant's application relates to its Document Requests numbered 118 and 119, which were the subject of the Tribunal's Procedural Order No. 5 of 18 August 2009, whereby the Tribunal ordered the Respondent to produce such documentation to the Claimant no later than 31 August 2009.

In its letter dated 11 September 2009, the Claimant contended that the Respondent had not fully complied with the Tribunal's order; and it sought a further order from the Tribunal that the Respondent should produce forthwith (a) an unredacted version of the London Economics Agreement (redacting only the fee); (b) Copies of any and all briefings that London Economics was given on the calculation of State aid and the Stranded Costs Methodology; (c) Copies of the details of State aid calculations that the Respondent has forwarded to the Commission subsequent to those that were sent to Dunamenti in January 2009; (d) Copies of the inputs, outputs and assumptions that were used to calculate the figures and explanations/justifications of the results for Dunamenti's recoverable State aid and stranded costs that were forwarded to Dunamenti on 9 January 2009 as well as for any other State aid calculations that the Respondent has forwarded to the Commission; (e) Copy of the Model used to calculate State aid and stranded costs, which includes the inputs, outputs and assumptions referred to in paragraph (c) above; and (f) Copies of any working papers relating to the calculations of recoverable State aid and stranded costs that were forwarded to Dunamenti on 9 January 2009 or any subsequent calculations.

The Respondent addressed the Claimant's complaints in its letter dated 18 September 2009, with four attachments. In summary, without here setting out the details of its submissions, the Respondent contends that it has complied fully with its obligations to produce documentation; and it denies any breach of the Tribunal's Procedural Order No. 5.

Having considered the Parties' respective submissions, the Tribunal does not consider that it would be appropriate to make the order requested by the Claimant.

The Tribunal would wish, however, to draw the Parties' specific attention to one or more of the possibilities, at or after the main hearing next February 2010, that (i) the Tribunal may require any redacted document to be produced by a requested party unredacted for inspection by the Tribunal or "special referee" for confirmation that only irrelevant passages have been redacted in the version produced to the requesting party; (ii) the Tribunal may draw an adverse inference against any party in wilful non-compliance with any order by the Tribunal for document production, being guided generally by Article 9(4) of the IBA Rules; and (iii) the Tribunal may order the legal and arbitration costs wasted by an adjournment of the main hearing caused by such wilful non-production to be paid by the defaulting party, in any event.

The Tribunal also notes that the Claimant, by its letter dated 2 October 2009, rejects any “implication” by the Respondent that the Claimant’s application is intended to support the separate application to annul the European Commission’s Decision on State aid brought by Dunamenti (the Claimant’s subsidiary) before the Court of First Instance in Luxembourg.

[Signed]

V.V.Veeder
President of the Tribunal