

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

REPUBLIC OF ARGENTINA,

Petitioner,

v.

AWG GROUP LTD.,

Respondent.

Civil Action No. 15-cv-01057-BAH

RESPONSE TO AWG GROUP LTD.’S NOTICE OF SUPPLEMENTAL AUTHORITY

The submission by AWG Group Ltd. (“AWG”) of *EDF International S.A. v. Argentina*, ICSID Case No. ARB/03/23, Decision on Annulment (Feb. 5, 2016) (“*EDFI*”), is inappropriate. *EDFI* is an ICSID decision which is not binding precedent even in other ICSID arbitrations, much less in a U.S. court proceeding under the Federal Arbitration Act (“FAA”), is factually distinct from the present case, was decided pursuant to a deferential standard of review based on an interpretation of the ICSID Convention inapplicable to the FAA, and does not represent a change in relevant law applicable in this Court.

Argentina has already distinguished the findings affirmed in *EDFI*, both with respect to Professor Kaufmann-Kohler’s disqualification and the state of necessity defense, in its prior submissions. *See* ECF No. 17 at 18, 21, 25; ECF No. 20 at 14, 24. For example, in this case, UBS held a direct stake in claimant Vivendi for its own benefit and was also Vivendi’s largest single shareholder, and in addition UBS was one of the largest direct shareholders in a second claimant, Suez. ECF No. 17 at 6-7. In contrast, it was “critical” to the *EDFI* Annulment

Committee, in declining to annul the award based on Professor Kaufmann-Kohler's being a director of UBS, that UBS held EDFI shares only indirectly and for pension fund beneficiaries. *EDFI* ¶ 161; *see also* *EDFI* ¶ 155 (“By contrast, in *Vivendi II*, it seems that UBS was the largest shareholder in the Claimant itself.”).¹ The *EDFI* Annulment Committee also directly rejected the contention, repeated by AWG in this case, that the unanimity of an award precludes annulment for lack of arbitrator independence or impartiality. *EDFI* ¶ 135 (“It is impossible to tell what degree of influence on one or both colleagues an arbitrator might have had in the course of what are necessarily confidential deliberations.”). In any event, here, the Award was not unanimous on a critical point. ECF No. 17 at 14-15; ECF No. 20 at 20.

Argentina renews its request for oral argument in this matter and is prepared in addition to address AWG's recent submission in supplemental briefing if the Court would find that beneficial.

Dated: February 12, 2016
Washington, D.C.

Respectfully submitted,

/s/ Matthew D. Slater

Matthew D. Slater (DC Bar No. 386986)
Teale Toweill (DC Bar No. 996061)
CLEARY GOTTLIEB STEEN & HAMILTON LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Telephone: (202) 974-1500
Facsimile: (202) 974-1999
mslater@cgsh.com
ttoweill@cgsh.com

Attorneys for Petitioner The Republic of Argentina

¹ *Vivendi II* is the Vivendi Annulment Decision on which Argentina relied in prior briefing. *See* ECF No. 17 at 11.