

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Sauna UK BidCo Limited**

**v.**

**Republic of Finland**

**(ICSID Case No. ARB/24/38)**

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**PROCEDURAL ORDER NO. 5**

**Decision on the Respondent's Request for a Ruling on HCI Designation**

***Members of the Tribunal***

Mr. Audley Sheppard KC, President of the Tribunal

Mr. D. Brian King, Arbitrator

Mr. Eduardo Silva Romero, Arbitrator

***Secretary of the Tribunal***

Ms. Anna Holloway

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19 December 2025

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## **I. PROCEDURAL BACKGROUND**

1. On 14 May 2025, the Tribunal issued Procedural Order No. 2 (“PO2”), addressing confidentiality and transparency in this proceeding.
2. On 8 December 2025, the Respondent filed a request pursuant to paragraph 33 of PO2 that the Tribunal resolve a dispute regarding Sauna’s assertion of Highly Confidential Information (“HCI”) in respect of excerpts from Exhibit C-110, Sauna’s [REDACTED], that it had filed with its Memorial (“Respondent’s Request”). The Respondent requested “that the Tribunal grant[] permission for Finland to rely on selected portions of slides 8-11 of [C-110] in the SPN Arbitration on a tribunal- and attorney-eyes only basis.” The Respondent wishes to rely on these excerpts in the forthcoming Counter-Memorial in the SPN Arbitration, due on 18 December 2025.
3. Following the Tribunal’s invitation, on 10 December 2025, the Claimant filed its observations on the Respondent’s Request. The Claimant requested that the Respondent’s Request be rejected and that the Tribunal “confirm that the [REDACTED] is properly designated as HCI under PO2.”
4. With the leave of the Tribunal, the Respondent filed a response to the Claimant’s 10 December 2025 observations early on 12 December 2025 and the Claimant filed its final observations later that same day.
5. On 15 December 2025, the Centre, on the instructions of the Tribunal, wrote to the Parties as follows: “Given the timing of the pending submission in issue, the Tribunal informs the parties now that it declines Finland’s application to lift the HCI categorisation over Exhibit C-110 to allow Finland to produce it (or excerpts) in the SPN Arbitration, but gives Finland leave to reapply should circumstances change. Reasons will follow.” This Procedural Order No. 5 sets out the Tribunal’s reasons.

## **II. SUMMARY OF PARTIES’ POSITIONS**

6. In the interests of procedural economy and bearing in mind the relative urgency of the Respondent’s Request, the Tribunal provides here only a high-level summary of the positions of the Parties; however, it has reviewed carefully the Parties’ complete submissions.

### **A. THE RESPONDENT’S POSITION**

7. The Respondent argues that Sauna has taken an unreasonable and incorrect approach to designating as HCI.<sup>1</sup> It argues that Sauna proposed the HCI regime in PO2 on the basis that it was intended to prevent the disclosure of “confidential business information” and asserts there is no basis for extending the regime to cover “especially sensitive material” or for imposing a new requirement that the information must not be available from other sources.<sup>2</sup>
8. It contends that Sauna bears the burden of establishing that the information in the designated excerpts is “confidential business information,” but it cannot discharge this burden. [REDACTED]

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<sup>1</sup> Respondent’s letter of 8 December 2025, Section I.

<sup>2</sup> Respondent’s letter of 8 December 2025, para. 15.

[REDACTED] Further, the information (from [REDACTED]) is now outdated and transaction specific.<sup>3</sup>

9. The Respondent also notes that there can be no dispute that the information is relevant to the issues in the SPN Arbitration, and there is no prejudice to Sauna in allowing the Respondent's Request (other than a concern about undermining SPN's position in the parallel arbitration, which is not a ground for HCI designation).<sup>4</sup> By contrast, Finland says, not allowing Finland to rely on the evidence in question in the SPN Arbitration would be to deny Finland due process.<sup>5</sup> In this context, the Respondent characterizes Sauna's assertion that [REDACTED] as "not [ ] serious" – [REDACTED].<sup>6</sup>
10. The Respondent offers to disclose the selected sections of C-110 on an attorney and tribunal-eyes only basis, to eliminate any residual concern regarding alleged confidentiality, and notes that [REDACTED].<sup>7</sup> It rejects in this regard Sauna's argument that a due process concern arises because, as a non-party to the SPN Arbitration, Sauna would have no right to correct "mischaracterisations" of its internal documents – Respondent states that Sauna has not explained why it has a concern about due process rights in relation to a parallel arbitration to which it is not a party. [REDACTED] In any event, Finland submits that it would act in good faith in tendering the evidence in the SPN arbitration.<sup>8</sup>
11. Finally, with respect to the Claimant's assertion that Finland must explain why the material already available to it is insufficient, Finland states that while the content of C-110 is derived from public information, the content itself – including highly relevant evidence of Sauna's [REDACTED] – is not available from other sources.<sup>9</sup>

#### **B. THE CLAIMANT'S POSITION**

12. The Claimant argues that (i) the designated sections of C-110 are "plainly HCI" (as defined in PO2) and Finland has identified no principled basis justifying the removal of the designation, and (ii) permitting disclosure would cause serious prejudice to Sauna.<sup>10</sup>
13. On the legitimacy of the designation, the Claimant emphasizes that PO2 allows the Parties to designate "especially sensitive material as [HCI]" and that C-110, a document containing confidential business information (including Sauna's [REDACTED]), plainly meets that standard. It points out that the underlying data need not itself be confidential so long as the resulting analysis or presentation is. The Claimant further argues that the fact that [REDACTED]

<sup>3</sup> Respondent's letter of 8 December 2025, para. 17.

<sup>4</sup> Respondent's letter of 8 December 2025, para. 17.

<sup>5</sup> Respondent's letter of 8 December 2025, para. 18.

<sup>6</sup> Respondent's letter of 12 December 2025, para. 3.

<sup>7</sup> Respondent's letter of 8 December 2025, para. 19.

<sup>8</sup> Respondent's letter of 12 December 2025, para. 2.

<sup>9</sup> Respondent's letter of 12 December 2025, para. 4.

<sup>10</sup> Claimant's letter of 10 December 2025, paras. 2-3.

- [REDACTED]
14. On potential prejudice, Sauna argues that it would suffer real and material prejudice if this HCI were disclosed to the SPN Claimants. Sauna is a competitor to Supernova and AMF, and their own [REDACTED] are highly confidential and commercially sensitive. The fact that the underlying source data may be public is irrelevant; it is the approach to Sauna's internal [REDACTED] that is confidential. [REDACTED]
- [REDACTED] Moreover, as a non-party in the SPN arbitration, Sauna would have no right to correct any mischaracterisations of its internal documents or to respond to Finland's submission, nor could it provide additional information or evidence to the claimants in the SPN Arbitration without revealing further HCI material to its competitors.<sup>14</sup>
15. By contrast, it says, the Respondent has offered no justification as to why it would be prejudiced in *this case* by Sauna's HCI designations of C-110.<sup>15</sup>
16. As regards the "attorney- and tribunal's eyes only" proposal made by Finland, the Claimant says that this "only exacerbates the due process concerns." It is unsure what power this Tribunal has to decide the basis on which evidence could be submitted in the parallel proceeding. Moreover, it says that if excerpts from C-110 are tendered in the SPN arbitration, this will result in the situation where only Finland will have access to the *full* document, while the SPN claimants and the tribunal in the SPN Arbitration will not, which would "run roughshod over basic tenets of fairness and due process." Sauna rejects the suggestion that the proposal is analogous to the arrangements with its legal counsel and experts, notably because its lawyers and experts act on Sauna's behalf (and Finland does not), and because the HCI shared in this arbitration was not for use by those advisors in the SPN arbitration.<sup>16</sup> It also rejects any suggestion that the fact that SPN claimants can make submissions on the tendered evidence in the SPN Arbitration could address the concerns – that cannot practically happen unless Sauna provides more HCI to them, and Debevoise cannot make submissions on behalf of a non-party in the parallel arbitration.<sup>17</sup>
17. Finally, Sauna notes that, as Finland acknowledges, the source information contained in C-110 is already available to Finland in the SPN Arbitration. It argues that "[p]roportionality dictates that Finland should rely on those non-HCI materials rather than compel Sauna to disclose its [REDACTED] [REDACTED] and comments that Finland has not demonstrated why the materials already available to it are insufficient.<sup>18</sup>

### III. ANALYSIS

18. The Tribunal begins by recalling the relevant passages of PO2, section H, which provide:

<sup>11</sup> Claimant's letter of 10 December 2025, paras. 14-18; Claimants' letter of 12 December 2025, paras. 2-4.

<sup>12</sup> Claimant's letter of 12 December 2025, para. 5.

<sup>13</sup> Claimant's letter of 10 December 2025, paras. 19-20.

<sup>14</sup> Claimant's letter of 10 December 2025, paras. 5, 21-23.

<sup>15</sup> Claimant's letter of 10 December 2025, para. 20.

<sup>16</sup> Claimant's letter of 10 December 2025, paras. 5, 24-25.

<sup>17</sup> Claimant's letter of 12 December 2025, para. 6.

<sup>18</sup> Claimant's letter of 10 December 2025, paras. 7, 27-30.

H. DISCLOSURE OF HIGHLY CONFIDENTIAL INFORMATION IN ICSID CASE NO. ARB/24/37

28. Notwithstanding any confidentiality provisions contained in this PO2, the Parties shall be entitled to disclose information from these proceedings (including the Award, orders and decisions of the Tribunal, the Parties' written submissions and supporting documents, transcripts and recordings of hearings, and documents produced by the Parties in response to document production requests) in ICSID Case No. ARB/24/37 (*Suomi Power Networks TopCo B.V., Supernova II Bidco BV and AMF Tjänstepension AB v. Republic of Finland*), subject to the procedure set forth in paragraphs 29–33 below being followed in the case of material marked as “Highly Confidential”.

29. Each Party shall be permitted to designate especially sensitive material as “Highly Confidential Information” in accordance with Rule 66 of the ICSID Arbitration Rules.

30. Highly Confidential Information shall be kept confidential by the Tribunal and each of the Parties, and shall be used only in connection with the Arbitration. This requirement shall apply except and to the extent that disclosure may be required of a Party to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority. The Tribunal may issue orders to set forth the terms of this confidentiality. This requirement shall be without prejudice to all other obligations of confidentiality in the arbitration.

31. A Party wishing to designate material as Highly Confidential Information shall do so in the following manner:

- i. The first page of each document containing Highly Confidential Information is to be clearly marked with the words: “**Highly Confidential Information**”.
- ii. To the extent that information stored or recorded in the form of electronic or other media is produced in such form, the producing party may designate such information as Highly Confidential Information by cover letter clearly identifying such information.
- iii. If the document also contains information that the designating Party believes is not Highly Confidential Information, it shall indicate the relevant pages or paragraphs that contain or do not contain Highly Confidential Information, as may be more appropriate. The receiving Party may request that the producing Party provide a version of the document in which the Highly Confidential Information is redacted. The producing Party shall not unreasonably withhold consent from creating a redacted version so long as (i) the amount of information not redacted on the document is substantial in amount and significant in substance, and (ii) the burden associated with providing such redacted documents is not undue (such burden to be determined based in part on the total number of documents for which the request is made).

32. A Party may challenge the other Party's designation of documents, material, or information designated as Highly Confidential Information by notice to the designating Party within 21 days after receiving that information. The notice shall identify the information the challenging Party considers to have been mis-designated as Highly Confidential Information, and the reasons it believes the information is not Highly Confidential Information. The designating Party shall respond to any such notice within 21 days either by removing the Highly Confidential Information designation or providing the reasons for its designation of the information as Highly Confidential Information.

33. If the Parties are unable to agree whether the documents, materials, or information constitute Highly Confidential Information, a Party may make an application to the Tribunal to resolve the dispute. The Party asserting that the materials are Highly

Confidential Information shall have the burden of establishing that they warrant the designation. Any successful challenge to the designation of documents, materials, or information as Highly Confidential Information shall not operate as a waiver of any protections otherwise afforded to such documents, materials, or information on any other basis. The Tribunal shall endeavor to rule on any applications filed within 14 days of receiving such application.”

19. The Tribunal notes that documents in this arbitration may be produced in the SPN arbitration, nevertheless as an exception, a Party may designate especially sensitive information as HCI. The Party so designating has the burden to justify that categorization.
20. The Tribunal considers that there are a number of factors that could augur in favour of denying HCI designation over slides 8-11 of C-110 and allowing them to be produced in the SPN arbitration, including:
  - i. The premise of section H of PO2 favours sharing and transparency between the two arbitrations;
  - ii. The analysis in the [REDACTED], so it is less likely to be especially sensitive today;
  - iii. The respective investors [REDACTED], so it is quite possible that Supernova and AMF carried out a similar analysis;
  - iv. Sauna is a shareholder in SPN, and it is possible that [REDACTED] are already known to the claimants in the SPN arbitration;
  - v. The witness statement of [REDACTED] in this arbitration is no longer HCI and can be produced in the SPN arbitration, and he refers often to C-110 [REDACTED];
  - vi. [REDACTED] who are the Claimants’ regulatory and damages experts in both arbitrations, have seen [REDACTED] but (presumably) cannot reveal in the SPN arbitration that it is a document they have viewed and cannot describe its contents or otherwise bring it to the attention of the tribunal (whether it affects their opinions or not).
21. However, at the present time, the Tribunal is persuaded not to lift the HCI designation, because:
  - i. [REDACTED] generally are often considered especially sensitive, and the Tribunal accepts Sauna’s representation that the slides in question remain so;
  - ii. To the extent that the [REDACTED] unless they were shared, in which case, Finland could ask for the production of relevant documents in the SPN arbitration;
  - iii. To the extent that the slides go to questions of damages, [REDACTED] etc. are referred to in the witness statement of [REDACTED] and can be raised without need for the [REDACTED].
  - iv. Sauna would not necessarily have an opportunity to comment on submissions on the slides made by Finland.

22. On balance, the Tribunal concludes that Finland is not significantly prejudiced, because it can refer to the witness statement of [REDACTED] to make various points about regulatory risk and financial analysis.
23. Nevertheless, we give leave to Finland to reapply in the event that, for example, [REDACTED] is requested by the SPN tribunal, or it becomes evident that it was shared and Finland cannot otherwise obtain a copy through document production, or substantial prejudice may result.

#### **IV. DECISION**

24. The Tribunal declines Finland's application but gives leave for it to reapply.

On behalf of the Tribunal,

[signed]

Audley Sheppard KC  
President of the Tribunal  
Date: 19 December 2025