

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Uniper SE, Uniper Benelux Holding B.V. and Uniper Benelux N.V.**

**v.**

**Kingdom of the Netherlands**

**(ICSID Case No. ARB/21/22)**

---

**PROCEDURAL ORDER NO. 1**

***Members of the Tribunal***

Ms. Tina Cicchetti, President of the Tribunal

Ms. Jean Kalicki, Arbitrator

Mr. D. Brian King, Arbitrator

***Secretary of the Tribunal***

Dr. Jonathan Chevry

---

March 3, 2022

## **Contents and Agenda for the First Session**

1.	Applicable Arbitration Rules .....	4
2.	Constitution of the Tribunal and Tribunal Members' Declarations .....	5
3.	Fees and Expenses of Tribunal Members .....	5
4.	Presence and Quorum .....	6
5.	Rulings of the Tribunal .....	6
6.	Power to Fix Time Limits .....	6
7.	Secretary of the Tribunal.....	7
8.	Representation of the Parties.....	8
9.	Apportionment of Costs and Advance Payments to ICSID .....	9
10.	Place of Proceeding.....	9
11.	Procedural Language, Translation and Interpretation.....	10
12.	Routing of Communications .....	11
13.	Number of Copies and Method of Filing of Parties' Pleadings .....	11
14.	Number and Sequence of Pleadings.....	12
15.	Production of Documents.....	13
16.	Submission of Documents.....	14
17.	Witness Statements and Expert Reports.....	16
18.	Examination of Witnesses and Experts.....	17
19.	Pre-Hearing Organizational Meeting .....	18
20.	Hearings .....	19
21.	Records of Hearings and Sessions .....	20
22.	Post-Hearing Memorials and Statements of Costs .....	20
23.	Publication of the Award, Decisions and Orders .....	21
24.	Transparency and Confidentiality of Other Case Materials.....	21
25.	Non-Disputing Party Submissions .....	22
26.	Cybersecurity .....	22
27.	General.....	22
	<b>ANNEX A .....</b>	<b>24</b>
	<b>ANNEX B.....</b>	<b>26</b>
	<b>ANNEX C .....</b>	<b>29</b>

## **INTRODUCTION**

The first session of the Tribunal was held on February 3, 2022, starting at 9.00 a.m. EST, by videoconference. The session was adjourned at 10.32 p.m. EST.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

### Members of the Tribunal:

Ms. Tina Cicchetti, President of the Tribunal

Ms. Jean Kalicki, Arbitrator

Mr. D. Brian King, Arbitrator

### ICSID Secretariat:

Dr. Jonathan Chevry, Secretary of the Tribunal

Mr. Nicolas Jelonek, Intern

### Participating on behalf of the Claimants:

#### *Counsel*

Mr. Jeffrey Sullivan QC, Gibson Dunn & Crutcher UK LLP, London

Ms. Sarah Wazen, Gibson, Dunn & Crutcher UK LLP, London

Ms. Stephanie Collins, Gibson, Dunn & Crutcher UK LLP, London

Ms. Nadia Wahba, Gibson, Dunn & Crutcher UK LLP, London

Mr. E. Jin Lee, Gibson, Dunn & Crutcher LLP, New York

Ms. Anna Masser, Allen & Overy, Frankfurt, Germany

Mr. Holger Jacobs, Allen & Overy, Frankfurt, Germany

#### *Party Representatives*

Ms. Dyonne Rietveld, Uniper, Rotterdam, the Netherlands

Ms. Stefanie Alexander, Dusseldorf, Germany

Dr. Jens Werner, Dusseldorf, Germany

Mr. Edgar Smallegange, Rotterdam, the Netherlands

Mr. Philipp-Alexander Schütter, Dusseldorf, Germany

### Participating on behalf of the Respondent:

Mr. Albert Marsman, De Brauw Blackstone Westbroek N.V., Amsterdam

Mr. Abdel Zirar, De Brauw Blackstone Westbroek N.V., Amsterdam

Mr. Alessio Gracis, De Brauw Blackstone Westbroek N.V., Amsterdam

Procedural Order No. 1

Mr. Johan den Breems, De Brauw Blackstone Westbroek N.V., Amsterdam  
Ms. Iulia-Georgiana Croiteru, De Brauw Blackstone Westbroek N.V., Amsterdam

*Party Representatives*

Dr. René Lefeber, Ministry of Foreign Affairs,  
Ms. Dorieke Overduin, Ministry of Economic Affairs and Climate  
Mr. Patrick van den Berghe, Ministry of Economic Affairs and Climate  
Ms. Angela Giuliano, Ministry of Economic Affairs and Climate  
Ms. Selma Blank, Ministry of Foreign Affairs

The Tribunal and the parties considered the following:

- The Draft Procedural Order circulated by the Tribunal Secretary on December 13, 2021; and
- The parties' comments on the Draft Procedural Order received on January 13, 2022 and February 15, 2022, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree; and

Following the First Session, the Tribunal held a Hearing on the Claimants' Request for Provisional Measures, dated December 3, 2021. This Request is not addressed in this Order and is subject to a separate decision from the Tribunal.

Following the session, the Tribunal now issues the present Order:

\*\*\*

**ORDER**

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The Procedural Calendar is attached as Annex B.

1. Applicable Arbitration Rules  
*Convention Article 44*

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. Constitution of the Tribunal and Tribunal Members' Declarations

*Arbitration Rule 6*

- 2.1. The Tribunal was constituted on December 2, 2021, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on December 2, 2021.
- 2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

3. Fees and Expenses of Tribunal Members

*Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees*

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
  - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
  - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

Procedural Order No. 1

4. Presence and Quorum

*Arbitration Rules 14(2) and 20(1)(a)*

- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Rulings of the Tribunal

*Convention Article 48(1); Arbitration Rules 16, 19 and 20*

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. The Tribunal will draft all rulings, including the Award, within a reasonable time period. If a procedural ruling has not been issued within one month after the final submission on a particular matter, the Tribunal will provide the parties with status updates every week. If the Award or a Decision has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every month.
- 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary electronically in the form of a letter or email.
- 5.6. Any ruling of the Tribunal, including the certified copy of the award, will be dispatched electronically to the parties.

6. Power to Fix Time Limits

*Arbitration Rule 26(1)*

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

Procedural Order No. 1

- 6.3. The parties may also agree to short extensions of time limits, provided that: (a) they inform the Tribunal prior to the scheduled deadline; and (b) the agreed extension does not affect any hearing date or materially affect other steps in the Procedural Calendar.
- 6.4. If one side experiences difficulty with any time limit, it should consult the other side immediately to explore whether the parties can agree on a modification of the Procedural Calendar. If such consultation is not possible in the circumstances, or if the parties cannot reach agreement, the relevant party may apply to the Tribunal for an extension of time.

7. Secretary of the Tribunal

*Administrative and Financial Regulation 25*

- 7.1. The Tribunal Secretary is Dr. Jonathan Chevry, Legal Counsel, ICSID, or such other person as ICSID may notify to the Tribunal and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Dr. Jonathan Chevry  
ICSID  
MSN C3-300  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 473-2812  
Fax: + 1 (202) 522-2615  
Email: [jchevry@worldbank.org](mailto:jchevry@worldbank.org)  
Paralegal name: Maria-Rosa Rinne  
Paralegal email: [mrinne@worldbank.org](mailto:mrinne@worldbank.org)

- 7.3. For local messenger deliveries, the contact details are:

Dr. Jonathan Chevry  
ICSID  
1225 Connecticut Ave. N.W.  
(World Bank C Building)  
3rd Floor  
Washington, D.C. 20036  
USA  
Tel. 202-458-1534

8. Representation of the Parties  
*Arbitration Rule 18*

8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For the Claimants:

Mr. Jeffrey Sullivan QC  
Ms. Sarah Wazen  
Ms. Stephanie Collins  
Ms. Nadia Wahba  
Gibson, Dunn & Crutcher UK LLP  
Telephone House, 2-4 Temple Avenue  
London, EC4Y 0HB  
United Kingdom  
Tel.: +44 (0)20 7071 4000  
Emails:  
[jeffrey.sullivan@gibsondunn.com](mailto:jeffrey.sullivan@gibsondunn.com)  
[swazen@gibsondunn.com](mailto:swazen@gibsondunn.com)  
[scollins@gibsondunn.com](mailto:scollins@gibsondunn.com)  
[nwahba@gibsondunn.com](mailto:nwahba@gibsondunn.com)

and

Mr. E. Jin Lee  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166-0193  
United States of America  
Tel.: +1 -212-35 1-2413  
Email:  
[elee@gibsondunn.com](mailto:elee@gibsondunn.com)

For the Respondent:

Dr. René Lefeber, Legal Adviser  
Ministry of Foreign Affairs  
Rijnstraat 8  
2515 XP Den Haag  
The Netherlands

Email:

and

Ms. Dorieke Overduin, LL.M.  
Ministry of Economic Affairs and Climate  
Bezuidenhoutseweg 73  
2594 AC Den Haag  
The Netherlands

Email:

and

Mr. Albert Marsman  
Mr. Bommel van der Bend  
Mr. Abdel Zitar  
Mr. Alessio Gracis  
Mr. Johan den Breems  
Ms. Iulia-Georgiana Croitoru  
Ms. Joyce Man

De Brauw Blackstone Westbroek Claude  
Debussylaan 80  
1082 MD Amsterdam  
The Netherlands



Procedural Order No. 1

Tel.:

Albert Marsman: +31 6 2053 7452

Bommel van der Bend: +31 6 5325 6773

Emails:

[albert.marsman@debrauw.com](mailto:albert.marsman@debrauw.com)

[bommel.vanderbend@debrauw.com](mailto:bommel.vanderbend@debrauw.com)

[abdel.zirar@debrauw.com](mailto:abdel.zirar@debrauw.com)

[alessio.gracis@debrauw.com](mailto:alessio.gracis@debrauw.com)

[johan.denbreems@debrauw.com](mailto:johan.denbreems@debrauw.com)

[iulia.croitoru@debrauw.com](mailto:iulia.croitoru@debrauw.com)

[joyce.man@debrauw.com](mailto:joyce.man@debrauw.com)

- 8.2. A party shall not appoint a person to be a representative or an expert in this arbitration when a relationship exists between that person and a member of the Tribunal that would create a conflict of interest. The Tribunal may, on application from any party, or of its own motion and in consultation with the parties, exclude any additional or alternative representative, or any expert, from the arbitration, if the Tribunal concludes that such exclusion is necessary to protect or preserve the integrity of the arbitration. If the Tribunal excludes any expert or representative from the arbitration, a party will be allowed to appoint alternative representatives or experts.
9. Apportionment of Costs and Advance Payments to ICSID  
*Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28*
- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of December 3, 2021, ICSID requested that each party pay US\$ 175,000 to cover the initial costs of the proceeding. ICSID received the Claimants' payment on December 15, 2021 and the Respondent's payment on December 22, 2021.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
10. Place of Proceeding  
*Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)*
- 10.1. The place of the proceeding shall be Washington, D.C., the seat of the Centre.

Procedural Order No. 1

- 10.2. The parties agree that the hearing is to be held at the place of the proceeding unless otherwise agreed by the parties or decided by the Tribunal after consulting with the parties.
  - 10.3. If appropriate in light of health or other circumstances, the Tribunal may decide to conduct the hearing either partially or entirely virtually after consulting with the parties.
  - 10.4. The Tribunal members may deliberate at any place and by any appropriate means the Tribunal considers convenient.
11. Procedural Language, Translation and Interpretation  
*Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22*
- 11.1. English is the procedural language of the arbitration.
  - 11.2. Documents filed in any other language must be accompanied by a translation into English.
  - 11.3. If the document is lengthy (i.e. more than five pages) and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
  - 11.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
  - 11.5. Documents exchanged between the parties in a language other than English under §15 below (Production of Documents) need not be translated.
  - 11.6. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English language shall be interpreted, simultaneously if possible. ICSID will consult the parties on the identity of the interpreters prior to their engagement.
  - 11.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
  - 11.8. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

12. Routing of Communications

*Administrative and Financial Regulation 24*

- 12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.
- 12.4. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings

*Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23*

13.1. The parties shall:

- 13.1.1. By the relevant filing date, submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation attached to the pleading ("**electronic filing**");<sup>1</sup> and
- 13.1.2. Within three working days following the electronic filing, upload the pleading with all the supporting documentation (including witness statements, expert reports, exhibits and legal authorities) and updated index to the file sharing platform that will be created by ICSID for purposes of this case.
- 13.2. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word). Any Excel files submitted by the parties must be exhibited in their native Excel format, except where such native Excel file (i) was not prepared for the purposes of the arbitration and (ii) is no longer available.
- 13.3. All pleadings shall be accompanied by a cumulative index hyperlinked to all the supporting documentation that the party has submitted up to the date of the

---

<sup>1</sup> Please note that the World Bank server does not accept emails larger than 25 MB.

Procedural Order No. 1

pleading, submitted within three working days following the electronic filing. The index shall indicate the document number and the pleading with which it was submitted. (Please follow the naming conventions contained in **Annex A**).

13.4. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall arrange the preparation of an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents. Subject to modalities to be agreed at the pre-hearing organizational meeting, this could be in the form of an electronic bundle prepared by a hearing service provider. The Parties shall also:

13.4.1. upload this electronic copy to the file sharing platform created by ICSID for purposes of this case; and

13.4.2. courier to the ICSID Secretariat at the address indicated at §7.3 above and to Mr. D. B. King at the address indicated at §13.5 below a USB drive containing this electronic copy.

13.5. The addresses of the Tribunal Members are as follows:

Ms. Tina Cicchetti	Ms. Jean Kalicki	Mr. D. Brian King
Arbitration Place	Arbitration Chambers	New York University School
Bay Adelaide Centre West	142 West 57th St., 11th	of Law
333 Bay Street, Suite 900	Floor	40 Washington Square
Toronto ON M5H 2R2	New York, NY 10019	South, Room 310D
Canada	United States of America	New York, NY 10012
		United States of America

13.6. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.

13.7. A filing shall be deemed timely if sent by a party by midnight Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings  
*Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31*

14.1. The written procedure will consist of the pleadings indicated in the Procedural Calendar in **Annex B**, to be filed within the time limits set therein.

14.2. The submission of Post-Hearing Memorials will be decided in accordance with §22 below.

15. Production of Documents

*Convention Article 43(a); Arbitration Rules 24 and 33-36*

15.1. Without prejudice to Article 43(a) of the Convention, the International Bar Association Rules for Taking of Evidence in International Arbitration (2020) (“**IBA Rules**”) may be used to guide the Tribunal regarding document production in this case. The IBA Rules shall not be regarded as legally binding on the Tribunal.

15.2. Without prejudice to any documents voluntarily submitted by the parties or required by the Tribunal, each party may request the other party to produce documents not accessible to the requesting party that are relevant to the case and material to its outcome (“**Document Request**”).

15.3. A Document Request shall contain: (i) a description of each requested Document sufficient to identify it, or (ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner.

15.4. Each party shall state in writing its objections to the requested documents (“**Objection to Requests**”), by the deadline set out in the Procedural Calendar. The Objection to Requests shall *not* be copied to the Tribunal or the Secretary of the Tribunal. The requesting party shall file its comments in writing on any objection made to the document requests, insofar as there are any outstanding disputes relating to such requests (“**Reply to Objections**”). The parties’ aggregate comments (*i.e.* Request, Objection and Reply), in the form of a completed *Stern Schedule*, shall be provided to the Tribunal in the format included in **Annex C**, by the deadline set out in the Procedural Calendar.

15.5. The parties shall seek agreement on production requests to the greatest extent possible and shall meet and confer to that end. In that regard, the Tribunal reminds the parties of their duty to act in good faith in the taking of evidence and within the framework of the processes laid down by the Tribunal for the production of documents. This requires the parties not only to formulate narrow and specific requests for documents or categories of documents in the first instance (by, for example, avoiding requests that call for “all documents relating to” a particular event), but also to cooperate in the process of achieving such formulations with respect to each other’s requests. In consequence, a party objecting to a request on grounds of overbreadth or excessive burden should indicate whether there is a

Procedural Order No. 1

narrower formulation with which it would be willing to comply. In reply, the requesting party should likewise indicate, in addition to any comments on the other party's objection to its original formulation, whether there is a narrower formulation that it would be willing to accept. The parties should not shift to the Tribunal the burden of identifying potential alternate formulations that avoid excessive burden while still allowing production of documents that are relevant and material to the outcome of the case.

- 15.6. Neither party shall be permitted to submit additional Document Requests after the deadlines set out in the Procedural Calendar, save under justified circumstances at the discretion of the Tribunal upon a reasoned written request, followed by observations from the other party, without prejudice to the Tribunal's power to call upon the parties to produce documents at any stage of the proceeding pursuant to Arbitration Rule 34(2).
- 15.7. The Tribunal shall issue its decision on the parties' Document Requests by the deadline indicated in the Procedural Calendar.
- 15.8. Documents produced pursuant to a Document Request voluntarily or pursuant to an order from the Tribunal shall be exchanged between the parties only, by the deadline indicated in the Procedural Calendar. They shall only form part of the record, if and when, they are submitted with the Reply and Rejoinder, respectively.

16. Submission of Documents

*Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24*

- 16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further exhibits may be submitted with the Reply and Rejoinder only insofar as the relevance of the additional evidence has arisen as a result of the other side's preceding submission or the documents produced during the document production phase.
- 16.2. With each factual allegation, whenever possible, the parties are to identify the evidence adduced in support of that allegation (with a specific page or paragraph reference). With each legal argument, whenever possible, the parties are to identify the legal authority adduced in support of that argument (with a specific page or paragraph reference).
- 16.3. No document will be considered to be on the record unless:
  - 16.3.1. it is filed as an exhibit to a written submission, witness statement or expert report;

Procedural Order No. 1

- 16.3.2. the parties have agreed to submit it into the record and filed it with the Tribunal;  
or
- 16.3.3. the Tribunal has admitted it into the record, upon the application of a party or  
on its own motion.
- 16.4. Unless a party has requested and obtained prior leave from the Tribunal, it may not  
file: (a) submissions other than those indicated in the Procedural Calendar; (b)  
documentary or testimonial evidence that does not accompany a submission  
indicated in the Procedural Calendar; or (c) documentary or testimonial evidence  
not explicitly relied upon in its submissions.
- 16.4.1. Should a party request leave to file additional or responsive documents, that  
party may not annex the documents that it seeks to file to its request.
- 16.4.2. If the Tribunal grants such an application for submission of an additional or  
responsive document, the Tribunal shall ensure that the other party is afforded  
sufficient opportunity to make its observations concerning such a document  
and, if permitted by the Tribunal, to provide evidence in rebuttal.
- 16.5. The Tribunal may call upon the parties to produce documents or other evidence in  
accordance with ICSID Arbitration Rule 34(2).
- 16.6. Documents shall be submitted in the following form:
- 16.6.1. The number of each exhibit containing a document produced by the Claimants  
shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal  
exhibits containing authorities, etc. The number for each exhibit containing a  
document produced by the Respondent shall be preceded by the letter “R-” for  
factual exhibits and “RL-” for legal exhibits containing authorities, etc.
- 16.6.2. Exhibits and legal authorities shall be numbered consecutively throughout these  
proceedings, commencing with “C-0001” and “R-0001,” and “CL-001” and  
“RL-001,” respectively. The number of the exhibit or legal authority shall  
appear on the first page of the document and shall be incorporated into the file  
name in accordance with §16.6.5.
- 16.6.3. A party may produce several documents relating to the same subject matter  
within one exhibit, numbering each page of such exhibit separately and  
consecutively.
- 16.6.4. Each party shall abstain, whenever possible, from resubmitting an exhibit that  
is already on the record and shall instead refer to it by its existing exhibit  
number. If this proves impossible, each party is at least required to cross-



Procedural Order No. 1

reference the newly produced exhibit with the already existing exhibit's reference.

16.6.5. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.

16.7. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.

16.8. The parties shall file all documents only once by submitting them with their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements.

16.9. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence and are provided to the other party and the Tribunal at least 30 minutes before the start of the presentation during which the demonstrative exhibit is intended to be used. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and, if requested, hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

17. Witness Statements and Expert Reports  
*Convention Article 43(a); Arbitration Rule 24*

17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.

17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.

17.3. Each witness statement and expert report shall be signed and dated and shall include a photograph of the witness or expert.

17.4. The Tribunal may, if it deems it appropriate, order the party-appointed experts of like discipline to meet and confer (on a without prejudice basis) on their reports. The purpose is for the experts to attempt to agree on those issues prompting different opinions in their expert reports, or to narrow their differences, and then record in writing for the benefit of the parties and the Tribunal the issues on which



Procedural Order No. 1

they reached agreement or narrowed their differences, as well as the remaining points of disagreement. The Tribunal shall ensure that each party is afforded sufficient opportunity to make its observations concerning any written product jointly issued by the experts.

18. Examination of Witnesses and Experts  
*Arbitration Rules 35 and 36*

- 18.1. By the deadline indicated in the Procedural Calendar, each side must notify the other side and the Tribunal of the names of the witnesses and experts presented by the other side to be cross-examined at the hearing.
- 18.2. The Tribunal may direct that a witness or expert not otherwise called by the parties attend the hearing for examination.
- 18.3. A party will not be permitted to present direct examination from its own witnesses or experts who have not been called for cross-examination without leave of the Tribunal.
- 18.4. A party's waiver of its right to cross-examine a witness or expert does not imply acceptance of the content of that witness's or expert's written testimony. When a party has waived its right to cross-examine a witness or expert or has limited the cross-examination to only part of the relevant witness statement or expert report, the Tribunal will exercise its discretion in weighing the evidence of that witness or expert.
- 18.5. Each side is responsible for summoning to the hearing those of its witnesses and experts whom the other side has called for cross-examination or whom the Tribunal has directed to appear. Each side is to bear the costs of its witnesses' and experts' appearance at the hearing, subject to the Tribunal's later allocation of costs.
- 18.6. In exceptional circumstances, and subject to any broader determinations about hearing modality as addressed in §10.3 above, the Tribunal may allow a witness to appear and be examined by videoconference and in such cases will issue appropriate directions.
- 18.7. If a witness or expert called for cross-examination ultimately fails to attend the hearing in person or by videoconference for any reason, the Tribunal will hear the parties on this issue and decide what weight should be given to the written testimony of said witness or expert, if any, taking into account all relevant circumstances.
- 18.8. Subject to further discussion at the pre-hearing organizational meeting, the procedure for examining witnesses will be as follows:

- 18.8.1. The side that has presented the witness may conduct a brief direct examination to confirm the witness statement, with any corrections, and to ask introductory questions, including about matters that have arisen after that witness's written statement was signed. As a general rule, direct examination is not to exceed ten minutes.
- 18.8.2. The opposing side may then cross-examine the witness about relevant facts within the witness's knowledge, not necessarily limited to facts addressed in the witness statement.
- 18.8.3. The side that has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination or questions posed by the Tribunal.
- 18.8.4. The Tribunal may examine the witness at any time, either before, during or after examination by one of the parties.
- 18.9. The procedure for examining experts will be the same, except that, subject to further discussion at the pre-hearing organizational meeting, the Tribunal may invite experts, in lieu of direct examination, to make a presentation lasting no longer than 30 minutes before the start of their cross-examination, to summarize their methodology and conclusions. The Tribunal may also order two or more experts to be examined concurrently (for example, by witness conferencing).
- 18.10. Issues concerning the sequestration of witnesses, including party representatives, will be determined by the Tribunal, following discussions in the pre-hearing organizational meeting.
- 18.11. The Tribunal will have full control at all times over witness and expert examination, including the right to limit or exclude questions to a witness or expert when it considers that the subject of the intended examination is sufficiently addressed by other evidence, or that the witness's examination is irrelevant, immaterial, unduly burdensome or duplicative.
19. Pre-Hearing Organizational Meeting  
*Arbitration Rule 13*
- 19.1. A pre-hearing organizational meeting shall be held at a date determined by the Tribunal after consultation with the parties, at least four weeks prior to the hearing. It shall comprise a teleconference or videoconference between the Tribunal, or its President, and the parties and should resolve any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.

- 19.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the parties shall submit to the Tribunal jointly – or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

20. Hearings

*Arbitration Rules 20(1)(e) and 32*

- 20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 20.2. The hearing shall take place on the dates specified in the Procedural Calendar.
- 20.3. The Members of the Tribunal shall endeavor to reserve at least two days after the hearing to determine the next steps and to hold deliberations.
- 20.4. The issue of allocation of time between the parties at the hearing shall be determined by the Tribunal, following discussion in the pre-hearing organizational meeting.
- 20.5. Hearings will be closed to the public. However, six weeks following the conclusion of the hearing, ICSID may publish a video recording of the hearing, showing solely the Tribunal and counsel (and not revealing the identity of any witness or expert, and without prejudice to each participant’s individual data protection rights under the GDPR or otherwise) (the “**Recording**”), as well as a hearing transcript, subject to the following rules:
- 20.5.1. Each party shall identify within three weeks after the conclusion of the hearing any parts of the Recording that must remain confidential and thus be removed from the Recording.
- 20.5.2. To the extent that the other party disagrees with the proposed removal of any parts of the Recording, the following procedure shall apply:
- 20.5.2.1. The party opposing the removal of the relevant part or parts from the Recording may, within one week after being notified of the other party’s proposal, submit a reasoned application to the Tribunal for an order that the publication of the Recording be permitted without the proposed part or parts being removed.
- 20.5.2.2. Within one week after the making of any such application, the party seeking the removal of the relevant part or parts of the Recording may respond to the application.

Procedural Order No. 1

- 20.5.2.3. The Tribunal will thereafter (and in any event within one week) make an order in relation to the proposed removal of the relevant part or parts of the Recording.
- 20.5.2.4. The hearing transcript published by ICSID will not include the part or parts of the Recording removed either by agreement of the parties and/or following the order of the Tribunal.
- 20.6. In preparation for the hearing, the Tribunal may instruct the parties to submit to the Tribunal jointly – or, where they are unable to agree, separately:
- 20.6.1. A chronology of relevant facts in tabular form; and
- 20.6.2. A list and brief description of the individuals and entities who/which are part of the relevant factual background (“*dramatis personae*”).
- 20.6.3. A list of the substantive issues required to be determined by the Tribunal, including the precise requests for relief advanced by each party, and the specific legal and factual basis for each request for relief.
21. Records of Hearings and Sessions  
*Arbitration Rules 13 and 20(1)(g)*
- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 21.3. The parties shall agree on any corrections to the transcripts within 30 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“**revised transcripts**”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.
22. Post-Hearing Memorials and Statements of Costs  
*Convention Article 44; Arbitration Rule 28(2)*
- 22.1. Whether or not Post-Hearing Memorials are required will be decided by the

Procedural Order No. 1

Tribunal after consultation with the parties by no later than the conclusion of the hearing.

22.2. The Tribunal will consider at the appropriate time the Parties' positions regarding the allocation of costs. In this respect, the Tribunal may ask the Parties to submit cost submissions at a date agreed in due course

23. Publication of the Award, Decisions and Orders

*Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)*

23.1. The parties consent to ICSID publication of the award and any order or decision issued in the present proceeding, subject to redaction pursuant to the following rules:

23.1.1. Each party shall identify within 21 days after receipt of any award, decision, or order from the Tribunal all redactions that the party proposes to be made. To the extent that the other party disagrees with any of the proposed redactions, the following procedure shall apply:

23.1.1.1. The party opposing the redaction may, within 14 days after being notified of the other party's proposal, submit a reasoned application to the Tribunal for an order that the publication of the document be permitted without the redaction.

23.1.1.2. Within 14 days after the making of any such application, the party seeking the redaction may respond to the application.

23.1.1.3. The Tribunal will thereafter make an order in relation to the proposed redaction. In its decision, the Tribunal shall be guided, but not bound, by the criteria set out in Articles 7.2, 7.5, 7.6 and 7.7 of the UNCITRAL Transparency Rules. Pending any such order, the disputed portion may not be published.

23.2. The Tribunal will remain constituted for the purpose of making any order under this Section in relation to its final award or other final decision.

24. Transparency and Confidentiality of Other Case Materials

24.1. The parties consent to the publication on the ICSID website of the parties' written submissions (Memorial, Counter-Memorial, Reply and Rejoinder), including a list

Procedural Order No. 1

of exhibits thereto, six weeks after the pleading has been filed, subject to the following rules.<sup>2</sup>

- 24.1.1. Each party shall have four weeks from the date of the filing of the pleading to redact any confidential or sensitive information from the pleading or list of exhibits. The other side will then have a further two weeks in which to review the proposed redactions.
- 24.1.2. If the other party has no objections to the redactions made pursuant to 24.1.1, the parties shall notify the Tribunal of the parties' agreement and ICSID may proceed to publish the pleading or procedural application on its website.
- 24.1.3. In the event of disagreement, the parties shall inform the Tribunal of the areas of disagreement and their reasons within one week of the other party presenting its objections to the redactions.
- 24.1.4. The Tribunal shall thereafter make an order in relation to the proposed redactions no later than eight weeks after the pleading or procedural application was originally filed. In its decision, the Tribunal shall be guided, but not bound, by the UNCITRAL Transparency Rules.

25. Non-Disputing Party Submissions

- 25.1. ICSID Arbitration Rule 37(2) shall apply to any request from a non-disputing party to make a submission in this proceeding.

26. Cybersecurity

- 26.1. The parties agree to take appropriate measures for the secure transmission of documents, information, and communications in this arbitration. If a particular document or communication requires heightened security, the parties are to confer and determine the appropriate cybersecurity measures for its transmission.

27. General

- 27.1. The Tribunal may issue such directions and orders to the parties as are reasonably needed to enable an award to be made properly, fairly and efficiently.

---

<sup>2</sup> The parties have not reached agreement regarding publication on the ICSID website of other documents submitted in the arbitration (e.g., witness statements, expert reports, exhibits, correspondence, procedural applications).

- 27.2. The parties are to conduct themselves in a manner consistent with the efficient use of time and resources and observe Tribunal directions, so as to enable the arbitration to proceed to the award in a proper, fair and efficient way. The Tribunal may take unreasonable behavior into account when exercising its discretion to allocate costs, including by issuing interim cost orders. Unreasonable behavior includes unjustified failure to meet deadlines in the Procedural Calendar or comply with other procedural orders, dilatory tactics, excessive document production requests, unnecessary or intemperate inter-lawyer correspondence, unnecessary legal argument, excessive cross-examination, patently exaggerated claims or unjustified interim applications.

[Signature]

---

Ms. Tina Cicchetti  
President of the Tribunal  
Date: March 3, 2022

**ANNEX A**

**ELECTRONIC FILE NAMING GUIDELINES**

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
<b>MAIN PLEADINGS</b>	<b>Title of Pleading–LANGUAGE</b>
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
<b>SUPPORTING DOCUMENTATION</b>  Exhibits	<b>C-####–LANGUAGE</b>
	<b>R-####–LANGUAGE</b>
	To be produced sequentially throughout the case.
	<b>CLAIMANTS’ FACTUAL EXHIBITS</b>
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	<b>RESPONDENT’S FACTUAL EXHIBITS</b>
	<i>R-0001-FR</i>
<i>R-0002-SPA</i>	
Legal Authorities	<b>CL-####–LANGUAGE</b>
	<b>RL-####–LANGUAGE</b>
	To be produced sequentially throughout the case.
	<b>CLAIMANTS’ LEGAL AUTHORITIES</b>
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	<b>RESPONDENT’S LEGAL AUTHORITIES</b>
	<i>RL-0001-SPA</i>
<i>RL-0002-ENG</i>	
Witness Statements	<b>Witness Statement-Name of Witness-Name of Submission-LANGUAGE</b>
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	<b>Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE</b>
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	<b>Legal Opinion-Name of Expert-Name of Submission-LANGUAGE</b>



*Uniper SE, Uniper Benelux Holding B.V. and Uniper Benelux N.V. v.  
Kingdom of the Netherlands  
(ICSID Case No. ARB/21/22)*

Procedural Order No. 1 – Annexes

	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	<b>WITNESS/EXPERT INITIALS-###</b>
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
<i>LS-0002</i>	
<b>INDICES</b>	<b>Consolidated Hyperlinked Index</b>
	<b>Index of Exhibits-C-#### to C-####</b>
	<i>Index of Exhibits-C-0001 to C-0023</i>
	<b>Index of Legal Authorities-RLA-### to RLA-###</b>
<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>	
<b>OTHER APPLICATIONS</b>	<b>Name of Application-[Party]-LANGUAGE</b>
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimants]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimants]-ENG</i>
	<i>Post-Hearing Brief-[Claimants]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimants]-SPA</i>	

**ANNEX B**

**PROCEDURAL CALENDAR**

<b>Description</b>	<b>By</b>	<b>Days</b>	<b>Date</b>
Request for Arbitration	Claimant	-	April 21, 2021
Application for Provisional Measures	Claimant	226	December 3, 2021
Response to Application for Provisional Measures	Respondent	49	January 21, 2022
First Session and Hearing on Provisional Measures	Parties	13	February 3, 2022
Memorial	Claimant	Date agreed	May 18, 2022
Request for bifurcation, if any	Either Party	41	June 28, 2022
Response to request for bifurcation, if any	Either Party	14	July 12, 2022
Decision on bifurcation, if necessary	Tribunal	14	July 26, 2022

**SCENARIO A [no request for bifurcation, or no bifurcation ordered]**

<b>Description</b>	<b>By</b>	<b>Days</b>	<b>Date</b>
Counter-Memorial, including any Preliminary Objections	Respondent	210 (from the Memorial)	December 14, 2022
<b>Document Production Phase</b>			
Request to Produce	Parties	28	January 11, 2023
Production of Non-Objected Documents & Objections to Produce	Parties	28	February 8, 2023
Reply to Objections & Stern Schedules sent to Tribunal	Parties	15	February 23, 2023
Decision on Request to Produce	Tribunal	28	March 23, 2023
Production as Ordered	Parties	42	May 4, 2023
<b>Written Procedure: Round 2</b>			
Reply on Merits and Counter-Memorial on Preliminary Objections, if any	Claimants	Agreed Interval: 39 days from close of document production, 180 days from filing of Counter-Memorial	June 12, 2023

*Uniper SE, Uniper Benelux Holding B.V. and Uniper Benelux N.V. v.  
Kingdom of the Netherlands*  
(ICSID Case No. ARB/21/22)

Procedural Order No. 1 – Annexes

<b>Description</b>	<b>By</b>	<b>Days</b>	<b>Date</b>
Rejoinder on Merits and Reply on Preliminary Objections, if any	Respondent	120	October 10, 2023
Rejoinder on Preliminary Objections, if any	Claimants	45	November 24, 2023
<b>Oral Procedure</b>			
Notification of Witnesses and Experts	Parties	21	December 15, 2023
Notification of Witnesses and Experts not called by the Parties	Tribunal	21	January 5, 2024
Pre-Hearing Telephone Conference	All	14	January 19, 2024
First Hearing Day	All	84	April 15, 2024
Last Hearing Day (incl. Reserve Days)	All	8 (+ 2) workdays	April 26, 2024
<b>Post-Hearing Phase</b>			
Transcript Revision	Parties	TBD	TBD
Post-Hearing Submission (if any)	Parties	TBD	TBD
Reply Post-Hearing Submission (if any)	Parties	TBD	TBD
Cost Submission	Parties	TBD	TBD
Award	Tribunal	TBD	TBD

**SCENARIO B [bifurcation ordered]**

<b>Description</b>	<b>By</b>	<b>Days</b>	<b>Date</b>
Memorial on Preliminary Objections	Respondent	60 (from Decision on Request for Bifurcation)	September 26, 2022
Counter-Memorial on Preliminary Objections	Claimants	45	November 10, 2022
<b>Document Production Phase</b>			
Request to Produce	Parties	14	November 24, 2022

*Uniper SE, Uniper Benelux Holding B.V. and Uniper Benelux N.V. v.  
Kingdom of the Netherlands*  
(ICSID Case No. ARB/21/22)

Procedural Order No. 1 – Annexes

<b>Description</b>	<b>By</b>	<b>Days</b>	<b>Date</b>
Production of Non-Objected Documents & Objections to Produce	Parties	14	December 8, 2022
Reply to Objections & Stern Schedules sent to Tribunal	Parties	14	December 22, 2022
Decision on Request to Produce	Tribunal	28	January 19, 2023
Production as Ordered	Parties	14	February 2, 2023
<b>Written Procedure: Round 2</b>			
Respondent's Reply on Preliminary Objections	Respondent	21	February 23, 2023
Rejoinder on Preliminary Objections	Claimants	28	March 23, 2023
<b>Oral Procedure</b>			
Notification of Witnesses and Experts	Parties	7	March 30, 2023
Notification of Witnesses and Experts not called by the Parties	Tribunal	7	April 6, 2023
Pre-Hearing Telephone Conference	All	14	April 20, 2023
First Hearing Day on Preliminary Objections	All	67	June 26, 2023
Last Hearing Day on Preliminary Objections (incl. Reserve Days)	All	2 (+1) workdays	June 28, 2023
<b>Post-Hearing Phase</b>			
Transcript Revision	Parties	TBD	TBD
Post-Hearing Submission (if any)	Parties	TBD	TBD
Reply Post-Hearing Submission (if any)	Parties	TBD	TBD
Cost Submission	Parties	TBD	TBD
Award	Tribunal	TBD	TBD

**ANNEX C**

**STERN SCHEDULE FOR DOCUMENT REQUESTS**

<b>Document Request No</b>	
<b>A. Documents or category of documents requested (requesting Party)</b>	
<b>B. Relevance and materiality (requesting Party)</b> <b>(1) para ref to submissions</b> <b>(2) comments</b>	
<b>C. Objections to document request (objecting Party)</b>	
<b>D. Response to objections and request for resolution (requesting Party)</b>	
<b>E. Decision of the Tribunal</b>	