

NAFTA Arbitration under the UNCITRAL Arbitration Rules

INTERNATIONAL THUNDERBIRD GAMING CORPORATION

Claimant

versus

THE UNITED MEXICAN STATES

Respondent

PROCEDURAL ORDER NO. 9

(13 September 2004)

CONSIDERING:

- (A) The previous Orders;
- (B) The Parties' Post-Hearing Briefs dated 2 August 2004;
- (C) Thunderbird's letter of 3 August 2004, requesting the Tribunal to consider and admit "new evidence which came to Claimant's attention on Friday, July 30, 2004", regarding a complaint filed on 30 November 2001 by Attorney Luis Ruiz de Velasco with the Office of Internal Control of the Secretary of State of Mexico, pertaining to the actions of Humberto Aguilar Coronado and Guadalupe Vargas Barrera in relation to the closing of the EDM facilities, and the response on 20 July 2004 of Maclovio Murillo Chavez, Head of the Area of Complaints of the Office of Internal Control of the Secretary of State of Mexico, advising of an investigation into Mr. Velasco's complaint;
- (D) Mexico's letter of 6 August 2004, objecting to the admission of the evidence referred to in Recital (C) above;
- (E) Thunderbird's letter of 10 August 2004, requesting the Tribunal to consider and admit "new evidence which addresses what Thunderbird believes to be false representations and implications as to post-hearing events and circumstances made and raised by


Mexico in its post-hearing brief”, regarding the Bella Vista Entertainment Center in Monterey and the Reflejos facilities in Rio Bravo and Reynosa;

- (F) Thunderbird’s letter of 13 August 2004, further to its letter of 3 August 2004, requesting the Tribunal to admit into evidence “what it understands to be a complete copy of the Office of Internal Control file pertaining to the ongoing investigation”;
- (G) Mexico’s letter of 17 August 2004 (received on 27 August 2004), as directed by the Tribunal by letter of 16 August 2004, objecting to the requests made by Thunderbird to admit new evidence in its letters of 3, 10, and 13 August 2004;
- (H) Paragraph 12.8 of Order No. 1, which provides: “Neither party shall be permitted to submit additional or responsive documents after the dates for the SoR and SoRej, save under exceptional circumstances as determined by the Tribunal. If the Tribunal grants an application for submission of an additional or responsive document after the afore-mentioned dates, the Tribunal shall ensure that the other party be afforded sufficient opportunity to make its observations concerning such a document”;
- (I) That although the complaint filed by Mr. de Velasco on 30 November 2001 (referred to in Thunderbird’s letters of 3 and 13 August 2004) was not submitted at an earlier stage of the proceedings, the Tribunal considers on the other hand that Mr. Chavez’s response of 20 July 2004 and the re-opening of an investigation into Mr. Velasco’s complaint constitute *prima facie* new and exceptional circumstances within the meaning of paragraph 12.8 of Order No. 1;
- (J) That, similarly, the events referred to in Thunderbird’s letter of 10 August 2004 surrounding the operations of the Bella Vista and Reflejos facilities constitute *prima facie* exceptional circumstances within the meaning of paragraph 12.8 of Order No. 1;

THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:

1. The evidence submitted by Thunderbird in its letters of 3, 10, and 13 August 2004, referred to in Recitals (C),(E), and (F) above, is admitted into the record, without prejudice to the relevance, materiality and weight of the evidence in question.
2. Mexico may further supplement its observations made by letter of 17 August 2004 regarding the evidence referred to in paragraph 1 above on or before 30 September 2004.
3. Thunderbird may respond to Mexico's observations referred to in paragraph 2 above on or before 15 October 2004.

On behalf of the Arbitral Tribunal,



Professor Dr. Albert Jan van den Berg,
Presiding Arbitrator