
I. An effective sales and purchase agreement for 10,000 Nego crabs was not concluded between Red and Blue. If an agreement was effectively concluded at US$200, Blue may cancel the agreement.
II. In the event a sales and purchase agreement for 10,000 Nego crabs for US$2,000,000 was effectively concluded between Red and Blue, there is a factual and legal basis on which the amount to be paid by Blue to Red should be reduced.
III. Red is obligated to pay US$500,000 for the sale of Nego crabs to Green Corp.

I. An effective sales and purchase agreement for 10,000 Nego crabs ('the Agreement') was not concluded between Red and Blue ('the Parties'). If an agreement was effectively concluded at US$('$')200, Blue may cancel the agreement.

1. The Agreement was not concluded between the Parties (**A.**). If the Agreement was effectively concluded at $50, Blue has no reason to cancel it. If the Agreement was effectively concluded at $200, Blue may cancel the Agreement (**B.**). Since the Agreement was not concluded, the question "*If an agreement was effectively concluded, what is the price of Nego crab per crab?*" is disregarded.

A. The Agreement was not concluded between the Parties

2. The UNIDROIT principles establish that a contract is concluded by "*the acceptance of an offer or by the conduct of the parties that is sufficient to show agreement*" *[UNIDROIT Principles of International Commercial Contracts ('PICC') 2.1.1]*. However, a reply to an offer which contains modifications is a rejection of the offer and forms a counter-offer *[PICC 2.1.11 (1)]*. This counter-offer is disregarded when the change is material, or when the offeror objects *[PICC 2.1.11 (2)]*.
3. In this case, Blue's offer was 10,000 Nego crabs for $50 per crab (**A-1.**). Red's acceptance was 10,000 Nego crabs for $200 per crab (**A-2.**). Red's acceptance acted as a rejection of Blue's offer (a counter-offer), and the Agreement was not concluded (**A-3.**).

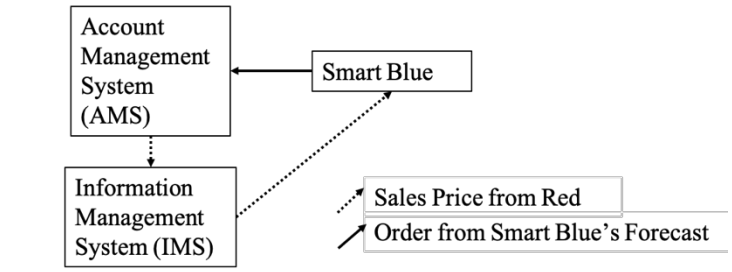
A-1. Blue's offer was 10,000 Nego crabs for $50 per crab because the Parties agreed that Smart Blue would use the price from the Information Management System ('IMS') for forecasts, which was $50 per crab

4. For Global Kitchen, Smart Blue's AI automatically places offers based on orders from Blue's customers and forecasts. For offers from forecasts, Smart Blue's AI uses information provided by Red through the IMS, among others, to make forecasts, and places the order on the Account Management System ('AMS') *[Exh.7A]*. The information about prices is originally from the AMS, however it passes through the IMS before being passed on to Smart Blue's AI. The key aspect in

this situation is that Smart Blue's AI cannot access the information from the AMS, and can only obtain information about prices from the IMS.

5. It must be noted that the offer to the AMS only consists of quantity, and the price is not expressly declared in the offer *[Exh.7A]*. In emails preceding the installation of Smart Blue, the Parties expressly agreed that the information the AI bases its offers on comes from the IMS *[Exh. 7]*. Therefore, the price of the IMS is the price of the offer.

Abbreviated diagram of system:



6. In this case, Smart Blue's AI placed the offer "*Blue, Inc. orders 10,000 Nego Crabs*" to the AMS, based on its forecast from the information it received from the IMS *[Exh.7A;¶14]*. Since Smart Blue's AI can only obtain the price from the IMS which was $50 per crab, the price of the offer is $50.

A-2. Red's acceptance was 10,000 Nego crabs for $200 per crab because Red automatically accepted the offer through the AMS, where the price was $200 per crab

7. A contract can be concluded in the case of automated contracting, "*where the parties agree to use a system capable of setting in motion self-executing electronic actions leading to the conclusion of a contract without the intervention of a natural person*" *[PICC 2.1.1 3. see comment]*.
8. In response to Blue's offer of 10,000 Nego crabs to the AMS, the AMS automatically accepted Blue's offer of 10,000 Nego crabs. Here, the system calculates the order using the price in the AMS. Therefore, the price of Red's acceptance is $200 *[Exh.7A]*.

A-3. Red's acceptance acted as a rejection of Blue's offer (a counter-offer), and the Agreement was not concluded

9. Red's acceptance of "10,000 Nego crabs at the price of $200 per crab" alters Blue's offer of "10,000 Nego crabs at the price of $50 per crab" and constitutes a counter-offer *[PICC 2.1.11]*. The counter-offer does not constitute an acceptance when the modification is a material alteration **(a.)** *[PICC 2.1.11(2)]*.

a. Red's acceptance constitutes a material change of price

10. In this case, Red's acceptance materially altered the offer. "*Additional or different terms relating to the price or mode of payment ... will normally, ... constitute a material modification of the offer*" *[PICC 2.1.11 see comment]*. Here, the change in price to $200 per crab is drastic. It is not a mere change in price, but one that quadruples the original amount.

B. If the Agreement was effectively concluded at $200, Blue may cancel it on the ground of mistake

11. If the Tribunal determines that the Agreement was concluded at the price of $200 per crab, Blue may cancel the Agreement on the ground of mistake from inaccurate information on RB Link.
12. PICC 3.2.2 states that "*(1) A party may only avoid the contract for mistake if, when the contract was concluded, the mistake was of such importance that a reasonable person in the same situation*

as the party in error would only have concluded the contract on materially different terms or would not have concluded it at all if the true state of affairs had been known, and (a) the other party made the same mistake, or caused the mistake, or ... ; or (b)...".

13. In this case, the mistake was of such importance that a reasonable person in the same situation as Blue would have not concluded it at all if the true state of affairs had been known (**B-1.**), and Red made the same mistake (**B-2.**). Additionally, there is no reason to prohibit Blue from avoiding the contract as it was not grossly negligent in committing the mistake and it did not bear the risks (**3.**).

B-1. A reasonable person in the same situation would not have concluded the Agreement had the true state of affairs been known

14. At the time Smart Blue's AI placed the order of 10,000 Nego crabs, the IMS of RB Link showed that (i) there was a large catch of Nego crabs, (ii) the market price of Nego crabs had dropped significantly, and (iii) Red's sale price of Nego crab was $50 *[¶14,¶15]*. Only because of (i)~(iii) did the AI foresee a large volume of orders by customers based on past transaction data *[¶14]*. Considering that Nego crabs are luxury products which cost over $200, and past data have shown that previous orders from customers have been sparse up to now, a reasonable person would not have ordered 10,000 Nego crabs had the true price been known *[¶13]*. In actuality, Blue states that it would not have placed an order of 10,000 Nego crabs had the price been $200 per crab *[¶16]*. Therefore, the mistake was of sufficient importance for it to be considered relevant.

B-2. Red made the same mistake because it transmitted an erroneous declaration

15. The mistake Blue and Red made was that (i) (ii) there was a large catch and drop of market price for Nego crabs, and (iii) the sales price of the Nego crab was $50.
16. PICC 3.2.3 establishes that "*an error occurring in the…transmission of a declaration is considered to be a mistake of the from whom the declaration emanated*".
17. For (i)(ii), the information is declared at Red's system and transmitted through the IMS before reaching Blue. In this particular case, the large catch and big drop of market price occurred for shrimp, but was modified to a large catch and big drop of market price for Nego crab at the IMS before reaching Blue *[¶15]*. For (iii), the sales price is declared at the AMS and transmitted through the IMS before reaching Blue. In this particular case, the sales price declared at the AMS was $200, but was changed to $50 at the IMS before reaching Blue. Red's error in transmission by the declaration of (i)~(iii) is equal to Red being under the mistake of (i)~(iii). Therefore, Red was under the same mistake as Blue.

B-3. There is no reason to prohibit Blue from avoiding the contract as it was not grossly negligent in committing the mistake and it did not bear the risks

18. PICC 3.2.2(2) states that "*A party may not avoid the contract if (a) it was grossly negligent in committing the mistake; or (b) the mistake relates to a matter in regard to which the risk of mistake was assumed or, having regard to the circumstances, should be borne by the mistaken party*".

a. Blue was not grossly negligent

19. Blue was not grossly negligent in committing the mistake because to avoid committing the mistake, Blue needed to notice that the (i)~(iii) mentioned above was incorrect in the three hours (10 pm-1 am) before placing the offer. To do this, Blue was required to compare information from

other sources for confirmation on whether the haul and market price were the same, and monitor the AMS and IMS 24 hours a day to confirm that the two prices were correct. These requirements are an excessive duty; therefore, Blue was not grossly negligent in committing the mistake.

b. Red bore the risk of mistake for information from its own research

20. Blue did not bear the risk of mistake because there are two types of information provided from the IMS: (1) information from Red's research and (2) information from third parties such as market research companies *[¶12]*. The Parties agreed that Red bears the risks of (1), while Blue bears the risks of (2) *[Exh.7]*. The information about Nego crab was obtained through Red's research, and is within the scope of (1) *[¶14]*.

Therefore, there is no reason to prohibit Blue from avoiding the contract, and Blue may cancel the Agreement on the ground of mistake because the conditions required by PICC 3.2.2 are satisfied.

II. In the event the Agreement for $2,000,000 was effectively concluded between the Parties, there is a factual and legal basis on which the amount to be paid by Blue to Red should be reduced.

21. The factual and legal bases on which the amount to be paid from Blue to Red should be reduced are that: Red is liable for full compensation for its non-performance (**A.**), and Blue is entitled to set-off the $2,000,000 Blue owes Red against the $2,000,000 compensation for Red's non-performance(**B.**).

A. Red is liable for full compensation for its non-performance

22. Red is liable for damages for its non-performance. The conditions required by PICC for a right to damages is a non-performance (**A-1.**) *[PICC 7.4.1]*, a causal link between the non-performance and harm (**A-2.**) *[PICC 7.4.2 see comment]*, certainty of harm (**A-3.**) *[PICC 7.4.3]*, and foreseeability of harm (**A-4.**) *[PICC 7.4.4]*.

A-1. Red is liable for non-performance

23. Red is obligated to provide Blue with information about the price and stocks of Products available for the Global Kitchen Service on each business day under the Supply Agreement *[Exh.4 Art.4(1)]*. Adapting to the introduction of RB Link, the obligation in Article 4(1) was updated from "*on each business day*" to "*in a timely manner*" as shown in the Memorandum of Understanding *[Exh.6]*. Here, Red was obligated to provide accurate information (**a.**), Red's non-performance is not excused under force majeure (**b.**), and Red's correction of data on the RB Link did not suffice as providing accurate information (**c.**).

a. Red was obligated to provide accurate information

24. The scope of Red's obligation to provide information extends to cover the provision of *accurate* information. This is because the nature and purpose of the Supply Agreement is to make sales and purchase agreements *[PICC 4.3(d)]*. Therefore, the information Red provides about the price and stocks of Products must be sufficiently accurate in order for Blue to place valid orders and make valid agreements.

25. Red breached its obligation to provide accurate information when the inaccurate information about Nego crabs was entered into the system of RB Link, and thereby automatically provided to Blue.

b. Red's non-performance is not excused under force majeure

26. A non-performing party is excused from liability in damages when that party proves that the non-performance was caused by a force majeure *[PICC 7.1.7(1)]*. However, in the case that the non-performing party fails to notify the other party within a reasonable time of the force majeure and its effect on its performance, it is liable for damages resulting from it *[PICC 7.1.7(3)]*.
27. Red may claim that they provided inaccurate data under a force majeure event. However, a hacking is not considered as a force majeure (**b-1.**), and even if it is deemed as a force majeure event, Red's breach is not excused because it failed to notify Blue of the event within a reasonable time (**b-2.**).

b-1. A hacking is not considered to be a force majeure event

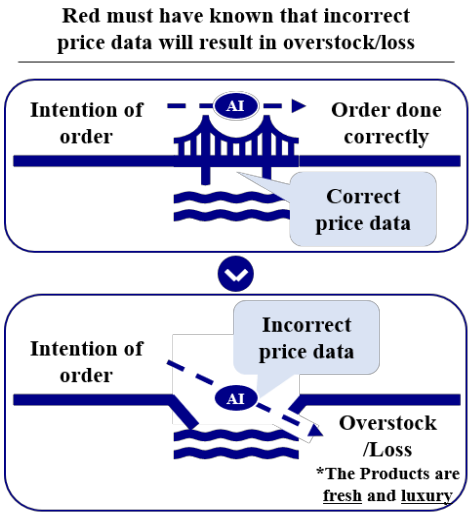
28. A hacking is not a force majeure. A force majeure is an occurrence beyond one's control, but also unforeseeable *[cf. PICC Art 7.1.7; Centro de Arbitraje de Mexico Case, 30 November 2006http://www.unilex.info/principles/case/1149]*. For a modern day company using technology, it is commercially common to expect and foresee a hacking, even with anti-virus systems installed. Therefore, although the hacking may be something that Red could not control, it cannot be deemed as a force majeure event.

b-2. Even if the hacking is a force majeure event, Red's liability is not excused because of their failure to notify Blue within a reasonable time

29. Even if Red's non-performance was caused by a force majeure, Red's breach is not excused. Red failed to notify Blue within a reasonable time that there was an unauthorized access to its system, and that the data concerning the price drop of Nego crab was inaccurate *[¶15]*. This constitutes a breach of Red's obligation to provide accurate information.

A-2. Causal link is confirmed

30. There is a sufficient causal link between Red's non-performance and the damages worth $2,000,000.
31. PICC 7.4.2 (see comment) refers to the harm sustained as a result of the non-performance. Blue would not have placed an order of 10,000 Nego crabs had Red not provided the inaccurate data concerning Nego crab to Smart Blue *[¶16]*. Therefore, the harm sustained was fully due to Red's non-performance.



A-3. Certainty of harm is established

32. The monetary damages of $2,000,000 is established with a reasonable degree of certainty. The monetary damages is the payment Blue allegedly owes Red for the unwanted 10,000 Nego crabs.

A-4. Foreseeability of harm is certain

33. The damages caused by Red providing inaccurate data were foreseeable. Red could have foreseen that if it did not provide Blue with accurate data, Smart Blue's AI, which works without rest, would place orders based on the inaccurate data *[Exh.7]*.

B. Blue may set-off the $2,000,000 Blue owes Red against the $2,000,000 compensation for Red's non-performance

34. PICC 8.1(2) establishes that "*if the obligations of both parties arise from the same contract, the first party may ... set off its obligation against an obligation of the other party which is not ascertained as to its existence or to its amount*".
35. Both Blue's obligation for payment and Red's obligation for compensation of damages arise from the Supply Agreement. Therefore, the condition required for set-off in PICC 8.1(2) is fulfilled, and Blue may exercise its right to set off its payment to Red of $2,000,000 against the $2,000,000 Red owes Blue for monetary damages, to $0.

III. Red is obligated to pay $500,000 for the sale of Nego crabs to Green Corp. ('Green')

36. If the Agreement (the sale and purchase agreement of 10,000 Nego crabs) was not concluded, Red, the owner of the crabs, is obligated to pay for the delivery cost (**A.**). If the Agreement was concluded, Red is liable for the delivery cost as expenses to Blue (**B.**).

A. If the Agreement was not concluded, Red, the owner of the crabs, is obligated to pay the delivery cost

37. If the Agreement was not concluded between the Parties, Red, the owner of the crabs, is obligated to pay the delivery cost under an oral contract concluded between the Parties *[PICC 1.2]*.
38. This is because Red agreed with Blue that they would decide who the owner and consequent seller of 10,000 Nego crabs is later and for the time being, Blue would form a contract with Green and temporarily pay the delivery cost *[¶17]*.
39. Red is obligated to pay for the full $500,000 Blue paid as the delivery cost to Green. The fact that the cost was different from the estimated $200,000 gives no reason to reduce the amount of $500,000 that Red owes to Blue. The oral contract between the Parties did not in fact specify the amount of the delivery cost, and neither was it Blue's fault that the actual cost increased from the estimated cost.
40. Therefore, Red is obligated to pay to Blue the entire $500,000 as the delivery cost.

B. If the Agreement was concluded, Red is still liable for the delivery cost as expenses to Blue

41. If the Agreement was concluded, Red is still liable for the delivery cost because Blue is entitled to "*recover any expenses reasonably incurred in attempting to reduce the harm*" *[PICC 7.4.8(2)]*.
42. In this case, Blue entered into a contract with Green to mitigate the damages of $2,000,000 caused by Red's non-performance. The contract was to sell the crabs at $1,000,000 under the condition that the price is post-paid, and the seller pays for shipping costs and customs duties. As a result, Blue paid $500,000 *[¶17,18]*.
43. The expense was reasonably incurred because of a multitude of factors. The fact that: Nego crabs' market value rely on its freshness, there is a need to promptly sell them at the highest possible price. The increase in the fare for air transportation of Nego crabs to Meditoria and the imposition of additional customs duties by Meditorian customs were unforeseeable at the time of the conclusion of the contract *[¶18]*.

44. Therefore, the expenses of $500,000 incurred for the sale of Nego crabs to Green is *"an expense reasonably incurred in attempting to reduce harm."* and Blue is entitled to recover the expenses.

BLUE HOT CASE

I. The sales of Blue Hot at the stores of Brown Trading Corp. in Negoland does not constitute a breach of obligation by Blue under the joint venture agreement between Red and Blue.
II. The Arbitral Tribunal should not render an arbitral award that "Blue shall not supply the Blue Hot series to any third party that sells them in Negoland".
III. If there was a breach of obligation on the part of Blue in Issue I, Blue does not owe the obligation to pay $400,000 for damages to Red on the ground that profit of Yellow in Negoland decreased in 2018.

I. The sales of Blue Hot at the stores of Brown Trading Corp. ('Brown') in Negoland does not constitute a breach of obligation by Blue under the joint venture agreement ('JVA') between the Parties.
As the scope of the non-compete clause does not cover the sales of Blue Hot at the stores of Brown in Negoland, there is no breach of the non-compete clause.

45. Article 14.3 of the JVA states "*Neither party shall carry on nor be engaged in any business that competes with the business of Yellow during the period of this Agreement*" *[Exh.10]*.
46. According to PICC 4.1, when a common intention of the parties cannot be established, a contract should be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances. When considering the scope of the non-compete clause, one should take into account: the meaning of 'competing with the business of Yellow' (**A.**), and the scope of 'engage in any business' (**B.**).
47. Only then can one consider whether the sales of Blue Hot to Brown constitute a breach of the non-compete clause.

A. The meaning of '*competing* with the *business of Yellow*'

48. For a product of Yellow to enter the market, it goes through three phases: manufacturing *[Exh.10 2.1]*, wholesale *[Exh.10 7.1]*, and retail *[Exh.10 7.2]*. In order to determine the existence of competition, all three phases should be considered comprehensively, because the clause itself specifies the subject of competition to the whole 'business of Yellow'.
49. *Manufacturing:* Competition in manufacturing consists of whether they use the same technology, know-how, and facilities, among others. In this case, Blue Hot uses a patented technology owned by Blue which can only be manufactured at a plant in Arbitria *[¶22; Exh.11]*. Therefore, Blue Hot and Yellow Quick do not compete in terms of manufacturing.
50. *Wholesale:* Competition in wholesale consists of whether products are distributed to the same retailers. In this case, Blue Hot is only distributed to Brown while Yellow's products are sold to either Blue or Red *[¶22]*. Therefore, Blue Hot and Yellow Quick do not compete in terms of wholesale.
51. *Retail:* Competition in retail consists of whether products meet the same needs of the customers. This is because when customers choose which products to buy, they choose the products which

must fulfill their needs. In order to judge whether the products meet the same needs of the customers, the needs of customers must be more specific than an easy and quick meal (**a.**) and the attributes of the products must be considered (**b.**).

a. The needs of customers must be more specific than an easy and quick meal

52. Since all instant foods meet the customer's needs of an easy and quick meal, every instant food may compete with each other *[¶19]*. However, if all sales of instant foods compete with Yellow's business, the Parties would not be able to engage in any instant food business in areas where Yellow sells its Products: Negoland, Arbitria, and other countries *[Exh.10]*. Based on this understanding, Blue's instant food business would be entirely prohibited as a possible competitor to Yellow's business, which imposes an excessive duty on Blue. Therefore, same needs here must be narrowly interpreted.

b. The needs of customers must be judged from the attributes of the product

	Menu Lineup	Cooking Method	Sales Channel	Brand	Ingredient	Price/Taste
Blue Hot	5	Knead the bag	5 stores	Blue	N/A	N/A
Yellow Quick	2	Pour water	30 cities	Yellow	Negoland produce	N/A
Competition	△	×	×	×	N/A	N/A

53. The specific criteria for whether the products meet the same needs of customers are as can be seen above. In this case, given that the customers of instant foods are busy working people *[¶19]*, the cooking method is the most important factor. However, they differ in this case. Many other factors, as well, differ between the two products. Therefore, the two products do not compete in retail sales.

54. Solely relying on the transition of the number of sales is inappropriate because there are too many factors related to the transition of sales and a causal link cannot be cleanly applied. Professor Bob Orange's testimony shows proof that customer preferences appear to be different in different areas [Exh.12]. Relying on sales is an unrealistic and uncommercial reading of the non-compete clause because neither party will be able to foresee whether the non-compete clause will come into effect until it starts selling.

B. The scope of 'engage in any business'

55. The Parties have not agreed on whether or not sales to a third party is under the scope of Article 14.3 [Exh.13]. Therefore, the scope of 'engage in any business' should be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it *[PICC 4.1, 4.3]*.

56. Broadening the scope of 'engage in any business' to include the sales of products that competes with the products of Yellow to third party retailers would be unreasonable because of two reasons. First, there are no means for the Parties to control the actions of a complete third party. Second, if one applies this interpretation and the sales of products to third party retailers constitutes a breach of contract, it would impose an excessive duty on the Parties to have to take responsibility for the terminal point of all its products. In this case, Blue would have to track the Blue Hot products so

that they would not end up in the hands of the consumers in Negoland to avoid breaching its obligations.

57. In reality, Blue is only engaged in the sales of Blue Hot in Arbitria, and Blue does not directly carry on in the sales of Blue Hot in Negoland.
58. For these reasons, it is reasonable to deem that the sales of products to third parties is not within the scope of Article 14.3 of the JVA and thus the sales of Blue Hot to Brown does not constitute a breach of contract.

Therefore, since the Blue Hot series do not compete with Yellow's business in manufacturing, wholesale, and retail, and since the sales of the Blue Hot series to Brown is not within the scope of the non-compete clause, the sales of Blue Hot at the stores of Brown is not a breach of the JVA.

II. The Arbitral Tribunal should not render an arbitral award that "Blue shall not supply the Blue Hot series to any third party that sells them in Negoland".

59. An arbitral award that "Blue shall not supply the Blue Hot series to any third party that sells them in Negoland" should not be rewarded because there was no non-performance by Blue (**A.**). Even if there was a non-performance by Blue, Red did not send the request for performance within a reasonable time after it became aware of the non-performance (**B.**).

A. There was no non-performance by Blue

60. See Issue 1, paragraphs 45-58 .

B. Even if there was a non-performance by Blue, Red did not send the request within a reasonable time after it became aware of the non-performance

61. In the case of a non-monetary obligation, a party may require performance to the other party "*within a reasonable time after it has, or ought to have become aware of the non-performance*" *[PICC 7.2.2(e)]*.
62. Red did not send the request within a reasonable time after it became aware of the non-performance. Red should have been aware of the non-performance in January 2018. Since the launch of Blue Hot in Negoland attracted much attention, it is certain that Red knew of the sales of Blue Hot *[¶24]*. Red was also well aware of the nature of Blue Hot *[Exh.11]*. Therefore, if one accepts Red's position that Blue Hot competes with Yellow Quick, Red should have known of the competition from the start. Moreover, given that sales of Yellow Quick dropped by half in 2018, if one accepts Red's position that Blue Hot caused its drop, Red must have known of that circumstance long before the issuance of the official sales record. Here, at least one year and one month had passed from Blue's non-performance before Red's demand for performance.
63. The reasonable period to request performance here would consist of the time to ask for legal advice and make a speedy decision *[Vogenauer, Commentary on the UNIDROIT Principles of International Commercial Contracts (OUP, 2nd ed. 2015)('Vogenauer')p.944]*. If Red takes an unreasonably long time to ask for legal advice as in this case, Blue would be in an unstable situation, unsure of whether or not it is obligated to pay damages *[Vogenauer p.900]*.

Therefore, Red's request for performance shall be dismissed.

III. If there was a breach of obligation on the part of Blue in Issue I, Blue does not owe the obligation to pay $400,000 for damages to Red on the ground that profit of Yellow in Negoland decreased in 2018.

A. If Blue is found liable for breaching the non-compete clause, Blue is not responsible for the full damages

64. If the Tribunal finds Blue liable for breaching the non-compete clause, Blue is not responsible for the full damages because the damages of $400,000 are uncertain (**A-1.**), and Red could have taken steps to mitigate the harm (**A-2.**).

1. The damages of $400,000 are uncertain

65. PICC 7.4.3 states that compensation is due only for harm that is established with a reasonable degree of certainty.
66. The alleged damages of $400,000 are based on the assumption that the $1,000,000 decrease of the profit of Yellow is solely and fully attributed to the sales of Blue Hot.
67. However, there is insufficient evidence of this. Professor Bob Orange's testimony only suggests that there is a *tendency* that people lean toward Blue Hot rather than Yellow Quick *[Exh.12]*. Also, Blue Hot was only sold in 5 stores throughout the 30 cities. It is unreasonable to attribute the decreases of Yellow Quick to a product with such limited reach. The degree to which Blue Hot is responsible for is unclear and incalculable from the present evidence.

2. Red could have taken steps to mitigate the harm

68. Blue is not liable for harm suffered because the harm could have been reduced by Red taking reasonable steps *[PICC 7.4.8(1) Mitigation of Harm]*.
69. An email sent from Red to Blue in October 2017 states "*We think that if Blue Hot is manufactured and sold in Negoland, it will be a big hit for sure.*" showing that Red foresaw the hit of Blue Hot in Negoland *[Exh.11]*. If one accepts Red's position that Blue Hot competes with Yellow Quick, it would have been reasonable to assume from this point that the sales of Blue Hot would reduce the sales of Yellow Quick.
70. Had Red contacted Blue about the non-performance as soon as the sales of Blue Hot in Negoland started in January 2018, Blue could have taken appropriate measures to prevent the drop of Yellow's sales such as stopping the sales of Blue Hot in Negoland.

Therefore, the extent of harm is not established with reasonable degree of certainty, and Blue is not obligated to compensate for the full $400,000 as damages.

THIRD PARTY FUNDING

The Arbitral Tribunal shall order Red to disclose the content of the agreement with the third-party fund.

71. Arbitrators must be impartial and independent to treat both parties with equality *[UNCITRAL Art 6.7, Art 17]*. Any doubt concerning their impartiality and independence must be cleared. This is

because an unfair judgement directly clashes with justice, and there is a substantial possibility that the award will be cancelled.

72. An arbitral award that contradicts the public policy of the country may be refused recognition and enforcement *[New York Convention Art V.2(b)]*. This possibility would surely arise in the event of an unfair award or an award ordered by unfair arbitrators, as such an award is clearly contrary to any countries' public policy.
73. To free the doubt to whether the arbitrators are impartial, both arbitrators and the parties are held responsible to disclose information *[International Centre for Dispute Resolution ("ICDR") Rule 13.3]*. Not only is the information about third-party funds within the scope of this disclosure obligation, but the requirement of parties for disclosure is becoming increasingly prominent regardless of whether there is doubt concerning the impartiality of the arbitrators *[Singapore International Arbitration Centre ("SIAC") Rule 24(l); International Bar Association Guideline Art 7(a)]*. This is because the interest of a third-party fund is the contents of an arbitral award and thus there is a high potential risk of conflict of interests, given that the amount of the fee it receives from its client depends on the content of the award.
74. In this case, there is suspicion concerning a possible conflict of interest relating to one of the arbitrators and the third-party fund with which Red entered into an agreement. Blue submitted information that: (1) Red had entered into an agreement with a third-party fund; and (2) the fund has a vested interest in one of the arbitrators *[Exh.15]*. In response, Red admitted (1), and only stated that it has no information concerning (2) *[Exh.16]*. However, to ensure the impartiality of the arbitrators and the validity of this arbitration, the Arbitral Tribunal must know the identity of the third-party fund and the content of the agreement to determine the relationship with the relevant fund, and to resolve the doubt concerning (2) because it is the arbitrators who know the circumstances. The mere statement by the suspected party does not provide an objective view on the fairness of the arbitration.

Therefore, the Arbitral Tribunal should order Red to disclose the identity of the fund and the content of the agreement with the fund to the Arbitral Tribunal and Blue, or at the very least, the aforementioned contents to the Tribunal.