List of Abbreviation

- "P. " : Page
- "¶" : Paragraph
- "Ex." : Exhibit
- "Art." : Article
- "Sec." : Section
- "UPICC" : Unidroit Principles of International Commercial Contract 2016
- "Ex.11B" : Ex.11 Blue's Written Statement
- "Ex.11R" : Ex.11 Red's Written Statement
- "Air Waybill":Ex.12 Excerpt of Conditions of Contract on Reverse Side of Air Waybill

TRANSPORTATION CASE

Blue hereby seeks the following arbitral awards:

Red shall pay 7,750,000 Abu dollars to Blue

Blue submits that:

Issue 1

A. There was a breach of Red's contractual obligation in relation to the damage to the goods "Abu Propolis" and "Abu Watch";
B. The damages of goods occured because Red did not pack the goods properly for air transportation;
C. Red is not exempt from its liability;

Issue 2

D. As there was a breach of obligation, Red shall pay 7,750,000 Abu dollars to Blue;
E. Blue is not barred from claiming for damages;
F. Even if the amount of damages was limited, it shall be 90,200 SDR**.**

Issue 1

A. There was a breach of Red's contractual obligation in relation to the damage to the goods "Abu Propolis" and "Abu Watch"

1) Red breached the obligation to transport the goods "Abu Propolis" and "Abu Watch" because they were broken when they arrived at the warehouse of Blue in Negoland

Under an agreement between Red and Blue on master agreement[*Ex.4*], Red is obligated *"to provide the transportation of goods with the airplanes owned by Red between the warehouses of Blue in Arbitria and the warehouses of Blue in Negoland"*[*Ex.4, Art.1.1.1*]. In other words, Red is obligated to provide transportation service to Blue. By this transportation obligation, Red shall be liable for *"damages due to loss, damage, or delay arising from the transport of parcels, or incidental other operations by Red ("Damage") when the cause of damage occurs during the transport"*[*Ex.4, Art.7.1*].

In this case, incidental other operations by Red includes packaging of the goods. When the agreement[*Ex.4*] was concluded, Red's incidental operation was considered to be customs clearance procedures and loading into the containers[*¶26(2)*]. However, in this case, Blue requested Red's cooperation for packaging work for the air transportation[*¶26, Ex.9*]. Therefore, Red's incidental operations include customs clearance procedures, loading into the containers, and packaging of the goods for air transportation[*UPICC4.1, 4.3(c)*].
In this case, the cushioning materials that Red used for the packaging were not dedicated for air transportation[*¶31②*]. With the air pressure of the cargo room, about 30% of the air in the cushioning material leaked out[*¶31③*]. As a result of the 30% leak of air from the cushioning materials, the violent vibration of the containers caused the violent vibration of Abu Propolis and Abu Watches inside the cardboard boxes[*¶31⑥*]. As a result, the containers of 40,000 bottles of Abu Propolis and the 5,000 Abu Watches were damaged[*¶31,¶33*]. Both parties do not dispute that such a leak of air would not have occurred if cushioning materials for air transportation had been used[*¶31③*]. Moreover, both parties do not dispute that Abu Propolis and Abu Watches would not have vibrated in the cardboard boxes if no leakage of air from cushioning materials had occurred[*¶31⑥*].
In light of this fact, the damages of the goods occurred because the cushioning materials that Red used for the packaging (Red's incidental operation) were not dedicated for air transportation. Moreover, Clear-air turbulence was encountered during the flight and the aircraft shook very badly. However, the damages of the goods would not have occurred if the goods were packaged with dedicated cushioning materials[*¶31⑥*]. Therefore, Red can not be exempt from its liability[*Ex.4, Art.7.1(6),(8)*]. Therefore, Red breached the obligation to transport the goods and therefore shall be liable for the damages to the goods "Abu Propolis" and "Abu Watch".

2) Red is liable for the defective packaging of the Cargo performed by Red under Air Waybill, Art.1

"The Carrier (Red) is not liable for defective packaging or marking of the Cargo unless performed by the Carrier (Red) of someone in the Carrier's service"[*Air Waybill, Art.1*].
In other words, Red is liable for defective packaging of the Cargo performed by the Red. In this case, Red sent two of its staff members to perform the work of packaging the goods for air transportation in a warehouse in Arbitria on September 17[*¶27*]. From the third day (September 19), only two staffs from Red (no Blue staff) packaged the items[*Ex.11.3B*]. As a result, the containers of 40,000 bottles of Abu Propolis and the 5,000 Abu Watches were damaged[*¶30, 33*]. In light of these facts, The defective packaging of Abu Propolis and Abu Watches was caused by Red's work. Therefore, Red is liable for defective packaging of the goods.

B. <u>The damages of goods occured because Red did not pack the goods properly for air transportation</u>

1) Red breached the obligation to provide relevant materials with transportation services as requested by Blue under Ex.4, Art.1.2.3

Red is obligated*"to provide Blue with other transportation services as requested by Blue, such as packing, research of relevant laws and regulations, advices on logistics"*[*Ex.4, Art.1.2.3*]. In this case, Blue requested Red to enhance the transportation system and the MEMORANDUM[*Ex.10*] was concluded. However, Red breached the obligation[*Ex.10, Art.2, Art.4*], this means Red did not provide Blue with appropriate transportation services.

a) Red breached the obligation to make a special arrangement of materials under Ex.10, Art.2

Red has the obligation to make a special arrangement of relevant materials to prepare for the increase of the volume of parcels during the Special Sales[*Ex.10, Art.2*]. In other words, Red is obligated to procure adequate amounts of cushioning materials. In this case, Red prepared the cushioning materials for air transportation. However, they were gone in no time[*Ex.11.4R*]. Even if the number of products was significantly more than Red expected[¶*28*], it could be easily expected how many cushioning materials are necessary. This is because the average daily sales amounted to 50 million Nego-Lira at the time of BSN 5th anniversary in 2014[¶*24*]. At that time, Red has already started the delivery services with Blue[¶*19*]. In light of these facts, Red breached the obligation to make a special arrangement of relevant materials to prepare for the increase of the volume of parcels during the Special Sales[*Ex.10, Art.2*].

b) Red breached the obligation to procure cushioning material for the air transportation under Ex.10, Art.4

Two people who were sent from Red were obligated to procure cushioning material for the air transportation[*Ex.10, Art.4*]. In this case, Red's staff asked Blue to procure additional cushioning materials urgently, but there was no special request made by Red's staff as to the quality of cushioning materials[*Ex.11.4B*]. These cushioning materials were not dedicated for air transportation, and their quality was not good enough[¶*31*]. In other words, Red did not procure appropriate cushioning material for the air transportation. Furthermore, in this case, three types of cushioning materials were used for packaging, (1)which Red prepared, (2)which Blue usually uses, and (3)which Blue purchased for Red for this transportation[*Ex.11.4B, 6B, 6A*]. Swan, who is from Red inadvertently thought that the cushioning materials (3) were standard materials in Arbitria. Even though the cushioning materials (3) were different from the cushioning materials (1) and (2), he did not raise any specific question about their quality[*Ex.11.6B*]. Since Red was obligated to procure cushioning materials for air transportation, Red should have checked Blue if the cushioning materials were standard in Arbitria and suitable for air transportation. In addition, Red is a specialist of air transportation. From these facts, Red did not procure cushioning materials for air transportation and breached the obligation[*Ex.10, Art.4*]. Therefore, Red breached the obligation to provide relevant materials with transportation services as requested by Blue[*Ex.4, Art.1.2.3*].

c) The additional cushioning material requested by Red shall be for air transportation

Even if Red procured cushioning materials including additional ones[*Ex.10, Art.2*], Red should have procured cushioning materials suitable for air transportation. However there is no special request as to the quality of cushioning materials by Red[*Ex.10, Art.4*]. The reason why Red should have procured cushioning materials suitable for air transportation is there was common intention of the parties that cushioning materials are suitable for air transportation[*UPICC 4.1*]. In applying UPICC 4.1, regard shall be had to all the circumstances, including UPICC 4.3(a)(c)(d).

Blue recognized that the cushioning materials Red procured in advance shall be dedicated for air transportation[*UPICC 4.3(c)*]. This is because Blue requested Red to procure the cushioning materials[*Ex.10, Art.4*], and based on the request, Red had prepared the cushioning materials for air transportation[*¶28*].

The purpose of contracting the MEMORANDUM[*Ex.10*] is that Blue requested Red to cooperate in the work of packing the goods for air transportation, and then handing over the packed products to Red[*UPICC 4.3(d)*]. This is because Blue requested Red to handle usual Blue's work "*(1) Blue itself packages the goods for air transportation*"[*¶26*].

Red should have procured cushioning materials suitable for air transportation because the packing also should have been for air transportation[*UPICC 4.3(a)*]. On July 16, Blue had discussions to request Red to cooperate in the work for packing. At the meeting, Red accepted Blue' requests for that Red send two people to facilitate smooth packing of parcels for the air transportation also, Blue requests Red to procure cushioning materials for packing[*Ex. 9.2③*].

C. <u>Red is not exempt from its liability</u>

1) Red is not exempt from clear-air turbulence[*Air Waybill, Art.3 and Ex.4, Art.7.1(6)(8)*]

"Carrier will not be responsible for damage..., if Carrier can prove that the carrier or its staff have taken all possible action to prevent incident from happening or that it was impossible to do so"[*Air Waybill, Art.3*]. However, in this case, since Red did not prepare enough cushioning materials[*¶29*], it end up with using the cushioning materials not dedicated for air transportation[*¶31②*]. From these facts, if Red had prepared enough cushioning materials suitable for air transportation, the damages for Abu Propolis and Abu Watch did not occur as mentioned in A(1). Red did not take possible action to prevent incident from happening, though it was possible for Red to expect airplane shakes during the flight from the standpoint of a specialist of air transportation. Therefore, Red is not exempt from clear-air turbulence.

2) Red was grossly negligent for the damage[*Air Waybill, Art.2*]

"Carrier is not liable for any damage of whatsoever nature arising out of or in connection with the Carriage of Cargo, unless such damage is proved to have been caused by the gross negligence of Carrier"[*Air Waybill, Art.2*]. However, in this case, Red did not procure enough cushioning materials[*¶29*], though Red accepted to make a special arrangement to prepare for the expected increase in the volume of delivery[*Ex.9.2①*]. These facts amount to gross negligence of Red, and the damage to two products was

caused by that negligence. Therefore, the damage has been caused by the gross negligence of Red.

3) There was no contributory negligence on the part of Blue[*Air Waybill, Art.5*]

"Contributory negligence on the part of Blue releases Red of its liability to the extent provided by the Convention and applicable law"[*Air Waybill, Art.5*]. However, in this case, Blue's staffs worked with Red for the first two days so that Red's staff could be familiar with the work. After that, Blue handed a tablet used in Blue's warehouse to Red's staff[*Ex.11.3B*]. On the other hand, there was no special request from Red as to the quality of cushioning materials procured by Blue[*Ex.11.4B*]. In other words, Blue provided enough support for Red, in spite of a shortage of labor due to Blue Ultra Sale and the leaving of its staff of the warehouse[*¶26*]. Therefore, there was no contributory negligence on the part of Blue.

Issue 2

D. As there was a breach of obligation, Red shall pay 7,750,000 Abu dollars to Blue

If there was a breach of Red's contractual obligation in relation to the damage to the goods "Abu Propolis" and "Abu Watch", Red shall pay 7,750,000 Abu dollars to Blue under UPICC 7.4.1~7.4.4.

1) There was certainty of harm

Regarding the amount of damage, it is composed of damages for 40,000 bottles of Abu Propolis, and for 5,000 Abu Watches and the cost to repair them. For Abu Propolis, the total damage is 150 Nego-Lira times 40,000 equals 6,000,000 Nego-Lira. For Abu Watches, the lost profit for Abu Watch is 300 Nego-Lira times 5,000 watches, amounting to 1,500,000 Nego-Lira. The repair cost for Abu Watch is 50 Nego-Lira times 5,000 watches equals 250,000 Nego-Lira. The total amount of damage is 1,750,000 Nego-Lira, consisting of, 1,500,000 Nego-Lira and 250,000 Nego-Lira as the repair cost[*¶34*]. From these facts, the grand total amount of damage is 7,750,000 Abu dollars. In addition, this compensation is established with a reasonable degree of certainty because the harm extended[*UPICC 7.4.3*].

Goods	Price	Quantity	Total
Abu Propolis	150 Nego-Lira	40,000 bottles(dispose)	6,000,000Nego-Lira
Abu Watch (lost profit)	300 Nego-Lira	5,000 watches(refund)	1,500,000Nego-Lira
Abu Watch (repair cost)	50 Nego-Lira	5,000 watches(repair)	250,000 Nego-Lira

Abu Propolis: Blue was forced to dispose of 40,000 bottles of Abu Propolis and its price changed from 50 to 150 Nego-Lira.

Abu Watches: Blue was forced to refund money for 5,000 Abu Watches that had been sold and then to spend 50 Nego-Lira per each to repair them. Although the watch could have been sold for 500 Nego-Lira per watch, Blue was forced to sell them for 200 Nego-Lira per watch due to a loss of opportunity to sell.

2) There is a causal link

UPICC 7.4.2 affirms the need for a causal link between the non-performance and the harm[*Ex.7.4.2 Comment 1*]. In this case, the cushioning materials that Red used for the packaging were not dedicated for air transportation[¶*31②*] With the air pressure of the cargo room, about 30% of the air in the cushioning material leaked out[¶*31③*]. As a result of the 30% leak of air from the cushioning materials, the violent vibration of the containers caused the violent vibration of Abu Propolis and Abu Watches inside the cardboard boxes[¶*31⑥*]. As a result, the containers of 40,000 bottles of Abu Propolis and the 5,000 Abu Watches were damaged[¶*31*]. In light of these facts, the damages of goods occurred because the cushioning material that Red used was not dedicated for air transportation. If Red had procured cushioning material dedicated for air transportation and packed the goods with it, no damages would have occured. Therefore, Red's non-performance caused the harm of Abu Propolis and Abu Watches.

3) There was foreseeability

Blue requested Red to pack parcels for the air transportation[*Ex.9.2.③*]. In addition, the core of Red's freight transportation business is its courier service business[¶*9*]. Since 2008, Red also expanded its business into international air cargo transportation between Negoland and Arbitria[¶*10*]. Thus, Red could have found that the damages would be caused if Red did not pack parcels suitable for the air transportation, with its professional knowledge for air transportation. Red requested Blue that " *"Abu Propolis" and "Abu Watch" will be sold as featured products*"[*Ex.9.1*], and "Abu Propolis" was contained in a bin and "Abu Watch" was a high functional watch[¶*25*]. In light of these facts, it was obvious that they were fragile, and Red could have expected these products would be damaged if Red did not pack suitably. Therefore, Red could foresee the damages.

E. <u>Blue is not barred from claiming for damages</u>

"*No action shall be maintained in the case of loss or damage to Goods unless a complaint is made to Carrier in writing by the person entitled to delivery"*[*Air Waybill, Art.7*]. It is essential to claim for damages in writing. On October 7, Blue notified Red by email that the Abu Watch was broken, and on October 12, Blue also notified Red by email that it had been found that about half of the Abu Watches had been broken due to the impact during the air transportation[¶*33*]. Therefore, Blue claimed damages of Abu Watches in writing. In addition, Abu Watches were broken for the same reason as in the case of Abu Propolis. It is the fact that "*Blue notified Red in writing of the damage and leakage of Abu Propolis*"[¶*31*]. Thus, Abu Watches were broken for the same reason as in the case of Abu Propolis which complaint was made in writing. From these facts, Blue notified the damage by writing and Blue is not barred from claiming for damages.

F. <u>Even if the amount of damages was limited, it shall be 90,200 SDR</u>

1) The limitation of damages of Red is 22 SDR per kilogram for such parcel

In determining the amount to which liability is limited, *"A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention"*[*Montreal Convention Art.25*]. According to the contract of carriage, Red's liability for damages "*shall be limited to 22 SDR per kilogram for such parcel"*[*Ex.4, Art.7.3*]. Thus, in case of limiting the amount of damages, the upper limitation of the liability of Red is 22 SDR per kilogram.

2) The limited amount shall be 90,200 SDR

Regarding the actual amount of damages, the total weight was 4,100 kilograms[¶*29*]. Accordingly, the amount of damages shall be limited to 90,200 SDR, which is 22 SDR times 4,100 kilograms in total under the contract[*Ex.4, Art.7.3*].

INFORMATION CASE

Blue hereby seeks the following arbitral awards:

The tribunal shall dismiss the claim of Red

Blue submits that:

Issue 1

A. Blue is not legally liable to pay 500,000 Nego-Lira to Red as compensation;
B. Even if Blue was legally liable, Blue can be exempt from its liability;

Issue 2

C. Blue is not legally liable to pay 6,500,000 Nego-Lira to Red as compensation;
D. Blue is not liable for the non-performance[*UPICC 7.4.1~7.4.4*];
E. Even if Blue was legally liable, the total amount of damages is reduced.

<u>Issue 1</u>

A. <u>Blue is not legally liable to pay 500,000 Nego-Lira to Red as compensation</u>

1) Blue performed the obligation that does not to infringe any privacy, nor have any claim of such infringement[*Ex.8, Art.8.2(4)*]

The General Data Protection Act of Arbitria ("GDPA") stipulates that "consent" of the data subject means indication of the data subject's wishes are freely given by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her[¶*37*]. Then, the Personal Information Protection Commission ("PIPC") found that the method for obtaining consent used by Red Travel was not sufficient. In this case, customers of Red Travel entered into transactions using the website recorded on the server of Negoland[¶*23*]. The laws of Negoland apply to transactions on Red Travel and the method of obtaining consent which Red used would not raise any legal issues[¶*37*].

Furthermore, for the other case argued before the Red case, the Arbitria Supreme Court decided on January 6, 2020 that the GDPA does not apply to cases where the residents of Arbitria voluntarily accessed websites operated by foreign companies that have similar business with Red travel[¶*41*]. In July 2019, the court of first instance for the same case had rendered a judgment along the same lines as the Supreme Court decision, and Red was aware of that fact. Although in September the court of appeals reversed such a decision, the supreme court announced it would render its decision on January 6, 2020 upon appeal of such case. Therefore, Red should have waited for such a supreme court decision. Anyway, Red Travel is the services provided by a Negoland corporation through Negoland servers under Negoland law. From these facts, applying the GDPA to Red Travel is excessive extraterritorial application of law and Red should have contested the fine based on the breach.

2) Blue performed all work called for by this agreement in compliance with applicable laws[*Ex.8, Art.8.3 (3)*]

The terms and conditions on the Red Travel website state that the applicable laws for transactions on Red Travel are the laws of Negoland[¶*37*]. According to the laws of Negoland, the method of obtaining consent would not raise any legal issues. In addition, there was no statement in the Red's material[*Ex.8, Art.2.1*] to the effect that the development of the site must be in accordance with the regulations of Arbitria[¶*40*]. From these facts, Blue followed a material provided by Red and developed the website according to the laws of Negoland. Consequently, the deliverable was not defective under the laws of Negoland and Blue is not obligated to repair it. Therefore, Blue performed its obligation under Ex.8, Art.8.3(3).

3) Blue performed the obligation that all deliverables to be prepared in a professional diligence and skill[*Ex.8, Art.8.3 (1)*]

In the Red Travel website, customers are required to scroll through the terms and conditions before making a contract, and no contract is made without customers' clicking on a statement that they have read and agreed to the terms and conditions[¶*37*]. It meets the representation and warranty that Blue shall prepare the deliverables in a workmanlike manner and with professional diligence and skill. Therefore, Blue performed its obligation under Ex.8, Art.8.3(1).

B. <u>Even if Blue was legally liable, Blue can be exempt from its liability</u>

1) Since Blue's non-performance was caused by Red's omission, Red may not rely on the non-performance of Blue[*UPICC 7.1.2*]

a) Red should have consulted with Blue before paying the fine

Red was aware that the court of first instance at another case had rendered a judgment that the GDPA does not apply to cases as mentioned in A(1). However, Red paid the fine without consulting with Blue. In this case, PIPC ordered Red to pay a fine within 3 months from October 10, 2019[*Ex.13*]. Thus, the due date for payment of fine was on January 9, 2020. In addition, the decision of the Supreme Court was expected to be rendered on

January 6[¶*41*]. From these facts, Red had time to consult with Blue before the supreme rendered the decision of the case. If Red consulted with Blue before paying the fine, Blue could have advised Red not to pay the fine under the Supreme Court decision. Therefore, Blue's non-performance was caused by Red's omission and Blue can exempt its liability [*UPICC 7.1.2*].

b) Red should have indicated that the Web Site breaches the GDPA[*Ex.8, Art.2.2*]

No sentence mentioned that Red had not approved the final Web Site, namely, Red approved the final Web Site and did not indicate the Web Site that is breaching the GDPA. If Red pointed out that, Blue could have fixed the Web Site so as not to breach the law. Because of Red's omission, Blue breached the GDPA and the PIPC imposed the fine to Red. Blue's non-performance was caused by Red's omission and Blue can exempt its liability[*UPICC 7.1.2*].

2) Red shall cooperate with Blue for the performance of Blue's obligations[*UPICC 5.1.3*]

"*Each party may be under a duty not only to refrain from hindering the other party from performing its obligation(s), but also to take affirmative steps to enable the other party's performance*"[*UPICC 5.1.3 Comment1*]. Red was aware that the court of first instance in another case had rendered a judgment that the GDPA does not apply to cases where the residents of Arbitria voluntarily accessed websites operated by foreign businesses as mentioned in A(1). Red should have objected to the order to prevent the breach of the GDPA, but Red did not contest and paid the fine. Therefore, Red did not take affirmative steps to enable Blue's performance and Blue can exempt its liability[*UPICC 5.1.3*].

Issue 2

C. Blue is not legally liable to pay 6,500,000 Nego-Lira to Red as compensation

1) Blue is not obligated to provide the system which does not have any bugs[*Ex.7, Art.6.2*]

"*Blue does not warrant uninterrupted or "error free" operation of the Computer System or Service that is not due to their negligence*"[*Ex.7,Art.6.2*]. Blue fixed the bugs and provided the uninterrupted R-CMS for Red[*Ex.14*]. However, the R-CMS had another bug and they caused the hacking. As a result, the R-CMS became the system which was not uninterrupted. In addition, since Blue confirmed that there were bugs in the R-CMS on February 5, 2019[*Ex.14*], the R-CMS was not an error free system. Furthermore, such an uninterrupted and errored system was not due to Blue's negligence. In fact, the hacking was caused by bugs in the R-CMS and the bugs allowed someone to steal the information needed to access the R-CMS customer data[¶*38*]. From these facts, Blue does not warrant these computer systems or services. Therefore, Blue is not obligated to provide the system which does not have any bugs.

2) Blue performed its obligation to provide the R-CMS[*Ex.7, Art.4.1*]

Blue shall build the computer System in accordance with and subject to the terms of this Agreement and the Schedule herein[*Ex.7, Art.4.1*]. Regarding this point, the R-CMS is not necessarily an uninterrupted or error free system[*Ex.7, Art.6.2*]. In fact, Blue completed to build R-CMS in December 2018, and provided it until January 1, 2019[¶*22*]. Thus, there was no breach of Blue's obligation to provide the R-CMS.

3) Red may not rely on the non-performance of Blue[*UPICC 7.1.2*]

Red may not rely on the non-performance of Blue[*Ex.7, Art.5.1(c) and Art.6.1*] to the extent that such non-performance was caused by Red's omission[*UPICC 7.1.2*]. In this case, the hacking and the leaking was caused by the bugs. Red knew there was unauthorized access before the hacking was caused. However, Red did not make enough efforts to prevent the hacking. In addition, the personal information was leaked because Red did not take any actions to prevent from stealing the passcode. As a result, the passcode was stolen and the personal information which should have been treated as confidential information was leaked. In light of these facts, Blue's non-performance was caused by Red's omission. Therefore, Blue can be exempt from its liability.

D. Blue is not liable for the non-performance[*UPICC 7.4.1~7.4.4*]

1) There are no causal link between non-performance of Blue and the damage

In this case, Blue confirms that the bug which caused the hacking and leaking of personal information was something they had not thought before. It was hard to find unless spending three or four days doing intensive checks. On January 21, 2019, Red told Blue that Red found evidence of an unauthorized access by email[*Ex.14*]. At that time, Blue was extremely busy and Red also knew it. However, Red did not take immediate measures such as temporary suspension of the system when Red noticed the unauthorized access on January 21. Red could have made temporary suspension because Red could use the backup system and there was no financial damage on Red caused by making the suspension[¶*42*]. If Red had taken any actions to prevent the hacking, the leaking of the personal information would not have happened. Therefore, there was no causal link between Blue's performance[*Ex.7, Art.4.2, Art.4.4, Art.5.1(c), Art.6.1*] and the damage of 1,500,000 Nego-Lira for the fine and 5 million Nego-Lira for the solatium.

E. Even if Blue was legally liable, the total amount of damages is reduced

1) The damages of 1,500,000 Nego-Lira shall be reduced under UPICC 7.4.7

Where the harm is due in part to an omission of Red, the amount of damages shall be reduced to the extent that these factors have contributed to the harm[*UPICC 7.4.7*]. In this case, Red knew there was unauthorized access before the hacking was caused. However, Red did not make enough efforts to prevent the hacking. Red paid 1,500,000 Nego-Lira as the fine for leaking the personal information. From these facts, the damage of 1,500,000 Nego-Lira was caused by Red because Red did not take any action for bugs. Therefore, there are causal relationships between Red's omission and the damage of 1,500,000 Nego-Lira, and Blue can reduce the amount of damage.

2) The damages of 5 million Nego-Lira shall be reduced under UPICC 7.4.7

The R-CMS was hacked and the personal information of 50,000 Red Travel's customer was leaked. For the solatium, Red decided to pay 100 Nego-Lira per person which is more than in the same level leakage in the past, without consulting with Blue. As a result, Red paid 5 million Nego-Lira in total to 50,000 of their customer as solatium. However, Red should have consulted with Blue because this amount was not reasonable. If Red consulted with Blue, Blue could have advised the reasonable price for this problem. From these facts, there are causal relationships between Red's omission and the damage of 5 million Nego-Lira. Therefore, Blue can reduce the amount of damage.

Annotation The exchange rate for the payment of damages from Blue shall be based on (1)when the problem occured, before January 2020. (2)Even if it was not allowed, when the arbitration proceeding started, as of March 16, 2020.

Arbitration Procedure

Issue 1

A. The arbitral tribunal does not have authority to make a decision to conduct the online examination of witnesses without the consent of both parties

The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to...provide fair and efficient process for resolving the parties' dispute[*UNCITRAL Arbitration Rules 2013 version("UNCITRAL Rules") Art.17.1*]. In addition, the recognition and enforcement of the arbitral award may be refused "*if the party was unable to present his case"*[*the Convention on the Recognition and Enforcement of Foreign Arbitral Awards("the New York Convention") Art.5.1(b)*]. From these provisions, without the consent of both parties, the online examination of witnesses may not give the party which disagrees with conducting the examination remotely an opportunity to present its case. In such cases, the recognition and enforcement of the award may be refused, and that is the breach of the tribunal's obligation to provide an efficient process for resolving parties' dispute. Therefore, the tribunal does not have authority to make a decision to conduct the online examination of witnesses if there was no consent of both parties.

B. Even if the arbitral tribunal has authority to make such a decision, it is possible only if the following conditions are met

1) The parties are treated with equality

The arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality[*UNCITRAL Rules Art.17.1*]. The online examination of witnesses may ruin the parties' right to be treated equally, such as semi-remote hearings, in which one side or its witnesses participates remotely, but not the other. In such cases, one party's witnesses might be coached from outside of the tribunal. Thus, in case of the online examination of witnesses, the tribunal is much required to treat the parties equally under Art.17.1.

2) Efficient process for resolving the parties' dispute

The arbitral tribunal is obligated to provide an efficient process for resolving the parties' dispute[*UNCITRAL Rules Art.17.1*]. In order to make the tribunal's award efficient, it must be recognized and enforced in Arbitria and Negoland. Regarding this point, the recognition and enforcement of the arbitral award may be refused if the party was unable to present his case[*the New York Convention Art.5.1(b)*]. Considering these provisions, the online examination of witnesses may not give the parties an opportunity to present its case, and there is a possibility that the award will be refused. Therefore, in such circumstances, the online examination of witnesses shall not be considered as an efficient process under Art.17.1.

Issue 2

C. If certain conditions need to be met, following conditions need to be met in the examination of witnesses using Zoom

1) Due process consideration

In order to prove the credibility of witnesses, it is appropriate to ensure a 360-degree view of the witnesses' venue, such as using multiple cameras. It is more difficult to assess the credibility of witnesses remotely, because of the loss of non-verbal cues and the inability to inspect the person's behavior. Moreover, remotely heard witnesses might be coached or otherwise unduly influenced[*Maxi Scherer, Remote Hearings in International Arbitration: Analytical Framework, Sec.5.2[b][ii]*].

2) Technical framework

The tribunal needs to be satisfied that all remote participants have a sufficiently good internet connection and hardware set-up.The need for interpreters is also one of the factors the tribunal should take into account. In addition, it is necessary to consult between the tribunal and the parties regarding the incidental measures in case of sudden technical failures, disconnection, power outages[*ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic ANNEX Ⅰ.B(iv)*].

3) Confidentiality, privacy and security

The parties and arbitral tribunal should discuss data security or cybersecurity, in order to ensure that unauthorized third parties cannot gain access to the remote hearing. Data privacy or confidentiality should also be secured, to avoid that the remote hearing provider or any other involved third party which stores, transmits, or otherwise has access to data during the remote hearing might misuse it outside the arbitral proceedings[*ICC Guidance Note ANNEX Ⅰ.C*].

4) Test sessions before the online examination

In advance of the hearing, it is appropriate to conduct a minimum of two mock sessions. They should be held within the month preceding the hearing to test connectivity and streaming, with the last session one day before the hearing[*ICC Guidance Note ANNEX Ⅰ.B(v)*].

End