

IN ARBITRATION PURSUANT TO THE ARBITRATION RULES OF THE UNITED
NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

AKGUN INSAAT MAKINA SANAYI DIS TICARET LTD. STI.
Claimant

v.

FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
Respondent

Notice of Arbitration

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19 June 2019

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I. INTRODUCTION

1. Akgun Insaat Makina Sanayi Dis Ticaret Ltd. Sti. (“Akgun Construction” or “Claimant”) files this Notice of Arbitration against the Federal Democratic Republic of Ethiopia (“Ethiopia” or “Respondent”).¹ Claimant is a company formed under the laws of the Republic of Turkey.
2. Claimant brings this dispute pursuant to the Agreement between the Republic of Turkey and the Federal Democratic Republic of Ethiopia Concerning the Reciprocal Promotion and Protection of Investments dated 16 November 2000² and in force from 3 October 2005 (the “Treaty” or “Turkey-Ethiopia BIT”).³
3. The dispute concerns Respondent’s failure to comply with its obligations under international law and Ethiopian law with respect to Claimant’s investments in Ethiopia. Those investments include Claimant’s interest in the development, construction and operation of the Ethio-Turkish Industrial Zone Project (“ETIZ” or the “Project”).
4. Article VII of the Treaty provides for UNCITRAL arbitration.⁴ Accordingly, Claimant files this Notice pursuant to Article 3 of the UNCITRAL Arbitration Rules (with new Article 1, paragraph 4 as adopted in 2013). Claimant submits this Notice without prejudice to its right to set out its claim in full at the appropriate time during this Arbitration.

¹ For ease of reference, all Turkish characters in this Notice of Arbitration have been transliterated to the English alphabet.

² **CLA-001**, Agreement Between the Republic of Turkey and the Federal Democratic Republic of Ethiopia Concerning the Reciprocal Promotion and Protection of Investments, signed 16 November 2000 (“Turkey-Ethiopia BIT”).

³ *Id.*, cover page.

⁴ *Id.*, Art. VII(2)(c).

II. PARTIES TO ARBITRATION

A. Claimant

5. Claimant is a family-owned company incorporated under Turkish law and registered with the Istanbul Trade Registry on 26 September 1991 under the registration number 279250.⁵ It is owned by three Turkish nationals, Yusuf Akgun, Serkan Ufuk Akgun and Yunus Akgun, who are each members of the Akgun family.⁶
6. Claimant is jointly represented by Jones, Swanson, Huddell & Garrison, L.L.C., Fishman Haygood, L.L.P., Ilhan & Yavuzturk Attorneys at Law and Charles Owen Verrill, Jr. Claimant requests that notifications intended for Claimant be sent to the following addresses:

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⁵ **C-001**, Copy of the Turkish Trade Registry Gazette dated 9 October 1991.

⁶ **C-002**, Copy of the Turkish Trade Registry Gazette dated 13 August 2018.

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B. Respondent

7. Respondent is the State of Ethiopia. Respondent's addresses are as follows:

Office of the President of Ethiopia

H.E. Sahle-Work Zewde
National Palace, Addis Ababa/Ethiopia

Office of the Prime Minister of Ethiopia

H.E. Abiy Ahmed (PhD)
Lorenzo Te'azaz Road P.O Box 1031
Addis Ababa/Ethiopia

Ministry of Trade and Industry of Ethiopia

H.E. Fetlework Gebre-Egziabher
Kazancise, P.O. Box:704
Addis Ababa/Ethiopia

Office of the Attorney General of Ethiopia

Ato Birhanu Tsegaye
Bambis, Jomo Kenyatta Avenue P.O Box 1370
Addis Ababa/Ethiopia

Embassy of Ethiopia in Ankara

H.E. Girma Temesgen Barkessa
74 Uğur Mumcu Street Suite 1-2, 06660 Gaziosmanpasa
Ankara/Turkey

III. SUMMARY OF FACTS

8. Mr. Yusuf Akgun, the founder of Akgun Construction, has substantial experience in the development and operation of private organized industrial zones.⁷ Mr. Yusuf Akgun participated in the development of the Ikitelli Organized Industrial Zone (“Ikitelli”) in Istanbul, Turkey as a contractor.⁸ He has been the Chairman of the Board of Directors of the cooperative which operates the ESKOOP Industrial Site within Ikitelli since 1997.⁹ Through his decades of service in this role, Mr. Akgun has become a recognized expert in the development and operation of industrial zones. It was based on this experience that representatives of the Federal Democratic Republic of Ethiopia and Ethiopia’s Ministry of Industry approached Mr. Akgun with the idea of developing an industrial zone in Ethiopia.¹⁰
9. Throughout 2008, Ethiopian officials visited Ikitelli and on multiple occasions met with Mr. Yusuf Akgun to discuss the development and construction of a similar organized industrial zone in Ethiopia.¹¹ During these meetings, the Ethiopian delegation specifically asked Mr. Akgun if he and his company, Akgun Construction, would be willing to develop such an industrial zone in Ethiopia.¹²
10. On 13 October 2008, Claimant and the Oromia State of Ethiopia signed a Memorandum of Understanding (“MOU”) for Claimant to develop an industrial zone in the Oromia Region of Ethiopia.¹³
11. The MOU called for the parties to execute an Agreement to commence the construction and operation of the industrial zone.¹⁴ On 11 June 2010, the initial Agreement on the Lease of Land and Development of an Organized Industrial

⁷ **C-003**, K. Bekele, *Turkish investors envisage an industrial zone worth USD 10bln in Ethiopia*, The Reporter, 22 August 2009, p. 7; **C-004**, Ethio-Turkish International Industrial City Catalogue for Potential Investors (“ETIZ Catalogue”), pp. 3, 19.

⁸ See *supra* note 7.

⁹ **C-005**, Copy of the Turkish Trade Registry Gazette dated 27 August 1997; **C-006**, Copy of the Turkish Trade Registry Gazette dated 13 March 2019.

¹⁰ **C-004**, ETIZ Catalogue, pp. 3, 5; **C-003**, K. Bekele, *Turkish investors envisage an industrial zone worth USD 10bln in Ethiopia*, The Reporter, 22 August 2009, p. 7.

¹¹ **C-003**, K. Bekele, *Turkish investors envisage an industrial zone worth USD 10bln in Ethiopia*, The Reporter, 22 August 2009, p. 7; **C-004**, ETIZ Catalogue, pp. 3, 5.

¹² See *supra* note 11.

¹³ **C-007**, Memorandum of Understanding between the Oromia State and Akgun Construction dated 13 October 2008 (“MOU”).

¹⁴ *Id.*

Zone (“the 2010 Agreement”) was executed between Akgun Construction and the Ethiopian Ministry of Industry.¹⁵ Under the terms of the 2010 Agreement, Claimant and Ethiopia were to jointly operate the ETIZ Project.¹⁶

12. However, in 2012, upon the specific request of then-Prime Minister of Ethiopia, Meles Zenawi, the parties replaced the 2010 Agreement with the Agreement on the Lease of Land and the Development of an Industrial Zone dated 8 June 2012 (“the 2012 ETIZ Agreement”).¹⁷ Under the terms of the 2012 ETIZ Agreement, Claimant became solely responsible for developing and operating the industrial zone and Ethiopia would not be directly involved in the management of the zone.¹⁸
13. Crucially, in every agreement between Akgun Construction and Ethiopia—the MOU, the 2010 Agreement, and the 2012 ETIZ Agreement—the parties’ agreements provided that Ethiopia, through the regional state of Oromia, would select and provide the land on which Claimant would construct and operate the ETIZ.¹⁹
14. Article 1 of the 2012 ETIZ Agreement specifies that “the Land” on which Claimant was to construct the ETIZ was a particular 1,460-hectare plot of land in Sendafa Town in Oromia, “to be allocated and delivered to [Akgun Construction] by the Oromia Regional State” on a phased basis.²⁰ Article 7(1) of the 2012 ETIZ Agreement reiterates that “[t]he Ministry and the Oromiya Regional State shall deliver and allocate the Land to [Akgun Construction] with the rights of management, operation and usage of the Land for the project”²¹ The 2012 ETIZ Agreement further specifies that the first stage, which totalled 660 hectares of land, would be handed over to Claimant in five phases:²²

¹⁵ **C-008**, Agreement between the Ministry of Industry of the Federal Democratic Republic of Ethiopia and Akgun Construction for the Lease of Land and Development of an Industrial Zone dated 11 June 2010 (“The 2010 Agreement”).

¹⁶ *Id.*, Art. 10(17).

¹⁷ **C-009**, Agreement between the Ministry of Industry of the Federal Democratic Republic of Ethiopia, Oromia Regional State and Akgun Construction for the Lease of Land and the Development of an Industrial Zone dated 8 June 2012 (“The 2012 ETIZ Agreement”).

¹⁸ *Id.*, Arts. 10(16) and 10(17).

¹⁹ See **C-007**, MOU, Art. 3; **C-008**, The 2010 Agreement, Art. 1 (definition of “Land”), Art. 7(1); **C-009**, The 2012 ETIZ Agreement, Art. 1 (definition of “Land”), Art. 7(1).

²⁰ See **C-009**, The 2012 ETIZ Agreement, Art. 1 (definition of “Land”), Art. 5.

²¹ *Id.*, Art. 7(1).

²² *Id.*, Art. 5.

Total area of the land to be handed over	1.460 hectares				
	1 st Phase	2 nd Phase	3 rd Phase	4 th Phase	5 th Phase
STAGE I: 660 ha AKGÜN must achieve 50 % occupancy rate on each land transferred to be able to proceed to the next phase.	100 ha	100 ha	100 ha	100 ha	260 ha
STAGE II: 800 ha AKGÜN must achieve 50 % occupancy rate on 660 hectares of the land transferred within five years starting from the date of handover.					

15. Importantly, the 2012 ETIZ Agreement expressly contemplates that the land on which the Project was to be constructed, and that the Ministry of Industry required to be allocated, was in the vicinity of the Legedadi and Dire Dams underground water basin.²³
16. The 2012 ETIZ Agreement requires Akgun Construction to use the property allocated to it solely for the Project as established in and required by the 2012 ETIZ Agreement.²⁴ Specifically, under the 2012 ETIZ Agreement, Ethiopia required that “[Akgun Construction] shall provide priorities for Industries which are engaged in leather products, goods and articles, textile and garment, chemicals and plastic, pharmaceutical, electric and electronics, printing, packing, automotive, metal and agro-processing Industries.”²⁵
17. The 2012 ETIZ Agreement also requires that “all commercial, technical, financial, and similar information” learned by any Party from another Party to the Agreement prior to or during the term of the Agreement must be “kept in confidence,”²⁶ and prohibits the Ministry of Industry and the Oromia Regional State from establishing, permitting, organizing, or promoting any industrial zone similar to the ETIZ within

²³ *Id.*, Art. 8(10).

²⁴ *Id.*, Art. 8(2).

²⁵ *Id.*, Art. 8(14).

²⁶ *Id.*, Art. 17(1).

50 km of the registered borders of the Project's land until the ETIZ occupancy rate reaches 75%.²⁷

18. Finally, the 2012 ETIZ Agreement provides:

If the investment made within the scope of the Project is stopped or suspended by a court order or administrative decision without any default which is attributable to the Developer [i.e. Akgun Construction], any and all direct and indirect losses of the Developer shall be handled by the relevant laws of [Ethiopia] and the BIT.²⁸

19. After signing the 2012 ETIZ Agreement, Claimant immediately proceeded with the development of the Project. One of the first steps was to compensate the farmers who were settled on the land that Ethiopia had allocated to Claimant for the Project. Accordingly, on 31 July 2012, Claimant paid compensation to the Oromia Regional State in the amount of ETB 14.717.476,15 (or USD 825.058,51).²⁹

20. Several months later, on 31 December 2012, Ethiopia legally allocated the first 100 ha of land and submitted a land lease certificate for a period of 80 years.³⁰ However, the land was not physically handed over to Claimant until 6 March 2013.³¹

21. Once Claimant had access to the land, it immediately commenced infrastructure works and construction mobilization.³² It also commenced promotional efforts to secure industrial tenants for the ETIZ Project. By 25 October 2013, Akgun Construction had secured a sub-lease with Afro-Oil Manufacturing as the first industrial tenant for the Project and was in the process of securing other tenants.³³

²⁷ *Id.*, Art. 11(14).

²⁸ *Id.*, Art. 11(11).

²⁹ **C-010**, Receipt issued by Cooperative Bank of Oromia dated 31 July 2012; **C-011**, National Bank of Ethiopia, Indicative Rates for Major Currencies Against Birr – Archive, <https://www.nbe.gov.et/market/searchbircurrencies.html> (last accessed 25 March 2019).

³⁰ **C-012**, Land Lease Certificate issued by Oromia Bureau of Rural Land and Environmental Protection dated 2 January 2013.

³¹ **C-013**, The protocol executed between Akgun Construction and Bureau of Rural Land and Environmental Protection of Oromia Regional State for the handover of the land dated 6 March 2013.

³² **C-014**, Letter from Akgun Construction to Ministry of Industry dated 12 June 2013.

³³ **C-015**, Sub-lease of parcel of land/building contractual agreement made between Akgun Construction and Afro Oil Manufacturing P.L.C. dated 25 October 2013.

22. In May 2013, the Ministry asked Claimant to prepare a detailed Environmental Impact Assessment (“EIA”).³⁴ Claimant engaged a local company, GOTA Management and Development Company Plc, to prepare the requested EIA. On or about 14 October 2013, Claimant submitted the first EIA for review by the appropriate Ethiopian agencies.³⁵
23. Meanwhile, Ethiopia was failing to uphold its obligations under the 2012 ETIZ Agreement to ensure allocation of the land and provision of sufficient power and water to the site for development of the Project. For example, although Claimant had much earlier provided the payment of funds to satisfy claims by farmers and settlers on the land, Ethiopia never passed those funds onto all of the farmers. In November 2013, two farmers attempted to stop work at the site to demand payment.³⁶ In April 2014, Claimant had to contact the Ministry of Industry to urgently request that water supply be restored for the ETIZ site.³⁷ In June 2014, Claimant had to write to the local police force to request assistance with getting farmers to stop growing grain crops on the site.³⁸ On 17 July 2014, Claimant complained to the Ministry of Industry and Ethiopian Investment Agency that power needed to be restored to the site.³⁹ In August 2014, Claimant wrote to the Ethiopian Electric Utility noting that it still needed to secure the 25 mW power supply to the site.⁴⁰ The Electric Utility Authority never did so.
24. Despite the headwinds it encountered, Claimant persisted in fulfilling its obligations. In January 2014, Claimant again assured the Ministry of Industry that the Project would not pollute the surrounding environment, and that a water purification plan would protect the water supply provided by the nearby dam complex.⁴¹ A 28 January 2014 letter from Claimant to Ethiopia’s President reiterated that, while other industrial zones near water supplies had been permitted without a separate water treatment plant, Claimant’s environmental measures would go above and beyond this historical practice by providing wastewater

³⁴ See **C-016**, Letter from Ministry of Industry to Akgun Construction dated 24 July 2014.

³⁵ See **C-017**, Letter from Akgun Construction to Ministry of Industry dated 19 December 2014, at 1.

³⁶ See **C-018**, Letter from Akgun Construction to Bureau of Rural and Environmental Protection of Oromia Regional State dated 14 November 2013.

³⁷ **C-019**, Letter from Akgun Construction to Ministry of Industry dated 28 April 2014.

³⁸ **C-020**, Letter from Akgun Construction to Bereh Voreda Police dated 6 June 2014.

³⁹ **C-021**, Letter from Akgun Construction to Ministry of Industry and Ethiopian Investment Agency dated 17 July 2014.

⁴⁰ **C-022**, Letter from Akgun Construction to Ethiopian Electric Utility dated 27 August 2014.

⁴¹ **C-023**, Report on Organized Industrial Zone Waste Water Purification Plant / Ethiopia Technical Approach File from Akgun Construction to Ministry of Industry dated January 2014.

treatment for all waste streams generated by the industrial tenants of the Project.⁴² Another letter dated 19 August 2014 reiterated the details of the waste handling, treatment, and recycling plans for the Project.⁴³

25. On 18 December 2013, the Ministry wrote to Claimant, enclosing the Addis Ababa City Government Water & Sewage Authority's concerns related to the first EIA report and required Claimant to submit a revised EIA based on the opinion contained therein.⁴⁴ Against this backdrop, Claimant retained Istanbul Technical University to prepare a second environmental assessment that addressed the authority's concerns and provided detailed schematics of the wastewater treatment capabilities for the Project, and submitted this revised environmental assessment on 15 October 2014.⁴⁵ In the interim, by letter dated 24 July 2014, the Ministry of Industry unexpectedly and without warning informed Claimant that it should suspend its work on the ETIZ Project.⁴⁶ Claimant responded with a letter dated 21 August 2014, outlining its concerns regarding this hasty notice of suspension and the potential loss of the nearly two-dozen investors that had expressed their intent to locate their operations in the ETIZ Project.⁴⁷
26. On 13 November 2014, the Ministry of Environment and Forest provided "Review Comments" rejecting the second environmental assessment,⁴⁸ and on 20 November 2014, the Ministry of Industry directed that the construction of the Afro-Oil facility in the ETIZ be halted until approval of an environmental assessment.⁴⁹
27. During a meeting held on 10 December 2014 between representatives of Claimant, the Ministry of Industry, the Ministry of Environment and Forest and other Ethiopian officials, the minister-advisor to Ethiopia's Prime Minister advised Claimant that the Ministry of Industry had made a mistake in the selection of the land for the Project, and that all fault on this subject belonged to the Ethiopian government.⁵⁰ Also, the

⁴² **C-024**, Letter from Akgun Construction to President of the Federal Democratic Republic of Ethiopia dated 28 January 2014.

⁴³ **C-025**, Letter from Akgun Construction to Ministry of Industry dated 19 August 2014.

⁴⁴ **C-026**, Letter from Ministry of Industry to Akgun Construction dated 18 December 2013.

⁴⁵ See **C-027**, Letter from Ministry of Industry to Akgun Construction dated 20 November 2014 and numbered 02.1.30/126.

⁴⁶ **C-016**, Letter from Ministry of Industry to Akgun Construction dated 24 July 2014.

⁴⁷ **C-028**, Letter from Akgun Construction to Prime Minister dated 21 August 2014.

⁴⁸ **C-029**, Letter from Ministry of Environment and Forest to Ministry of Industry dated 13 November 2014.

⁴⁹ **C-030**, Letter from Ministry of Industry to Akgun Construction dated 20 November 2014 and numbered 02.3/435.

⁵⁰ **C-017**, Letter from Akgun Construction to Ministry of Industry dated 19 December 2014, at 2.

minister-advisor made it clear that Akgun Construction would not be allowed to establish an industrial zone on the land. One of the Ethiopian officials told Claimant's representatives that no environmental assessment would be approved for the Project and that the Project needed to stop.⁵¹

28. On 17 June 2015, the Ethiopian Ministry of Industry confirmed in a letter to Claimant that the Project would have to be relocated from the land that Ethiopia had selected and designated pursuant to the 2012 ETIZ Agreement.⁵² To date, and despite numerous requests from Claimant that it do so, Ethiopia has never proposed a specific or suitable relocation site for the Project.
29. As a result, and despite numerous attempts by Claimant to negotiate a path forward with the Ethiopian authorities, the ETIZ Project has been stalled for nearly five years.
30. However, despite refusing to move forward with the ETIZ Project as it was obligated to do, in the years since it repudiated its obligations to Claimant, Ethiopia has moved forward with numerous other industrial zones of the sort it induced Akgun Construction to design and develop. Not only does public information indicate that those zones are operating successfully and without any apparent harm to the environment, the information published by Ethiopia itself demonstrates that the design and plan of these industrial zones bears a similarity to the designs prepared by Claimant and submitted to Ethiopia.⁵³

IV. JURISDICTION

A. The Parties Consented to UNCITRAL Jurisdiction

31. In Article VII of the Treaty, Respondent consents to arbitrate investment disputes. This Article provides:

⁵¹ *Id.*

⁵² **C-031**, Letter from Ministry of Industry to Akgun Construction dated 17 June 2015.

⁵³ Compare **C-004**, ETIZ Catalogue, pp. 4, 22 with **C-032**, Ethiopian Investment Commission, *Agro-industrial parks planned nationwide*, 7 November 2016, <http://www.investethiopia.gov.et/index.php/information-center/news-and-events/357-agro-industrial-parks-planned-nationwide.html> (last accessed 25 March 2019); **C-033**, Ethiopian Investment Commission, *Ethiopia plans to have 15 industrial parks by June 2018*, 17 August 2017, <http://www.investethiopia.gov.et/about-us/how-we-can-help?id=485> (last accessed 25 March 2019); **C-034**, Ethiopian Investment Commission, *Construction of 7 Industrial Parks to be Completed this Year*, 16 October 2018, <http://www.investethiopia.gov.et/index.php/information-center/news-and-events/718-construction-of-7-industrial-parks-to-be-completed-this-year.html> (last accessed 25 March 2019); **C-035**, Addis Herald, *Ethiopia industrial parks*, 5 September 2018, <https://www.addisherald.com/gmedia-album/ethiopia-industrial-parks/> (last accessed 24 April 2019).

1. Disputes between one of the Parties and an investor of the other Party, in connection with his investment, shall be notified in writing, including a detailed information, by the investor to the recipient Party of the investment. As far as possible, the investor and the concerned Party shall endeavour to settle the disputes by consultations and negotiations in good faith.

2. If the disputes, cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, the dispute can be submitted, as the investor may choose, to:

(a) the Competent Court or Arbitral Tribunal of the Party in the territory of which the investment has been made; or

(b) the International Center for the Settlement of Investment Disputes (ICSID) set up by the “Convention on the Settlement of Disputes Between States and Nationals of Other States”, in case both Parties become signatories of this Convention.

(c) an ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL).

3. The arbitration awards shall be final and binding for all parties in dispute. Each Party commits itself to execute the award according to its national law.⁵⁴

32. The Treaty entered into force on 3 October 2005, and Respondent’s consent became effective on that date.⁵⁵ With this Notice, Claimant elects to submit this dispute to arbitration under the UNCITRAL Rules as provided in Article VII(2)(c) of the Treaty and the Parties’ consent to arbitration is therefore perfected.

⁵⁴ **CLA-001**, Turkey-Ethiopia BIT, Art. VII.

⁵⁵ *Id.*, cover page.

B. There Is a Dispute Between the Parties

33. Article VII(1) of the Treaty provides for the arbitration of “[d]isputes between one of the Parties and an investor of the other Party, in connection with his investment.”⁵⁶
34. A “dispute” is defined as a “disagreement on a point of law or fact, a conflict of legal views or of interests between two persons.”⁵⁷ The dispute at issue in this Arbitration arises from Respondent’s failure to comply with international law and Ethiopian law with respect to Claimant’s investments.

C. The Dispute Is Between an Investor of a Contracting Party and a Contracting Party

35. The Treaty’s definition of “investor” includes “corporations, firms or business associations incorporated or constituted under the law of either of the Parties and having their headquarters in the territory of that Party.”⁵⁸
36. Claimant is Akgun Construction, a company incorporated in the Republic of Turkey. Hence, it is an investor as defined in Article I(1)(b) of the Treaty.
37. Respondent is the Ethiopian State and thus a Contracting Party to the Treaty.

D. The Dispute Is Within the Subject-Matter Jurisdiction of the Tribunal

i. The Dispute Concerns Investments

38. Article II of the Treaty defines the term “investment” as:

[...] every kind of asset in particular, but not exclusively:

- (a) shares, stocks or any other form of participation in companies,
- (b) returns reinvested, claims to money or any other rights having financial value related to an investment,
- (c) movable and immovable property, as well as any other rights as mortgages, liens, pledges and any other similar rights related to investments as defined in conformity with

⁵⁶ *Id.*, Art. VII(1).

⁵⁷ **CLA-002**, *The Mavrommatis Palestine Concessions*, P.C.I.J. Series A — No. 2, Collection of Judgments dated 30 August 1924, at 3 (of the electronic printout).

⁵⁸ **CLA-001**, Turkey-Ethiopia BIT, Art. I(1)(b).

the laws and regulations of the Contracting Party in whose territory the property is situated

(d) industrial and intellectual property rights such as patents, industrial designs, technical processes, as well as trademarks, goodwill, know-how and other similar rights,

(e) business concessions conferred by law or by contract, including concessions related to natural resources [...].⁵⁹

39. Claimant's investments in Ethiopia are in the form of the 2012 ETIZ Agreement. The know-how needed to develop the ETIZ and the materials and equipment needed to perform the 2012 ETIZ Agreement also fall within the Treaty's definition of "investment."

ii. This Tribunal Has Jurisdiction over Disputes Arising from the Treaty

40. Claimant submits that Respondent has violated its obligations not to expropriate investors' assets without compensation⁶⁰ and to provide fair and equitable treatment.⁶¹ Claimant's claims are based on the protections provided for in the Treaty and arise from Respondent's Treaty violations. Accordingly, this Tribunal has jurisdiction over these claims.

iii. Jurisdiction Under the Treaty Extends to "Umbrella Clause" Claims

41. Article III of the Treaty contains a two-part most-favored nation (or "MFN") clause, which provides:

1. Each Party shall admit in its territory investments, and activities associated therewith, on a basis no less favorable than that accorded in similar situations to investments of investors of any third country, within the framework of its laws and regulations.

2. Once the investment is accepted, each Party shall accord to this investment, treatment no less favorable than that accorded in similar situations to investments of its investors

⁵⁹ *Id.*, Art. II.

⁶⁰ *Id.*, Art. IV.

⁶¹ *Id.*, Art. II(2).

or to investments of investors or any third country, whichever is the most favorable.⁶²

42. This clause clearly allows for the importation of provisions from other bilateral investment treaties to which Ethiopia is a party if those provisions afford more favorable investment protection than the base Treaty, *i.e.*, the Turkey-Ethiopia BIT.
43. The BIT between Ethiopia and Denmark includes an umbrella clause at Article 2(3). It reads:

Each Contracting Party shall observe any commitment it may have entered in to with regard to investors of the other Contracting Party.⁶³

44. This clause provides greater investment protection than that afforded to Turkish investors under the Turkey-Ethiopia BIT as it imposes a specific duty on Ethiopia to observe all contractual obligations and other specific commitments entered into by it. By virtue of the MFN clause in the Turkey-Ethiopia BIT, Turkish investors, such as Claimant, must be afforded the same protection offered to Danish investors. Respondent is thus obligated to observe its contractual or other specific commitments with regard to Claimant's investment.
45. Accordingly, this Tribunal has jurisdiction over Claimant's claims arising from Ethiopia's breaches of contractual obligations and specific commitments made by it to Claimant.

iv. Jurisdiction Under the Treaty Extends to Claims Based on Ethiopian Law

46. Article VII of the Treaty provides:

1. Disputes between one of the Parties and an investor of the other Party, in connection with his investment, shall be notified in writing, including detailed information, by the investor to the recipient Party of the investment. As far as possible, the investor and the concerned Party shall endeavor to settle these disputes by consultations and negotiations in good faith.

⁶² *Id.*, Art. III(1)-(2).

⁶³ **CLA-003**, Agreement Between the Federal Democratic Republic of Ethiopia and the Kingdom of Denmark Concerning the Promotion and Reciprocal Protection of Investments, signed 24 April 2001 ("Denmark-Ethiopia BIT"), Art. 2(3).

2. If the disputes, cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, the dispute can be submitted, as the investor may choose, to

[...]

(c) an ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL).⁶⁴

47. Article VII of the Treaty thus defines its subject matter jurisdiction by making reference to the “[d]isputes between one of the Parties and an investor of the other Party, in connection with his investment.”⁶⁵ The scope of jurisdiction of a tribunal constituted under Article VII is therefore not limited to disputes arising under the Treaty.

48. Respondent has obligations towards Claimant under Ethiopian law. The subject-matter jurisdiction of the tribunal constituted under the Treaty covers disputes that have arisen from violations of Respondent’s obligations under Ethiopian law.

E. This Tribunal Has *Ratione Temporis* Jurisdiction

49. The Treaty became effective on 3 October 2005.⁶⁶ As provided in Article I(2) of the Turkey-Ethiopia BIT, the term “investment” covers all investments made in the territory of the other Party before or after the entry into force of the Treaty. However, it is not applicable to claims arising out of disputes which occurred prior to its entry into force.”⁶⁷

50. Claimant’s claims relate to a dispute that arose no earlier than 2014 when Ethiopia forced Claimant to stop work. Each of these events post-date the effective date of the Treaty. The Tribunal therefore has *ratione temporis* jurisdiction.

F. Claimant Requested Consultations with Respondent

51. Article VII of the Treaty requires that, prior to initiating an arbitration, an investor give the respondent written notification of the dispute, including detailed information. It further provides that the parties should “endeavour to settle the

⁶⁴ **CLA-001**, Turkey-Ethiopia BIT, Art. VII(1)-(2) (emphasis added).

⁶⁵ *Id.*, Art. VII(1) (emphasis added).

⁶⁶ *Id.*, cover page.

⁶⁷ *Id.*, Art. I(2).

disputes by consultations and negotiations in good faith” and wait during the prescribed six-month cooling-off period.⁶⁸

52. On 27 March 2015, Claimant sent a letter notifying Respondent of this dispute and seeking an amicable resolution thereof to Mr. Tadesse Haile, the Ministry of Industry (delivered to the office of Mr. Ahmed Abteu, then-Minister of Industry of Ethiopia), the Oromia Regional State (delivered to the office of Mr. Muktar Kider, then-President of the regional state and to the office of Abdulaziz Muhammed, then-Vice President of the regional state) and the Legal Directorate of the Ministry of Industry.⁶⁹
53. The letter clearly sets out the current dispute and the basis for Claimant’s request for compensation.⁷⁰
54. On 27 March 2015, notice was served via hand delivery on the Ministry of Industry, the Office of the President and Vice President of Oromia Regional State, the Legal Directorate of the Ministry of Industry and Mr. Tadesse Haile, former Minister of Industry.⁷¹ More than six months have passed since that time, and Respondent has not answered Claimant’s request for amicable negotiations of this dispute. The cooling-off period provided for in the Treaty has therefore elapsed, Claimant has fulfilled its obligations under Article VII, and this dispute is ripe for arbitration.

V. COMPOSITION OF THE TRIBUNAL AND OTHER RELATED MATTERS

A. Number of Arbitrators

55. The Treaty’s dispute resolution clause does not specify the number of arbitrators that should be appointed. Given the magnitude and nature of the dispute, and especially the fact that it is brought pursuant to a bilateral investment treaty, Claimant submits that any disputes between the Parties should be resolved by a tribunal composed of three arbitrators pursuant to Article 7 of the UNCITRAL Arbitration Rules.
56. Anticipating such a determination, Claimant nominates as its party-appointed arbitrator:

Sir David A. R. Williams, KNZM, QC
Essex Court Chambers

⁶⁸ *Id.*, Art. VII(1)-(2).

⁶⁹ **C-036**, Notice from Akgun Construction to Ministry of Industry dated 27 March 2015.

⁷⁰ *See id.*

⁷¹ **C-037**, Signatures of the recipients as proof of delivery.

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London WC2A 3EG
UK
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B. Appointing Authority

57. Claimant proposes that the Permanent Court of Arbitration ("PCA") serve as the appointing authority and provide administrative support throughout the arbitration.

C. Place of Arbitration

58. Article VII of the Treaty is silent as to the place of arbitration. Claimant submits that the place of the Arbitration should be The Hague, Netherlands because: (1) The Hague is a preferred venue for arbitration and (2) the PCA is located in The Hague.

D. Language of Arbitration

59. The Treaty's dispute resolution clause does not specify the language of arbitration. Considering the international nature of the dispute and Article 19 of the UNCITRAL Arbitration Rules, Claimant submits that English should be the language of the Arbitration.

VI. APPLICABLE LAW

60. The rules of international law, including the Turkey-Ethiopia BIT, and the relevant rules of Ethiopian law form the law applicable to this dispute.

61. The Turkey-Ethiopia BIT has been applicable since its effective date: 3 October 2005.⁷² The rules of other treaties, including but not limited to the Denmark-Ethiopia BIT, are also part of the applicable law by virtue of the MFN clause of the Treaty.

VII. SUBSTANTIVE CLAIMS

A. Respondent Violated Its Obligation Not to Expropriate Claimant's Investments Without Compensation

i. Respondent Has an Obligation Not to Expropriate Claimant's Investments Without Compensation

62. Article IV of the Treaty provides:

⁷² **CLA-001**, Turkey-Ethiopia BIT, cover page.

1. Investments shall not be expropriated, nationalized or subject, directly or indirectly, to measures of similar effects except for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the general principles of treatment provided for in Article III of this Agreement.

2. Compensation shall be equivalent to the market value of the expropriated investment before the expropriatory action was taken or became known. Compensation shall be paid without delay and be freely transferable as described in paragraph 2 Article V.⁷³

63. The obligation not to expropriate extends to contractual rights that constitute an investment. This has been affirmed consistently in the case-law of international investment tribunals.⁷⁴

ii. Respondent Expropriated Claimant's Investment

64. Ethiopia recruited Akgun Construction from Turkey to Ethiopia for the specific purpose of developing an industrial zone. Following a years-long negotiation process, Akgun Construction and Ethiopia entered into the 2012 ETIZ Agreement whereby Ethiopia, and Ethiopia alone, undertook to allocate land for the Project and to designate priority industries for the Project. In keeping with this obligation, Ethiopia designated land and industries for the Project. In direct conflict with this designation, Ethiopia halted Akgun Construction's performance of the Agreement allegedly on environmental grounds. Specifically, Ethiopia alleged that development of an industrial zone for the industries (specified by Ethiopia) on the

⁷³ *Id.*, Art. IV.

⁷⁴ See, e.g., **CLA-004**, *Eureko B.V. v. Republic of Poland*, Ad Hoc Arbitration, Partial Award dated 19 August 2005, ¶ 241 ("There is an amplitude of authority for the proposition that when a State deprives an investor of the benefit of its contractual rights, directly or indirectly, it may be tantamount to a deprivation in violation of [an expropriation provision]. The deprivation of contractual rights may be expropriatory in substance and in effect." (internal citation omitted)); **CLA-005**, *Compania de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award dated 20 August 2007, ¶ 7.5.4 ("There can be no doubt that contractual rights are capable of being expropriated, and a number of treaty cases have arisen out of contractual disputes. The same act that may violate a treaty may also violate a contract, or both the treaty and the contract. The fact that there is overlap does not prevent a tribunal from considering the act as a possible treaty breach. Further, whether a given act was in breach, or was thought by one of the parties to be in breach of the contract, may well inform the tribunal's assessment of that act for purposes of a treaty claim.").

land (allocated by Ethiopia) could cause environmental harm to the surrounding areas.⁷⁵

65. Moreover, during the course of negotiations and in connection with the signing of the 2012 ETIZ Agreement, Ethiopia induced Akgun Construction to prepare and provide to it designs and feasibility studies which contain intellectual property and know-how which Ethiopia appears to have then used in the development of other industrial zones.⁷⁶

66. As a consequence of all the measures taken by Ethiopia, Akgun Construction has been completely deprived of its rights under the 2012 ETIZ Agreement and of its intellectual property in violation of Ethiopia's obligations under the Treaty.

B. Respondent Violated Its Obligation to Provide Fair and Equitable Treatment

i. Respondent Is Obligated to Provide Fair and Equitable Treatment

67. Respondent has an obligation to provide fair and equitable treatment under the Treaty.

68. Article II(2) of the Treaty provides:

Investments of investors of each Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Party. Neither Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, or disposal of such investments.⁷⁷

69. Under the principle of fair and equitable treatment, the host State must respect the legitimate expectations of the investor and comply with the principles of due process in its administrative decision-making.⁷⁸ The host State must act in a consistent manner, free from ambiguity, and with transparency.⁷⁹ The acts of the host State must not be arbitrary and discriminatory. Finally, governmental

⁷⁵ See *supra* ¶¶ 9-29.

⁷⁶ See *supra* ¶¶ 8, 30. See also **C-009**, The 2012 ETIZ Agreement, Preamble, Arts. 10(1), 10(3).

⁷⁷ **CLA-001**, Turkey-Ethiopia BIT, Art. II(2).

⁷⁸ **CLA-006**, *Tecnicas Medioambientales Tecmed S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award dated 29 May 2003, ¶ 154.

⁷⁹ *Id.*

prerogative must be used in a reasonable manner so as not to undermine the basic expectations of the investor. As summarized by the *LG&E v. Argentina* tribunal:

[T]he fair and equitable standard consists of the host State's consistent and transparent behavior, free of ambiguity that involves the obligation to grant and maintain a stable and predictable legal framework necessary to fulfill the justified expectations of the foreign investor.⁸⁰

ii. Respondent Violated Its Obligation to Provide Fair and Equitable Treatment

70. Respondent's treatment of Claimant was neither fair nor equitable and as such injured Claimant's protected rights as an investor under the Turkey-Ethiopia BIT.
71. Despite Claimant's good faith reliance on Respondent's representations, Respondent continued to act inconsistently with the expectations that it created. In doing so, it violated the legitimate expectations of Claimant.
72. As a result of this continuing unfair and inequitable treatment, Claimant's investment suffered substantial harm.

C. Obligations that Respondent Entered into with Regard to Claimant's Investment

73. Respondent must observe all obligations it has entered into with respect to an investment. This obligation is contained in Article 2(3) of the Denmark-Ethiopia BIT, which applies to this dispute by virtue of the MFN clause of the Treaty.⁸¹
74. Article 2(3) of the Denmark-Ethiopia BIT provides:

Each Contracting Party shall observe any commitment it may have entered in to with regard to investors of the other Contracting Party.⁸²

75. This provision extends to contractual obligations; therefore, a breach of a contractual obligation owed to an investor also constitutes a breach of the Turkey-Ethiopia BIT. Respondent breached the obligations it entered into with

⁸⁰ **CLA-007**, *LG&E Energy Corp. et al. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability dated 3 October 2006, ¶ 131.

⁸¹ **CLA-003**, Denmark-Ethiopia BIT, Art. 2(3); **CLA-001**, Turkey-Ethiopia BIT, Art. 3(1)-(2).

⁸² **CLA-003**, Denmark-Ethiopia BIT, Art. 2(3).

regard to Claimant's investment, including the 2012 ETIZ Agreement, and thus breached its umbrella clause obligations.

VIII. QUANTUM

76. As a result of Respondent's breaches of international law and Ethiopian law, Claimant has suffered, and continues to suffer, losses that are no less than USD 150 million.

IX. CLAIMS FOR RELIEF

77. Respondent's violations of international law and Ethiopian law have caused significant damages to Claimant. Respondent is obliged to provide Claimant with full compensation for these damages.

78. Claimant, accordingly, requests that the Arbitral Tribunal grant the following relief in favor of Claimant:

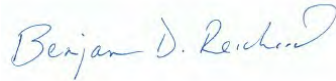
- i. Find and declare that Respondent has violated its obligations under international law and Ethiopian law as a result of its acts and omissions with respect to the ETIZ Project;
- ii. Find and declare that Respondent has violated its obligations with regard to Claimant's investment contained in the 2012 ETIZ Agreement, and thus the umbrella clause obligation under the Treaty by virtue of the MFN clause thereof;
- iii. Award compensation to Claimant for its damages, currently estimated to be no less than USD 150 million;
- iv. Award Claimant all costs and fees incurred in connection with this Arbitration;
- v. Award Claimant pre-award and post-award interest at a rate to be compounded and fixed by the Arbitral Tribunal; and
- vi. Award Claimant any other relief to which it may be entitled in law or equity.

X. RESERVATION OF RIGHTS AND FUTURE SUBMISSIONS

79. Claimant expressly reserves all of its rights under international law and Ethiopian law, and all other rights that it has or may have under law, equity and otherwise.
80. Claimant also hereby expressly reserves the right to further amend, supplement, and augment its claims and to submit such further pleadings, arguments, exhibits, and evidentiary materials as may be appropriate, including but not limited to witness statements, expert witness statements and studies, and oral testimony, as Claimant may in its judgment deem appropriate or as may be required to respond to any claim, allegation, or defence that may be advanced by Respondent.




Jennifer Morrison Ersin
Jones, Swanson, Huddell
& Garrison, LLC



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For and on behalf of Akgun Insaat Makina Sanayi Dis Ticaret Ltd. Sti.