

COMMUNICATION TO THE PARTIES

Axis Communications AB/ Axis AB v. Saudi Telecom Company
Case No. LRO2013-0051

The WIPO Arbitration and Mediation Center (WIPO Center) refers to the Legal Rights Objection (LRO) proceeding LRO2013-0051 concerning the applied-for gTLD string <.axis> and to the previous correspondence on the issue of the Applicant's late-filed response.

As indicated in its email communication to the Parties of July 2, 2013, the WIPO Center is aware of an ICANN Ombudsman report of June 7, 2013 entitled "Time Limits and Objections ICANN New gTLD Programme .axis Application and Objection". The WIPO Center additionally has noted New gTLD Program Committee (NGPC) resolutions 2013.07.13.NG02 and 2013.07.13.NG04 of July 13, 2013 which respectively include a request for the WIPO Center to "reconsider its stance with regard to the rejection of the applicant's response in light of the facts and analysis stated in the Ombudsman's report" and encourage Dispute Resolution Service Providers "to use their discretion, in light of the facts and circumstances of each matter, and in cases where it is shown that the affected party is making a good faith effort to comply with the deadlines, as to whether to grant extensions, or deviate from the deadlines set forth in the Applicant Guidebook".

As the ICANN Ombudsman's report acknowledges, the WIPO Center does not perceive a legal basis for jurisdiction on the part of this ICANN Office over the WIPO Center as an external Dispute Resolution Service Provider. This question of competence aside, as previously pointed out to ICANN in communications of June 14 and July 31, 2013, the WIPO Center notes that, contrary to what is stated in the ICANN Ombudsman's report, the LRO procedure, including notably the sanction introduced in Article 11(g) of the Procedure, was not established by the WIPO Center but by ICANN. Also contrary to what is stated in the report, the WIPO Center had neither at that time refused the Applicant's response, nor accepted it, but had rather suspended action in the proceeding to seek guidance from ICANN. The WIPO Center has further noted that the report indicates that for the purpose of the report the Ombudsman contacted the Applicant, and that the report makes no mention of contact with the other party.

In its letter of July 31, 2013, the WIPO Center requested clarification from ICANN whether the NGPC resolutions were intended as a specific instruction to accept the Applicant's response. In a reply on August 27, 2013, ICANN, rather than confirming any such intent, requested "that WIPO review the facts and circumstances of the .AXIS objection, and inform all parties of its decision regarding whether it will accept the late filing of the response by the applicant."

In terms of the substance of the issue before it, the WIPO Center recalls that Article 11(g) of the Procedure states that "[i]f the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful". The WIPO Center further recalls that the Objector expressly refused to agree to an extension of the relevant time period

to enable the Applicant's response to be considered.

In addressing the implication of Article 11(g) of the Procedure for the present case, the WIPO Center has carefully considered all the facts and circumstances. This review *inter alia* confirms numerous instances in which the Applicant was informed, including well before the formal notification of the proceeding, both of the applicable timeline for its submission of a response and of ICANN's sanction in the event of failure to timely submit such a response. Relevant party communications were made by the WIPO Center on March 14, March 25, April 18, and May 14, 2013.

Even with broad discretion in applying Article 11(g) of the Procedure to all the facts and circumstances, the WIPO Center simply finds insufficient basis to accept the late-filed response. As a consequence of Article 11(g) forming part of the Procedure, the WIPO Center must therefore conclude that "the Applicant shall be deemed to be in default and the Objection shall be deemed successful."

The WIPO Center shall not proceed any further with this case.

ICANN is copied on the present communication, and it will be for ICANN to determine any consequences of the present determination.

WIPO Arbitration and Mediation Center

Date: September 20, 2013