

ORIGINAL DOCUMENTS IN SAFE

Case No. B-56

Date of filing: 13 APRIL 84

\*\* AWARD - Type of Award FINAL  
- Date of Award 10 APRIL 84  
5 pages in English 5 pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* SEPARATE OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
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\*\* DISSENTING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
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\*\* OTHER; Nature of document: \_\_\_\_\_  
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DUPLICATE ORIGINAL  
نسخه برابر اصل

CHAMBER ONE  
AWARD NO. 120-B56-1

TELECOMMUNICATION COMPANY OF  
IRAN,

Claimant,

and

NATIONAL AERONAUTICS AND SPACE  
ADMINISTRATION,

Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL  
دادگاه داری دعاوی ایران - ایالات متحده  
ثبت شد - FILED  
Date ۱۳۶۲ / ۱ / ۲۴  
13 APR 1984  
شماره B-56

AWARD

I. The Proceedings

On 15 January 1982 TELECOMMUNICATION COMPANY OF IRAN ("TCI") filed a claim with the Tribunal against NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ("NASA") seeking reimbursement of a cheque for U.S.\$100,000 paid to NASA as "earnest money" in connection with the initiation of negotiations with a view to concluding an agreement for the provision by NASA of launching facilities for two Zohreh satellites for the domestic use of Iran. No such agreement was reached, and negotiations were discontinued.

A Statement of Defence was filed by the Agent of the Government of the United States of America on 8 September 1982. A Reply was filed by TCI on 14 June 1983, and a Rejoinder was filed on 11 October 1983. The Tribunal had previously indicated in its Order filed on 20 October 1982 that it intended to decide the case on the basis of the documents submitted.

II. Facts and Contentions

On 20 August 1977 Mr. Malek-Abhari of TCI wrote to Dr. Robert A. Frosch, Administrator of NASA, inquiring about the possibility of using services made available by NASA for the launch of satellites forming part of a domestic communications satellite system for Iran. It was envisaged that two satellites would be launched in late 1981 and a third at a later date.

Dr. Frosch replied on 5 October 1977 that it should be possible for NASA to provide the services required. The penultimate paragraph of his letter referred to the NASA policy document governing reimbursement for the use of shuttle facilities, NASA Management Instruction ("NMI") 8610.8, a copy of which was enclosed. The letter continued,

"As stated in this policy, payload programs become firm for planning and scheduling consideration only after receipt by NASA of a formal request for launch accompanied by the required earnest money payment."

The relevant provision of NMI 8610.8, paragraph 4 (g), states as follows:

"Earnest Money. Earnest money will be paid to NASA prior to contract negotiations. The earnest money required per contract shall be \$100,000 in 1975 dollars; however if the payload is a small self-contained payload, the earnest money shall be \$500.00. The earnest money will be applied to the first payment made by the customer or will be retained by NASA."

On 27 November 1977 Mr. A. Ardehali of TCI wrote to Dr. Frosch requesting the initiation of negotiations for the provision of satellite launch facilities. The second paragraph of the letter states:

"In accordance with paragraph 4-g of NASA document NMI 8610.8, dated January 21, 1977, enclosed is the 'earnest' money payment \$100,000 (U.S. Dollars) required prior to definitive contract negotiations, which will subsequently be applied to the first payment for launch services. Please inform us of the earliest date possible when detailed negotiations can begin."

NASA acknowledged receipt of the cheque in a letter of 2 December 1977.

Negotiations commenced thereafter in December 1977, and continued throughout 1978, but it proved impossible to reach agreement on the text of a Launch Services Agreement. In January 1979 TCI informed NASA that the implementation date for the Zohreh project was under review. By a telex of 22

December 1981, TCI requested the return of the \$100,000. NASA refused to do so.

TCI argues that it was its express intention that the money should be applied to the first payment for launch services and that it was never agreed that it should otherwise be retained. TCI contends that discussions never reached the stage of definitive and final negotiations as NASA refused to accept any suggested amendments to the draft agreement. TCI further contends that there was inequality of bargaining power such as to render it inequitable to enforce the terms of NMI 8610.8 against it.

The United States Government, on behalf of NASA, contends that TCI expressly agreed to the terms of NMI 8610.8, which were in any event not negotiable. It contends that the payment of "earnest money" was understood by both parties to cover part of NASA's expenditure in devoting time and funds to discussions and analysis of the needs of one customer to the exclusion of others at any given time, whether or not an agreement eventually resulted. It is denied that there was a lack of good faith on the part of NASA's negotiators. The failure of the negotiations is rather attributed by NASA to the inability of TCI to give sufficiently precise specifications of its satellite launching requirements for a satisfactory agreement to be drawn up.

### III. Reasons for Award

The provisions of paragraph 4 (g) of NMI 8610.8 are clear and unambiguous. No evidence has been submitted to the Tribunal that would raise any doubt that they were understood and accepted without reservation by TCI. Dr. Frosch's letter of 5 October 1977 specifically drew TCI's attention to the requirement for a payment of "earnest money". In its reply, the letter of 27 November 1977, TCI stated that it was enclosing a cheque for \$100,000 "[i]n

accordance with paragraph 4-g of NASA document NMI 8610.8." The fact that TCI went on to express the intention that this amount should subsequently be applied towards the first launch services payment merely confirms that it was the mutual expectation of the parties that their negotiations would result in a successful agreement. It does not, in the view of the Tribunal, give grounds for construing an implied reservation from the alternative provision that if no agreement resulted, the money would be retained by NASA.

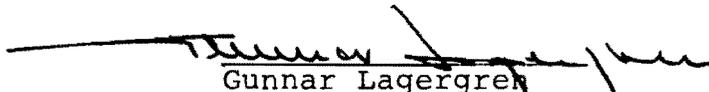
The Tribunal finds nothing inherently inequitable in the requirement of "earnest money" as a precondition for negotiations. Such negotiations, even at a preliminary stage, could be expected to involve a substantial commitment of time and resources on the part of NASA which would otherwise be wholly uncompensated in the event that the discussions proved abortive. In such cases the requirement of "earnest money" has become frequent commercial practice, and the evidence clearly indicates that TCI was prepared to accept it as such in this case.

For the foregoing reasons,

The claim of TELECOMMUNICATION COMPANY OF IRAN is dismissed.

Each Party shall bear its own costs of the arbitral proceedings.

Dated, The Hague  
10 April 1984

  
Gunnar Lagergren  
Chairman  
Chamber One

  
Mahmoud M. Kashani  
Dissenting Opinion

  
Howard M. Holtzmann