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August 10, 2004

Via E-mail and Fax For Distribution to the Tribunal

Mr. Gonzalo Flores
International Centre for the Settlement of Investment Disputes
818 H Street, N.W.
Washington, D.C. 20433

Re: Thunderbird v. Mexico.

Dear Mr. Flores:

I write to request that the Tribunal consider and admit new evidence which addresses what Thunderbird believes to be false representations and implications as to *post-hearing events and circumstances* made and raised by Mexico in its post-hearing brief. This new evidence concerns the Bella Vista Entertainment Center in Monterey and the Reflejos facilities in Rio Bravo and Reynosa

Bella Vista Entertainment Center in Monterey.

In its SoR and at the hearing, Thunderbird submitted evidence of a large skill machine facility, known as El Centro de Entretenimiento Bella Vista, located in Monterey. This is one of the locations where Thunderbird and its controlled EDM-Monterey were preparing to open a facility (in order to ramp up to the 2000 machines promised and guaranteed through the *solicitud* process). The Bella Vista facility is located at la Avenida Jorge del Moral s/n, en la Colonia Lomas del Roble en el Municipio de San Nicolas de los Garza, Nuevo Leon. At the time of the SoR, evidence indicated that the facility was open and operating at least 426 video skill machines. [*Jesus de la Rosa Buenrostro Dec. filed in support of the SoR*].

In its SoRej, Mexico stated the Bella Vista facility was closed. It cited no evidence for that claim. [*SoRej, page 40*].

At the hearing, Carlos Gomez testified upon direct examination that he had visited the Bella Vista facility one week before the hearing and that it remained open with 450 skill machines in one room and another 100 in an adjoining room. [*Transcript pages 713-715*]

At the conclusion of Mr. Gomez's direct examination, counsel for Mexico asserted that "during the last few days, actions have been taken with regard to some of these establishments". [*Transcript, page 716*] The Tribunal then advised Respondent's counsel that it was particularly interested in the Bella Vista facility because it was identified as "definitely closed" while the other

facilities under scrutiny were designated with “appeals pending”. *[Transcript, page 716]*

Mr. Alcantara then testified that an inspector had gone to the Bella Vista facility after Mexico’s receipt of the SoR and had determined that Bella Vista was closed. No witness statement was provided from the inspector. Poor photographs of the facility taken at least two months prior to the hearing were admitted as Mexico’s only evidence that Bella Vista had been closed by government action. *[Hearing Transcript, 868 through 870]*

At Paragraph 96 of its post-closing brief, Mexico addresses the Bella Vista facility as follows:

Mr. Alcántara reiterated that the owners of this establishment had desisted from the Amparo they had initiated against the closure, ***which means this establishment is closed down definitively.*** In the hearing, the Respondent provided the Tribunal and Thunderbird with photographs of this establishment that showed the seals placed by the SEGOB when they closed down the establishment. The photographs were taken during a SEGOB inspection that was carried out after hearing through this procedure that the Claimant declared it was in operation. *[English translation][Emphasis added]*

With this portion of its post-hearing brief, Mexico does not simply argue the evidence presently before the Tribunal. Rather, it makes the ***affirmative representation that the Bella Vista facility “is closed down definitively”***. This is a false representation to the Tribunal. The Bella Vista skill machine facility remains open and operating. As evidence of this fact, Thunderbird offers for admission the following evidence:

- Exhibit C101 - Copy of Bella Vista playing card obtained on Saturday, August 7, 2004.
- Exhibit C102 - Copy of winnings receipt from Bella Vista bearing the date (August 7, 2004) and time (9:37 p.m.) the receipt was issued.
- Exhibit C103 - Video tape of Bella Vista taken on Sunday, August 8, 2004

Supplemental declaration of Carlos Gomez authenticating the exhibits and describing the Bella Vista operations he witnessed on August 7- 8, 2004.

[Digital and .pdf copies of these offered exhibits and a .pdf copy of the Gomez declaration are submitted with the e-mail version of this letter and with the cd-rom version which follows by overnight mail. Instructions for viewing the video footage are included with this letter. Hard copies of the documents and the Gomez declaration and a DVD version of the video footage will follow shortly.]

This evidence flatly contradicts the representation of Mexico made at Paragraph 96 of its post-hearing brief. Bella Vista was open at the time of the hearing. It remains open today. Mexico is not being truthful with this Tribunal as to the ongoing activities of domestic skill machine operators.

Paragraph 12.8 of Procedural Order No. 1 allows admission of evidence after the SoR and SoRej upon "exceptional circumstances". Thunderbird asserts that a false representation of fact as to *post-hearing events or circumstances* made by a party in a post-hearing brief on a highly-relevant issue is an "extraordinary circumstance" warranting the admission of new evidence specifically addressing that misrepresentation. It is one thing for Mexico to argue the evidence as it was presented at the hearing; it is quite another thing for Mexico to make an affirmative and, in Thunderbird's view, false representation as to post-hearing circumstances on the highly relevant issue of domestic skill machine operators. It is only fair that Thunderbird be given the opportunity to set the record straight as to significant and ongoing skill machine operations at El Centro de Entretenimiento Bella Vista in Monterey. Mexico has not been forthright in its arguments and presentation of evidence on this issue. Under such circumstances, Mexico should not be heard to claim prejudice. Thunderbird respectfully requests that this new evidence pertaining to the Bella Vista facility be admitted and considered by the Tribunal in its deliberations.

Reflejos in Rio Bravo and Matamoros

In its SoR, Thunderbird established that the Reflejos skill machine facilities were open and operating [*Notary Declaration re Reflejos in Rio Bravo filed in support of SoR; Gilberto Vazquez Cuevas dec, filed in support of SoR, paras. VI, VII*]. At the hearing, Carlos Gomez testified upon direct examination that he had visited the Reflejos skill machine facilities one week before the hearing and they were open.

Mr. Alcantara testified that the Reflejos facilities had been operating under *amparo* orders and that they had closed through no action of the government [*Hearing Transcript, pages 863-865*]. There is no evidence in the record that there were appeals pending against these companies or that any other type of government action was being taken at the time these facilities were purportedly closed by the owners.

At Paragraph 95 of its post-hearing brief, Mexico re-iterates Mr. Alcantara's testimony that "the Ministry had knowledge that these establishments had closed voluntarily". While not an affirmative representation of post-hearing events and circumstances as was its Paragraph 96 statement concerning the Bella Vista facility, Mexico's statement in Paragraph 95 raises the clear implication the Reflejos skill machine facilities are closed indefinitely. That implication is false. The Reflejos facilities are open and operating today. As evidence of this fact, Thunderbird offers for admission the following evidence:

August 10, 2004
Mr. Gonzalo Flores
Page 4

Exhibit C99(a)(b)(c) - Video tape of Reflejos in Rio Bravo taken on Saturday, August 7, 2004

Exhibit C100(a)(b) - Video tape of Reflejos in Reynosa taken on Saturday, August 7, 2004

[Digital and .pdf copies of these offered exhibits are submitted with the e-mail version of this letter and with the cd-rom version which follows by overnight mail. A DVD version of the video footage will follow shortly. Instructions for viewing the video footage are included with this letter.]

This evidence flatly contradicts Mexico's clear implication that the Reflejos facilities are closed indefinitely by the owners. They are open today.

Paragraph 12.8 of Procedural Order No. 1 allows admission of evidence after the SoR and SoRej upon "exceptional circumstances". Thunderbird asserts that a false implication as to *post-hearing* events or circumstances raised by a party in a post-hearing brief on a highly-relevant issue is an "extraordinary circumstance" warranting the admission of new evidence specifically addressing that implication. It is appropriate for Mexico to argue the evidence presented at the hearing. But, it may not use that evidence to raise an false implication as to *post-hearing circumstances* on the highly relevant issue of whether domestic skill machine operators remain open for business while the Thunderbird EDMs are closed . It is only fair that Thunderbird be given the opportunity to set the record straight as to ongoing skill machine operations at the Reflejos facilities. Mexico claims to vigorously regulate all skill machine operations. Mexico had it, and has it, within its power to present a clear picture to the Tribunal as to which domestic skill machine operators are open and why. It has not done so. Under such circumstances, Mexico should not be heard to claim prejudice. Thunderbird respectfully requests that this new evidence pertaining to the Reflejos facilities be admitted into evidence and considered by the Tribunal in its deliberations.

Sincerely,



James D. Crosby

cc: Hugo Perezcano Diaz (via email)
Thunderbird (via email)