

THE  
JOHN H. JACKSON  
MOOT COURT COMPETITION

**elsa**  
The European Law Students' Association

# Answers to Clarification Questions

---

John H. Jackson Moot Court Competition  
23<sup>rd</sup> edition - 2024/2025



WORLD TRADE  
ORGANIZATION

## 23rd John H. Jackson Moot Court Competition Corrections & Answers to Clarification Questions

### Note for teams

Questions are presented as received from teams. The case authors have carefully considered all the questions. They have been divided into two categories: (i) questions about facts for which clarifications have been provided; (ii) questions concerning legal issues and substantive arguments, which are for the teams to develop themselves or to which the responses can be found in the Case facts. Duplicate questions on the same/similar issues received from several teams have only been addressed once.

Teams are reminded that their arguments shall be limited to the specific legal claims and defences raised in the case and based on the facts provided therein and in the clarifications below.

### Table of Contents

Clarifications and Corrections by the Case Authors	2
Part I. Questions about facts for which clarifications have been provided	3
Part. II. Questions concerning legal issues and substantive arguments, which are for the teams to develop themselves or to which the responses can be found in the Case facts	15

## Clarifications and Corrections by the Case Authors

- a) At p. 6, para. 33, line 3 of the Case, the phrase “four Maina states” should be corrected as follows: “three Maina states”.
- b) The teams are instructed to focus only on the parts of Alabasta’s GATS Schedule that are presented in Annex 2. Any other commitment made by Alabasta in its GATS Schedule should be considered legally irrelevant, including horizontal commitments. All pertinent commitments regarding the sectors and services examined in the Case are provided in Annex 2.
- c) Section 4.2 of the DEL has two components: a 30% local content requirement and a fine of 7.5% of domestic turnover if the requirement is not met. These components are challenged as one single measure under Article XVII of the GATS, as such.
- d) Modes 1-4 of Alabasta’s GATS Schedule correspond to modes (a) to (d) within the meaning of Article I.2 of the GATS.
- e) Able1 and ATV1 provide general content, i.e., they show various types of shows, documentaries, movies, news and sports events.
- f) In claim (i), the services to be compared are those supplied by Able1 and ATV1, as domestic services, against the audiovisual content streamed on Wega-Flix in Alabasta, as foreign services. It should be assumed that there are no other foreign or domestic services relevant to the claim. The suppliers to be compared are Wegapunk, as the relevant foreign supplier, and Able1 and ATV1, as the relevant domestic suppliers. It should be assumed that there are no other foreign or domestic suppliers relevant to the claim.
- g) In claim (ii), the services to be compared are, on the one hand, the audiovisual content streamed on Atlas in Alabasta, as the third country’s services, and on the other, the audiovisual content streamed on Wega-Flix in Alabasta, as the complaining country’s services. It should be assumed that there are no other services relevant to the claim. The suppliers to be compared are Wegapunk, as the relevant supplier of the complaining country, and Atlas, as the relevant supplier of the third country. It should be assumed that there are no other suppliers relevant to the claim.
- h) Addition to footnote 3: the Alabasta-Karda MoU has identical provisions to those of the Alabasta-Allos MoU.

## Part I. Questions about facts for which clarifications have been provided

1. Was the omission of the annex regarding Alabasta's WTO Schedule of Concessions intentional?

**Yes. Footnote 11 of the Case contains all the information the participants need in relation to Alabasta's Schedule of Concessions.**

2. Has Alabasta listed any exemptions in the Annex on Article II exemptions?

**No, there are no exemptions listed in relation to Article II of the GATS that could be of relevance to this Case. Teams should not discuss exemptions or carve-outs other than those set out in Section V of the Case.**

3. Is Wano a member of a Free Trade Area or an international organisation related to economy/trade, such as the EU or OECD?

**Wano is not an OECD member. It has signed several Free Trade Agreements but is not an EU/EEA/EFTA member.**

4. Did Wano, Alabasta or any other involved parties make any commitments under the WTO's Basic Telecommunications Agreement, particularly with respect to digital or audiovisual services, in the context of their GATS Schedule?

**The parties did not make any commitments under the WTO's Basic Telecommunications Agreement that could be relevant to this Case.**

5. Is Wano a party to the OECD's Declaration on Government Access to Personal Data held by Private Sector Entities?

**No, Wano has not signed the OECD's Declaration on Government Access to Personal Data held by Private Sector Entities. Alabasta, Allos and Karda have all done so.**

6. How does Alabasta's regulatory framework compare to other countries in terms of data protection and competition?

**Alabasta's regulatory framework is one of the strictest regarding the protection of personal data, while its competition laws follow general international trends, at least in terms of the design and phrasing of the key legal provisions.**



7. Does Alabasta have any rules in its domestic legal system regulating government access to personal data held by private entities and data protection?

**Aside from DEL, Alabasta enacted a Data Protection Law in 2017 based largely on the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data. The Data Protection Law was amended:**

- **In 2019, to incorporate the MoUs signed with Allos and Karda that same year (2019); and**
  - **In 2022, to incorporate the OECD’s Declaration on Government Access to Personal Data held by Private Sector Entities. This was done because, earlier in 2022, Alabasta, Allos and Karda had amended their MoUs to include a reference to the OECD’s Declaration on Government Access to Personal Data held by Private Sector Entities (as seen, for instance, in the current version of the Alabasta – Allos MoU featuring in Annex 4 of the Case – see Article 5.1 *in fine*). N.b.: Karda and Allos have not yet amended their data protection laws in accordance with the OECD’s Declaration on Government Access to Personal Data held by Private Sector Entities. Their data protection laws are, however, in line with the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data. In Allos and Karda, state-to-state MoUs are considered neither as international treaties nor as directly applicable domestic laws. While the 2019 MoUs were incorporated into domestic laws in both countries, the 2022 amendments have yet to be incorporated.**
8. Is Alabasta’s government authorized to investigate and penalise violations of the DEL and data protection laws?
- Yes. The DMA investigates, and imposes penalties and fines for, breaches of the DEL. The Ministry of Economy investigates, and imposes penalties and fines for, breaches of the Data Protection Law.**
9. According to para. 50 of the Case, Alabasta rejected an LoI because Wano had no MoU with Alabasta. Is Wano one of the “third countries”, which are mentioned in footnote 3, with which Alabasta started negotiating a data flow MoU in 2024?

**No. Some preliminary diplomatic discussions were held in 2019 between Alabasta and Wano on potentially signing an MoU, but these were halted after WegaPunk's CEO, Sun Miski, complained to Wano's government about the screening of the Achilles Films takeover.**

10. Has Wano established data privacy regulations that comply with international standards?

**Wano does not have any other data privacy regulations, other than GADA, which could be relevant to this Case.**

11. After submitting the LoI, does a foreign company from a non-MoU country have to store all data generated by the merged company in Alabasta or just store the data generated by the acquired company?

**The foreign company is required to store all data generated in Alabasta within Alabastan territory, not just the data generated by the acquired company.**

12. When signing a subscription on Wega-Flix, is there a clause regarding the disclosure of private data in the terms and conditions?

**Yes, the e-contract signed with WegaBasta contains a general clause providing for consent so that WegaBasta can "process" personal data but makes no reference to the "transfer" of said data to Wano or any other jurisdiction.**

13. Has any foreign company tried to acquire a controlling interest in a local Alabastan audio-visual service provider without an MoU between the foreign country and Alabasta before the establishment of the DEL?

**No other foreign company has submitted an offer to acquire an Alabastan company since the establishment of DEL, aside from what is mentioned in the Case.**

14. How is a "legally binding commitment" under Section 4.3 of the DEL actually made?

**It takes the form of a sworn declaration or affidavit affirming the party's commitment to comply with the requirements of Section 4.3 of the DEL. If the commitment is accepted by the DMA, the latter issues a formal decision outlining the exact terms of this commitment and its binding nature (including potential penalties and remedies in case of breach). If the DMA does not accept it, it issues a formal decision outlining the reasons for the rejection.**

15. What types of “exceptional circumstances” might justify the DMA extending its decision-making timeframe by one month under Section 2.5 of the DEL?

**The DEL does not provide specific examples or criteria in that regard.**

16. Referencing para. 58 of the Case, what are the different impacts of the DMA “ordering Wegapunk” to halt versus “requesting” temporary quotas?

**Both references should be understood as equally binding and enforceable.**

17. Were temporary quotas, as requested by the DMA in the first interim measure, actually imposed (para. 58 of the Case)?

**Yes, the quotas ordered by the DMA were imposed and enforced in large technology stores.**

18. In para. 53 of the Case, the DMA approves Atlas’ full takeover of Achilles; when did Atlas send its LoI to the DMA?

**A few weeks after the DMA’s rejection of the acquisition of Achilles by WegaPunk.**

19. Was there an economic impact study, a projected revenue report or a cost-benefit analysis conducted prior to implementing the increased tariffs on tablet computers intended to fund the DMA and update customs technology?

**The impact assessment report of the DEL included a detailed cost analysis and potential sources of public revenue that could contribute to the creation and functioning of the DMA. The report included measures other than the tariff increase of the VAT on all electronic goods (imported or domestic) from 17% to 22%. The Parliament heavily negotiated this matter but the Minister of Economy persuaded it to opt for the tariff increase, instead of the VAT or other measures.**

20. Is there any legislative documentation or official record of the tariff increase on electronic goods (the change from a 5% to a 13% rate on tablet computers in 2019)?

**The tariff increase was implemented via a Presidential Decision of 2019 amending the Customs Code. The Presidential Decision was properly notified to the WTO.**



21. How were the interim measures (referred to in paras. 58 and 61 of the Case) enforced? Specifically, were they enforced at the time WegaBasta imported the WegaPads (i.e., at the border)? Does a temporary quota on sales entail an import quota? If not, how is the quota on sales imposed (i.e., daily, weekly, monthly, per person, per company)?
- **Regarding the first interim measures decision (February 2021): the DMA made regular visits to large technology stores to ensure that the decision would be enforced. It also requested and received written updates from Wegapunk concerning the latter's inventory, to ensure the quota was being complied with.**
  - **Regarding the second interim measure (September 2022): the DMA requested and received written updates by Wegapunk on the latter's inventory in Alabasta, as demonstrated among others by WegaBasta's customs declarations. Moreover, the decision set out an obligation to ensure that only the stripped-down version of Wega-Pad would be sold in Alabasta either through physical or online channels. However, Wegapunk was not prohibited from importing Wega-Pads that included the pre-installed preference for Wega-Flix, as long as these were not sold either in physical stores or online. Wegapunk continued importing Wega-Pads that included the pre-installed preference for Wega-Flix in their regional fulfilment centre situated in Alabasta. Wegapunk stores all products intended for the Mainan market in the Alabastan regional fulfilment centre before exporting them to Allos and Karda. Customs officials were instructed to conduct regular inspections on imports of Wega-Pads in order to halt potential online sales of Wega-Pads that included the pre-installed preference for Wega-Flix, through foreign online retailers.**
  - **The sale quota limits the percentage of Wega-Pads containing a free subscription of Wega-Flix that can be sold within a month to 50% of the total sales of Wega-Pads. All Wega-Pads are produced in Wano and imported to Alabasta. Wegapunk is not prohibited from importing Wega-Pads that include the pre-installed preference for Wega-Flix, as long as these are not sold either in physical stores or online for the duration of the interim measures.**
22. Does "large technology stores" in para. 58 of the Case include online marketplaces, such as WegaSpend?

**No, this term only includes physical retail stores.**



23. For Section 4.2 of the DEL, how is the fine levied, and what is the definition of domestic revenue? Does it include WegaPad sales, and does it consider WegaBasta's revenue or WegaPunk's global revenue?

**The fine is imposed by the DMA on the relevant enterprises – in this case on WegaPunk. Domestic revenue includes all revenue generated within Alabasta from the supply of audiovisual content, not the sale of electronic goods or the provision of other services.**

24. What is the legal personality of Wega-Flix and how is it structured?

**Wega-Flix is not an independent legal entity, but an online streaming platform (i.e., a service).**

25. WegaBasta is WegaPunk's fully owned subsidiary in Alabasta (see para. 11 of the Case). What is the precise nature of WegaBasta's physical presence in Alabasta? Do they operate a local office or other establishment with personnel in Alabasta?

**WegaBasta's headquarters are situated in the capital of Alabasta. The headquarters employ full-time staff (30 people).**

26. Is WegaBasta incorporated in Alabasta? Is it a juridical person of Wano or Alabasta?

**WegaBasta is a company incorporated in Alabasta, under Alabastan laws.**

27. Were there any attempts to implement the subsidisation programme mentioned in the Key Recommendations?

**Over the years, some parliamentary discussions have been held on subsidizing domestic technology companies, but this never led to a specific legislative proposal, among others, due to budget constraints.**

28. Did WegaPunk's acquisition plan of Achilles Films involve shifting the latter's place of incorporation from Alabasta to Wano (paras. 48-53 of the Case)?

**No, Achilles Films would remain an Alabastan company.**

29. Are Atlas, Achilles Films, Able1, ATV1, Alemachus, and WegaPunk and its conglomerate companies all private sector entities?

**None of these companies are state-owned or state-controlled in any way.**

30. Is it compulsory for Alabastan users to sign a contract with WegaBasta if they want to access Wega-Flix?

**Yes.**

31. How are Wega-Flix's services delivered in Alabasta? Specifically, are the content signals for Wega-Flix sent directly from WegaPunk's servers to Alabasta, or are they provided through WegaBasta in Alabasta?

**Wega-Flix is streamed directly from WegaPunk's servers situated in Wano.**

32. Does the Atlas app come installed with the WegaPad or do you have to download it?

**The Atlas app is required to be installed. WegaPads are either sold with Wega-Flix pre-installed or as a stripped-down version with neither the Atlas app nor Wega-Flix pre-installed.**

33. Regarding footnote 4, does the Wega-Pad with the free six-month subscription cost overall less, more, or the same compared to other tablet computers?

**Wega-Pad is a premium tablet, and generally costs more than other tablet computers, with or without the free six-month subscription. However, the free six-month subscription of Wega-Flix is seen as particularly enticing by consumers due to the relatively high subscription price.**

34. Does the 2022 DMA interim measure ban sales of Wega-Pads that come pre-installed with Wega-Flix? If not, do Figures 3 and 4 show all Wega-Pad sales, regardless of whether Wega-Flix is pre-installed?

**Yes, the DMA ordered WegaPunk to sell only a stripped-down version of Wega-Pad in Alabasta. Figures 3 and 4 refer to the total sales and imports of Wega-Pads (with and without the pre-installed features).**

35. Was the free subscription of Wega-Flix also cancelled along with removing the app of Wega-Flix from WegaPad under the 2022 DMA measure?

**No, WegaPunk offered to all costumers buying a WegaPad a free subscription of Wega-Flix when downloading the app.**

36. From a technical viewpoint, is it possible that Wega-Flix can livestream sports events?

**It could potentially livestream sports events but it does not presently have any agreement or license with a sports association or competition, nor is it planning to conclude one.**

37. What is the exact extent of the interoperability between the Atlas app and the Wegapad? Has the interoperability been removed and has the Atlas app been integrated into the Wegapad (paras. 55, 60 of the Case)?

**The stripped-down version of WegaPad does not present interoperability issues with the Atlas app. The precise status of the interoperability of the Atlas app and the full-version WegaPad is not clear, but it is part of the main DMA proceedings that were initiated in July 2022 and are still pending. The DMA relied on preliminary evidence of limited interoperability to issue its interim decision; this evidence had been mainly produced by Atlas itself.**

38. Can the pre-installed Wega-Flix app on the WegaPad be uninstalled/deleted? If so, does this have an adverse effect on the WegaPad's functionality (paras. 16 and 60 of the Case)?

**It can be uninstalled or deleted. However, according to the interim decision of the DMA, some interoperability issues remain with the Atlas app, even after the deletion of the Wega-Flix app.**

39. How many Alabastan citizens cancelled their Wega-Flix subscription permanently (without reactivation) in May 2018?

**The precise figure is unavailable; the number was small, in any case.**

40. What are the end uses for the services provided by Atlas? Is the content provided by Atlas on-demand?

**Yes, Atlas' content is provided on-demand.**

41. Is Figure 4 on the volume of imports of tablet computers on p. 13 of the Case referring to the volume of imports in Alabasta?

**Yes, Figure 4 refers to import volumes of tablet computers in Alabasta.**



42. The footnote at para. 8 of the Case states that local content is content where 50% of the production cost has been incurred locally; how is production cost determined?

**It is determined by analysing the payments made to locally established entities or local residents.**

43. What is the amount of local content in Alabasta that Atlas's streaming services currently produce, and does this meet the new requirement of the DEL?

**Atlas currently meets the local content requirement.**

44. Has Alabasta taken/considered measures to protect its culture and history other than Section 4.2 of the DEL?

**Many proposals have been examined and implemented over the years to preserve culture and history, such as the establishment of new museums, cheaper tickets to archaeological sites and theaters, increased financial support to the National Arts and Drama University, and administrative support to regional film production companies.**

45. Are there quantifiable standards associated with Alabasta's cultural protection goals?

**No quantifiable standards have been set.**

46. Has the DMA failed to investigate any claims within a 12-month timeline, allowing them to expire? If so, how many?

**So far, no other investigation has been delayed beyond the 12-month deadline.**

47. What follow-up was there and what reasons were given for the dismissal of the first complaint (paras. 56 and 59 of the Case), if at all?

**The DMA dismissed the complaint during the main stages for substantive reasons, as the alleged restrictions were either not established or proven (algorithmic boosting) or were considered not to harm consumer welfare (tying and bundling).**

48. Are the "main proceedings" in para. 62 of the Case referring to the DMA's self-initiated proceedings?

**Yes. According to para. 60 of the Case, the DMA self-initiated the anti-steering proceedings. Prior to the investigation's initiation, the Minister of Economy heavily criticized the DMA on social media, specifically tweeting about its silence regarding**

Wegapunk's alleged distortive practices in the tablet computers market. These practices, the Minister argued, undermined fair competition, negatively impacted consumer welfare, and threatened Alabasta's digital competitiveness. However, the Minister refrained from making any public comments regarding the initiation of the proceedings or the issuance of interim measures in September 2022.

49. What is the average amount of time it takes for a DMA case to be processed from start to finish?

**Precise data is not available, but the DMA usually concludes its investigations within 11 or 12 months.**

50. What reasons have been publicly set forth by Alabasta to justify the repeal in 2000 of its 1990 law (para. 43 of the Case)?

**The explanatory statement by the Minister of Economy at the time the bill was being introduced to the Parliament mentioned the need to "progressively liberalize" Alabasta's economy.**

51. What reasons have been publicly set forth by Alabasta to justify the "significant delays" in the 2021 investigation against Wegapunk?

**No official reasons were presented, but a local newspaper reported an increased workload due to several complaints submitted by the Minister of Economy and various procedural hurdles (extensions granted to the parties - mostly the Minister of Economy - to submit expert reports and submissions).**

52. Does the fact that Alabasta conceded less favourable treatment in consultations mean that we are not expected to argue this issue in claim (ii)?

**Yes. In claim (ii), the participants should not discuss less favourable treatment.**

53. What is the income status of the Maina states?

**All Maina states are middle-income economies, with Alabasta being the largest economy in terms of GDP and Karda being the largest in terms of GDP per capita.**

54. Do Wano, Alabasta, Karda and Allos have the status of "developing" states for the purposes of the WTO?

**Alabasta and Allos have the status of "developing" states for the purposes of the WTO.**

55. In para. 47 of the Case, is the second term “DMA” actually intended to be “DEL”?

**It correctly refers to the DMA.**

56. Are the complaints mentioned in para. 65 of the Case filed by Prof. Buggy as the Minister of Economy?

**Yes, Prof. Buggy in his official capacity as the Minister of Economy submitted several complaints related to key sectors of the digital economy, many of which concern significant foreign market players.**

57. Which government released the study in para. 66 of the Case?

**This study was released by the Alabastan Ministry of Culture. The studies at paras. 67 and 68 were released by the Alabastan Ministry of Economy.**

58. Which public body adopted the CDTS?

**The CDTS has never been officially “adopted” by any governmental body of Alabasta. Wano alleges that the CDTS drives the conduct of the Minister of Economy and the DMA.**

59. Is there a time cap for DMA’s provisional measures?

**No particular time cap has been introduced under the DEL.**

60. To what extent does the government have influence on the conducted research (funding specific research tracks or only funding for general activities) within the Alabastan University?

**The Strategic Economic Study was funded through a specific research scheme, pursuant to a call for proposals and a tendering process. The call for proposals specified that the content of the proposed study would entail specific policy suggestions that could be implemented in the future by Alabasta.**

61. Does “today” on p. 11, para. 65 of the Case, refer to December 2022 - December 2023, or June 2023 - June 2024?

**It refers to September 2024.**



62. For claim (iii), can the participants look beyond the confines of Article XI:1 of the GATT?

**Claim (iii) concerns Article XI:1 of the GATT. Other provisions are not directly relevant to this claim.**

63. What is the main difference between a television channel and cable TV?

**Contrary to traditional TV channels which are accessible for free, TV services are subscription-based.**

64. Does Wano have a Digital Economy Law?

**Wano does not have one single consolidated instrument that regulates the digital economy. Rather, disciplines related to the digital economy can be found in existing laws and regulations. Wano has been notoriously lenient in anti-trust enforcement and market intervention when it comes to the digital economy, as a matter of legal tradition and political priorities.**

**Part. II. Questions concerning legal issues and substantive arguments, which are for the teams to develop themselves or to which the responses can be found in the Case facts**

65. Are any other non-Mainan countries in talks for an MoU with Alabasta?

**Yes; according to footnote 3, Alabasta started negotiating MoUs with non-Mainan states in 2024.**

66. Who processes the data stored in WegaPunk's and Atlas' servers respectively, and who receives such data?

**Please refer to paras. 15 and 21 of the Case.**

67. Are there any procedural or substantial requirements for data disclosure requests by Wano's Government in GADA?

**Please refer to Section 3 of Annex 4. GADA contains no other relevant provisions.**

68. Regarding the DMA, are there more provisions regulating its operation? Is there a Budget Act or other official document to confirm the cost of the DMA's establishment?

**All relevant provisions are provided in the DEL, including the budget of the DMA. The provisions relevant to this Case are those set out in Annex 5.**

69. What is the quantitative impact of the DEL on the market share of Wega-Flix and other Wanian companies operating in Alabasta?

**The Case provides an overview of the market trends during the time of DEL's introduction and enforcement. Each team should assess the pertinence of these trends as they see fit.**

70. Has the tariff increase been applied uniformly on all imported electronic products? Which Harmonized System codes are specifically affected by this increase?

**All pertinent information in relation to this question is included in footnote 11.**

71. Does Atlas provide on-demand content like Wega-Flix?

**Please refer to para. 21 of the Case.**

72. At para. 33 of the Case, it is mentioned that some citizens of Alabasta cancelled their subscription on WegaPunk; how many citizens of Alabasta are users of WegaPunk, Atlas, or both?

**The latest available data of relevance to this question can be seen in Figure 2.**

73. What does the “Minimum 30% local content” set in Alabasta’s GATS Schedule mean? Does such limitation equal the measure at issue? And what is the standard of “local content” set in Alabasta’s GATS Schedule?

**This is for the teams to analyse and argue.**

74. What is the probative value of the study conducted by McEasy, the Strategic Economic Study by the Department of Law (Annex 3), and other evidence used under the Case?

**This is for the teams to analyse and argue.**