ICC INTERNATIONAL COURT OF ARBITRATION

ICC Case No. 21404/ASM

PT VENTURES, SGPS, S.A.

Claimant

v.

VIDATEL LTD.

MERCURY – SERVIÇOS DE TELECOMUNICAÇÕES SARL

GENI S.A.

Respondents

REPLY TO COUNTERCLAIM

---

12 February 2016

WHITE & CASE LLP
Counsel for Claimant

19, Place Vendôme
75001 Paris
France

TABLE OF CONTENTS

Page

I. INTRODUCTION

1. Pursuant to Article 5(6) of the ICC Rules, PTV hereby submits this reply to counterclaim ("**Reply**") in response to Vidatel's answer dated 8 January 2016 ("**Answer**"). Unless otherwise indicated, capitalized terms not defined in this Reply have the meaning given to them in PTV's Request for Arbitration.

2. This Reply addresses only Vidatel's counterclaim. PTV maintains its position as set out in its Request for Arbitration and rejects all allegations that Vidatel makes in defense, which will be addressed in greater detail in the course of these proceedings.

II. PTV'S REPLY TO VIDATEL'S COUNTERCLAIM

A. VIDATEL'S COUNTERCLAIM

3. Vidatel submits two counterclaims:

- for a declaration that (i) "PTV is in breach of a material obligation under the Shareholders' Agreement by reason of the Oi acquisition", and, therefore, (ii) "upon a notice of termination being served upon PTV by all three Respondents terminating the Shareholders' Agreement PTV shall be obliged to negotiate in good faith with a view to selling its shares (...)";[1] and

- "in the event that any of [PTV's] claims for damages succeeds", an "order that the Claimant pay damages or an indemnity to the First Respondent for damages due to breach of Article 6 of the Shareholders' Agreement".[2]

4. To support its counterclaims, Vidatel relies primarily on Articles 6 and 13 of the Shareholders' Agreement.[3]

5. According to Vidatel's vague, general and unsupported allegations, as a result "of a series of interrelated transactions" which took place in 2014, "PTV moved out of the control of PT Telecom" (PTV's owner at the time of signature of the Shareholders'

---

1 Vidatel's Answer, ¶ 86(d).

2 Vidatel's Answer, ¶ 86(e). See also ¶ 85 ("if contrary to Vidatel's primary case it has incurred liabilities to PTV as claimed in the Request, Vidatel counterclaims damages for breach of Article 6 by PTV") (emphasis added).

3 Vidatel's Answer, ¶ 11.

Agreement) and "into the control of" the Brazilian telecommunications company Oi S.A. ("**Oi**"), allegedly in breach of both the prohibitions on transfer under Article 6 of the Shareholders' Agreement and, specifically, PTV's obligation under Article 6.2, in the circumstances, "to offer its shares for sale to the Respondents."[4]

6. Vidatel contends that "PTV's breach is on any view a breach of a 'material obligation' within the meaning of Article 13.1", which would entitle the "Respondents" to serve a notice of termination under Article 13.1 of the Shareholders' Agreement "in order to commence the process under Article 13.2 for sale of PTV's shares".[5]

7. Interestingly, Vidatel argues on behalf of, and seeks a declaration referring to, all of the "Respondents", thereby confirming that the three Respondents are engaged in a concerted scheme against PTV and have an aligned position and strategy in this arbitration.

8. In any event, Vidatel's counterclaims have no basis under the Shareholders' Agreement for the reasons set out below.

B. ARTICLES 6 AND 13 OF THE SHAREHOLDERS' AGREEMENT[6]

9. Article 6 of the Shareholders' Agreement, entitled "Transfer of Shares", governs the transfer of shares of Unitel by its "Shareholders", which are defined under Article 1 as "[PTV], Vidatel, Mercury and Geni and their respective successors in title as shareholders of Unitel from time to time."

10. Under Article 6.1 of the Shareholders' Agreement, with the exception of sales of shares to "Affiliated Companies":

> "None of the SHAREHOLDERS shall sell, assign, transfer, pledge, encumber, hypothecate or in any other manner dispose of or part with its right, title or interest in any shares in Unitel (...), except in accordance with the provisions of this clause 6 or with the consent of the other Parties." [Underline added]

---

4 Vidatel's Answer, ¶¶ 11-12.

5 Vidatel's Answer, ¶ 84.

6 See **Exhibit C-4,** Shareholders' Agreement, dated 15 December 2000.

11. Article 6.2 provides in turn that:

> "If any of the SHAREHOLDERS (selling party) desires to transfer any or all of its shares in Unitel, the selling party shall give notice of its intention to transfer (...). Such notice shall constitute an offer to the other SHAREHOLDERS (...)." [Underline added]

12. Articles 6.1 and 6.2 specifically refer to, and govern exclusively the transfer of "shares in Unitel" by one of its Shareholders.

13. By combination of Articles 13.1 and 13.2 of the Shareholders' Agreement, if one of the Shareholders "commit[s] a breach of any material obligation imposed upon it by" the Shareholders' Agreement, then the other "non-defaulting SHAREHOLDERS shall be entitled at their discretion to serve a notice of termination on the defaulting SHAREHOLDER", upon which "the SHAREHOLDERS shall negotiate in good faith" the sale of the shares of the defaulting Shareholder.

14. Therefore, Articles 13.1 and 13.2 come into play and apply only if there is a breach of a material obligation by one of the Shareholders.

C. PTV DID NOT TRANSFER ITS SHARES OF UNITEL AND VIDATEL'S COUNTERCLAIMS THEREFORE HAVE NO BASIS

15. Vidatel's counterclaims are entirely based on the premise that PTV committed a contractual breach under Article 6 because of the "Oi acquisition", which would qualify as a breach of a "material obligation" under Article 13.1.

16. However, in this case, PTV has not sold any of its shares in Unitel. The "Oi acquisition" referred to by Vidatel in support of its counterclaims involved transactions between Portugal Telecom and Oi, but it has not resulted in any transfer of shares in Unitel by PTV and has had no impact on PTV's shareholding in Unitel. Quite the contrary, PTV remains the full owner of its 25% shareholding in Unitel and firmly intends to exercise fully, and benefit from, all of its rights as shareholder, which is the very reason why PTV started this arbitration.

17. Vidatel is well aware of this situation, and the insurmountable obstacle in the way of its counterclaims. In an attempt to circumvent the clear terms of Articles 6.1 and 6.2, Vidatel refers to the alleged "obvious intention of the Unitel shareholders", according to which the provisions of Articles 6.1 and 6.2 would not only apply to the Shareholders, but also to "those owning or controlling them".[7] However, there is no indication anywhere in the Shareholders' Agreement of such "obvious intention". Had the Shareholders intended to extend the scope of the restriction on transfers in Article 6 to owning or controlling shareholders, they would have provided for it specifically (in the same way that the Shareholders specifically agreed to permit the free transfer of shares in Unitel to "Affiliated Companies").

18. Therefore, in the absence of any transfer by PTV of its shares of Unitel, there is and can be no breach by PTV of any of the provisions of Article 6, much less a breach of a "material obligation" within the meaning of Article 13.1.

19. Vidatel's counterclaims must therefore be dismissed entirely.

20. Vidatel's baseless allegations and counterclaims are a belated and self-serving attempt to retrospectively justify its own material breaches of the Shareholders' Agreement, which started well before 2014, and forced PTV to initiate this arbitration.

---

[7] Vidatel's Answer, ¶ 11(b).

III. PRELIMINARY STATEMENT OF RELIEF SOUGHT

21. For the reason set out above, in addition to the preliminary relief set out in its Request, PTV respectfully requests that the Arbitral Tribunal:

(a) Dismiss Vidatel's counterclaims;

(b) Order Vidatel to pay all costs and expenses incurred by PTV in defending Vidatel's counterclaims; and

(c) Grant any and all other relief that it may deem necessary and appropriate.

IV. RESERVATION OF RIGHTS

22. PTV reserves the right to amend and supplement this Reply as it may deem appropriate.

Respectfully submitted on behalf of PT Ventures, SGPS, S.A.

On 12 February 2016

White & Case LLP

White & Case LLP