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**ICC INTERNATIONAL COURT OF ARBITRATION**

**21404/ASM**

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**PT Ventures, SGPS, S.A.**

**Claimant**

**v.**

**(1) Vidatel Ltd**

**(2) Mercury – Serviços de Telecomunicações SARL**

**(3) Geni SARL**

**Respondents**

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**ANSWER OF THE FIRST RESPONDENT**

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8 January 2016

## INTRODUCTION

1. This Answer is provided on behalf of the First Respondent, Vidatel Ltd (“**Vidatel**”), pursuant to Article 5(1) of the ICC Arbitration Rules. Unless otherwise stated and for ease of reference only, Vidatel adopts the abbreviations and defined terms as used in the Request.
2. Vidatel wishes to clarify at the outset that:
  - (a) this Answer is not intended as a definitive statement of Vidatel’s position and Vidatel will wish to set out in subsequent memorials and/or submissions the detail of the factual and legal propositions on which it relies;
  - (b) moreover, the preparation of Vidatel’s Answer has been substantially hindered by (i) the diversion of resources necessary to respond to a host of interim applications and parallel proceedings initiated by PTV against both Vidatel and other persons or entities connected to the transactions complained of in PTV’s Request; (ii) the further distraction of PTV’s legal challenges under French law to the constitution of the Tribunal; and (iii) the limited time which it has been afforded to prepare this Answer;
  - (c) in those circumstances, failure at this stage to address any specific allegation is under no circumstances to be taken as an admission with respect to that allegation; and
  - (d) except where this Answer makes explicit admissions, PTV is required to prove each and every fact upon which its claims depend.
3. By way of summary of Vidatel’s responses to the allegations made against it:
  - (a) Vidatel uniformly denies all allegations of conspiracy, “looting” of Unitel and other similar and unfounded allegations of dishonesty or other material wrongdoing by Vidatel. Vidatel has at all times acted in good faith and in what it considered to be the best interests of Unitel. In this connection, the suggestion at paragraph 4 of PTV’s Request that Geni and Mercury – which (as described at paragraph 7 of the Request) are entities distinct from Vidatel

and Vidatel's owner, Isabel Dos Santos – have engaged in wrongful transactions at the expense of Unitel and hence at their own expense as 50% shareholders (in aggregate) of Unitel, merely to benefit Mrs Dos Santos personally, is entirely nonsensical.

- (b) Moreover, the repeated attempts throughout the Request to impugn the integrity of Mrs Dos Santos (including through innuendo and tendentious descriptions such as the “*billionaire daughter of Angola’s President*”) are unacceptable, designed solely to prejudice the Tribunal’s perception of Vidatel and have no proper place in this arbitration.
  - (c) Insofar as PTV claims to be unaware of transactions about which it now complains this appears to be the result of a lack of information-sharing in the wake of PTV’s acquisition by the Brazilian telecoms company, Oi. Although Oi’s lack of communication with PTV’s former representatives within Unitel (principally Zeinal Bava and Luis Pacheco de Melo) is regrettable, it is not and cannot logically or legally be held to be something for which Vidatel is responsible, let alone the basis of a claim for damages.
  - (d) In any event, PTV’s attempt in these arbitral proceedings between shareholders to challenge the validity and effectiveness of transactions entered into by Unitel (which is not – and could not be – a party to the Shareholders’ Agreement or to this arbitration) is misconceived.
  - (e) Even if this arbitration were a proper forum to complain about such transactions - which for the reasons set out below is not the case - then PTV’s quantification of its losses for nearly USD 2.5 billion is grossly exaggerated and on any view fanciful.
4. Moreover, there is a fundamental defect in PTV’s standing even to advance its complaints against Vidatel and the other Respondents. Although PTV technically remains a shareholder of Unitel, that is only so as a consequence of PTV’s deliberate refusal to comply with its obligation under the Shareholders’ Agreement to offer its shares for sale to the Respondents. See further below at paragraphs 9 to 15. This is a free-standing defence to PTV’s claims (since PTV would otherwise be deriving a

benefit from its own ongoing breach of contract). Vidatel also seeks by way of counterclaim a declaration from the Tribunal in respect of this issue.

5. Yet further:

- (a) PTV's claim has not been brought as a bona fide attempt to recover compensation for loss and damage which PTV has sustained as a result of any material wrongdoing by Vidatel. Rather, the claim is motivated by the desire of PTV and those controlling it (in particular, Oi, PTV's majority indirect shareholder) to: (i) exert commercial pressure upon Vidatel in the context of recent negotiations between PTV and the Respondents for the sale of PTV's interest in Unitel, and (ii) exaggerate the value of PTV's outstanding interest in Unitel for the financial purposes of Oi.
- (b) As such, PTV's claim amounts to: (i) an abuse of the arbitral process (which the Tribunal has power to restrain in order to protect the integrity of the process before it); and/or (ii) an abuse of rights and a breach of PTV's good faith obligation (under Article 762(2) of the Angolan Civil Code) as a matter of Angolan law.
- (c) In respect of its defence, Vidatel will rely in particular upon: (i) PTV's gross inflation of its claim; (ii) the assortment of proceedings brought by PTV in the courts of the British Virgin Islands, the Netherlands, France and Angola, designed to maximise pressure upon Vidatel (and Mrs Dos Santos, the owner of Vidatel), the other Respondents and Unitel; (iii) the parallel settlement discussions between PTV and Oi (on the one hand) and the Respondents and Unitel (on the other hand) regarding the potential purchase of PTV's interest in Unitel; and (iv) the reliance placed by Oi in its latest financial statements on the alleged (inflated) value of PTV's outstanding interest in Unitel.

#### **GENERAL COMMENTS**

6. Much of the background to the dispute is uncontentious. In particular, it is true (as explained by PTV at paragraphs 4-16 of the Request) that:

- (a) The immediate parties and their ultimate owners are those described in paragraph 7 of the Request (albeit that the legal relevance of vague and subjective labels such as “*influential*” or “*most influential*” is not understood).
  - (b) The relationship between PTV and the Respondents dates back to 1999/2000 and there has been substantial economic growth in Angola since the end of the civil war in 2002. Unitel has itself grown to a very substantial business with more than 10 million customers and 2,400 employees (albeit that the suggestion that PTV was instrumental in achieving that growth is incorrect and denied by Vidatel).
  - (c) Unitel is a major Angolan telecoms company of which PTV (subject to Vidatel’s counterclaim below) and the Respondents are each 25% shareholders, all four of them being parties to a Shareholders’ Agreement dated 15 December 2000 (subject to the validity of PTV’s entitlement to retain its shareholding as against the Respondents).
  - (d) The Shareholders’ Agreement and the Management Agreement between Unitel and PTV of the same date sought to govern the parties’ relationship for the establishment and operation of a mobile telecommunications network pursuant to a licence received from INACOM.
  - (e) In so far as PTV provided services to Unitel during the early years of its establishment in the Angolan market, its remuneration for such services was expressly set out in Article 5.1 of the Management Agreement. Beyond this, the relevance of paragraph 8 of PTV’s Request is not understood.
  - (f) The express terms of the Shareholders’ Agreement include those quoted or summarised at paragraphs 9 to 16 of the Request. Vidatel reserves the right to refer to the Shareholders’ Agreement for their full terms, meaning and effect.
7. It is also true, if regrettable, that the relationship between the shareholders has deteriorated. Much of this, however, is attributable to PTV’s failure to acknowledge its own obligations to its fellow shareholders as described below.

## **OI ACQUISITION: PTV'S BREACH OF THE SHAREHOLDERS' AGREEMENT**

8. In addition to the provisions relied upon by PTV, the Shareholders' Agreement further provides (so far as presently relevant):

*“ “Affiliated Company” means any company, now or hereinafter existing, which, directly or indirectly, controls a Party or is controlled by or is under common control with such a Party; a person “controls” a company, if it, directly or indirectly, holds or is beneficially entitled to, other than by way of security interest only, more than 50% of its voting rights, income or capital, alone or in combination with another Affiliated Company.*

...

- 6.1 *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, or any rights arising therefrom or attaching thereto, now or at any time hereafter held by either, or, suffer or permit any such shares to be in any manner transferred, by operation of law or otherwise, except in accordance with the provisions of this clause 6 or with the consent of the other Parties.*

*The SHAREHOLDERS shall, however, be free to transfer their shareholding in Unitel to any of their Affiliated Companies, as amended, and such transfer shall not be regarded as a transfer of shares as contemplated in this clause 6.*

*Where any of Parties' Affiliated Companies which holds the shares in Unitel is disposed of by any SHAREHOLDER, that SHAREHOLDER shall ensure that the shareholding in Unitel shall be returned to it prior to disposal and shall not be disposed of as an asset of their Affiliated Companies.*

*In the event of a transfer stipulated above taking place such SHAREHOLDER shall ensure that such Affiliated Companies becomes a Party to this agreement as is envisaged in terms of clause 6.4.*

- 6.2. *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, and the terms and conditions of any offer received from a third party, if any, to the other SHAREHOLDERS. Such notice shall constitute an offer to the other SHAREHOLDERS, on the same terms and conditions as contained in the notice. The other SHAREHOLDERS shall have the right, at its option, to purchase, pro rata, the offered shares at the price and on the terms contained in the offer, for the offer of any third party, if any, may be accepted by the selling party.*
- 6.3. *In the event that any or all of the other SHAREHOLDERS do not elect to purchase such shares within 30 (thirty) days after the receipt of the said notice of intention to sell, or it refuses to purchase all such shares offered for sale, then the selling party shall have the right to transfer such shares not purchased by any or all of the other SHAREHOLDERS to a third party, provided that the terms and conditions of a transfer to the third party (including, but not limited to, price) shall not be more favourable than those offered to the other SHAREHOLDERS.*
- 6.4. *The third party transferee shall, as a condition of the transfer, submit to the other SHAREHOLDERS and Unitel a written statement stating that the transferee agrees to being a Party to and to be governed by all of the terms and provisions of this agreement and to be fully bound by the terms thereof, assuming all obligations of the Party from which it has purchased the shares. No SHAREHOLDER shall sell any shares to a third party unless the provisions of this clause are included as a term of that sale.*
- ...
- 6.6. *Any share transfer under this clause 6 shall be subject to any necessary governmental validation or approval, if any.*
- ...
- 9.7 *Notwithstanding any other stipulations of this agreement, the following issues may only be decided upon by a resolution of a General Meeting of the*

*shareholders of Unitel adopted by shareholders holding in aggregate at least 75% of the shares in Unitel:*

- 9.7.1 issue, allotment, redemption, purchase or grant of options over any Unitel shares or other securities or any reorganization of Unitel's share capital;*
- 9.7.2 alteration of the articles of incorporation or by-laws (or equivalent constitutional documents) of Unitel or ... passing any resolution [for] its winding-up or liquidation;*
- 9.7.3 any change in the nature or scope of Unitel's business or the commencement of any new business not being ancillary or incidental to such business;*

*...*

*13.1. In the event that any SHAREHOLDER shall commit a breach of any material obligation imposed upon it by this agreement or allow its shareholding in Unitel to be attached under any circumstances (in event of default), then the all (but not some) of non- defaulting SHAREHOLDERS shall be entitled at their discretion to serve a notice of termination on the defaulting SHAREHOLDER whereupon the provisions of sub-clause 13.2. shall apply.*

*13.2. Upon service of a notice of termination pursuant to sub-clause 13.1. the SHAREHOLDERS shall negotiate in good faith either with a view to finding a third party purchaser for all of the shares of the defaulting SHAREHOLDER or with a view to the non-defaulting SHAREHOLDERS purchasing, pro rata, the shares of the defaulting SHAREHOLDER, in either event at net asset value.*

*If no purchaser is found for all the shares of the defaulting SHAREHOLDER and the other SHAREHOLDERS do not purchase the shares of that SHAREHOLDER within a period of four months from date of the relevant notice of termination, the SHAREHOLDERS shall procure that Unitel be wound up. For this purpose each of the SHAREHOLDERS undertakes with the other of them to vote in favour of the resolution for winding up. [In the event of such liquidation, PTI would have the first option to purchase any of the*

*assets of Unitel, at the value that the asset was taken into Unitel at the commencement of this joint venture or, at fair market value, whichever is the lesser.]*

...

*13.4 Should the SHAREHOLDERS be unable to agree on the net asset value of Unitel the matter shall be referred to the auditors of Unitel for their determination. ”*

9. The purpose of the transfer restrictions at Article 6 was to ensure that Unitel remained within the control of the same four shareholders, albeit that each of them was free to transfer shares to an Affiliated Company within the same control.
10. As at the date of the Shareholders’ Agreement on 15 December 2000, the interest of PT Telecom (“**PT SGPS**”) was held through its subsidiary PTV (then called Portugal Telecom Internacional SGPS SA). Article 12 of the Shareholders’ Agreement (as referred to by PTV at paragraph 16 of its Request) – as well as the Management Agreement (which recorded at recital III thereof the parties’ intention that Unitel should be able to access the experience of the Portugal Telecom Group in the mobile telecommunications market through PTV and other Portugal Telecom Group Affiliates) further confirms that PTV’s status as a subsidiary of PT Telecom was a matter of significant importance.
11. During 2014, the consequence of a series of interrelated transactions (the details of which do not need to be set out at this stage but which will be the subject of disclosure and analysis in due course), was that PTV moved out of the control of PT Telecom and into the control of Oi. This was not a transfer of the interest in Unitel to an Affiliated Company (as would have been permitted under the Shareholders’ Agreement). Rather, it was a disposal of PT Telecom’s interest in Unitel caught by the prohibitions on transfer. In support of that analysis, Vidatel relies, notably, upon:
  - (a) the express language of Article 6.1, in particular the wide scope of the prohibition on transfer and the references to not “*in any other manner*” disposing or parting with “*its right, title or interest in any shares*”, or “*suffer*

*or permit any such shares to be in any manner transferred, by operation of law or otherwise”;*

- (b) the obvious intention of the Unitel shareholders, as appearing from the terms of the Shareholders’ Agreement and the circumstances in which it was entered into, namely, that no third party outside the original four shareholders and those owning or controlling them would acquire an interest in Unitel without the consent of the other shareholders and those owning and/or controlling them;
  - (c) the purposive and flexible approach under Angolan law towards the interpretation of such transfer restrictions; and/or
  - (d) the general duty of good faith under Article 762(2) of the Angolan Civil Code.
12. In breach of Article 6.2 of the Shareholders’ Agreement, PTV then failed to offer its shares for sale to the Respondents. This was despite a letter (undated but sent in late March/early April 2014) from the Respondents to PTV setting out (i) their concerns about the intended transactions between Oi and PT Telecom which had been publicly announced at that time; and (ii) their wish to exercise the rights of pre-emption and to acquire PTV’s shares in the event of those transactions taking place.
13. The apparent willingness of Oi to flout such pre-emption rights and change of control restrictions is further illustrated by separate ICC arbitration proceedings also arising out of the very same 2014 Oi/PT Telecom transactions. These are said by Samba Luxco S.a.r.l, the 25% minority partner in Africatel Holding BV (the holding company for PT Telecom’s and now Oi’s interest in Unitel) to have entitled Samba Luxco to exercise a put option which has not been honoured.
14. Moreover, the proposed transaction between Oi and PT Telecom which was originally announced involved a merger. In the event, that merger did not take place and there was instead a disposal to Oi of PT Telecom’s interest in Unitel (with PT Telecom being sold separately to Altice). Hence the actual transaction was in even more obvious conflict with the letter and spirit of the Shareholders’ Agreement than that originally contemplated. Yet, PTV still did not see fit to seek the permission of the

Respondents or offer its shares for sale pursuant to the provisions of Article 6 of the Shareholders' Agreement.

15. In those circumstances:

- (a) PTV's ongoing status as shareholder, and hence its standing to bring claims under the Shareholders' Agreement, only exists by virtue of its own failure, in breach of Article 6.2 of the Shareholders' Agreement, to offer its shares for sale to the Respondents;
- (b) its standing to initiate these arbitration proceedings is not therefore a legitimate standing but derives from a breach of contract;
- (c) PTV's failure to comply with Article 6.2 of the Shareholders' Agreement therefore operates as a defence (*exceptio*) to the claims brought by PTV against Vidatel irrespective of whether those claims could have succeeded if brought whilst PTV remained in the control of PT Telecom;
- (d) further, or alternatively, Vidatel is entitled to and seeks a declaratory award by way of counterclaim: see further below at paragraph 86(d);
- (e) in the yet further alternative, Vidatel will contend that such liabilities as it may be held to have incurred to PTV as alleged in the Request are themselves the result of PTV's breach of Article 6.2 as aforesaid and Vidatel will therefore (i) counterclaim damages for breach of contract against PTV, and (ii) if necessary, rely on such counterclaim by way of set-off and/or as a defence of circuity of action against PTV's claims;
- (f) the balance of this Answer is without prejudice to the above contentions.

#### **PTV'S ALLEGATIONS: OVERVIEW**

16. So far as the detail of PTV's claims is concerned, and following the numbering of PTV's Request, it is not in dispute that: (i) PTV has had fewer than three appointees on the Unitel board since about 2006; (ii) there have been substantial delays in Unitel's payment of dividends to its two "*foreign investors*" (being PTV and Vidatel); (iii) Unitel purchased a stake in BFA from BPI and entered into transactions with

Unitel International Holdings and Tokeyna; (iv) PTV has at times complained about lack of and/or delay in the provision of information about Unitel's affairs; (v) there has been reference by Unitel in meetings and correspondence to a "suspension" of PTV's rights and there have been proposals (not yet put into effect) for (vi) changes to Unitel's share capital; and (vii) amendments to the Shareholders' Agreement and Unitel's by-laws.

17. By way of general response to those allegations, the following clarifications are important:

- (a) References to a "suspension" of PTV's rights (Issue 5 in Section C of PTV's Request) arose in the context of PTV having betrayed the trust and confidence of its fellow shareholders by allowing new investors into the capital structure of Africatel without the Respondents' prior knowledge or approval. PTV then compounded the situation by failing to follow through on the proposal (discussed between all four shareholders of Unitel) that PTV should exit its investment in Unitel. An already difficult situation was made worse still in 2014 by PTV's breach of Article 6.2 of the Shareholders' Agreement as described in paragraphs 9 to 15 above. The purported suspension has not, in any event, caused any loss to PTV (and Vidatel expressly denies that it did so in so far as the contrary is alleged by PTV).
- (b) So far as Unitel's corporate governance and documentary records are concerned, in so far as those records (in particular as regards the decision-making of its corporate bodies and officers) may not be as detailed and complete as they could be or indeed as Vidatel had believed that they were (as to which Vidatel makes no admissions), this is to be understood in the Angolan context, where matters may be handled somewhat informally, as PTV well knows, given the fact that until very recently it had a designated representative on the board of Unitel. It would be unreasonable therefore, in the circumstances to consider that such lack of formality amounts to evidence of wrongdoing, let alone fraud or conspiracy, nor does it mean that PTV has suffered any loss as a result. Moreover, as mentioned at paragraphs 3(c) and (d) above and explained further at paragraphs 18 to 30 below, questions of

corporate authority and validity and/or as to whether wrongs have been committed by or against Unitel are outside the scope of this arbitration.

- (c) In relation to Tokeyna, Vidatel does not accept that PTV was (as it claims) previously unaware that Tokeyna is a Unitel vehicle, incorporated by or at the direction of Unitel and for Unitel's benefit albeit that, for administrative reasons and at Unitel's request, the legal title to its shares has been held on an interim basis by Mrs Dos Santos. Insofar as PTV's complaints in this respect are based on a misunderstanding of the role of Tokeyna then those complaints fall away in light of this explanation.
- (d) In any event, the significance of Tokeyna within these arbitral proceedings falls away for a second reason, namely the intention on the part of Unitel to cancel and/or reverse the Tokeyna transactions so that from the perspective of Unitel (and hence PTV as a shareholder) it is as though those documents and the related transactions were never executed. At the time of writing this cancellation and/or reversal has not yet been effected, but Vidatel understands it to be imminent and on any view will have occurred prior to the Tribunal making any award.

### **PROPER SCOPE OF THE ARBITRATION**

- 18. There is a further crucial preliminary matter which Vidatel wishes to emphasise before dealing below with PTV's complaints. It relates to the proper subject matter of the arbitration and hence the extent of the Tribunal's jurisdiction. The parties to the arbitration agreement are PTV and the three Respondents. The arbitration agreement at Article 16.1 of the Shareholders' Agreement provides (so far as relevant):

*“Any claim, dispute or other matter in question between the Parties with respect to or arising under this Agreement or the breach thereof, shall be decided by arbitration ...”*

- 19. Hence the dispute must arise between the Parties and must be with respect to or arising under the Shareholders' Agreement between them.

20. Those limitations on the scope of the Tribunal's jurisdiction give rise to two distinct sub-issues:
- (a) the position of Unitel so far as its relationship with shareholders and the status of its transactions is concerned; and
  - (b) the distinction between Vidatel and Mrs Dos Santos.

*Unitel*

21. Unitel is, of course, a legal entity separate from its shareholders (see Article 5 of the Angolan Commercial Companies Law, Law No. 1/04 of 13 February 2004). The actions of Unitel in that separate legal capacity feature prominently in PTV's Request. Indeed, PTV variously alleges that:
- (a) dividends due and owing from Unitel have been improperly withheld: see paragraphs 34 to 48 of the Request;
  - (b) various high-value transactions purportedly entered into by Unitel with third parties are in truth null and void (see paragraph 45 of the Request);
  - (c) BFA dividends received by Unitel have not been credited (see paragraphs 48 to 50 of the Request); and
  - (d) information rights with respect to the affairs of Unitel have not been respected (see paragraphs 53 to 57 of the Request).
22. Although it is nowhere acknowledged within PTV's Request, such allegations in relation to Unitel create insuperable difficulties for PTV in bringing its claims against Vidatel and its fellow shareholders. Unitel is, of course, not a respondent to the arbitration, nor a party to the underlying Shareholders' Agreement containing the agreement to arbitrate. It follows that the Tribunal would have no power to make any award binding on Unitel as to the rights and obligations as between PTV and Unitel or the legal status of the transactions between Unitel and third parties which PTV seeks to impugn.
23. Moreover, since Angolan law provides a coherent corporate law regime and its own avenues of recourse to dissatisfied shareholders (e.g. to seek annulment of corporate

resolutions or vindication of information rights), which avenues, to the best of Vidatel's knowledge, PTV has recently resorted to on several counts and which in part overlap with the matters submitted to arbitration (details of which shall be disclosed in future memorials), then an arbitral Tribunal ought to be especially astute to ensure that it does not exceed its proper remit. Even if this was not the case, still PTV cannot be entitled to use the Shareholders' Agreement for obtaining relief against Unitel, whether directly or indirectly in the form of purported claims against the Respondents, as this Tribunal lacks jurisdiction to determine or grant relief in respect of the rights and obligations of Unitel.

24. So far as the alleged "looting" is concerned, the problem for PTV goes further. That is because whether or not those transactions are null and void is an essential preliminary issue which logically must be resolved before the alleged liability of the Respondents can be addressed. Indeed, if the transactions are null and void then Unitel has not suffered the losses about which PTV complains and which in turn form the basis of its own claim for loss in its capacity as shareholder. Although, in theory, Unitel might suffer a loss if the effects of the allegedly void transactions could not be unwound, there is no allegation by PTV (and certainly no evidence) that payments could not, in principle, be reversed in Unitel's favour if a competent Court concluded that this is what needed to happen. In any event, there is no room for such speculation whilst the prior question of whether the transactions in question (which are transactions to which Unitel, but not the Respondents, is party) are valid or invalid in the first place remains unresolved.
25. The only appropriate response on the part of the Tribunal is therefore to decline to deal with any of PTV's complaints which are: (i) in substance allegations against Unitel; or (ii) which in any event cannot be fairly adjudicated upon in proceedings to which Unitel is not a party; and (iii) clearly fall out of the scope of the arbitration clause and jurisdiction of the Tribunal.

*Vidatel and Isabel Dos Santos*

26. It is true that Mrs Dos Santos owns and controls Vidatel. It is also true (as PTV asserts at paragraph 25 of its Request) that she has been a director of Unitel since 2001 and served as President of the Board of Directors since 2013.

27. However, it clearly does not follow that PTV is entitled to advance complaints against Mrs Dos Santos in her capacity as director and/or President under the guise of a claim against Vidatel under the Shareholders' Agreement. Like Unitel, Mrs Dos Santos is not a party to the arbitration agreement and therefore cannot and should not be made a respondent to the arbitration proceedings.
28. Yet, much of the substance of PTV's complaint is in reality directed at Mrs Dos Santos personally as distinct from Vidatel in its capacity as shareholder. Importantly, PTV's allegation at paragraph 4 of its Request is not that the Respondents' alleged "*scheme to loot Unitel*" has been for Vidatel's benefit or, at paragraph 26 of the Request, that Vidatel is particularly responsible for decision-making. Rather, PTV alleges that the looting has been for the benefit of Mrs Dos Santos and that Mrs Dos Santos is the key decision-maker. Indeed, there is no allegation in the Request that Vidatel as a company has derived any benefit from any of the impugned transactions. The only allegation which (even if proved, and it is hotly contested: see paragraphs 36-53 below) would represent any benefit to Vidatel is the dividend issue, in relation to which PTV incorrectly alleges that Vidatel has received preferential treatment.
29. PTV cannot sensibly suggest that Vidatel is responsible in its capacity as shareholder for having procured Mrs Dos Santos to act in a certain way. Such allegations make no sense when Mrs Dos Santos controls Vidatel and not the other way around.
30. In summary, insofar as PTV's complaints are in substance complaints against Mrs Dos Santos, then the Tribunal has no jurisdiction to entertain them. Given the importance of these jurisdictional arguments, Vidatel reserves the right to request a bifurcation of proceedings so that questions of jurisdiction and/or *lis pendens* are resolved in advance of hearing evidence on the substance of the claims.

## **PTV'S INDIVIDUAL COMPLAINTS**

### **1. Board representation**

31. PTV makes the stale and unconvincing complaint that since 2006 it has been denied its right to appoint three board directors. The contractual provision to that effect is at Article 9.1 of the Shareholders' Agreement and its language is common ground. The historical reason for the inclusion of this provision was the way in which PT Telecom

wished to account for its indirect investment in Unitel. As Vidatel understands it, in order for PT Telecom to book its interest in Unitel on a consolidated basis, accounting rules required that PTV have the right to appoint a majority of the board of Unitel.

32. Irrespective of the original reason for Article 9.1, the short response to the complaint which PTV now makes is that it has not insisted upon or sought to enforce its rights under that provision for nearly a decade. Rather, it has approved the composition of the board, including at General Meetings held on 18 October 2006, 29 September 2008, 18 June 2012 and 22 October 2012. Indeed, it is unsurprising that PTV was content with this arrangement given that the provision in the Shareholders' Agreement for PTV to have three appointees had been linked to the Management Agreement between Unitel and PTV, the five year term of which expired in 2005.
33. The board was thereby authorised to act on Unitel's behalf and to bind Unitel. Having approved the board in General Meetings in this manner and been content with a single appointee on the board since 2006, it is simply not open to PTV now to assert, in response to transactions with which PTV is (now) uncomfortable or unhappy, that the position would have been different if the composition of the board had been different. Yet, that is precisely PTV's submission at paragraph 30 of its Request.
34. The suggestion that PTV "*protested repeatedly*" on the issue also mischaracterises the position. As footnote 22 to that allegation at paragraph 28 of the Request shows (referring to letters of 24 November 2014 and 30 January 2015), the complaints that PTV relies upon were in fact made just twice, in fairly quick succession and only after PTV had failed to complain about the issue for more than eight years. Vidatel infers that these complaints were initiated by Oi, following the acquisition of its majority holding in PTV in 2014, in disregard to the established course of conduct whereby PTV had accepted that it was content for a single appointee on the Unitel board.
35. Further or alternatively, Vidatel will contend that PTV's attempt to now rewrite history and portray its acceptance of a single board appointment since 2006 as a breach of Article 9.1 of the Shareholders' Agreement is a breach of its duty of good faith under Article 762(2) of the Angolan Civil Code.

## 2. Dividends

36. PTV's complaints that it has not received dividends due to it are, as stated above and will in due course be explained in further detail, a matter concerning Unitel and fall outside the scope of the arbitration clause and the Tribunal's jurisdiction and may indeed be subject to *lis pendens* considerations. Additionally and in any event, PTV's complaints:
- (a) fail even to identify what it is that Vidatel as shareholder is said to have done or failed to do to prevent Unitel from making such payment;
  - (b) fundamentally and crucially misunderstand the nature of PTV's legal entitlement (which is to participate in Unitel's profits in Kwanza);
  - (c) overlook the acute and widely publicised foreign exchange difficulties in Angola and the chronic shortage of US Dollars;
  - (d) proceed on an incorrect premise as to the sums received by Vidatel; and
  - (e) wrongly assume that the mere delay in payment of a debt by Unitel (a creditworthy entity) entitles PTV to claim the full amount as damages as against Vidatel.

### *No relevant allegation against Vidatel*

37. The first and fundamental problem facing Vidatel in seeking to respond to PTV's claim is that PTV's Request advances no factual case against Vidatel as to what Vidatel is alleged to have done or failed to do in order to prevent PTV from receiving dividends. Paragraph 38 of the Request refers to the "*Respondents' Actions*" but makes no attempt to explain what those actions are. Indeed, it is not easy to understand how in its capacity as shareholder Vidatel can have stood in the way of payment by Unitel.
39. On the face of it, PTV's complaint about non-payment of dividends is purely against Unitel. Indeed, at paragraph 35 of its Request, PTV refers to the shareholders (including Vidatel) having voted for the distribution of dividends. Self-evidently, this reflects the intention that the sums be distributed rather than withheld by Unitel on the

part of the shareholders. There is no allegation that Vidatel, as shareholder, subsequently sought to countermand that instruction to Unitel or block its execution. If PTV's belief or suspicion is that Mrs Dos Santos caused Unitel not to pay dividends then that is a complaint against her personally and falls outside the scope of the arbitration (see above at paragraphs 26 to 30 above).

40. In any event, if and when PTV articulates a proper complaint against Vidatel along with the evidence in support, then Vidatel will respond.

*Kwanza/US Dollars*

41. As to the nature of PTV's entitlement, Vidatel agrees with PTV that it arises under Articles 23 and 24 of the Angolan Commercial Companies Law. Those provisions, however, make no reference to receiving payment in a foreign currency.
42. On the contrary, Article 550 of the Angolan Civil Code states that all payments in Angola (including dividends) must unless otherwise expressly agreed – which is not the case - be made in Kwanza, the official Angolan currency.
43. The shareholders' entitlement and, correspondingly, the company's obligation, with respect to the payment of dividends is therefore in Kwanza. Insofar as a company may choose to assist a foreign investor (authorised as such under Angola's foreign investment laws) in relation to the process of conversion from Kwanza into a foreign currency, then that is a purely voluntary exercise which neither reflects nor creates any obligation as a matter of Angolan law. The fact, therefore, that historically PTV and Vidatel have had their dividend entitlement in Kwanza converted into US Dollars does not mean that Unitel is obliged under the Shareholders' Agreement or as a matter of Angolan law to tender and make dividend payments to those (or any of its) shareholders otherwise than in Kwanza.

*Foreign exchange issues*

44. Vidatel will adduce evidence in due course as to the foreign exchange controls in Angola and the difficulty in exporting US Dollars. Strikingly, PTV's Request does not even acknowledge or refer to these issues.

45. As the Kwanza is not a freely convertible currency, the legal route to obtain the conversion from Kwanza to foreign currency for the purpose of expatriating dividends is as follows:
- (a) an application is made to a commercial bank to expatriate dividends outside of Angola;
  - (b) the commercial bank will apply to the Angolan Central Bank for permission to convert the dividends into US Dollars and subsequently expatriate them outside of Angola;
  - (c) once and only if such approval is granted, the commercial bank will convert the dividends. Conversion of the Kwanza to US Dollars will then depend on the availability of US Dollars within the commercial bank in question.
46. A shareholder's ability to convert Kwanza dividends into a foreign currency therefore depends upon not only the approval of the Angolan Central Bank but also the ability of commercial banks in Angola to effect the exchange. This is part of doing business in Angola.
47. If PTV wishes to receive payment of dividends without further delay, it can nominate an Angolan bank account (and indeed is obliged to maintain such an account under the Private Investment Laws from time to time in force, namely Article 53 of the 2003 Law, Article 75 of the 2011 Law and Article 53 of the 2015 Law, as a matter of Angolan law, albeit that Vidatel understands that PTV is in breach of this obligation, as it never nominated said bank account). The relative ease with which Unitel is able to make Kwanza payments can be seen from the fact that Geni and Mercury (who receive dividends in Kwanza) have received far greater sums by way of dividends and the sums outstanding to them as recorded in Unitel's accounts are correspondingly lower than the sums due to PTV.

*Incorrect allegations as to Vidatel receipts*

48. No doubt in order to put its claim as high as possible, PTV has assumed and asserted (without identifying any basis for doing so) that Vidatel has received payments in respect of dividends declared for financial years since 2011.

49. This is simply wrong: although Vidatel has received payments in 2013 and 2014 they correspond to the dividends declared in respect of FY2011. Vidatel has yet to receive any payment at all in relation to FY2012 or FY2013.
50. The detailed accounting information and proof of payments will be provided in due course in order to rebut PTV's allegations if they are maintained.
51. As to whether PTV intends to maintain its allegation in its current form, Vidatel notes that in one of the rounds of evidence filed by PTV in the British Virgin Islands in support of an interim freezing injunction against Vidatel, PTV has submitted a spreadsheet reflecting PTV's analysis of the declaration and receipt of dividends: see Exhibit CGSB3 to the Third Affidavit of Charles Balmain, p 264. As submitted by Vidatel in the course of those interim proceedings, the conclusions that PTV has sought to draw from that analysis (as to which see Balmain 3, p 52) are entirely consistent with Vidatel's own explanations that it has not received payment of dividends declared in respect of FY2012, FY2013 or FY2014. PTV has made no attempt to amend its Request to reflect information and evidence which has subsequently come to light.

*Misconceived quantum*

52. The flaws in PTV's claim are not limited to its incorrect allegation that Vidatel has been paid in respect of the FY2012 and subsequently declared dividends. Indeed, there is an even more fundamental defect. Unitel's obligation to pay dividends to PTV is a debt and recorded as such in Unitel's books and reflected in its annual financial statements. Unitel is good for the money (and PTV has certainly not sought to suggest otherwise).
53. The delay in receipt of dividends (whether in Kwanza or US Dollars) is not therefore a loss of principal. Even if PTV could make out a factual case, as yet unpleaded, that Vidatel had obstructed payment of dividends that Unitel would otherwise have made, PTV it is not entitled to say as against Vidatel that the whole of its entitlement to dividends has been lost. The claim for losses asserted at paragraph 97 of PTV's Request is untenable so far as unpaid dividends are concerned (and, indeed, untenable more generally for the reasons set out below).

### 3. Alleged looting

54. Faced with transactions which PTV's current management seem not to fully understand, PTV has jumped to the frankly ridiculous conclusion that they are part of a concerted scheme to "loot" Unitel. Vidatel vehemently denies those allegations. In any event they are not on a proper analysis allegations against Vidatel at all. Rather, they are complaints about Unitel and/or the conduct of Unitel's individual directors. For the reasons given at paragraphs 18 to 30 above, such claims are outside the scope of this arbitration and the Tribunal's jurisdiction.
55. The claims fail on the facts in any case. Vidatel repeats paragraph 17(b) above with regard to any shortcomings (as to which no admissions are made) that there may have been in the internal processes, communication and record-keeping within Unitel. Board meetings and shareholder meetings are relatively infrequent and necessarily deal with matters at a high level. As a foreign investor with no Angolan presence, PTV has not been involved and has shown limited desire to be involved (or at least not recently) in the day-to-day financial and operational challenges of the company. Inevitably, PTV will not therefore have had a grasp on the detail of some of Unitel's transactions and the rationale for them.
56. With regard to the Tokeyna transactions, the concept of Tokeyna was developed by Unitel in conjunction with third party management consultants, tax and legal advisors (none of the advice from whom Vidatel is in a position to disclose without Unitel's consent). The concept was for Tokeyna to be incorporated in the British Virgin Islands and operate from Dubai. It would provide support services to Unitel with greater operational flexibility in terms of hiring and retaining key personnel, access to foreign currency and tax optimisation than would be possible if all such services were provided from Angola. The establishment of Tokeyna was therefore undertaken *bona fide* at the direction of Unitel and in order to further the commercial interests of Unitel.
57. Indeed, Unitel recognised throughout that Tokeyna was a related party so that there needed to be a transfer pricing mechanism in order to ensure that the price for Tokeyna's services was set on an arm's length basis. Plainly, Unitel would not have

gone through this exercise if Tokeyna had been established simply to act as a repository of funds for the benefit of Mrs Dos Santos.

58. For essentially administrative reasons and to enable Tokeyna to be incorporated swiftly (having particular regard to the burden and delay of Know Your Client checks), Mrs Dos Santos, at the request of Unitel, agreed to act as the registered shareholder of Tokeyna on an interim basis. Unitel having organised and paid for the incorporation of Tokeyna, Mrs Dos Santos signed a Declaration of Trust and a share transfer form (with the transferee left blank) enabling Unitel at a later date and at its sole discretion to transfer Tokeyna into its own ownership or into the ownership of a nominee entity of Unitel's choosing. All this will be explained further in due course in the proceedings by reference to witness evidence and contemporaneous documents.
59. As it turned out, Tokeyna never became operational and never in fact provided any services to Unitel. Governmental authorisation was necessary for the "*outsourcing*" to Tokeyna of management services as contemplated under the Unitel/Tokeyna arrangements. Despite Unitel's requests and a further protest against the initial refusal, such consent was refused by the relevant government authority. The Services Agreement between Tokeyna and Unitel therefore never began. No payments were ever made and no services provided. Vidatel understands that Unitel intends: (i) to formally cancel the Services Agreement; and (ii) to reverse such accounting provisions as were made to reflect payments which would have been due but which have not and will now never be paid to Tokeyna.
60. As well as being counterparty to the (unimplemented) Services Agreement, Tokeyna is also party to the loan assignment by which Unitel's right to repayment under loans entered into with the Dutch company Unitel International Holdings (formerly Jadeium BV) was sold to Tokeyna for USD 150,000,000. Like the Services Agreement, no funds have in fact changed hands under this assignment, and Vidatel understands that Unitel intends to reverse the assignment (whether by exercising the contractual right to repurchase the loans or by another route).
61. The rationale for entering into the assignment in the first place was part of Unitel's strategy to have access to foreign currency which (as noted above and as will be fully developed in evidence) is in short supply in Angola. The underlying loans between

Unitel and Unitel International Holdings (which were in Euros and US Dollars) required the authorisation of the Central Bank of Angola (“BNA”) to enable the foreign currency to be acquired and exported for the purpose of financing foreign investment. Unitel thereby had the benefit of a right to repayment in foreign currency from a creditworthy counterparty, Unitel International Holdings, whose repayment obligations were secured over the shares in the foreign telecoms companies (in Sao Tome, Cape Verde and Portugal) which the funds from Unitel were used to acquire.

62. That right to repayment is valuable to Unitel and it is simply incorrect for PTV to assert that there is “*no strategic or other benefit whatsoever*” (see Request, paragraph 42).
63. Insofar as PTV alleges that Mrs Dos Santos sought to create deliberate confusion between Unitel Holdings (a Unitel subsidiary) and Unitel International Holdings, a company of which she is the shareholder, this is misconceived. PTV has always been aware of the distinction (see, for instance the minutes of the General Meeting of 12 June 2013). Indeed, Mrs Dos Santos’ role as the shareholder of Unitel International Holdings was publicly reported in the press in the context of her investment in telecoms companies outside Angola.
64. As to whether the transactions were validly authorised and executed, for the reasons given at paragraphs 18 to 30 above, this is not an area which the Tribunal can properly consider given that Unitel is not a party to this arbitration nor to the underlying Shareholders’ Agreement. Vidatel’s enquiries suggest, however, that there may not have been specific approval for individual contracts by the Audit Committee (also referred to as the Supervisory Board) of Unitel. However:
  - (a) if Unitel failed to take the necessary steps to secure such approval, then that is not a complaint which can be levelled at Vidatel. Indeed, Vidatel has no visibility of, nor ability to control, the affairs of an entirely separate corporate entity as is Unitel, let alone a corporate body within Unitel;

- (b) if the purported contracts need to be unwound as a consequence of their invalidity then that will need to be considered in some other forum;<sup>1</sup>
- (c) nevertheless, even on the basis of Vidatel's limited information, it appears that the question of authorisation may not be clear-cut. Although the Audit Committee may not have been asked for or given their approval as to specific contracts, it appears that they did approve some or all of the annual accounts in which the economic effects of those transactions are clearly and unambiguously reflected;
- (d) further and in any event, Vidatel does not accept (as alleged at paragraph 45 of the Request) that the loan transactions between Unitel and Unitel International Holdings were in the nature of transactions between Unitel and its directors (directly or through another person or intermediary) within the meaning of Article 418 of the Angolan Commercial Companies Law. Even if they were, Vidatel denies that PTV is entitled to complain of the matter in this arbitration and/or seek any relief (including damages) in respect thereof because:
  - (i) PTV has expressly agreed under Article 9.6.5 of the Shareholders' Agreement that 4 out of 5 directors on the Unitel Board of Directors can approve contracts between Unitel and its shareholders and/or the latter's Affiliated Companies (which agreement, on PTV's own case as to the ownership of Unitel International Holdings, must apply to the loan contracts between Unitel and Unitel International Holdings);
  - (ii) PTV implicitly accepts that the 4 directors of the Unitel Board other than the director appointed by PTV approved the making of those loans; and/or
  - (iii) those 4 directors could in any event have approved the making of those loans pursuant to Article 9.6.5;

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<sup>1</sup> As to which forum, possibilities include the chosen forum under the various agreements (albeit, on this premise, void), the home courts of any relevant defendant who has received a benefit which requires to be reversed or the Courts of a country such as Angola with a sufficiently close connection to the claims.

- (e) it is denied in any event that these loan transactions have caused any loss to Unitel.

*BFA*

65. The matter of Unitel's shareholding in BFA and other matters deriving therefrom, as in the case of alleged lack of payment of dividends or record of the same are complaints about Unitel and/or the conduct of Unitel's individual directors. For the reasons given at paragraphs 18 to 30 above, such claims are outside the scope of this arbitration and the Tribunal's jurisdiction. In any case, this is yet another area of apparent misunderstanding on the part of PTV, which appears to be the result of a lack of communication within the PT group. PTV complains that Unitel has not received the benefit of dividends paid by BFA, in which Unitel acquired a 49.9% stake in 2008. PTV even suggests (and calculates its loss on this basis) that Unitel should have received the gross sum of 49.9% of the dividends declared by BFA in each of the years from 2008 to 2013 without taking into account at all of any financing costs of Unitel in relation to the acquisition.
66. Again, this is a misconceived claim by PTV which is explicable only on the basis that PTV has sought to inflate its claim as far as possible.
67. Moreover, as recorded in the minutes of the board meeting of 21 February 2011, at which Luis Pacheco de Melo was present on behalf of PTV, it was expressly agreed at board level (with no dissent from PTV) that the dividends received from BFA would be used by Unitel to repay its loan from BPI. By reason of this agreed set-off, Unitel has not suffered any loss in connection with this transaction.

**4. Information rights**

68. Vidatel insists that, once again, these are primarily complaints about Unitel and/or the conduct of Unitel's individual directors, since it is the corporation that has the duty under Angolan law to provide any or all of its shareholders with the information PTV complains to have been deprived of. PTV is perfectly aware of this and has acted accordingly as Vidatel shall in due course explain and demonstrate in further detail. For the reasons given at paragraphs 18 to 30 above, such claims are outside the scope of this arbitration and the Tribunal's jurisdiction.

69. In any case, PTV complains about having been “*kept in the dark*” and denied access to information. It is not alleged, however, that this has caused PTV any loss (nor could any such allegation sensibly be made). Nor does PTV seek any sort of mandatory relief but instead a declaration that there has been a prior failure by Vidatel to “*procure that Unitel*” keep PTV informed as to its financial and business affairs.
69. In those circumstances, the dispute over information rights is a somewhat sterile one. For the record, however, Vidatel understands that:
- (a) PTV’s legal adviser (Maria Manuela Cunha) was allowed to access and inspect Unitel’s records at its registered office pursuant to a shareholder’s statutory right of inspection at a company’s registered offices under Article 320 of the Angolan Commercial Companies Law;
  - (b) In any event, to the extent that PTV complains about any lack of access to the records of Unitel, or any alleged refusal to allow copies to be made this is not a complaint which can sensibly be levelled at Vidatel. The Claimant should take this issue up with Unitel (and in fact has);
  - (c) There has been no scheme to “*sideline*” or “*oust*” PTV<sup>2</sup> and insofar as PTV’s complaint is that documents and information packs have been supplied at or only shortly before meetings (allegedly in breach of Article 321(2) of the Angolan Commercial Companies Law) then any such breach was non-material, as this is how matters have been organised as between all attendees at those meetings, and no loss has been suffered by PTV as a result;
  - (d) If, which is also denied, there have been shortcomings in the record-keeping and administration at Unitel (see paragraphs 17(b) and 55 above), this is not due to any conspiracy but instead the consequence of Unitel’s rapid and exponential growth, with which its administration has sometimes struggled to keep pace; and
  - (e) The competing pressures on the management of Unitel, as well as its shareholders, are also why PTV’s letters have on occasions gone unanswered.

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<sup>2</sup> See Request, paragraph 57.

## 5. Purported suspension

70. Vidatel has addressed this issue at paragraph 17(a) above.

## 6. Threatened dilution

71. This is another sterile complaint: PTV's stake has not been diluted and it has therefore suffered no loss in this regard. It is another issue where PTV has misunderstood the position and sought to find wrongdoing where none exists.

72. Moreover, it is also an issue which has been overtaken by events since PTV issued its Request so that the current formulation of its claim is now unsustainable. At a General Meeting of 30 November 2015 at which the matter was reviewed, PTV's representative clarified that PTV accepted the principle of an increase in Unitel's nominal value per share and an increase in shareholder capitalisation, albeit under certain conditions. The 30 November 2015 meeting had been preceded by a distribution of information to shareholders on 20 November 2015 (in compliance with Article 321(2) of the Angolan Commercial Companies Law) explaining the proposal both as to: (i) the Angolan law obligation (under Article 305 of the Angolan Commercial Companies Law) to maintain a nominal value per share equivalent to USD 5 per share, and (ii) the desirability for commercial reasons of increasing Unitel's shareholder capitalisation (including to bring Unitel closer to its competitors and to prepare it for future opportunities such as international investments or a possible flotation).

73. In light of PTV's agreement in principle to the proposed increase in Unitel's nominal value per share and in the shareholder capitalisation, no question of breach of PTV's alleged right of veto under Article 8.1 of the Shareholders' Agreement (as alleged at paragraph 69 of PTV's Request) arises. Moreover, if need be, Vidatel will contend that the proposed increases in nominal value per share and shareholder capitalisation:

- (a) do not constitute "*a change in the capital structure of Unitel*" within the proper scope and meaning of Article 8.1 of the Shareholders' Agreement; or
- (b) alternatively, that by virtue of Articles 9.7.1 of the Shareholders' Agreement which takes precedence over any other conflicting provision of the

Shareholders' Agreement ("*Notwithstanding any other stipulation of this agreement*"), the proposed increases are a "*reorganisation of Unitel's share capital*" which the Respondents, as holders in aggregate of 75% of the shares of Unitel, were and are entitled to vote upon irrespective of PTV's objection (if there is any such objection).

**7. Proposed amendments to the By-Laws and Shareholders' Agreement**

74. This is another sterile complaint in relation to a proposal which in the event was not implemented and so has given rise to no loss to PTV (indeed, it does not feature in PTV's prayer for relief). The agenda for the 15 December 2014 General Meeting included proposals for such amendment but all shareholders voted to suspend consideration of the above agenda item. Consequently, the issue was not discussed further at the General Meeting of 15 December 2014. This goes to show that there never was any intention on behalf of the Respondents to oust PTV from Unitel.
75. Furthermore, as far as Vidatel has been able to establish, PTV has filed proceedings before the Angolan Courts against Unitel, requesting the annulment of the shareholders resolutions passed in the 15 December 2014 General Meeting, in which case the Tribunal must stay and refuse jurisdiction on this matter altogether.
76. In any event, Vidatel will, if necessary, rely on Article 9.7.2 of the Shareholders' Agreement in support of the contention that, notwithstanding any other provision of the Shareholders' Agreement, it is sufficient for holders in aggregate of 75% of the shares of Unitel to vote upon amendments to Unitel's articles of incorporation or by-laws (or other equivalent constitutional documents).

**QUANTUM ISSUES**

77. PTV quantifies its claim as nearly USD 2.5 billion, presupposing that:
- (a) the value of its equity interest in Unitel has been lost entirely (notwithstanding that (subject to Vidatel's counterclaim below) PTV remains the legal and beneficial owner of this interest and that PTV's indirect parent Oi still values it on its books at around USD 1.3bn);

(b) its entitlement to payment of dividends from Unitel is worthless (notwithstanding that Unitel is a creditworthy debtor which recognises PTV's dividend entitlement in all relevant financial statements); and

(c) PTV has suffered a loss of 25% of the sums allegedly "*looted*" from Unitel.

78. None of this bears scrutiny.

79. Subject to Vidatel's counterclaim below, PTV remains a shareholder in Angola's largest private company and its shares are extremely valuable, hence the USD 1.3bn valuation on Oi's balance sheet. As to dividends, its rights to payment from Unitel are valuable and undiminished, and PTV must give credit for them, even if PTV is able to establish some (currently unpleaded) claim for losses arising out of the delay (which itself has been caused by PTV's failure to nominate an Angolan bank account and its refusal to accept the payment of its dividends in Kwanza, the currency in which Unitel's obligation to pay dividends is denominated). As to the alleged "*looting*", PTV's claim for losses cannot be reconciled with its claims that the transactions in question are void.

80. In any event, PTV has identified no basis for saying that if the impugned transactions had not been entered into then PTV would have received 25% of the funds, let alone received them in US Dollars. Meanwhile, Unitel remains entitled to repayment of the loans which it has made to Unitel Holdings International (a substantial creditworthy entity) and there is no suggestion in PTV's request, nor would there be any basis for suggesting, that Unitel Holdings International would not be able to repay those loans to Unitel in accordance with the agreed terms.

## **COUNTERCLAIM**

81. By reason of the facts and matters set out notably at paragraphs 8 to 15 above in relation to the Oi acquisition, PTV is in breach of the Shareholders' Agreement and/or its obligation under Angolan law to deal in good faith with its fellow shareholders.

82. Indeed, as set out above and will in due course be demonstrated in further detail, by failing to notify the remaining shareholders of the intended transaction with Oi and

rather attempting to disguise it as a merger and/or assignment to an affiliated party as a means to avoid such notification and subjection to the provisions of Article 6.2. of the Shareholders' Agreement, PTV has indeed violated both the letter and the spirit of the said Agreement.

83. PTV's conduct has prevented the Respondents from exercising their pre-emptive right to acquire PTV's shares in Unitel and effectively resulted in an unauthorised transfer of the economic ownership of the shares to a fifth entity, outside the initial group of four shareholders. Indeed, whereas initially the Respondents were ultimately dealing with PT Telecom, they are now dealing with Oi, an entirely different corporate entity.
84. Having regard to the importance within a closely held and extremely valuable company of the restrictions on transfer of shares, PTV's breach is on any view a breach of a "*material obligation*" within the meaning of Article 13.1. The Respondents are therefore entitled to serve notice under Article 13.1 in order to commence the process under Article 13.2 for sale of PTV's shares at their net asset value. Vidatel seeks declarations to that effect.
85. Further, as set out in paragraph 15(e) above, 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, the full extent of which are still being assessed and will be set up by way of set-off and/or in support of a defence of circuitry of action (*exceptio*).

#### **PRAYER FOR RELIEF**

86. For the above reasons, the First Respondent requests that the Tribunal:
  - (a) decline to deal with any of PTV's complaints which are in substance allegations against Unitel, or which in any event cannot be fairly adjudicated upon in proceedings to which Unitel is not and cannot be a party and clearly fall outside of the scope of the arbitration clause and jurisdiction of the Tribunal, such as is the case with matters regarding (a) payment of dividends and related damages, (b) validity of and alleged damages arising from contracts and agreements entered into by Unitel with Tokeyna and / or Unitel

International Holdings and BFA, and (c) alleged violation of PTV's information rights under Angolan law;

- (b) stay and refuse jurisdiction on the matter of the shareholders resolutions allegedly passed in the 15 December 2014 General Meeting;
- (c) in any case, dismiss all claims made by the Claimant;
- (d) declare in relation to the First Respondent's Counterclaim that:
  - (i) PTV is in breach of a material obligation under the Shareholders' Agreement by reason of the Oi acquisition;
  - (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 at net asset value to either a third party purchaser or, pro-rata to the Respondents and furthermore obliged to recognize and accept that should the Shareholders be unable to agree on the net asset value of Unitel the matter be referred to the auditors of Unitel for their determination.
- (e) in the event that any of the Claimant's claims for damages succeeds, 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, the full extent of which will meanwhile be assessed and quantified and with appropriate set-off as between claims and cross-claims; and
- (f) order that the Claimant pay the First Respondent all costs and expenses incurred by the First Respondent in relation to this arbitration.

## **PROCEDURAL MATTERS**

87. The First Respondent's details in the Request are correct.
88. The First Respondent is represented in this arbitration by:

### **Quinn Emanuel Urquhart & Sullivan, LLP:**

Robert Hickmott

Philippe Pinsolle

Martin Davies

John McElroy

Alexis Foucard

Marina Boterashvili

89. The First Respondent agrees with the Claimant that, pursuant to the Shareholders' Agreement:
- (a) the place, or legal seat, of arbitration shall be Paris, France;
  - (b) the language of the arbitration shall be English; and
  - (c) the Shareholders' Agreement shall be governed by the law of Angola.
90. As to the constitution of the Tribunal, this has been addressed in separate correspondence, the most recent of which (at the time of filing this Answer) was sent on behalf of the First Respondent on 18 December 2015.

Respectfully submitted on behalf of Vidatel Ltd

8 January 2015

*Quinn Emanuel*

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**