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## Five-member ICC panel hears multibillion-dollar case

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Tom Jones



David Arias, Bernard Hanotiau, Klaus Sachs, Marcelo Ferro and Luca Radicati di Brazolo

The first ever five-person ICC tribunal has finished the merits hearing in a US\$2.8 billion arbitration between four shareholders in Angolan telecoms company Unitel over alleged breaches of a four-way shareholders' agreement.

GAR understands that a five-member panel chaired by German arbitrator **Klaus Sachs** has been hearing the claim, along with co-arbitrators [Bernard Hanotiau](#) of Belgium, **David Arias** of Spain, **Marcelo Ferro** of Brazil and [Luca Radicati di Brozolo](#) of Italy.

According to Portuguese newspaper [Público](#), the hearing began in the seat of arbitration, Paris, on 8 February and has now come to a close, with post-hearing briefs scheduled for July and rebuttals to be heard in October.

The dispute relates to the ownership structure of Unitel, Angola's largest telecoms company. The claim was filed in 2015 by PT Ventures, a subsidiary of Brazilian telecom operator Oi which holds a 25% shareholding in the company.

Other shareholders in Unitel include Angolan company Vidatel, which is owned by Isabel dos Santos, the billionaire daughter of former Angolan president Eduardo dos Santos, and

MSTelcom-Mercury – a subsidiary of state-owned oil and gas group Sonangol which had also been controlled by Isabel dos Santos until she was ousted by incumbent president João Manuel Gonçalves Lourenço in November 2017.

The fourth and final shareholder is Angolan entity Geni, which reportedly belongs to Eduardo dos Santos's ally General Leopoldino do Nascimento, known as "Dino". Each shareholder has a 25% stake.

GAR understands that PT Ventures filed the claim under an agreement between the Unitel shareholders signed in 2000. In it, PT accuses the other shareholders of various breaches of the agreement, including blaming it for Unitel's failure to pay €665 million in dividends since 2011.

PT also alleges the other shareholders prevented it from exercising certain shareholder rights. In addition to these claims, GAR also understands that the tribunal is also considering several significant counterclaims against PT related to Oi's takeover of Portugal Telecoms in 2014, which brought PT ventures under the Oi umbrella.

It is unclear how the five-person tribunal was constituted but likely that other shareholders in Unitel got to appoint arbitrators, along with the parties to the dispute themselves. It is also unclear how Sachs was chosen as chair.

GAR understands a tribunal this large has never been appointed in an ICC case before.

Although there is no explicit provision covering the establishment of five-member tribunals in the ICC rules, they are also not explicitly excluded.

Jones Day partner **Michael Bühler** clarifies that under article 12.1 of the ICC rules, the number of arbitrators is one or three, and the entire system (including the ICC cost calculator or the time the arbitrators are given to submit their draft award to the ICC) is set up with that in mind.

“This said, unless the law at the place of arbitration would not allow to have more than three arbitrators (many arbitration laws require that there be an uneven number), the ICC rules do not prohibit a five member tribunal. Quite to the contrary, article 11.6 of the rules says that “insofar as the parties have not provided otherwise, the arbitral tribunal shall be constituted in accordance with the provisions of articles 12 and 13.”

Bühler also points to article 10.1 of the UNCITRAL Model Law on international arbitration, which provides that the parties are free in determining the number of arbitrators. In his view, the ICC should have “no problem” in accommodating a five-person panel from a practical perspective.

“By default, the number is three; but I have even seen a clause with four arbitrators, with the fourth and presiding arbitrator having been given the casting vote”.

The dispute has not only been playing out in Paris. In July last year, Oi secured a judgment from a court in Angola's capital, Luanda, which declared invalid a Unitel shareholders meeting from May 2015. **Judge Tatiana de Assis Aço** found that the shareholders' actions – including their refusal to allow PT Ventures to participate in the meeting – had breached Angola's Commercial Companies Law and Commercial Code.

A lawsuit also continues against Vidatel in the British Virgin Islands, where the company is incorporated, as Oi seeks to freeze the company's assets to allow for smoother enforcement in the event of a favourable arbitral award.

In the arbitration in Paris, PT Ventures is represented by White & Case partners **John Willems** and **Christophe von Krause** in Paris. Vidatel is represented by Portuguese firm PLMJ, led by **Jose Miguel Júdice** in Lisbon, alongside Uria Menendez in Lisbon and Madrid. The Angolan company had originally instructed Quinn Emanuel Urquhart & Sullivan but dispensed with their services in 2015.

Meanwhile, MS Telcom-Mercury has instructed Portuguese firm Morais Leitão Galvão Teles Soares da Silva & Associados. Geni is using another Lisbon firm, Lino de Castro Horta e Costa & Associados.

Oi continues to battle legal complications over the US\$20 billion restructuring deal it struck in December last year to try and resolve Latin America's largest ever corporate debt default. The company filed for bankruptcy protection in June 2016, prompting a protracted battle between shareholders, bondholders, regulators, and state banks.

Oi shareholder Bratel has filed for arbitration at the Brazilian Business Arbitration Chamber (CAMARB) in an attempt to halt the impending debt-swap and get the plan put before a general shareholders' meeting.

*PT Ventures v Unitel* (ICC Case 21404/ASM)

Tribunal:

- **Klaus Sachs** (chair) (Germany)
- **Bernard Hanotiau** (Belgium)
- **David Arias** (Spain)
- **Marcelo Roberto Ferro** (Brazil)
- **Luci Radcati di Brozolo** (Italy)

Counsel to PT Ventures

- White & Case

Partners **John Willems** and **Christophe von Krause** with associates, **John Rogerson**, **Sven Michael Volkmer**, **Mounia Larbaoui**, **Samy Markbaoui**, **Faustine Chapelin**, **Hazel Levent** in Paris

Counsel to Vidatel

- PLMJ

Partner **Mariana Franca Gouveia** and managing associate **Pacome Ziegler** in Lisbon

- Uria Menendez

Partner **Fernando Aguilar** in Lisbon and **Gillian Cahill** in Madrid

Counsel to MS Telecom-Mercury

- Morais Leitão Galvão Teles Soares da Silva & Associados

Partners **Antonio Pinto Leite**, **Filipe Vaz Pinto** and **Catarina Monteiro Pires**, with associates **Ricardo Nascimento Ferreira** and **Carolina Pitta e Cunha** in Lisbon

Counsel to Geni

- Lino de Castro Horta e Costa & Associados

**Pedro Horta e Costa** in Lisbon

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