

## Panel of five decides Angolan telecoms case

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Tom Jones



Luanda, Angola (Credit: iStock.com/mtcurado)

A subsidiary of Brazilian telecoms group Oi has been awarded US\$650 million in an ICC case against its fellow shareholders in Angolan mobile carrier Unitel – a dispute that was heard by a five-member arbitral tribunal and reportedly involved claims worth US\$3 billion.

The Paris-seated tribunal – chaired by Germany’s **Klaus Sachs** and including co-arbitrators **Bernard Hanotiau** of Belgium, **David Arias** of Spain, **Marcelo Ferro** of Brazil and **Luca Radicati di Brozolo** of Italy – handed down a final award on 20 February in favour of Oi’s indirect Portuguese subsidiary PT Ventures.

Oi, which has been in judicial organisation in Brazil since 2016, announced the outcome in a [regulatory filing](#) last week, with Unitel issuing its own [press release](#) on the same day.

PT Ventures has a 25% stake in Unitel, Angola’s largest mobile phone carrier, with equal stakes held by three other shareholders: a subsidiary of Angola’s national oil and gas company Sonangol; and companies owned by Isabel dos Santos, the billionaire daughter of Angola’s ex-president Eduardo dos Santos, and his ally General Leopoldino do Nascimento, respectively.

Oi acquired a majority stake in PT Ventures as part of its merger with Portugal Telecom in 2014. PT Ventures filed its ICC claim a year later against the other Unitel shareholders, who asserted counterclaims.

According to Oi, the tribunal concluded in its award that the other Unitel shareholders had breached the shareholders' agreement by denying PT Ventures' right to appoint the majority of Unitel's board members since 2006; entering into "self-interested transactions"; failing to ensure it was kept informed about key corporate issues and transactions; and unjustifiably purporting to suspend PT Ventures' shareholder rights.

Oi says the tribunal found that these "repeated" breaches had significantly decreased the value of PT Ventures' stake in Unitel and therefore found the other shareholders jointly and severally liable to pay US\$339 million for that loss, plus interest calculated at a LIBOR +2% rate until payment.

The tribunal also found that the other shareholders were jointly and severally liable to pay US\$315 million for foreign currency dividends that PT Ventures had not received since 2012, plus simple interest at 7%. Unitel says PT Ventures' dividends claim was for more than US\$736 million plus interest.

In its own press release, Unitel observes that PT Ventures did not prevail on the bulk of its claims, which were worth US\$3 billion.

The Angolan company says the tribunal rejected PT Ventures' request for an order directing the other Unitel shareholders to buy out its stake for at least US\$2.17 billion within a month of the award being rendered. The other shareholders had argued neither Angolan law nor the shareholders' agreement provided a basis for such an order.

According to Unitel, the tribunal also dismissed as unfounded a claim for more than US\$241 million corresponding to alleged losses in respect of allegedly harmful transactions concluded by Unitel before 2014.

Unitel says the tribunal rejected the other shareholders' defence that the shareholders' agreement had been amended, finding that as the amendments were never written or signed by the shareholders the agreement of 2000 remained valid and unchanged.

Oi says the tribunal dismissed the other shareholders' counterclaims in their entirety. GAR understands this included a claim that Oi's purchase of PT Ventures in 2014 entitled the other Unitel shareholders to exercise a pre-emptive right to acquire PT Ventures' stake in Unitel at net asset value. The panel rejected this on the basis that such a right was not specifically provided for in the agreement.

The tribunal ordered the other Unitel shareholders to pay over US\$12 million towards PT Ventures' costs and legal fees, and US\$1 million to cover 80% of the administrative costs of the arbitration.

PT Ventures was represented by White & Case in Paris and London.

Vidatel, the company owned by Isabel dos Santos, was represented by Portuguese firm PLMJ and Uria Menendez in Lisbon and Madrid. The firms replaced Vidatel's original counsel Quinn Emanuel Urquhart & Sullivan in 2015.

Sonangol subsidiary MS Telkom-Mercury was represented by Portuguese firm Morais Leitão Galvão Teles Soares da Silva & Associados. Geni, the company majority owned by do Nascimento, used another Lisbon firm, Lino de Castro Horta e Costa & Associados.

PLMJ partner **Jose Miguel Júdice** in Lisbon tells GAR: “I am very happy that the tribunal did not consider, in accordance with the applicable law, that the respondents should be obliged to buy the shares of Unitel for market consideration at US\$2.1 billion.”

It has been suggested this is the [first time](#) that an ICC case has been decided by a five-member tribunal. Although there is no explicit provision for such tribunals in the ICC rules, they are not explicitly excluded.

GAR understands all five members of the tribunal were nominated by the ICC, after the institution decided that it would give the three respondents an unfair advantage to allow each party to appoint an arbitrator in the manner provided for in the arbitration agreement.

Hearings took place between February and May 2018.

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

#### Tribunal:

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

#### Counsel to PT Ventures

- White & Case

Partners **John Willems** and **Christophe von Krause** and associates **Lucas de Ferrari**, **Sven Michael Volkmer**, **Samy Markbaoui**, **Hadia Hakim**, **Hazel Levent**, **Faustine Chapelin**, **Fadi Hajjar**, **Mounia Larbaoui** in Paris, with partner **John Rogerson** and associate **Gwen Wackwitz** in London

#### Counsel to Vidatel

- PLMJ

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

- Uria Menendez

Partner **Fernando Aguilar** with principal associate **Daniel Bento Alves** and senior associate **Nair Cordas** 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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87 Lancaster Road, London, W11 1QQ, UK | Tel: [+44 207 908 1188](tel:+442079081188) / Fax: [+44 207 229 6910](tel:+442072296910)  
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