



ICC (INTERNATIONAL CHAMBER OF COMMERCE)

ICC Case No. 21404/ASM/JPA (C-21757/ASM)

**PT VENTURES SGPS S.A. V. VIDATEL LTD., MERCURY - SERVIÇOS DE  
TELECOMUNICACÕES S.A. AND GENI SA**

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**SKELETON ARGUMENT FOR FREEZING RELIEF BEFORE THE EASTERN CARIBBEAN  
SUPREME COURT IN THE HIGH COURT OF JUSTICE OF VIRGIN ISLANDS (COMMERCIAL  
DIVISION)**

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# Skeleton Argument For Freezing Relief Before The Eastern Caribbean Supreme Court In The High Court of Justice of Virgin Islands (Commercial Division)

*Time permitting, the applicant suggests that the Court pre-read the following:*

- *This skeleton Argument*
- *The Affidavit of Charles George Stewart Balmain [Tab 4 of File 1 of the Hearing Bundle]*

*This pre-reading should take no longer than an hour.*

## INTRODUCTION

1. By this application the Applicant, PT Ventures SGPS SA ("PT Ventures") seeks an order freezing the worldwide assets of the Respondent, Vidatel Ltd ("Vidatel") and an ancillary disclosure order.
2. The application is made pursuant to section 43 of the Arbitration Act 2013, in support of arbitration proceedings which will be commenced imminently by PT Ventures in the ICC International Court of Arbitration, and which are described in more detail at §10 below ("the Arbitration Proceedings").

## THE PARTIES

3. PT Ventures is a company incorporated under the laws of Portugal. Vidatel was incorporated under the laws of the Virgin Islands in 1999, and is ultimately owned by Isabel dos Santos, a billionaire businesswoman and the daughter of José Eduardo dos Santos, the President of the Republic of Angola. She is, unsurprisingly, extremely influential.

## INVESTMENT IN ANGOLA

4. In or about 2000, PT Ventures became involved in the development of the mobile telephony market in Angola. It did so with three partners, through a company incorporated in Angola, Unitel S.A. ("Unitel"). The shareholdings in Unitel are as follows:
  - (a) PT Ventures owns 25% of the issued share capital;

- (b) Vidatel owns 25% of the issued share capital;
- (c) Geni SARL ("Geni") owns 25% of the issued share capital; and
- (d) Mercury Serviços De Telecomunicações SARL ("Mercury") owns the remaining 25%.
5. Geni (or possibly part of it) is directly or indirectly owned by General Leopoldino do Nascimento, a retired general in the Angolan army, and an influential business person in the region. Mercury is a wholly owned subsidiary of the Sonangol Group, Angola's state-owned oil and gas company. Both Geni and Mercury are incorporated under the laws of Angola. (Geni, Mercury and Vidatel are collectively referred to in this skeleton as the "Angolan Shareholders".)
6. At the time it entered into the Shareholders' Agreement (see below) with the Angolan Shareholders, PT Ventures was a subsidiary of Portugal Telecom SGPS, SA, the Portuguese telecommunications operator. PT Ventures' experience in the industry was critical to the Angolan Shareholders, as is demonstrated by the terms of a Management Agreement dated 15 December 2000 which states that PT Ventures will provide Unitel with the *"necessary support, assistance, advice, collaboration, cooperation and full availability in all technical activities and managerial capacities necessary, properly and efficiently to enable Unitel to carry on and develop"* its activities in the telecoms sector.
7. PT Ventures records its investment in Unitel to date at some €1,328 billion (roughly equivalent to US\$1,491 billion at today's exchange rate). Unitel is now Angola's largest mobile phone operator, and Angola's largest privately owned company. Available information shows that Unitel's operating income has increased exponentially from approximately US\$9 million in 2002, to in excess of US\$978 million in 2012. That operating profit has significantly reduced, however, as a result of the course of conduct embarked upon by the Angolan Shareholders and which forms the basis of the Arbitration Proceedings.
8. The relationship between the four Unitel shareholders is governed by the terms of a Shareholders' Agreement dated 15 December 2000 [CGSB1/1]<sup>1</sup>(the "**Shareholders' Agreement**"). The Shareholders' Agreement is governed by the law of Angola (Article 15) and provides (Article 16) for any dispute between the parties to be decided by arbitration in Paris in accordance with the Rules of the International Chamber of Commerce.

## THE DISPUTE

9. The following provisions of the Shareholders' Agreement are relevant to the dispute which has arisen between PT Ventures on the one hand and the Angolan Shareholders on the other:
- (a) Article 7.1 [CGSB1/6] which provides each shareholder with pre-emptive rights with respect to any new issue of shares in Unitel;
- (b) Article 8.1 which governs the passing of resolutions at General Meetings of the shareholders;

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<sup>1</sup> PT Ventures was previously known as Portugal Telecom SGPS, SA, hence the reference to that entity in the Shareholders' Agreement.

(c) Article 9.1 [CGSB1/7] which provides that the Board of Directors of Unitel shall consist of five directors, of whom PT Ventures is entitled to nominate three including (subject to an approval process) the managing director;

(d) Article 9.6 [CGSB1/8] which sets out a number of transactions which Unitel may only enter into with the approval of four out of five of the directors. These restricted transactions include:

(i) Expenditure and incurrence of debt or other liabilities in excess of the budget or strategic or business plan (Article 9.6.2);

(ii) The disposal of assets exceeding US\$1 million (Article 9.6.4);

(iii) Contractual arrangements between Unitel and its shareholders and/or companies affiliated with the shareholders, or contracts which are not entered into in the ordinary course of business or in accordance with the budget or strategic or business plan (Article 9.6.5); and

(iv) The appointment of advisors to Unitel (Article 9.6.9).

(e) Article 9.8 [CGSB1/10] which obliges Unitel to keep books of account and to provide the shareholders with quarterly unaudited management accounts to prepare accounts in respect of each accounting reference period (defined as being a period of 12 calendar months) and to procure the auditing of those accounts as soon as practicable and in any event no later than 4 months after the end of the relevant accounting reference period; and

(f) Article 9.9 [CGSB1/11] in which the shareholders undertake to procure that Unitel keeps each of them fully informed as to all its financial and business affairs.

10. PT Ventures' claim in the Arbitration Proceedings will be in essence that the Angolan Shareholders, including Vidatel, are engaging in a course of conduct which has consistently breached both the terms of the Shareholders' Agreement and Angolan law and which is designed to divert funds from Unitel into the hands of the Angolan Shareholders and/or their beneficial owners or controllers, to deprive PT Ventures of its rightful share of Unitel's profit, and ultimately to oust PT Ventures from Unitel. The course of conduct is set out in detail in the draft Request for Arbitration [CGSB1/605], and in Mr Balmain's supporting affidavit, but in summary PT Ventures' complaints fall under the following heads:

(a) blocking PT Ventures from appointing its nominees to the Board of Directors;

(b) withholding or diverting dividends from PT Ventures;

(c) unlawfully diverting Unitel funds at the expense of Unitel and/or PT Ventures;

(d) preventing Unitel from providing information to which PT Ventures is entitled as a shareholder; and

(e) threatening to dilute PT Ventures' shareholding and attempting to amend the Shareholders' Agreement to the detriment of PT Ventures.

11. Much of this course of conduct is predicated on or sought to be justified by the wrongful assertion by the Angolan Shareholders that PT Ventures' rights have been suspended or waived.

### **(a) Blocking PT Ventures from the Unitel Board (paragraphs 23 to 33 of the Request for Arbitration)**

12. The business affairs of Unitel are overseen by its Board of Directors. Mrs dos Santos has been a director since 2001 and has chaired the Board since 2012. Although it is entitled to nominate three directors (including, subject to an approval process), the Managing Director to the Board, PT Ventures has not in fact had three nominees on the Board since 2006. Since that time, and up to July 2014, PT Ventures has only had one director on the Board.
13. In July 2014 PT Ventures' sole appointee resigned. The Angolan Shareholders then voted against his proposed replacement for pretextual reasons during the General Meeting held on 15 December 2014.
14. On becoming aware of a General Meeting to be held on 13 May 2015, PT Ventures wrote to the Angolan Shareholders seeking to add the issue of the composition of the Board to the agenda. No response was received and as set out below, PT Ventures was excluded from the General Meeting altogether.
15. As matters stand, the Board is therefore under the sole control of the Angolan Shareholders.

### **(b) Withholding/diverting dividends from PT Ventures (paragraphs 34 to 38 of the Request for Arbitration)**

16. PT Ventures has not, since 2010, received its proper share of the dividends declared by Unitel which, as far as PT Ventures is aware, have nevertheless been paid in full to the Angolan Shareholders. The position in summary is as follows:
  - (a) The dividend distribution declared in 2010 is part paid to PT Ventures, with a balance of US\$93.9 million unpaid;
  - (b) The dividend distribution declared in 2012 remains unpaid, with an amount of US\$190 million due to PT Ventures; and
  - (c) A similar sum remains outstanding in respect of the distribution declared in November 2013.
17. A total of c.\$490 million is therefore owing to PT Ventures, plus its share of any further distributions for 2013 and 2014 of which it is unaware due to its exclusion from the Board.
18. Again, PT Ventures' efforts to have this situation addressed have come to nothing.

## **(c) The siphoning of assets from Unitel (paragraphs 39 to 52 of the Request for Arbitration)**

19. There are at least six questionable transactions in respect of which complaint is made by PT Ventures, on the grounds that their sole purpose appears to have been to divert funds unlawfully from Unitel, to keep those funds out of PT Ventures' reach, and for those funds to end up in the hands of the Angolan Shareholders or their affiliates or owners or controllers. These transactions are:

(a) A Loan totalling c.\$264m made to a company known as Unitel International Holdings BV ("Unitel Holdings") in 2012 (the "2012 Loan") (paragraphs 33 to 46 of Mr Balmain's affidavit).

(b) Transactions entered into in 2013 including:

(i) further loans to Unitel Holdings totalling c.\$200m in 2013 (the "2013 Loans");

(ii) the sale of part of Unitel's infrastructure to its wholly owned subsidiary at a distressed price, followed by a lease back of the same assets at full value;

(iii) the assignment, also at a distressed price, of the 2012 Loan and 2013 Loans (together, the "Unitel Holdings Loans") to a BVI company known as Tokeyna Management Limited ("Tokeyna");

(iv) the conclusion of a service agreement between Unitel and Tokeyna under which fees of US\$155,652,356 were allegedly incurred by Tokeyna.

(These transactions are set out in detail at paragraphs 47 to 53 of Mr Balmain's affidavit); and

(v) The use of dividends due to Unitel as a result of a 49.9% stake in Banco Fomento de Angola ("Banco Fomento") to repay a debt owed by Unitel to Banco BPI, SA, ("Banco BPI") and the improper treatment of those dividends in the books and records of Unitel (paragraphs 30 to 32 of Mr Balmain's affidavit);

20. The key points about these transactions are these:

(a) Unitel Holdings is not (as its name might suggest) affiliated with Unitel, but is wholly owned by Mrs dos Santos;

(b) The Unitel Holdings Loans were not approved by PT Ventures and PT Ventures' enquiries about them have been ignored;

(c) When put on the spot, Mrs dos Santos (i) sought to explain the 2012 Loan by referring to a company known as Unitel Internacional BV, which is a wholly owned subsidiary of Unitel, but not the recipient of the the Unitel Holdings Loans; and (ii) alleged (wrongly) that a PT Ventures representative had approved the Unitel Holdings Loans at an unspecified meeting;

(d) As a matter of Angolan law, the Unitel Holdings Loans required the approval of both the Unitel Board (but with the abstention of Mrs dos Santos as an interested director) and the Audit Committee of Unitel. Neither body in fact authorised the Unitel Holdings Loans;

- (e) The Unitel Holdings Loans have no discernible corporate purpose;
  - (f) PT Ventures has sought to obtain information about the sale and lease back of the towering infrastructure but has not been successful.
  - (g) The assignment of the Unitel Holdings Loans to Tokeyna is questionable: no board or shareholder authorisation was given and it is unclear why the price was so low;
  - (h) The service agreement is also questionable, given the level of fees incurred in such a short time soon after the incorporation of Tokeyna and the possibility that those fees were simply a way of siphoning the price paid by Tokeyna for the Unitel Holdings Loans, back out to Tokeyna;
  - (i) The treatment of the Banco Fomento dividends appears to benefit Mrs dos Santos, who is both the board chair of Banco Fomento and who has an indirect interest in Banco BPI; and
  - (j) The treatment of Banco Fomento dividends does not benefit Unitel;
21. It is also worth noting that neither the 2012 nor the 2013 accounts appear to have been signed off by Unitel's auditors PwC, and they had expressed reservations about the transactions in the draft report (paragraph 51 of Balmain affidavit).

#### **(d) Wrongful withholding of information from PT Ventures (paragraphs 54 to 58 of the Request for Arbitration)**

22. The Angolan Shareholders have ensured that PT Ventures is deprived of relevant information regarding Unitel's financial and business affairs. [X-ref aff].
23. For example, PT Ventures' efforts to obtain more information about the withholding or non-payment of dividends and about the transactions referred to at paragraph 19 above have all come to nothing. Not only is this a breach of the Shareholders' Agreement but also a breach of Angolan law, since under the Angolan Companies Act a 25% shareholder must be granted broad access to corporate records and information.

#### **(e) Purporting to suspend PT Ventures' shareholder rights (paragraphs 59 to 66 of the Request for Arbitration)**

24. The Angolan Shareholders have alleged in correspondence with PT Ventures that the "*General Meeting of Unitel decided in October 2012 to suspend PT Ventures' shareholder rights*" and that the suspension "*has to date not been contested and remains in force*". As far as PT Ventures is aware, the concept of suspending a shareholder's rights does not exist under Angolan law. In any event, there is no basis for a "*suspension*", it is noteworthy that no basis has been alleged, and yet again PT Ventures' efforts to get to the bottom of what has happened have led nowhere. It is certainly not the

case that the alleged suspension has not been contested by PT Ventures.

### **(f) Threatened Dilution of PT Ventures' shareholding (paragraphs 67 to 71 of the Request for Arbitration)**

25. The Angolan Shareholders have stated that they intend to dilute PT Ventures' shareholding by increasing the share capital of Unitel and changing the nominal value of the shares. This would be a clear breach of Article 7 of the Shareholders' Agreement.

### **(g) Amendment to the Shareholders' Agreement (paragraphs 72 to 76 of the Request for Arbitration)**

26. On the agenda for the 15 December 2014 General Meeting were "*deliberations about*" proposed changes to Unitel's laws and the Shareholders' Agreement. Although as far as PT Ventures is aware the deliberations never actually took place, there is nothing to stop a further attempt being made, which may or may not come to PT Ventures' notice.

## **SUMMARY OF RELIEF SOUGHT IN THE ARBITRATION**

27. PT Ventures seeks compensation of US\$2,449 billion from Vidatel, Geni and Mercury jointly and severally, together with a number of ancillary orders and declarations.

## **INTERIM RELIEF - FREEZING ORDERS**

28. The principal relief which PT Ventures seeks is an order freezing the worldwide assets of Vidatel to a maximum sum of US\$2,449 billion together with a standard ancillary disclosure order.

29. The Court's power to grant interim relief in aid of arbitration proceedings is set out in s43 of the Arbitration Act 2013 which provides in relevant part as follows:

*43. (1) Article 17J of the UNCITRAL Model Law is substituted by this section.*

*(2) On the application of a party, the Court may, in relation to any arbitral proceedings which have been or are to be commenced in or outside the Virgin Islands, grant an interim measure.*

*(3) The powers conferred by this section may be exercised by the Court irrespective of whether or not similar powers may be exercised by an arbitral tribunal under section 33 in relation to the same dispute.*

*(4) The Court may decline to grant an interim measure under subsection*

*(2) on the ground that*

*(a) the interim measure being sought is currently the subject of arbitral proceedings; and*

*(b) the Court considers it more appropriate for the interim measure sought to be dealt with by the arbitral tribunal.*

*(5) In relation to arbitral proceedings which have been or are to be commenced outside the Virgin Islands, the Court may grant an interim measure under subsection (2) only if*

*(a) the arbitral proceedings are capable of giving rise to an arbitral award, whether interim or final, that may be enforced in the Virgin Island under this Act or any other enactment; and*

*(b) the interim measure sought belongs to a type or description of interim measure that may be granted in the Virgin Islands by the Court in relation to arbitral proceedings.*

*(6) Subsection (5) applies even if*

*(a) the subject matter of the arbitral proceedings would not, apart from that subsection, give rise to a cause of action over which the Court would have jurisdiction; or*

*(b) the order sought is not ancillary or incidental to any arbitral proceedings in the Virgin Islands.*

*(7) In exercising the power conferred under subsection (2) in relation to arbitral proceedings outside the Virgin Islands, the Court shall have regard to the fact that the power is*

*(a) ancillary to the arbitral proceedings outside the Virgin Islands; and*

*(b) for the purposes of facilitating the process of a court or arbitral tribunal outside the Virgin Islands and has primary jurisdiction over the arbitral proceedings.*

*(8) The Court has the same power to make any incidental order or direction for the purposes of ensuring the effectiveness of an interim measure granted in relation to arbitral proceedings outside the Virgin Islands as if the interim measure were granted in relation to arbitral proceedings in the Virgin Islands.*

*(9) An interim measure referred to in subsection (2) means an interim measure referred to in article 17 (2) of the UNCITRAL Model Law, as provided in section 33 (1), as if the reference*

*(a) to arbitral tribunal in that article were a reference to the Court, and*

*(b) to arbitral proceedings in that article were a reference to court proceedings,*

*and is to be construed as including an injunction but not including an order under section 58.*

*(10) A decision, order or direction made or issued by the Court under this section is not subject to appeal.*

30. The Court's power to grant freezing orders is confirmed by CPR 17.1 (1)(j) which provides that a

freezing order may be granted in relation to any asset, whether located within the jurisdiction or not. In exercising the power to grant freezing orders, the BVI Courts have adopted the English common law approach. An applicant must accordingly show:

(1) A good arguable case;

(2) That there is a real risk that the Defendant may dissipate its assets (wherever located) before judgment can be enforced; and

(3) That the Respondent will be adequately protected by the Applicant's cross-undertaking in damages. (*Stuart Alexander Lockhart v Caribbean Developments (Antigua) Limited & Ors* ANUHCV 2011/0721 [30]).

## (1) A good arguable case

31. PT Ventures' claims in the arbitration have been outlined above. PT Ventures must show that it has a "good arguable case" which means having much the better of the argument: *The Niedersachsen* [1983] 1 WLR 1412.
32. In PT Ventures' respectful submission, it is evident that it has at least a good arguable case; the evidence shows a pattern of conduct for which there is only one explanation: Geni, Mercury and Vidatel are using Unitel to fund themselves and their affiliates, whilst blatantly ignoring the safeguards set out in the Shareholders' Agreement and they intend completely to disenfranchise PT Ventures. Furthermore, PT Ventures' rights are currently in abeyance pursuant to a notion of "suspension" that is unknown to Angolan law and it is being deprived of dividends.

## (2) Risk of Dissipation

33. The relevant question is whether there is a real risk that due to the conduct of Vidatel and its owner, Mrs dos Santos, an arbitral award in PT Ventures' favour would remain unsatisfied: *The Niedersachsen* [1983] 1 WLR 1412 at 1422. "Solid evidence" or a "good arguable case" that there will be dissipation is required. The conduct of Vidatel and Mrs dos Santos as alleged in the draft Request for Arbitration is relevant to the question of whether there is a risk of dissipation<sup>2</sup>. In summary, the factors relied upon are as follows:
  - (a) First, the Request for Arbitration raises very serious allegations of fraud, dishonesty and breach of contract against Vidatel and Mrs dos Santos. That alleged behaviour demonstrates, in and of itself, that they may well continue that conduct by taking steps to frustrate the enforcement of any award that PT Ventures is ultimately able to obtain.
  - (b) Mrs dos Santos has sought to pass off Unitel Holdings as a Unitel subsidiary, when it is wholly owned by her; through Vidatel, she has permitted unauthorised loans from Unitel to Unitel Holdings

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<sup>2</sup> Gee, *Commercial Injunctions* (5th ed.) paragraph 12.40.

of some US\$490 million, and the assignment of the United Holdings Loans to Tokeyna for only US\$150 million. PT Ventures is therefore concerned that Mrs dos Santos holds her assets through an elaborate international network of companies and that she does so to keep her ownership opaque and to protect her assets against third parties.

(c) Vidatel is itself a shell company, with no known operations or employees, and which seems to be merely a conduit for dividends from Unitel.

(d) The recent conduct of the Angolan Shareholders as detailed in paragraphs 54 to 82 of Mr Balmain's affidavit paints an alarming and disturbing picture.

## NEED FOR EX PARTE RELIEF

34. In view of the transactions to which Vidatel has been party, which are referred to at paragraph 1.5 above and which are dealt with in further detail in the following paragraphs, PTV's concern is that as soon as Vidatel realises - through the launch of the ICC Arbitration, and through the launch at around the same time in The Netherlands of related litigation against a company owned by Ms Dos Santos - that PTV has taken formal steps to seek redress against the Angolan Shareholders, and is no longer willing to wait for the Angolan Shareholders to engage in discussions, Vidatel will dissipate assets, whether within or without the British Virgin Islands so as to render any award in PTV's favour in the ICC Arbitration entirely nugatory. Further, PTV has serious concerns about the prospects of enforcing any arbitral award in Angola because Angola is not a signatory to the New York Convention and Vidatel (through Mrs dos Santos) benefits from the very highest political connections and there is a clear risk that that Vidatel may seek to take advantage of those connections in order to avoid the enforcement of a substantial arbitral award.
35. PTV has attempted for several months without success to engage with the Angolan Shareholders to achieve a negotiated outcome to these disputes. It indicated on 23 September 2015 that it intends to resort to legal remedies failing a satisfactory response from the Angolan Shareholders by 25 September 2015. PTV's Request for Arbitration in the ICC Arbitration will be issued on or about October 12th, or as soon as this ex parte application has been heard, and PTV seeks the protection of the BVI court before that date.

## CONCLUSION

36. PT Ventures has established good arguable claims against Vidatel.
37. In the event that Vidatel is not restrained from dealing with its assets, there is a demonstrable and clear risk that it will structure its affairs in such a way as to frustrate any attempt to enforce the arbitration award against it.

## FULL AND FRANK DISCLOSURE

38. In compliance with its duty of full and frank disclosure, PT Ventures has highlighted various matters in the supporting evidence to which the Court is referred. Those are:

(a) PT Ventures has seen a very limited number of documents which could be portrayed as suggesting that one or more of the transactions were the subject of some shareholder/board discussion in meetings which may have taken place on 16 December 2013 and 31 January 2014. At this stage, PT Ventures can say no more about these documents and meetings (if they did, in fact, take place) than (i) minutes were never made available to it; and therefore (ii) any resolution made in either meeting would not have been valid.

(b) As noted above, the Angolan Shareholders have on certain occasions (but not others) asserted that the rights of PT Ventures as a shareholder of Unitel have been "*suspended*" and (although PT Ventures says that there is no legal basis for such an assertion, and that it is being made as a pretext for the unlawful actions of the Angolan Shareholders) that the events upon which the assertion has been contrived did, in fact, occur. Were PT Ventures' rights validly suspended, then it is conceivable that PT Ventures would not have standing to bring damages claims of the nature sought in the Arbitration Proceedings.

(c) Vidatel may argue that PT Ventures has unduly delayed in bringing this application, having been deprived of its proper dividends since 2010, and having been aware since late last year of the service agreement between Unitel and Tokeyna and the assignment of loans by Unitel Holdings to Tokeyna. Indeed, it may be also be argued that PT Ventures has intended to bring these Arbitration Proceedings since January 2015 when it referred to the possibility of commencing an arbitration claim pursuant to the Shareholders' Agreement. However, throughout the period 2010 to now, PT Ventures has been seeking to re-establish its shareholder rights through dialogue with the Angolan Shareholders. For obvious reasons PT Ventures is in a difficult position. It is heavily invested in an Angolan company controlled by the Angolan Shareholders. It has, therefore, done everything possible to resolve matters by negotiation. Those efforts do not detract, however, from the conduct of Vidatel, and the other shareholders. That conduct has recently extended, to PT Ventures' concern and disappointment, in purporting to engage in settlement discussions, but refusing to progress matters. PT Ventures is, therefore, compelled to take action to defend its rights. Against this background, while not accepting that it has delayed in bringing this application, PT Ventures does not believe any delay to be unreasonable or fatal to the application.

(d) In respect of PT Ventures' right to appoint three members of the Unitel Board, which would give PT Ventures a *de facto* right of veto over related party transactions (under Article 418 of the Angolan Companies Act), Vidatel may argue that PT Ventures has acquiesced under Angolan law to any breach under Article 9.1 of the Shareholders' Agreement having taken no steps in respect of that breach since it objected to it in June 2006. As a result, Vidatel may allege that the 2012 Loan was validly approved by four out of five Unitel Board members (i.e. not including PT Ventures' representative in 2012). Nevertheless, PT Ventures says that at no stage has it waived its right under the Shareholders' Agreement, nor has it ever agreed to Article 9.1 being amended in any way. Further, no prior approval for the loans was ever sought at either the Board of General Meetings, which would have had to be the case if the transaction was to be approved by either body. Finally, at Unitel Board level, the interested director, Mrs dos Santos, would have had to abstain from any vote in favour of the transaction, meaning that it would not have been capable of being approved by the requisite number of directors without the affirmative vote of PT Ventures' representative in

any event.

(e) PT Ventures has taken steps in Angola to challenge the provisions adopted in the 2014 and 2015 General Meetings.

## **The Draft Order**

39. PT Ventures wishes to highlight that the ordinary course of business exception has not been included in the draft Order. As far as PT Ventures is aware, Vidatel does not carry on any business.