INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

International Arbitration Tribunal

In the Matter of the Arbitration between:

DigiTelCom, Ltd.,
TelCo Inc.,
KATEL LLC,
And SoTel LLC

ICDR Case No. 50 494 T 00309 09

Vs.

Tele2 Sverige AB

AWARD OF ARBITRATORS

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated June 9, 2003 and 15 July, 2003, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby, FIND, as follows:

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GLOSSARY OF FOOTNOTES ABBREVIATIONS

Parties' submissions:

Claimant's Amended Demand for Arbitration and Statement of Claims of 27 August 2010 will be referred as "Amended Demand";

Claimant's Memorandum of Law of 27 August 2010 will be referred as "C-I, and Claimants' Submission n° 2 of 28 January 2011 as "C-II";

Claimants' Response to sections 7-38 of Respondent's submission n° 1 of 1 December 2010 will be referred as "Claimants' Response on Jurisdiction";

Claimants' Response to Respondent's request for Clarification of Claimants' Damages of 10 February 2011 will be referred as "Claimants' Clarification on Damages";

Claimants' Post Hearing Submission of 7 June 2011 will be referred as "CPHB-I", and Claimants' Post Hearing Rebuttal Submission of 21 June 2011 as "CPHB-II";

Respondent's Statement of Defence of 29 July 2009 will be referred as "Statement of Defence";

Respondent's Submission n° 1 of 15 November 2010 will be referred as R-I, and Respondent's Submission n° 2 of 4 March 2011, as R-II;

Respondent's Post Hearing Brief of 7 June 2011 will be referred as "RPHB-I"; and Respondent's Rebuttal Post Hearing Brief of 21 June 2011 as "RPHB-II".

Note: Reference to witness' statements and experts' reports will be made according to the abbreviations made by the parties in their submissions, including the name of the witness or expert.

I. The Parties

A. THE CLAIMANTS

1. DigiTelCom Ltd ("DigiTelCom"), TelCo Inc. ("TelCo"), KATEL LLC (KATEL") and SoTel LLC. ("SoTel") (Referred together as the "Claimants") are companies registered in the British Virgin Islands, the State of Delaware (USA), and the Kyrgyz Republic respectively (KATEL and SoTel). All the Claimants are represented in this arbitration by Mr. Paul J. Yesawich, Mr. David Edwards and Ms. Teresa Bair, from HARRIS BEACH LLP. 99 Garnsey Road, Pittsford, New York (N.Y.) USA.

B. THE RESPONDENT

2. The Respondent in this arbitration is Tele2 Sverige AB ("Tele2" or the "Respondent"), a Swedish Company, represented in this arbitration by Prof. Kaj Hobér, Mr. Kristoffer Löf and Ms. Cecilia Stråle, from MANNHEIMER SWARTLING ADVOKATBYRA AB, Norrlandsgatan 21, Box 1711, Stockholm SE-111 87, Sweden.

II. The Arbitration Clause

3. The jurisdiction of the Arbitral Tribunal is based on an arbitration clause contained in identical terms in Section 27.2 of the Agreement for the Acquisition of shares in AO St. Petersburg Telecom and AO Oblcom dated June 9, 2003 (hereinafter the "SPA"), Section 18.2 of the Agreement for the operation, use and transfer of the CDMA License held by AO "St. Petersburg Telecom" dated 15 July, 2003 (hereinafter the "CDMA License Agreement"), and Section 21.2 of the Preferred Partner Roaming Agreement dated July 15, 2003 (hereinafter the "Roaming Agreement").

4. Such arbitration clauses (hereinafter "the Arbitration Clause") provide in substantially identical terms that:

> *"Any controversy or claim arising out of or relating to this Agreement or the breach hereof shall be finally settled by arbitration in accordance with the then prevailing Rules of the American Arbitration Association in the City of New York. The Parties acknowledge that service of any notices in the course of such arbitration at the addresses given in* [the notice provision Clause] *shall be sufficient and valid. The Parties agree that the losing Party to such arbitration shall bear the costs of the proceedings, including reasonable attorneys' fees of the prevailing party, subject to the award of the arbitrators. Judgment upon an*

arbitration award hereunder may be rendered in any court having jurisdiction thereof or application may made to any such court for judicial acceptance of the award or an order of enforcement as the case may be"[1].

III. The Arbitral Tribunal

5. On 8 February 2010, the International Centre for Dispute Resolution (hereinafter the "ICDR") appointed Mr. Mark Kantor, Mr. Tom Shillinglaw, and Mr. Alexis Mourre, as arbitrators. The three arbitrators subsequently decided to elect Mr. Alexis Mourre to serve as chairman of the Arbitral Tribunal.

IV. The Place of the Arbitration

6. Pursuant to the Arbitration Clause, the seat of the arbitration is New York, N.Y., USA.

V. The Law Applicable to the Merits of the Dispute

7. Section 27.1 of the SPA, Section 18.1 of the CDMA License Agreement and Section 21.1 of the Roaming Agreement provide in substantially identical terms that:

> *"This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws provisions thereof."*

8. Therefore the applicable law is the Law of New York.

VI. Summary of the Proceedings

9. On 5 June 2009, DigiTelCom notified to the ICDR a Notice of Arbitration (hereinafter "the Notice"). Although the Notice referred to the Commercial Arbitration Rules and Mediation Procedures of the AAA, it is common ground that this arbitration is subject to the ICDR International Arbitration Rules (hereinafter "the Rules").

10. On 15 July 2009, an administrative conference call, administered by the ICDR, took place between counsels for the parties.

11. On 29 July 2009, Tele2 notified to the ICDR its Statement of Defence.

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[1] Clause 27.2 of the SPA; Clause 18.2 of the CDMA License Agreement; Clause 21.2 of the Roaming Agreement.

12. The preliminary hearing took place by conference call on 8 April 2010 at 3pm CET.

13. On 9 April 2010, the Arbitral Tribunal sent drafts of the Procedural Order n° 1, dealing with the organization of the proceedings, and of the Provisional Timetable, to the parties. The Arbitral Tribunal directed the parties to provide their comments on such drafts. After consulting the parties, the Arbitral Tribunal also appointed Mr. Bingen Amezaga, whose CV was communicated to the parties, as Administrative Secretary of the Arbitral Tribunal.

14. On 27 April 2010, after receiving the parties' comments, the Arbitral Tribunal issued its Procedural Order n° 1, dealing with the organization of the proceedings.

15. On 14 May 2010, the Arbitral Tribunal issued the Provisional Timetable. On 12 July 2010, the Arbitral Tribunal issued an Amended Provisional Timetable.

16. On 27 August 2010, DigiTelCom filed a "Memorandum of Law" with Exhibits C-1 to C-83 and the written statements of Ross Jacoby, David Palagi, Alexey Tereshchenko, Igor Chepizhenko (Exhibits CWS-1 to CWS-4) and the Expert Analysis, Report and Summary of Damages Suffered by Claimant of Scott Chandler and Gregory Sadler (Exhibit CEWS-1).

17. On the same day, DigiTelCom filed an "Application for Leave to Amend Demand for Arbitration and Statement of Claims", to the effect of joining TelCo, SoTeland KATEL as additional claimants in the arbitration. The application was accompanied by an "Amended Demand for Arbitration and Statement of Claims", with Exhibits A, B and C.

18. On 30 August 2010, the Arbitral Tribunal wrote the following to the parties: *"The Arbitral Tribunal has discussed Claimant's Application for Leave to Amend Demand for Application and Statement of Claims (« the Application »). The Arbitral Tribunal understands the Application to be a request for joinder of three additional claimants. The Arbitral Tribunal also understand that the three new claimants are all represented by Harris Beach and accept the jurisdiction of the Arbitral Tribunal, as constituted under the ICDR Rules. The Application may, or may not, give rise to objections of a procedural, jurisdictional or substantial nature, and the Arbitral Tribunal believes that any such objection should be raised by the Respondent in its Submission n°1 on 15 November 2010. Under this understanding, Claimant's Amended Demand for*

Arbitration and Statement of Claims and Memorandum of Law will be admitted in the record as claimants' Submission n°1. For the avoidance of doubt, such submission (including the Memorandum of Law) is deemed to have been filed by all four claimant parties. The Arbitral Tribunal's decision on its jurisdiction with respect to the three provisionally joined claimants, or with respect to any possible objection to the joinder that might be raised by the Respondent, is obviously reserved. For the sake of clarity, the Arbitral Tribunal's Procedural Order n°1 and the Amended Provisional Timetable will apply to the provisionally joined claimants and are accordingly amended. All deadlines applicable to DigiTelCom will consequently apply to them".

19. On 15 November 2010, Respondent filed its Submission n° 1 with exhibits R-1 to R-15, legal authorities RL-1 to RL-34, as well as the witness statement of Yuri Dombrovsky (Exhibit RWS-1) and the expert report of Dominic Wreford (REWS-1).In that same submission, Respondent made an application (hereinafter "the Application for Immediate Determination") for the Arbitral Tribunal to make an immediate, documents-only, determination with respect to (i) its *rationae materiae* jurisdiction with respect to the CDMA License Agreement, and (ii)its *rationae personae* jurisdiction with respect to TelCo, KATEL and SoTel.

20. On 23 November 2010, the Arbitral Tribunal acknowledged receipt of the Application for Immediate Determination and requested Harris Beach LLP to confirm that it is duly empowered to act on behalf of TelCo, KATEL and SoTel (which companies shall be, together with DigiTelCom, hereinafter referred to as "the Claimants").

21. On the same day, Harris Beach LLP confirmed that it is authorized to represent TelCo, SoTel and Katel in the arbitration, and that said companies agreed to the jurisdiction of the Arbitral Tribunal. In the same communication, the Claimants requested leave to comment on the application for Immediate Determination, which the Arbitral Tribunal granted.

22. On 24 November 2010, in accordance with section B of the Amended Timetable, both parties filed their Requests for the Production of Documents in the form of a Redfern Schedule.

23. On 1 December 2010, within the time allowed by the Arbitral Tribunal, Claimants responded to the Application for Immediate Determination ("Claimants' Response on Jurisdiction"), as well as case authorities 1 through 9.

24. On 2 December 2010, the Arbitral Tribunal rendered the following Procedural Order on the Application for Immediate Determination:

> *"The Arbitral Tribunal has carefully considered Respondent's application ("the Application") that the Arbitral Tribunal render a partial award on its (i) rationae personae and (ii) rationae materiae jurisdiction (sections 7-38 of Respondent's Submission No. 1), as well as Claimants' reply of 1 December 2010.*
>
> *As to the Arbitral Tribunal's rationae personae jurisdiction, the Respondent submits that a documents only partial award should be immediately rendered to declare Claimant's request for the joinder of TelCo, KATEL and SoTel inadmissible. The basis for that application is essentially that the ICDR Rules do not permit the Claimant to add new Claimants after the Statement of Claim.*
>
> *As to the Arbitral Tribunal's rationae materiae jurisdiction, the Respondent requests the Arbitral Tribunal to decide, in a partial award based only on documents, that it is deprived of jurisdiction to decide claims based on the CDMA Agreement.*
>
> *As regards the request for the joinder of TelCo, KATEL and SoTel, the Arbitral Tribunal notes that there is no provision in the ICDR Rules on point, and that applications for joinder of additional parties are neither expressly permitted or prohibited under the Rules. The Arbitral Tribunal therefore considers that it has implied powers, under the Rules, to join additional parties if possible and appropriate under the circumstances. The reference made by the Respondent to consolidations is in this respect inapposite, as consolidations of different proceedings raise entirely different issues.*
>
> *The Arbitral Tribunal also considers that its decision on the request for joinder is merely procedural and does not entail any consequence as to its jurisdiction with respect to the joined parties. The Arbitral Tribunal may, or may not, uphold or decline its jurisdiction with respect to the joined claimants in its award. As a consequence, whether the additional claimants should be joined to the arbitration may be decided in the form of a procedural order, or even of a simple letter, with no need of rendering an award.*

In making its decision on the request for joinder, the Arbitral Tribunal has considered several circumstances.

First, based on the parties' submissions so far, the Arbitral Tribunal is unable to conclude with certainty that it lacks jurisdiction with respect to TelCo, KATEL and SoTel. As a consequence, it is appropriate that such parties participate to the arbitration until an award is made on point. The Arbitral Tribunal also considers that it needs to be fully briefed in order to make its decision on the jurisdictional issue in dispute, and that it would not be appropriate to immediately render a documents only partial award, as suggested by the Respondent.

Second, the joinder does not in any manner prejudice Respondent's interests. TelCo, KATEL and SoTel could in fact perfectly have been indicated as claimants in the Statement of claim, which would have produced exactly the same results as joining said companies at the present stage of the proceedings. In addition, TelCo, KATEL and SoTel have accepted the procedural timetable, so that the joinder will not entail any delay in the resolution of the dispute. Furthermore, the hearing not having yet taken place, the joinder does not affect Respondent's ability to present its case with respect to the joined claimants. Finally, it does not appear that the presence of the three joined claimants is likely to significantly increase the procedural burden of the arbitration for the Respondent.

The Arbitral Tribunal, in accepting the application for joinder, finally takes into account that the three added claimants have accepted its jurisdiction, as well as the constitution of the Arbitral Tribunal.

For the avoidance of doubt, the Arbitral Tribunal understands and will consider that said companies have endorsed DigiTelCom's submissions since the beginning of the arbitration, so that their procedural situation will be the same as if they had been parties to the arbitration from the outset.

As to the Arbitral Tribunal's rationae materiae jurisdiction with respect to the CDMA Agreement, the Arbitral Tribunal sees no need to phase the arbitration and to immediately render a documents only partial jurisdictional award. Here

again, the parties' submissions do not enable to Tribunal to conclude with certainty that it lacks jurisdiction with respect to claims or defenses based on said Agreement. In addition, the jurisdictional issue in dispute is closely linked to the merits and the Arbitral Tribunal believes more appropriate to be fully briefed, and to hear the parties' witnesses, before making its decision.

As a consequence, of the foregoing, the Arbitral Tribunal decides (i) that TelCo, KATEL and SoTel shall be joined as additional claimants to the arbitration, (ii) that the present decision is procedural and does not prejudice the Arbitral Tribunal's decision on whether it has jurisdiction with respect to such parties, which decision will be made in an award, (iii) that all submissions made so far by DigiTelCom will be deemed to have been also made by TelCo, KATEL and SoTel, (iv) that all time-limits applicable to DigiTelCom will also apply to TelCo, KATEL and SoTel, and that (v) the procedural timetable is unchanged.

In the interest of time, the Arbitral Tribunal has expressed its views on the Application in the form of a letter. Would any of the parties like the Arbitral Tribunal to render a reasoned procedural order setting out the above decisions, please let us know".

25. On 3 December 2010, Respondent requested leave to supplement its request for production of documents with a request for duly notarized documents of incorporation of TelCo, SoTel and KATEL, as well as certified copies of the powers of attorney authorizing counsel for Claimants to represent them in this dispute. On the same day, the Arbitral Tribunal authorized Respondent to so supplement its request for the production of documents.

26. On even date, Claimants informed the Arbitral Tribunal that it accepted to produce the documents sought by Respondent but needed additional time to locate one of them (the first-generation electronic copy of the letter purportedly designating SoTel and KATEL as operators under the Roaming Agreement). On the same day, Respondent objected (in Claimants' Redfern Schedule) to one of Claimants' requests to produce (request n° 12).

27. On 8 December 2010, in accordance with section B of the Amended Timetable, the Arbitral Tribunal issued its Procedural Order n° 2, dealing with the parties' requests for document production. As to Claimants' request n° 12, the Arbitral Tribunal granted Claimants two working days to narrow its request.

28. On 10 December 2010, Claimants narrowed its request n° 12. On even date, the Arbitral Tribunal encouraged the parties to confer and agree on the narrowed request and directed Respondent to stay its possible objections by 14 December 2010. No such objection was communicated by the Respondent within said time limit and the Arbitral Tribunal did not further hear from the parties in respect of request n° 12.

29. On 28 January 2011, in accordance with section C of the Amended Timetable, Claimants filed their Submission n° 2, with Exhibits C-90 to C-94, CL-3 to CL-65, the witness statements of Maxim Zakhariev and Alexander Buevich, as well as the additional witness statements of Ross Jacoby, David Palagi, Igor Chepizhenko (Exhibits CWS-5 to CWS-9), and the additional expert report of Scott Chandler and Gregory Sadler (CEWS-2). The second Exhibit CEWS-2 was accompanied by supporting documentation (Exhibits C-95 to C-107).

30. On 4 February 2011, Respondent made an application to the Arbitral Tribunal to the effect that Claimants be directed to clarify the relief sought by each of the four claimant companies and the contracts upon which such relief is sought.

31. On the same day, the Arbitral Tribunal responded as follows: *"The Arbitral Tribunal does not take position at this stage on the issues raised by the Respondent, but invites the Claimants to respond to Respondent's letter by 11 February, and to provide in their response the necessary clarifications insofar as they might be necessary. The Arbitral Tribunal, in so doing, reminds the Claimants that they have the duty of establishing with sufficient clarity what is claimed by each of them and under what basis. The Arbitral Tribunal finally makes it clear that the procedural timetable and the hearing dates are confirmed*".

32. On 10 February 2011, in response to Respondent's request for clarification, Claimants notified a Response to Respondent's Request for Clarification of Claimants' Damages ("Claimants' Clarification on Damages").

33. On 4 March 2011, in accordance with Section C of the Amended Timetable, Respondent filed its Submission n° 2, with Exhibits R-16 to R-31, RL-35 to RL-77, the witness statements of Carl Magnus Stenberg as well as an additional witness statement of Yuri Dombrovsky (Exhibits RWS-2 and RWS-3),and the second expert report of Dominic Wreford (Exhibit REWS-2).

34. On 6 and 7 March 2011, within the time allowed by the Arbitral Tribunal, each party communicated that it intended to cross-examine at the hearings all the witnesses and experts presented by the other party.

35. The pre-hearing conference call took place on Friday 18 March 2011 at 18:30 CET.

36. During the pre-hearing conference call, the Arbitral Tribunal asked Claimants to confirm whether the proper identification of TelCo was TelCo Ltd. or TelCo, Inc. On 21 March 2011, Claimants' counsel sent an e-mail to confirm that TelCo's proper identification is Telco, Inc. (this was subsequently confirmed at the hearing and Respondent confirmed that there was no issue in this respect[2]).

37. On 23 March 2011, the parties' confirmed their agreement as to the order of presentation of witnesses and experts as well as to the rules regarding the presence of witnesses during the hearing. On 28 March 2011 both parties submitted a list of their respective delegations to the hearings.

38. On 28 March 2011, Respondent informed the Arbitral Tribunal that it did not intend to cross-examine three witnesses presented by the Claimants, Messrs. Buevich, Tereshchenko and Palagi. On 29 March 2011, the Arbitral Tribunal informed the parties that such witnesses will consequently not need to attend the hearings, and that their written statements will be included in the record as written evidence, which evidentiary value will be freely assessed by the Arbitral Tribunal. The Arbitral Tribunal also confirmed that the fact that Respondent decided not to cross-examine witnesses does not imply an acceptation of the contents of such witnesses' written statements.

39. On 31 March 2011, the Arbitral Tribunal sent to the parties a draft of Procedural Order n°3, dealing with the organization of the hearings, as well as a draft of the hearings schedule, and asked the parties to submit their comments on these documents before 6 April 2011.

40. On 8 April 2011, after having received the parties' comments, the Arbitral Tribunal issued its Procedural Order n° 3 dealing with the organization of the hearings, as well as the schedule of the hearings.

[2] Transcript, p. 8: 17.

41. In the following days, Claimants informed the Arbitral Tribunal that Mr. Zakhariev would be heard by video-conference, and that Mr. Sadler (co-author with Mr. Chandler of the expert reports in CEWS-1 and CEWS-2) would also attend the hearing.

42. The witness hearings took place in New York from Monday 11 April to Wednesday 13 April 2011.

43. The following witnesses and experts presented by the Claimants were cross-examined and re-examined: Messrs. Ross Jacoby, Igor Chepizhenko and Maxim Zakhariev (by video-conference from Russia), Scott. C. Chandler and Gregory P. Sadler. The following witnesses and experts presented by the Respondent were cross-examined and re-examined: Messrs. Carl-Magnus Stenberg, Yuri Dombrovsky and Dominic Wreford.

44. At the end of the hearings, the Arbitral Tribunal consulted the parties on the following steps of the proceedings. The parties agreed to exchange two rounds of Post-Hearing Briefs ("PHB"). The Arbitral Tribunal also asked the parties to produce the lease agreement between SPT and MultiCom (the "Lease Agreement"); such document was produced with Claimants' first PHB.

45. Each party, before the close of the hearings, declared that it had no objection as to the manner in which the proceedings had been conducted save, for the Respondent, its objections as to (i) the scope of Mr. Tereschenko's direct examination, and (ii) the joinder of TelCo, KATEL and SoTel[3].

46. On 7 June2011, the parties submitted their first PHBs. Claimants' first PHB was accompanied by the Lease Agreement (Exhibit C-108) as well as by additional legal exhibits (CL-22, CL-66 and CL-67). On 20 June 2011, the parties submitted their second PHBs. The parties' costs submissions were submitted with their second PHBs.

47. On 11 July 2011, the Arbitral Tribunal wrote the following to the parties:

> "*The Arbitral Tribunal is now ready to close the proceedings. However, we note that Claimants have, in page 10 of their second PHB of 21 June, included a quantification of some but not all of their pleas to relief. Such figures also*

[3]Transcript p. 859: 9-21

include an amount that appears to be new (the 1,670,000 US$ claim for "costs associated with efforts to implement CDMA Agreement"), and they do not make reference to the claim relating to damages corresponding to the present value of DigiTelCom's transferred interest, which the Claimants had quantified in an amount between 317 M US$ and 685 M US$ in their 10 February 2011 submission titled "Clarification of Claimant's Damages". To avoid any doubt, the Arbitral Tribunal would like the Claimants to confirm, at the latest by 15 July 2011, that its prayers for relief are as those included in its 10 February 2011 submission titled "Clarification of Claimant's Damages", and that the 1,670,000 US$ claim for "costs associated with efforts to implement CDMA Agreement" (21 June PHB, page 10), should be added to the quantification of its CDMA License Agreement claim in their 10 February 2011 submission. The Claimants are requested to abstain from any additional comment and, of course, from adding any exhibit to their response. Once we receive Claimants' response, Respondent will let us know whether it deems necessary to comment. As to Respondent's prayers for relief, the Arbitral Tribunal will base its award on those indicated in its Submission n°2. As to costs, the Arbitral Tribunal has noted the parties' respective requests as expressed in their second Post-Hearing Briefs."

48. On even date Claimants confirmed: *"that 1,670,000 US$ should be added to the quantification of their CDMA License Agreement claim in their 10 February 2011 submission and that their prayers for relief are as those included in their 10 February 2011 submission".*

49. On 18August 2011, the Arbitral Tribunal declared the proceedings closed.

VII. Factual Background

A. DIGITELCOM'S SHAREHOLDINGS IN SPT AND OBLCOM; THE CDMA LICENSE

50. Even though neither the SPT nor Oblcom shareholders' agreements were presented to the Arbitral Tribunal as exhibits, it is common ground that DigiTelCom owned a minority participation of 25.4 % in SPT and 36.6 % in Oblcom. The majority shareholder in SPT was Millicom VOL Holding GmbH (hereinafter "Millicom").St.

Petersburg State Unitary Enterprise "St. Petersburg Cable Television" also owned a minority stake of 14% in SPT[4].

51. SPT and Oblcom provided telecommunication services. SPT operated an N-AMPS (analog) cellular network in the city of Saint Petersburg. Oblcom operated an N-AMPS (analog) cellular network in the surrounding Leningrad Oblast (Region). Both companies shared for their base stations a common switching Centre and operated under the trade name FORA in the 800 MHz band[5].

52. On 30 March 1998, SPT obtained from the Ministry of the Russian Federation for Communication and Information Technology (the "Ministry") a license to operate in the City of Saint Petersburg a network using the CDMA standard[6](the "CDMA License")[7].

53. It is common ground that the CDMA License was limited to fixed services and could not be used to provide mobile telephony[8]. The CDMA License also provides for a number of specific requirements and restrictions[9] to be complied by the licensee.

54. The CDMA network had to become operational ("start date for services") no later than 1 May 2000[10], and the CDMA License's validity was until 4 April 2007[11].

55. The CDMA License granted to the licensee the possibility of providing fixed telephony services using CDMA technology, but the licensee had to obtain as well a Permission specifying the frequencies available for use by the operator[12].On 27 July 2000, SPT obtained a *"Permission to use radio frequencies for operation of radioelectronic facilities"*, ref. N° 06-10-28/17858. This Permission expired on August 1, 2005[13].

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[4] CEWS-1, § 36; Exhibits C-94, tab 10, R-25 and R-26.
[5] CWS-4, §8.
[6] CDMA for Code Division Multiple Access, which is a 2G, or second generation, digital standard.
[7] Exhibit R-2, 30 March 1998 is the date of registration of the license in the Unified Register of Licenses for Communications.
[8]Exhibit R-2, § 2.
[9]For example, (i) the terms of activity of the CDMA License foresee in paragraph 3 that the installed network capacity of the licensee shall equal at least 10000 numbers in 1999, 18000 numbers in 2000, and 30000 numbers in 2001; (ii) in paragraphs 3 and 4, by the end of the third year licensee has to commission at least 70% of paragraph 3's capacity and provide coverage of not less than 50% of the licensee's specified area; (iii) in paragraph 37 periodical and annual statistical reports must be provided by the licensee; and (iv) paragraph 38 provides that the License may not be transferred to another party.
[10] Annex 2 of the CDMA License (Exhibit R-2).
[11]Exhibit R-2, first page.
[12]Transcript Tereshchenko, p. 640: 4-17.
[13]Exhibit C-48.

56. Following the award of the CDMA License, SPT procured from Motorola and installed a CDMA base station controller and six base stations located throughout St. Petersburg[14]. SPT's CDMA Network shared with its N-AMPS network a common switch[15] (the "Switch"), and the CDMA base stations were located at the existing N-AMPS sites and utilized the same "haul-back" transmission as well[16].

57. On 24 April 2000, the Ministry decided that the 800 MHz frequency would, by 2010, be dedicated to broadcast digital television rather than to cellular telecommunications[17].

58. Because SPT and Oblcom were operating in the 800 MHz band and would thus lose the ability to operate in these frequencies as a result of such decision, the Ministry of Communications awarded each of them, in April 2002, a GSM 1800 MHz license for their N-AMPS operations[18].

59. In 2002, Tele2 acquired Millicom's majority equity stakes in both SPT and Oblcom[19]. Further to certain strategic disagreements which nature is not relevant to the solution of the present dispute, Tele2 decided to purchase and DigiTelCom accepted to sell its minority equity stakes in SPT and Oblcom.

B. THE CONTRACTS IN DISPUTE

60. The parties accordingly agreed to enter into (i) the SPA, whereby DigiTelCom would sell to Tele2 its minority equity stakes in SPT and Oblcom, as well as (ii) two ancillary agreements, the CDMA License Agreement and the Roaming Agreement.

1- The SPA

61. The SPA was executed on 9 June 2003. It provided for the sale by DigiTelCom to Tele2 of its equity participations in SPT and Oblcom for a consideration consisting in a purchase price of USD 6,500,000. Two of the "Whereas clauses" of the SPA provided

[14] CWS-4 Chepizhenko, § 9.
[15] The switching station is a room containing the equipment necessary to connect and route communications to other networks (CWS-1 Jacoby, § 45).
[16] The "haul back" is the transmission of a communication between the switch and the base stations (CWS-4 Chepizenko, §§ 8, 13).
[17] Exhibit R-9.
[18] CWS-4 Chepizhenko, § 17, CWS-3 Tereshchenko, §§ 12-13.
[19] CWS-1 Jacoby, § 18.

that further consideration was for the parties to enter into the CDMA License Agreement and the Roaming Agreement.

62. It is common ground that the purchase price was paid as provided by the SPA and the Stock Pledge and Security Agreement (and accompanying Promissory Note) executed on 15 July 2003[20].In addition, on 15 July 2003, the parties executed the CDMA License Agreement as well as the Roaming Agreement. The parties' "execution and delivery" of these two agreements were conditions precedent to the Completion (e.g., closing) of the SPA[21].

2- The CDMA License Agreement

63. The CDMA License Agreement relates to the use and transfer of the CDMA License. SPT is the licensee under the CDMA License.

64. "Background" Whereas clauses for the CDMA License Agreement provide that DigiTelCom, subject to the terms of the Agreement, was entitled "*to operate and use the CDMA network*" and "*enjoy the full economic and other benefits thereof as if the CDMA License had in fact been transferred to DigiTelCom*". The parties also contemplated that, until such time as the CDMA License would be actually transferred from SPT to DigiTelCom "*the agreements regarding operation and use of the CDMA network by DigiTelCom* [would] *continue in effect in an evergreen basis*"[22], as contemplated in the Agreement.

65. The CDMA License[23]was subject to certain conditions (see, for example, footnote 9) and, pursuant to Clause 2.8 of the CDMA License Agreement, DigiTelCom acknowledged that it has full knowledge of the CDMA License and that the relevant regulatory authority has powers to "*revoke or amend*" its terms.

66. Pursuant to Clause 3.2 of the CDMA License Agreement, the parties' primary goal was "*the ultimate transfer of the CDMA License to DigiTelCom*[...] *on a "live", "ongoing", and "seamless" basis*". Accordingly, Clause 3.1 provides that "*at a time of DigiTelCom's choosing Tele2 shall use its best efforts and shall cause SPT (for no*

[20]Exhibit C-1(d) and (e)
[21]Exhibit C-1 (a), 5.1 (f) and (g).
[22]C-1(b) CDMA License Agreement, Recitals p. 2.
[23]The CDMA License was designated as being attached as Exhibit A to the CDMA License Agreement. However it was not attached to Exhibit C-1(b).

additional consideration) to use its best efforts, to take any and all actions, including (without limitation) the making of formal decisions, performing acts, and/or executing and/or delivering documents, instruments, and undertakings which are in DigiTelCom's reasonable opinion necessary or appropriate to effect and complete the full transfer of the proportional interest in and to the CDMA License represented by all shareholdings of SPT, on the date hereof, other than shareholdings held by shareholders of SPT as of the day hereof who are not affiliates of Tele2".

67. The CDMA License Agreement was executed on 15 July 2003. Pursuant to Clause 3.1, the parties' intention was to realize the transfer of the CDMA License to a wholly-owned SPT subsidiary (potentially the Russian joint stock company, MultiCom).The shares of that subsidiary would then be distributed up to a minimum of 85% to DigiTelCom, and the remaining shares to other shareholders of SPT which were not at the date of the CDMA License Agreement affiliates of Tele2. As we shall see in subsequent sections of this award, the parties were unable to transfer the CDMA License as contemplated in the CDMA License Agreement.

68. Clause 2.1 of the CDMA License Agreement provides for DigiTelCom's right, until such time as the transfer of the CDMA License is realized pursuant to Clause 3, to use and operate the existing CDMA network (hereinafter "the Existing CDMA Network") pursuant to the terms of the CDMA License and to utilize the CMDA License frequency allocations. Clause 2.1 further stipulates that DigiTelCom would first certify in writing to Tele2 that it used its best efforts to have the minority shareholders of SPT "*vote in favor of the transactions contemplated by this Agreement*".

69. Clause 2.3, however, provides that DigiTelCom would not be entitled to establish a commercial service using the Existing CDMA Network "*without first reaching an appropriate commercial arrangement with Tele2 respecting such use, such as, for example, the purchase or lease of the CDMA Existing Network from Tele2*". Pursuant to Clause 2.4, DigiTelCom could nevertheless establish commercial services in St. Petersburg in accordance with the CDMA License by implementing a new network (i.e. by establishing a new wireless telecommunication network, including switching, base stations, transmission and other necessary equipment).

70. Clause 2.4 also provides that DigiTelCom was responsible for, within 6 month after the date of the CDMA License Agreement, i.e. by 15 January 2004, "taking physical control of maintaining (to its sole satisfaction) all machinery and equipment comprising the

CDMA Existing Network, excluding the switch (the responsibility for commercially reasonable maintenance of which shall rest and remain with Tele2)". Such responsibility of DigiTelCom to take control of the maintenance existed irrespective of whether legal title on the CDMA Existing Network may pass to it, and Clause 2.4 accordingly provides for Tele2 to give to DigiTelCom full and complete access to the network in order to enable DigiTelCom to conduct the network's maintenance after the expiry of the six months period (within which DigiTelCom was to take control of the maintenance).

71. Clause 2.4 provides, in this respect, that "*until such six month period has passed, Tele2 shall in a commercially reasonable manner continue to maintain all machinery and equipment comprising the CDMA Existing network*". Pursuant to Clause 3.2, support and maintenance obligations would however continue after the completion of the CDMA License: "*it is conceivable and contemplated that such operational support may be required not only during the transfer process, but also maintained for a period of time after the completion of the CDMA License transfer in order to assure a smooth and uninterrupted transfer of operational 'hand-off' of the CDMA Network to DigiTelCom and the parties shall in the post-transfer period continue to do their outmost to achieve such smooth and uninterrupted operational 'hand-off'*". Clause 3.3 further provides that DigiTelCom: "*shall incur, pay directly or indemnify Tele2, and agrees to hold Tele2 and SPT harmless from any and all actual costs, expenses and liabilities... incurred by SPT or Tele2 in complying with the provisions of this Clause 3.*"

72. The CDMA License Agreement also provides for certain obligations regarding the relations with Russian regulatory authorities. Clause 2.5 provides that Tele2 and SPT will inform DigiTelCom about all investigations and requests from regulatory authorities, and provides for DigiTelCom's right, during the term of the CDMA License, to instruct SPT to take all necessary actions for the operation of the CDMA Network and/or "*necessary or appropriate to ensure that the CDMA License is not cancelled, revoked or suspended*". Clause 2.5 specifies that no such action should be taken by SPT or Tele2 without DigiTelCom prior consent and that no liability may arise for failure to take such actions ("*or for the timeliness or manner with respect to which such action is taken*") unless instructions were given by DigiTelCom in writing.

73. The CDMA License Agreement nevertheless provides in Clause 2.5 that "*DigiTelCom acknowledges that the primary business of SPT is to manage and operate its own*

telephony business" and that SPT's obligations according to the CDMA License Agreement "*will be subject to the demands of SPT's own business*".

74. Finally, pursuant to Clauses 2.6 and 2.7, DigiTelCom supports all costs and expenses incurred by Tele2 and SPT as a result of the performance of their obligations and DigiTelCom's operation of the CDMA Network.

3- The Roaming Agreement

75. The Roaming Agreement was executed on 15 July 2003. In substance, the Roaming Agreement provides for DigiTelCom's right to designate, within 5 years after the date of the Roaming Agreement (i.e. no later than 15 July 2008), up to two mobile telephony operators located in a Central Asian Republic (hereinafter "the Operators") to use Tele2's network when roaming in Russia, Sweden and other countries where Tele2 has its own mobile telephony operations.

76. Clause 2.10 of the Roaming Agreement provides that, within 60 days after nomination of the Operators by DigiTelCom: *"The Operators and Tele2 shall nominate at least one person each to participate in a technical committee which shall meet not later than sixty (60) days after nomination of the Operators by DigiTelCom to discuss and agree upon all technical and operational matters relating to the implementation and on-going operation of the roaming services to be provided pursuant to this Agreement"*. The Roaming Agreement further provides that the parties would then "*as promptly as possible enter into written roaming agreements reflecting the agreements herein provided and containing technical and operational matters agreed upon pursuant to this clause 2.10*".

77. Clause 1.12 provides that: *"as soon as reasonably practicable"* after each Roaming Operator is designated, that Roaming Operator shall enter into an agreement with Tele2 either *"incorporating the terms and conditions of this Agreement or enter into a new agreement on similar terms and conditions"*.

78. Clause 2.7 permits Tele2 *"at its sole discretion"* to terminate the Roaming Agreement with an Adverse Event, and Clause 2.7.5 permits Tele2 to terminate *"without liability to DigiTelCom or any Operator"* "*if no resolution satisfactory to Tele2 has been reached of the Adverse Event*".

79. Finally, Clause 20 provides that: *"In no circumstances shall the aggregateliability of Tele2 for any breach of this Agreement or of any agreement with an Operator exceed US$1,000,000 and legal terms awarded pursuant to Clause 21.2"*.

C. THE NOVEMBER 2003 INSPECTION AND THE 22 DECEMBER LETTER TO THE INSPECTION SERVICES

80. It is common ground between the parties that, at the time of the CDMA License Agreement, the CDMA Network was not commercially operated. Yury Dombrovsky, former General Manager for Tele2 Russia and at the time Consultant for the company, accordingly declares that *"at the time the transaction took place, SPT had a very limited CDMA Network which had never been commercially operated*[...]*.There had never been any real investments made in the CDMA Network. The Network consisted of only a few base stations and the coverage was therefore very limited. There were only a few numbers put into operation"*[24].Mr. Dombrovsky adds that as far as he can remember *"SPT never had any commercial subscribers or commercial customers on its CDMA network, only a few test customers"*[25]. As a consequence of such situation, at the time when the CDMA License Agreement was signed, SPT was in breach of the regulatory requirements contained in the CDMA License. No documentation was presented to the Arbitral Tribunal regarding (i) any due diligence DigiTelCom would had done regarding the status of the CDMA License prior to the CDMA License Agreement being signed, or (ii) the extent to which the CDMA License status was discussed by the SPT board of directors.

81. In November 2003, the State Communications and Information Technology Inspection Service for Saint Petersburg and Leningrad Region (the "Inspection Service") inspected SPT's CDMA network. Subsequent to said inspection, the Inspection Service issued on 26 November 2003 a document named Conclusion n° 9663-78/7, and sent to the then Director General of SPT, Mr. Serguei Sukharev[26], an improvement notice n° 304/206-2[27]. Such improvement notice requested the elimination of the three following breaches of the CDMA License:

> *"- For the time of inspection the installed communication network capacity of the Licensee was 8,540 numbers. In accordance with the license, by the end of*

[24] RWS-1 Dombrovsky, § 4.
[25] RWS-1 Dombrovsky, § 4.
[26] Mr. Serguei Sukharev had replaced Mr. Maxim Zakhariev who was terminated as SPT's Director General in approximately October 2003 (CWS-3 Tereshchenko, § 24).
[27] Exhibit C-6.

2001 the installed capacity has to be greater than or equal to 30,000 numbers (violation of p.3 of the License);

- By the end of the third operating year the Licensee has to put into operation 21,000 numbers (70% of 30,000). The operator put into operation 52 numbers which constitutes 0.25% of the capacity required" (violation of p. 4 of the License).

- There are no public pay telephones installed in the Saint Petersburg Telecom OJSC network (violation of p. 17 of the license)".

82. The Inspection Service therefore requested SPT to:

> *"Elaborate and clear with the* [...] *Inspection Service the schedule of elimination of violations of* [...] *this Improvement Notice and inform our Service in written form on the elimination of every violation mentioned above by 12/22/2003"*[28].

83. On December 22, 2003[29], Mr. Sukharev responded that the breaches identified by the Inspection Service *"are caused by Decision of State Committee of Radio Frequencies from 04/24/2000 (Record n°22/3) that limits the availability period for 800 MHz frequencies range for means of radio access and mobile communications with the year 2010"*. Mr. Sukharev further stated that:

> *"Taking into account the fact that the Decision of the State Committee of Radio Frequencies mentioned above makes it difficult to provide any long-term development for the network and the possibility of using the frequency range is undefined, the stockholders of Saint Petersburg Telecom OJSC made a decision to postpone further development of the radio access project within 800MHz range. Accordingly, further increase of the network numbering capacity and acquisition of public pay telephones in the nearest time is not planned"*[30].

84. Pursuant to Clause 2.5 (last paragraph) of the CDMA License Agreement, SPT had a responsibility (i) promptly to communicate to DigiTelCom such Inspection Service improvement notice, and (ii) to use "*reasonable diligence in coordinating with DigiTelCom all dealings*" with the Inspection Service. DigiTelCom avers that the letter

[28] Exhibit C-6, p. 2.
[29] Exhibit C-7. The letter is erroneously dated November 2003.
[30] Exhibits C-7, C-19.

was sent without its knowledge or consent[31]. Tele2 avers, on the contrary, that the letter was handed on the same day – 22 December 2003 – by Mr. Evgeny Kurilov of Tele2 to Mr. Gregory Donat of DigiTelCom[32]. There is however no other material evidence on point.

85. A 12 February 2004 email sent by Mr. Svedberg to Mr. Jacoby, of DigiTelCom contained a copy of the 22 December 2003 letter to the Inspection Services[33].

D. DIGITELCOM'S DECISION TO TAKE CONTROL OF THE MAINTENANCE AND ATTEMPTS TO HAVE THE CDMA LICENSE AGREEMENT SIGNED BY SPT

86. It is common ground that, during a meeting held in Saint Petersburg on 18 December 2003 between David Palagi of DigiTelCom and SPT's General Director Serguei Sukharev, DigiTelCom informed SPT of its willingness to take control of the maintenance of all machinery and equipment composing the Existing CDMA Network (excluding the Switch). This was confirmed in a letter sent on 20 January 2004 by David Palagi to Johnny Svedberg "*as you may know, during our Saint Petersburg meeting of 18 December 2003, with Mr. Serguei Sukharev, I informed him of DigiTelCom's readiness to undertake the maintenance of all machinery and equipment(excluding the switch)*"[34].Such 20 January 2004 letter made reference to Section 2.4 of the CDMA License Agreement, pursuant to which DigiTelCom was responsible for taking control of the Existing CDMA Network by 15 January 2004.

87. In that same letter, David Palagi informed Johnny Svedberg that, on the occasion of the 18 December 2003 meeting in Saint Petersburg, he had asked Serguei Sukharev "*to co-sign our original copy of the Agreement, which he declined pending his further study of the Agreement*"[35]. The same request was reiterated by Ross Jacoby to Johnny Svedberg on 13 February 2004, and Johnny Svedberg responded positively on the same day[36].

88. Apparently, Serguei Sukharev then suggested that the CDMA License Agreement be signed by Maxim Zakhariev, whom he had just replaced as Chief Executive Officer of SPT. On 19 February 2004, David Palagi responded *"as to your suggestion that Maxim sign the Agreement, we do not see that as a legally legitimate option. He is not, but you*

[31] C-II, p. 2 B; CPHB-I, p. 7.
[32] Exhibit C-19.
[33] Exhibit C-19.
[34] Exhibit C-10.
[35] Exhibit C-10.
[36] Exhibit C-21.

are, the individual of authority at this time"[37].As it appears, however, Mr. Zakhariev signed a copy of the CDMA License Agreement[38]. On 20 February 2004, Johnny Svedberg wrote to Ross Jacoby *"that the incident in St P was an unfortunate mistake in our communication with our legal advisor. We have instructed our local GD that we should sign the agreement. I trust that your local representative can make the necessary arrangements for it to be signed today or early next week"*[39].

89. On 27 February 2004, DigiTelCom's in-house counsel Mr. Tereshchenko reiterated DigiTelCom's request that Mr. Sukharev, on behalf of SPT, sign the CDMA License Agreement[40]. It is common ground that the CMDA License Agreement was signed by Serguei Sukharev on behalf of SPT the same day[41].

E. THE JANUARY 2004 CRASH

90. On 14 January 2004 (i.e. one day before the expiry of the six months period after which DigiTelCom was responsible for taking control of the maintenance of the machinery and equipment), Tele2 advised DigiTelCom that, two days before, there had been a failure in the Base Site Controller computer software. Tele2 also informed DigiTelCom that it was unable to solve the problem and that Motorola's "*support and consultation*" was necessary[42].

91. On 20 January 2004, Tele2 wrote to DigiTelCom to inform it of the content of a letter received from Motorola. Motorola's letter refers to a preliminary assessment of the status of the system, and stated that *"SW load of the system is very old and not supported by Motorola's CNRCs"*. Motorola also assessed the costs of determining the source of the problem, and stated that an agreement needed to be signed between Motorola and SPT to that effect. Tele2 requested DigiTelCom to provide its instructions in this respect[43].

92. Further to a meeting held on 26 January 2004 between a technical team of DigiTelCom led by Ms. Nashnitsyna and the technical director of SPT, Mr. Konstantin Derkach, DigiTelCom apparently tried to assess and resolve the problem itself. Such attempts

[37] Exhibit C-27.
[38] Exhibit R-17.
[39] Exhibit C-28.
[40] Exhibit C-29.
[41] CWS-1 Jacoby, §34.
[42] Exhibit C-8.
[43] Exhibit C-11.

appear to have been unsuccessful and Ms. Nashnitsyna wrote on 29 January 2004 an internal memorandum to Ross Jacoby stating that *"FORA technical personnel is not able to solve CDMA network reactivation without Motorola's help"*[44].Ms. Nashnitsyna also reminded Ross Jacoby that she had informed him that Motorola was "*ready to help only on a repayable basis*".

93. DigiTelCom's awareness that Motorola's intervention on site was needed is confirmed by Ms.Nashnitsyna's internal memorandum of 19 February 2004 to Ross Jacoby[45]. The 19 February 2004 memorandum refers to "*two main problems to be solved that threaten our keeping the CDMA License*", which were described as follows:

> *"1. Restoring to work conditions the existing equipment.*
> *- Existing SW of the system is very old and is not supported anymore by the company. Moreover, the company has no specialist in the old version and no spare parts for repairs.*
> *- Motorola is able to send an engineer to SPB to restore the system to working conditions or make sure what is the reason of the problem if this problem cannot be solved onsite. i.e., to clarify whether the problem is critical and related to SW or it is a HW problem.*
> *In any case, you have to coordinate the question of the remuneration for this job with Tele2, as well as the question of sending the second guarantee letter from Tele2 to Motorola concerning remuneration for defining the reasons of failure of the CDMA equipment and restoring it to working conditions.*
> *Only after this letter Motorola will send Tele2 SPB the draft of the agreement.*
> *Upon arrival of Motorola specialist(s) we will take part in his (their) work at the station.*
> *2. Upgrade necessary for the system*
> *In my opinion, we have to ask Motorola to send us a commercial proposal for the system upgrade so that you could evaluate further costs".*

94. The parties seem to disagree on who contracted and paid Motorola in order to address the issues raised by the CDMA Network reactivation[46]. It is however common ground that Motorola's intervention allowed the CDMA Network to be reactivated.

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[44] Exhibit C-13.
[45] Exhibit C-26.
[46] Transcript: Claimants' opening statement, p. 43: 5-11; Jacoby 182: 12-14, 17-22; Chepizhenko pp. 488:4-490:2; CPHB-I, P. 4, footnote 5; RPHB-I, § 47; Exhibit C-30.

95. On 26 February 2004, although she complained that DigiTelCom's specialists had not been invited to attend the "*recovery work*", Ms. Nashnitsyna from DigiTelCom congratulated Mr. Serguei Sukharev from SPT for "*the successful resolution of problems related to CDMA Network close down*"[47].

F. DIGITELCOM'S REQUESTS FOR DOCUMENTS

96. It appears from DigiTelCom's30 January 2004 internal memorandum that DigiTelCom had a meeting with SPT's Technical Director, Mr. Derkach, in the occasion of which it requested a list of technical documents relating to the CDMA Existing Network[48]. Mr. Derkach "*appointed specific engineers (five persons) that should provide us [DigiTelCom] with detailed answers to our questions*". On 4 February 2004, DigiTelCom wrote to SPT to the effect of confirming such request[49].From DigiTelCom's 29 January 2004 internal memorandum, however, DigiTelCom had already received a number of technical documents relating to the Existing CDMA Network[50]. DigiTelCom's request was reiterated on 26 February 2004. The 26 February 2004 letter stated that the requested documents were necessary to the effect of DigiTelCom's taking control of the network operation[51].

97. Mr. Sukharev responded on 3 March 2004by listing twelve documents that had been provided by SPT to DigiTelCom from 26 to 30 January 2004, two additional documents ready to be handed over, and five documents evidencing the work already done, so that "*the operational integrity of the system was restored*"[52]. On 5 March, DigiTelCom responded by providing a list of documents that were still missing. The 5 March letter complained that the contacts between DigiTelCom and SPT were "*too bureaucratic*"[53]. The missing documents appear to have been released to DigiTelCom, who did not complain further.

98. On 5 April 2004, however, Mr. Tereshchenko wrote to Mr. Sukharev to request all materials and information "*about CDMA License transfer from*[SPT]*to MultiCom LLC*"[54].On 13 April 2004, Tele2 wrote to DigiTelCom that "*all the documents*

[47] Exhibit C-16 (second document).
[48] Exhibit C-14.
[49] Exhibit C-16.
[50] Exhibit C-13.
[51] Exhibit C-16 (second document).
[52] Exhibit C-30.
[53] Exhibit C-31.
[54] Exhibit C-32.

mentioned above were forwarded to Tele2 Moscow Office for execution of the license transfer"[55].

99. DigiTelCom reiterated its request on 22 April 2004: "*As for the materials and information related to the transfer of CDMA license from Saint Petersburg Telecom OJSC to Multicom, LLC, please, deliver copies to all – outgoing and incoming – materials that were sent, according to your letter from 04/13/2004 Ref. N°40-A, to TELE2 Moscow Office, and give all the information concerning this question*". The 22 April 2004 letter also requested Tele2 to "*coordinate with us all your steps related to the license transfer mentioned above, including sending of letters, delivering of documentation etc., as work proceeds, inform us on the progress in this question regularly and in a timely manner*"[56].

100. On 20 May 2004, Tele2 confirmed the presence of the documentation at Tele2's Moscow office[57]. On 3 June 2004, Mr. Tereshchenko, DigiTelCom's lawyer, replied to SPT's lawyer by stating that "*as it follows from your letter (from May 20, 2004 Ref. N°53-A), TELE2 Moscow Office received only a part of the material requested. It is hard to imagine a situation when the originals of documents are handed to other party without being copied, or when such copies cannot be delivered to you from your Moscow office. Before receiving the copies from Moscow you had to hand us what you already had, at least. But that was not done. Referring to the above, we would like to ask you again to satisfy our request mentioned in the letter from April 22, 2004. Otherwise, DigiTelCom would be forced to inform Tele2 Sverige AB of the Agreement violation from their part*"[58].

101. On 1 July 2004, DigiTelCom's lawyer, Mr. Tereshchenko, insisted that "*up to this moment DigiTelCom, Ltd. has not received any requested materials, which means Tele2 continues to violate its commitments under CDMA Agreement. Taking into account our repeated requests (letters from April 5, 2004, April 22, 2004, June 3, 2004), hereby DigiTelCom, Ltd. demands from Tele2 to fulfill in its entirety the request indicated in the letter from April 22, 2004 (copy attached)*"[59].

[55] Exhibit C-34.
[56] Exhibit C-35.
[57] Exhibit C-36.
[58] Exhibit C-37.
[59] Exhibit C-38.

102. On 2 July 2004, Tele2's lawyer responded that "*we made a request to Tele2 Moscow office concerning provision of copies of the existing documents on the transfer of the CDMA License from Saint-Petersburg Telecom OJSC to Multicom Ltd. that will be handed over to you as soon as we receive them*"[60]. On 13 July 2004, Tele2 informed DigiTelCom that "*all the documents concerning the License transfer that you requested are in our office and ready to be mailed*". DigiTelCom responded the same day by requesting that the documents not be mailed but instead handed to a messenger the subsequent day[61].

G. THE AIR CONDITIONING FAILURE

103. On 8 April 2004, Ms. Nashnitsyna informed Mr. Jacoby that SPT's Technical Director Mr. Konstantin Derkach had informed her on the phone that the air conditioning unit at the base station BS002, where the CDMA equipment was installed, had failed. The 8 April 2004 letter stated that an air conditioning unit was needed to guarantee the normal operation of the equipment and that "*it is necessary to purchase and install a new air-conditioning unit*". The letter asked Mr. Jacoby to "*give a permission to Tele2 to spend the funds necessary for purchasing and installing an air conditioning unit at the site BS002*"[62]. No such authorization however appears to have been given by Mr. Jacoby.

H. NOMINATION UNDER THE CDMA LICENSE AGREEMENT AND LACK OF TRANSFER OF THE CDMA LICENSE

104. The CDMA License Agreement contemplates[63] that the parties would endeavor to transfer the CDMA License to a Russian joint stock company called MultiCom. It is however common ground that such transfer had to be authorized by the relevant regulatory authority (since the CDMA License is by its terms non-transferable[64]).

105. As part of its efforts to transfer the CDMA License to Multicom, the Lease Agreement was executed on 1st March 2004 between SPT and Multicom[65]. Pursuant to the Lease Agreement, SPT transferred to Multicom the equipment constituting one base station controller and six base stations of the CDMA Existing Network[66]. Such equipment did not cover SPT's Switch or the billing system.

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[60] Exhibit C-39.
[61] Exhibit C-40.
[62] Exhibit C-33.
[63] C-1(b) CDMA License Agreement, Recitals p. 4.
[64] Exhibit R-2, §38.
[65] Exhibit C-108.
[66] RPHB-I, § 28.

106. On 1 October 2004, Ross Jacoby wrote to Johnny Svedberg that "*we have been making progress with the transfer into Multikom. Shortly, it is anticipated to come in favourably. For that reason, we need to address a few items: 1. The nomination of the "Nominee". DigiTelCom has decided to nominate Telco, Ltd., a Delaware corporation, to be the "Nominee" within the meaning of the CDMA License Agreement dated 15 July, 2003. The formal notice shall be forthcoming next week. 2. In addition, we should take preparatory steps toward the transfer of the AO "Multicom" to TelCo. Prior to the transfer of shares from SPT to TelCo, if you agree, we may want to coordinate a change in the management team. 3. Do you have plans for your equipment? We may consider to acquire it, if we agree on the price*"[67].

107. Johnny Svedberg replied on 4 October 2004 as follows: "*I have asked Yurito facilitate the support required from our side for the transfer of the license as he is closer to the action but please keep me informed. You may buy the equipment, it is just a matter of price. As we paid you such high price for your equity I hope to get a substantial shunk of it back. After all it is solid, good, true American high tech technology*"[68]. Ross Jacoby responded on 6 October 2004 as follows: "*1. From our side, I asked Gregory, with the assistance of Alexey, our lawyer, to facilitate the transfer. They will agree with Yuri on the steps and keep us posted on the developments. 2. Regarding the 20th century Eastern Block left-over equipment that you are trying to sell for a king's ransom, we are sure it is worth its weight in gold. But I think we may still want to negotiate the price. In any event, all jokes aside, let's talk and see if we can agree on this item. I will be in New York most of next week, if you are also available, let's talk*"[69].

108. On 6 October 2004, DigiTelCom notified the following to Tele2: "*Please take notice that in accordance with Section 1.11 of the July 15, 2003 CDMA License Agreement, for the operation, use and transfer of the CDMA License held by AO "St. Petersburg Telecom" ("Agreement"), we are hereby informing you of DigiTelCom Ltd.'s ("DigiTelCom") decision to designate TelCo, Ltd., a Delaware corporation ("TelCo"), to be the "Nominee", as defined under Section 1.1. of the Agreement. Therefore, please be advised that all of DigiTelCom's rights, benefits and obligations under the Agreement are assigned to, and assumed by, TelCo*"[70].

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[67] Exhibit C-41.
[68] Exhibit C-41.
[69] Exhibit C-41.
[70] Exhibit C-51.

109. On 21 October 2004, Ross Jacoby proposed to Tele2 to purchase or lease its entire N-AMPS operation instead of purchasing the CDMA Base Station Equipment and apportioning the Switch[71]. Johnny Svedberg replied on 26 October by pointing out that he did not have any objections to such a proposal, but Tele2 were in the process of "*wrapping up an agreement for the outsourcing of the entire AMPS operations*"[72]. Ross Jacoby confirmed DigiTelCom's interest in purchasing Tele2's AMPS operation on 2 November 2004[73], and Johnny Svedberg again reserved his answer on the subsequent day[74].

110. On 1 March 2004, SPT filed a request to the relevant regulatory authority to the effect of authorizing MultiCom to use the radio frequencies assigned to SPT under the CDMA License[75]. Apparently, such application was unsuccessful. *"It was and still is, rather complicated to transfer a license to another company in Russia...This is a complicated process, however, which required government approval"*[76].On 10 December 2004 Alexander Tereshchenko, Senior Legal Counsel of DigiTelCom, sent an internal memorandum to Ross Jacoby setting out the existing restrictions to the CDMA License (including the validity period limited to 4 April 2007 and the fact that the License could not be transferred to third parties)[77].

111. According to Igor Chepizhenko, who was at the time based in Saint Petersburg to work on the development of the Existing CDMA Network, during the second semester of 2004, "*DigiTelCom technical team in St. Petersburg was disbanded and returned to other assignments*"[78].

112. At some point in the first quarter of 2005, Mr. Dombrovsky took the initiative, on behalf of SPT, to ask an influential member of the Russian Duma to intervene to facilitate the transfer of the radio frequencies[79]. On 22 April 2005, said member of the Russian Duma informed that "*a planned session of the State Radio Frequency Commission took place on April 4 2005. During this session the Commission made a decision to decline the re-issuing of the SRFC Decision from 06.04.1998/2624-OP from OJSC "Saint Petersburg Telecom" to LLC "Multicom" based on the negative expert report on possibility of use*

[71] Exhibit C-42.
[72] Exhibit C-43.
[73] Exhibit C-44.
[74] Exhibit C-45.
[75] Exhibit C-50; RWS-1 Dombrovsky, §6; RPHB-I, § 29.
[76] RWS-1 Dombrovsky, § 6.
[77] Exhibit C-46.
[78] CWS-7 Chepizhenko, § 24.
[79] R-II, § 52, footnote 78; Transcript Dombrovsky p. 529: 19-23.

of applied REM (radio electronic means)"[80]. The same member of the Duma wrote to the Chairman of the State Commission for Radio Frequencies of the Russian Federation, on 19 May 2005, to ask for a reconsideration of said decision[81]. Such attempt was however not successful.

I. ALLEGED NOMINATIOND UNDER THE ROAMING AGREEMENT

113. The Claimants allege that, on 6 October 2004, DigiTelCom designated KATEL and SoTel as Operators under the Roaming Agreement[82].

114. The 6 October 2004 purported notice reads as follows: "*PLEASE TAKE NOTICE that, in accordance with Section 1.12 of the July 15, 2003 Preferred Partner Roaming Agreement, for the provision of world-wide roaming services to our affiliated two (2) Operators, as therein defined ("Agreement"), we are hereby informing you of DigiTelCom Ltd.'s ("DigiTelCom") designation of (i) KATEL Limited Liability Company, a company organized under the laws of the Kyrgyz Republic ("KATEL"), and (ii) SoTel Ltd. Limited Liability Company, a company organized under the laws of the Kyrgyz Republic ("SoTel"), to be the "Operators", as defined under Section 1.12 of the Agreement. Please be further advised that, when reasonably practicable, each KATEL and SoTel may contact you directly on their own for the purposes of establishing the agreed upon preferred partner roaming relationships under the Agreement*"[83].

115. Respondent denies that it ever received such notification[84].

J. RENEWED ATTEMPTS TO TRANSFER THE CDMA LICENSE AND NEGOTIATIONS TO SET UP AN "EVERGREEN AGREEMENT"

116. On 24 January 2006 Ross Jacoby wrote to Johnny Svedberg the following: *"to date, despite numerous promises, both our companies have been unable to transfer the license and the frequencies from SPT to MultiCom.* [...] *We have taken a decision to put in a Network under the existing evergreen agreement. Please tell me your view on how best to proceed with your company at St. Petersburg. If you can, please ask them to cooperate with our nominated company, TelCo, Ltd.*"[85].Johnny Svedberg replied on 26

[80] Exhibit R-18.
[81] Exhibit R-19.
[82] C-I, p. 9; C-II, pp. 15-17; Exhibit C-52.
[83] Exhibit C-52.
[84] R-I, § 176-180; R-II, § 97-101.
[85] Exhibit C-54.

January 2006 that *"I need to come back on the license transfer issue I have not been updated for a long time"*[86]. On the same day, Johnny Svedberg asked Carl Magnus Sternberg to update him on the transfer of the license[87]. The following day, Yuri Dombrovsky from Tele2 wrote the following to Johnny Svedberg "*we applied for the license transfer from SPT to MultiCom and doing our best to push but the issue stuck in the Ministry. Neither "yes" or "no" so far. If MultiCom wants to start operations, I believe we have to begin them through the evergreen agreement*"[88].

117. On 31 January 2006, Ross Jacoby wrote the following e-mail to Johnny Svedberg *"It is good to hear that things are, generally, going rather well for Tele2 in Russia. I regret that St. Pete is not part of that success story. I guess Saint Petersburg can* [be] *a difficult city to navigate. There are a number of reasons that one can attribute that to, one of which can be lack of strong local presence (partner). It is regrettable that our relationship was tainted from the outset by the legacy of MIC and Motorola. From what I understand about your other operations in the region, you seem to have good local partner. Hopefully your new director*[89] *can improve things. Can we be of assistance? In any event I look to hear from you regarding the CDMA and please let me know if we can get together. I am presently in St. Petersburg"*[90].

118. On 20 February 2006, Johnny Svedberg wrote again to Ross Jacoby asking *"what do you want us to do in relation to the St P license? Do you have a local contact person we can talk to or is it managed by you and Gregory?"* Ross Jacoby responded the same day that *"it would probably be best if I was to supervise the initial hand/off. Who on your end would be the contact person?"*, and Johnny Svedberg immediately responded that *"the contact person will be Ian Reidy"*[91].

119. Ross Jacoby and Johnny Svedberg had dinner together on Wednesday 1 March 2006 and apparently discussed a possible sale of Tele2's N-AMPS operation. Ross Jacoby followed up on 3 March 2006 by writing *"It was good to meet you for dinner this*

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[86] Exhibit C-55.
[87] Exhibit R-20.
[88] Exhibit R-20. The 4th Whereas clause of the CDMA License Agreement provides that: "*DigiTelCom and Tele2 desire (i) that DigiTelCom shall, subject to and on the terms of this Agreement, be entitled to operate and use the CDMA network and enjoy the full economic and other benefits thereof as if the CDMA License had, in fact, been transferred to DigiTelCom as owner and holder thereof, and (ii) that the agreements regarding operation and use of the CDMA network by DigiTelCom continue in effect on an evergreen basis until such time as the CDMA License is actually transferred, as contemplated herein, to DigiTelCom*". The manner in which the "evergreen agreement" was to operate is dealt with in subsequent paragraphs of this award (§§ 364 and seq.).
[89] The recently appointed Tele2 regional director for St. Petersburg was Ian Reidy.
[90] Exhibit C-56.
[91] Exhibit C-56.

Wednesday. I enjoyed our conversation. We should do it more often. On the business side we will review the N-AMPS possibility and get back to you with ideas"[92].

120. At that point of time, the parties were still hoping to obtain the authorization to transfer the license to MultiCom. On 16 March 2006, Carl Magnus Stenberg wrote to Ross Jacoby that *"I spoke with Dombrovsky today and he believes that we may be able to transfer the CDMA License within a few months. Actually we had a successful case end of last year to transfer a GSM license in another of our Russian subsidiaries, why we know it is possible if we give it some time. Do you want us to proceed with the final attempt to transfer the license in parallel with preparing the alternative way forward* [to] *enable you to operate the license if still kept by SPT, please advise?"*[93]. Ross Jacoby responded the following day that *"as to the CDMA, we would like to continue with our efforts to transfer the license, in parallel to our moving forward under the evergreen agreement. We look forward to continued cooperation"*[94]. A communication to the same effect was sent the same day by Ross Jacoby to Yuri Dombrovsky[95].

121. The parties then engaged in discussions relating to the possible sale by Tele2 to DigiTelCom of Tele2's N-AMPS operations. On 24 March 2006, Ross Jacoby wrote to Johnny Svedberg "*regarding the N-AMPS operations, as a follow up to our discussions and in view of this opportunity, would you find our purchase offer acceptable, if we can do the N-AMPS License transfer as well*"[96]. Johnny Svedberg responded on 27 March 2006 by declining DigiTelCom's offer "*It would be good for both parties if we manage to transfer the license. As I told you, I do not feel it is worth the trouble to sell the AMPS license. We need to spend all our attention and focus on the GSM business in St. P. Hence we rather limit the license efforts to the agreement already put in place as part of the shares purchase agreement*"[97].

122. On 29 March 2006, Ian Reidy of Tele2 informed Ross Jacoby that a fresh application to transfer the license from SPT to MultiCom had been presented, but that *"our latest information does seem to suggest that it is very unlikely that this will be possible, and so we should continue to move forward under the evergreen agreement principle already discussed"*. In the same message, Ian Reidy confirmed Tele2's agreement to sell

[92] Exhibit C-56.
[93] Exhibit C-57.
[94] Exhibit C-57.
[95] Exhibit C-58.
[96] Exhibit C-59.
[97] Exhibit C-60.

MultiCom to TelCo or another company owned by DigiTelCom to be used as the CDMA operating company, as well as Tele2's willingness in principle *"to enter into Site Sharing Agreements with MultiCom on agreed commercial terms and to generally mutually cooperate in BTS rollout activities"*. The 29 March 2006 message also made DigiTelCom aware that the next scheduled Ministry inspection of the CDMA License is planned for October 2006[98].

123. DigiTelCom does not appear to have responded to that message.

K. THE 2006 INSPECTION AND THE 17 NOVEMBER 2006 IMPROVEMENTNOTICE

124. On 16 May 2006,Carl-Magnus Sternberg wrote the following message to Ross Jacoby:

> *"Tele2/SPT has reasons to believe that Rossvyasnadsor will conduct an inspection of SPTs licenses in October 2006 and I would like to highlight that CDMA license conditions are not met at present since the network is not operational. Therefore there is a material risk that the CDMA license may be revoked as a result of the inspection. SPT has no internal resources to put the system on air and no support agreement with the system vendor exist, why this commercial matter must be resolved by DigiTelCom before the system can be operated in accordance with the license requirements. Please let me know if DigiTelCom would like any assistance from Tele2 to take needed action to comply with the license requirements prior to the Rossvyaznadsor inspection. For the avoidance of any doubts Tele2 will not take any action without your explicit request.*
>
> *Furthermore the expiry of the license is due in April 2007. In the event DigiTelCom intends to prolong the license, as far as I'm aware, DigiTelCom must file appropriate applications to the state authorities during a period not earlier than 6 months and no later than 2 months prior to the license expiry. Please let me know if you need any assistance in relation to the license prolongation. For the avoidance of any doubts Tele2 will not take any action without your explicit request"*[99].

[98] Exhibit C-61.
[99] Exhibit C-62.

125. DigiTelCom did not respond to that message and Debevoise & Plimpton, Moscow based counsel for Tele2, sent it again on 31 May 2006 to be sure that it had been effectively received, since "*our client has received no response*"[100]. Ross Jacoby reacted on 9 June 2006 by proposing to Carl-Magnus Stenberg to share a lunch or a dinner the subsequent week[101]. Further to his meeting with Carl-Magnus Stenberg, Ross Jacoby wrote to Tele2 that *"during our meeting Carl-Magnus informed me that both CDMA and N-ANPS operations are no longer maintained by SPT. As it impacts our CDMA License Agreement, of course I find this news disturbing, and would have preferred that we had we known of this decision prior to it becoming effective. I explained that despite our readiness and desire, we could not, in the past, take over the operation and maintenance of the CDMA stations because both CDMA and N-ANPS share the same switching platform. At Tele2's request, it remained under Tele2's operational control. I further stated that this news significantly impacts our timetable and we would like to effect the takeover as soon as possible. We agreed with Carl-Magnus to set up a meeting in St. Petersburg prior to the commencement of his summer holidays. I'm presently re-arranging my travel plans to effect the same. During our discussion, it was explained to me that Telex [Tele2] would have no objections if we were to take over the operations of both standards in St. Petersburg. In addition, Carl-Magnus inquired whether we would consider taking over the remainder of Tele2's N-AMPS and/or TDM operations in Russia. Having discussed this matter with my colleagues, I would like to confirm that we would be interested in pursuing this proposal. In order to make our St. Petersburg meeting more productive, can you please advise how can we strike such an arrangement"*[102].

126. Johnny Svedberg replied in 26 June 2006 that *"your comments regarding the CDMA operation is surprising to me. In the past we let you know about the operation and the need to upgrade the network. At that time you elected not to take the cost quoted by Motorola. I feel that we have made all and more required as part of our agreement and we have also kept you informed about the situation. Also I would like to remind you that the overall arrangement as per the agreement was that you were supposed to be in the driving seat all the time and we were supposed to support you as per your instructions during the process"*[103]. As far as the projected sale of the N-AMPS operations was concerned, Johnny Svedberg confirmed that Tele2 *was "open to discuss such arrangement. The most important thing for us is that you can demonstrate the capability*

[100] Exhibit C-63.
[101] Exhibit C-64.
[102] Exhibit C-65.
[103] Exhibit C-65.

to undertake such operation and that we do not need to allocate any time or provide any resources"[104].

127. Ross Jacoby then met with Ian Reidy to discuss the status of the network and the issues raised by the incoming inspection. Further to that meeting, on 25 July 2006, Ian Reidy sent a long memorandum to Ross Jacoby[105]. As to the incoming inspection, the 25 July 2006 memorandum stated that *"we generally believe that we would pass the 'paper' inspection, although even here there could be certain risks as truly the system is not in commercial operation and the inspection could require for copies of customer contracts, tariffs, etc. to be provided. However, as we have discussed the more serious risk is in the event that the system cannot be restored and Rossvyaznadzor elects to undertake a 'full inspection'* [...]. *I recommend again that you take advice/input from your own Russian specialist license managers to see how they expect how Rossvyaznadzor would manage the inspection*". As to the technical issues raised by the situation of the network, Ian Reidy stated that; *"the switch itself is still operational since this continues to support the AMPS services. Also, there are a number of CDMA base stations still fully installed that we believe would work once the base station controller works. Hence, the core problem as previously advised is believed to be the base station controller located at Kantimiroskaya"*. As a consequence, Ian Reidy advised *to either replace the old and defaulting material or, alternatively, to use a borrowed base station.*

128. DigiTelCom does not appear to have responded to this 25 July 2006 memorandum. As a consequence, Ian Reidy sent on 18 August 2006 an e-mail to Ross Jacoby inquiring *"whether you still intend to send some CDMA specialist to try to restore the CDMA system ahead of the planned license inspection activities still scheduled for October"*[106].Ian Reidy renewed its request on 4 September 2006, adding *"there is a material risk that the CDMA license may be revoked as a result of the inspection"*.

129. Ross Jacoby and Ian Reidy met during the 18-22 September week to discuss the issues. Further to that meeting, Ian Reidy sent a message to Ross Jacoby whereby he stated that he expected the inspection to be 'paper' based rather than involving a physical checking of the system, and that he was preparing the necessary documentation for the inspection. Ian Reidy however stated that *"as advised at our meeting, it is not possible to provide certain of these documents (e.g. customer contracts) as the service as we know is not in*

[104] On the same day Yuri Dombrovsky sent to Ross Jacoby the locations of Tele2's AMPS operations, Exhibit C-77.
[105] Exhibit R-5.
[106] Exhibit R-5.

operation. Ultimately, as I feel I must again point out, this fact still constitutes a risk that the CDMA license may be revoked as a result of the inspection, but let us hope not". Finally, Ian Reidy confirmed Tele2 readiness to *"support the installation of a Qualcomm base station"* in order to facilitate the possibility of making/receiving test CDMA calls[107].

130. On 5 October 2006, Ross Jacoby advised Ian Reidy that *"we are making progress for the base station installation that we have discussed"*[108]. Ross Jacoby does not appear to have provided Tele2 with further comments regarding the base station installation.

131. The inspection appears to have taken place in October 2006[109]. As a result, the Ministry found that the licensee was in breach of its obligations for it had not *"provided any communication services for over three months"*[110]. At that point of time, the Ministry requested from SPT a letter providing explanations for that situation. The letter to the Ministry had to be submitted by 13 November 2006, 14:00 local time[111]. On the same day, Ian Reidy and Ross Jacoby exchanged drafts of the letter to the Ministry[112], and Ross Jacoby thanked him for "*the revised letter. Overall, it is a good one. Please find its re-draft with minor corrections, which hopefully meet your approval*"[113].

132. The draft approved by Ross Jacoby on 13 November 2006 reads as follows: *"Referring to your oral request please be informed that JSC "Sankt-Petersburg Telecom" does not provide services under the license number 9663 "Providing local telephone service with radio access" since July 2006 in view of the fact that the available equipment is not modern enough and due to temporary inability to offer competitive services to customers, which complicates attraction of subscribers. JSC "Sankt-Peterburg Telecom" is currently considering various options for providing communication services under the said license"*[114].

133. The letter as approved by Ross Jacoby was submitted on the same day to the Ministry[115].

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[107] Exhibit R-6.
[108] Exhibit R-6.
[109] R-I, § 151.
[110] Exhibit C-71.
[111] Exhibit R-22.
[112] Exhibits R-21 and R-8.
[113] Exhibit C-73.
[114] Exhibit R-8.
[115] See e-mail from Ian Reidy to Ross Jacoby Exhibit C-73: *"ref. the below and our subsequent telecon, I can confirm that this version of the letter has been submitted to Rossvyaznadzor"*.

134. Further to the letter submitted on 13 November 2006 to the Ministry, the latter issued on 17 November 2006 an improvement notice referring to the licensee's *"failure to render communication services for a period longer than three months"*[116]. The improvement notice requested the licensee to eliminate the violation no later than 17 December 2006.

L. DIGITELCOM AND TELCO'SDISCUSSIONS WITH ZTE, METROSVYAZ LTD., MOTOROLAAND LUCENT

135. In the course of 2005 and 2006, DigiTelCom and TelCo engaged in preliminary negotiations with certain supplier of telecommunication equipment and with a Russian telecommunications operator. A non-disclosure agreement was signed on 17 February 2005 with the equipment supplier ZTE[117]. Claimant also produced a Draft Memorandum of Understanding relating to the possible supply by ZTE to TelCo of "*telecommunication network equipment for the purpose of creating and implementing an experimental CDMA 2000 network in the 800 MHz bandwidth (the "Network") in the city of Saint Petersburg*"[118].

136. In March 2006, Ross Jacoby (on behalf of a company TKTel, Ltd.) engaged in discussions with a telecommunications operator Metrosvyaz *Ltd. "for the potential acquisition of Metrosvyaz's CDMA-800 operation conducted in the Russian Federation"*[119]. One of Metrosvyaz' assets referred to in the draft confidentiality agreement was ZAO RTK (Leningradskaya oblast "Petrosvyaz"), and part of the discussions involved the extension of a $100,000 loan to RTK, which entity was to the point of being dissolved for lack of funds[120].

137. Negotiations also took place from November 2006 with Motorola for the supply of two hard disks that had been found missing in the CDMA Network[121]. Finally, Claimants submitted a draft Memorandum of Understanding dated December 2006 between TelCo and Lucent Technologies for the supply of telecommunication network's equipment *"for the purposes of creating and implementing an experimental CDMA 20000 network"*[122].

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[116] Exhibit R-7.
[117] Exhibit C-47.
[118] Exhibit C-82.
[119] Exhibit C-67.
[120] Exhibit C-67, e-mail from Ross Jacoby dated 3 August 2006.
[121] Exhibit C-66.
[122] Exhibit C-83.

138. At the beginning of December 2006, Ross Jacoby discussed with Ian Reidy of Tele2 the possibility that SPT would grant to TelCo a limited power of attorney[123]. On 4 December 2006, Ross Jacoby again wrote to Ian Reidy to confirm that TelCo was DigiTelCom's nominee under the CDMA License Agreement and to request that Tele2 *"provide us with the necessary authority to deal with the matter at hand"*. The day after, Ross Jacoby specified the intended scope of the power of attorney that he was requesting: *"the bigger concern at the moment is not the ownership or the structure but our ability to interface with the regulatory authorities. As discussed, for this purpose, we would like a power of attorney for a limited purpose. It may be for an individual or a company. For example, SPT can give TelCo a limited power of attorney to represent it in regards to matters concerning the CDMA license and operations"*[124].

139. There however appears to have been some degree of ambiguity on the exact scope of the power of attorney requested by Ross Jacoby, as Ian Reidy wrote on 6 December 2006 that: "*part of our problem has been in understanding precisely how such PoA would be used. When you first raised this proposal, you mentioned possible usage in negotiations with suppliers, so we have especially considered this*". Ian Reidy in his message communicated that, having considered the matter, "*Tele2 feels that it would not be appropriate to issue such PoA. Under the SPA, DigiTelCom is now itself responsible for the maintenance of the CDMA Existing Network.*" In addition, Tele2did not want to *"be exposed in some way to paying for equipment/services for which it no longer has the right to use"*. Ian Reidy however reserved the possibility of a favorable answer should the scope of the request be clarified and recommended Ross Jacoby *"to prepare a draft of what you envisage and upon our receipt we shall assess, and possibly reconsider our decision"*[125].

140. Ross Jacoby responded the following day by stating that *"we are disappointed with your lawyer's viewpoint. As we understand, without the necessary apparent authority, it would be extremely difficult to operate the system. In the interest of moving things forward, I have, however, instructed our [legal] to come up with a solution that suits us all"*[126]. There is no material evidence in the record however that Ross Jacoby ever submitted a draft power of attorney to Ian Reidy. Nor did the parties discuss again that matter.

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[123] See e-mails from Ross Jacoby to Ian Reidy of 1 December 2006, R-4.
[124] Exhibit R-4.
[125] Exhibit R-4.
[126] Exhibit R-4.

M. THE SUSPENSION AND EXPIRY OF THE CDMA LICENSE

141. The time limit for the correction of the breaches imposed by the Ministry expired on 17 December 2006. On 14 December 2006, Tele2 requested Ross Jacoby to approve a draft letter to the Ministry applying for an extension of that time limit to 17 February 2007[127]. Ross Jacoby immediately approved the draft, which was sent to the Ministry on 15 December 2006[128].

142. On 26 December 2006, the Ministry replied by a letter that no extension of the time limit would be granted and informed that another inspection would be carried out from 18 to 28 December 2006 in order to verify the compliance with the 17 November 2006 Improvement Notice. The 26 December 2006 letter also requested SPT to provide *"the information on the number of subscribers on the local telephone communication network with the means of radio access"*. A copy of such communication was sent by Tele2 to Ross Jacoby on 28 December 2006[129]; in such communication, Victor Sadovnikov from Tele2 informed Ross Jacoby that "*the answer to this request will be mailed to you with the next letter*".

143. On 27 December 2006, Tele2 responded to the Ministry by sending a letter which terms were substantially identical to those of the letter which had been sent to the Ministry on 13 November 2006. The letter stated that: *"as of 12/27/2006 subscribers of the local telephone communication network suing* [using] *the means of radio access are absent due to the fact that the equipment present is not up-to date enough and it is temporary impossible to offer competitive services to the customers"*. A copy of Tele2's 27 December 2006 letter to the Ministry was sent by Victor Sadovnikov to Ross Jacoby on 29 December 2006[130].

144. On 27 December 2006, the Ministry issued a report stating that: *"SPT has not provided the service of local telephone communication using the means of radio access since July 2006 on the grounds of lack of demand for such service*[...]. *All base stations are switched off, no emission is registered*[...].*The Licensee has not provided any communication services for over three months*[...]. *No requirements of the Improvement*

[127] Exhibit C-81.
[128] Exhibit C-73 (page 5), see also C-81.
[129] Exhibit C-69.
[130] Exhibit C-70.

Notice [...] *were complied with"* and *"the licensing authority has the right to suspend the license"*[131].

145. On 30 December 2006, Ross Jacoby wrote to Victor Sadovnikov complaining about Tele2 decision to respond immediately to the Ministry's letter of 26 December 2006: *"I was extremely surprised at your haste in answering yesterday's GosSvyazNadzor's letter, especially after the "timeout" until the 29th. Although we did discuss a similar type of approach as one of the options, the letter was never agreed upon. It could have been just one option to pursue. Was there something new or urgent (expressed during your meeting with GosSvyazNadzor that I did not know about) which necessitated the next day reply?"*[132].

146. Ian Reidy responded on 9 January 2007by recalling that the extension of the time limit to comply with the 17 November 2006 Improvement Notice had been denied, and requesting his instructions as to what actions *"you now wish SPT to take on your behalf"*[133]. Ian Reidy wrote again to Ross Jacoby on 2 February 2007 and on 20 February 2007 to request instructions and to remind that the CDMA License would expire on 4 April 2007 and that it was unlikely to be extended without corrective actions[134].

147. On 1 March 2007, the Ministry notified to SPT its decision to suspend the CDMA License. On the same day, Tele2 informed DigiTelCom of such decision[135]. This 1 March suspension was ordered notwithstanding the fact that the CDMA License expired by its terms on 4 April 2007.

148. On 21 March 2007, Ian Reidy wrote to Ross Jacoby the following: *"I understand that there is currently some activity on-site to restore the CDMA system and that your engineer seems to have got the base station controller working and is in process of trying to establish calls. There is now only two weeks before the CDMA License expires on 04/04/07. Please advise of any actions you would now like SPT to take. I will await your instructions"*[136].

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[131] Exhibit C-71, CWS-1 Jacoby, § 115, C-II, p. 3 M.
[132] Exhibit C-72.
[133] Exhibit C-72.
[134] Exhibit R-11.
[135] Exhibit C-74.
[136] Exhibit C-68, p. 5.

149. Ross Jacoby responded on 27 March 2007 by informing Tele2 that (1) TelCo has been able to re-establish the base station controller but has been unable to establish phone calls, (2) he understood that Tele2 had de-commissioned the rest of the base stations, (3)he had contacts at the highest level in the Ministry who *"would be willing to entertain our proposal to install a new CDMA 2000 1X with EV-DO on a limited experimental basis"*, and (4) DigiTelCom were *"now looking to enter into a Memorandum of Understanding*" with the equipment supplier ZTE, but he now suggested that *"the MOU is to be between SPT and ZTE directly"*, requesting Tele2 approval to that effect. Finally, Mr. Jacoby asked that a license extension request be filed[137].

150. Ian Reidy responded the same day by stating that Tele2 *"may be willing to enter into such MoU with the Vendor providing such MoU is non-binding on SPT. In parallel, as we would see it there would be a MoU between SPT and TelCo Ltd. To accelerate a prompt conclusion to this, I propose that you send drafts of the MoU's for me to discuss with our legal team here"*. Ian Reidy also confirmedTele2's readiness to file an application to extend the license although he expressed doubts as to its outcome since there are *"no grounds to do so as Rossvyaznadzor have judged that we are not satisfying the current license conditions as we have not yet resolved the stated violations."* In absence of a reply, Ian Reidy wrote again on 30 March 2007 to inform Ross Jacoby that the extension application would be filed on the same day and recalled that Tele2 was waiting to hear from Ross Jacoby as to the draft MoU[138].

151. Ross Jacoby responded on 30 March by stating that *"we are in the process of working out the wording of the MoU, which is, of course, non-binding. We will send you a draft when it is available, hopefully early next"*[139]. On 31 March 2007, Ian Ready informed that he was waiting for the draft MoU and confirmed that the extension had been requested. A copy of the application was sent by Ian Ready to Ross Jacoby on 4 April 2007[140].

152. On 10 August 2007, Ian Reidy informed Ross Jacoby of the Ministry's decision to deny the application for extension[141].

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[137] Exhibit C-68, p. 4.
[138] Exhibit C-68, pp. 3-4.
[139] Exhibit C-68, p. 2.
[140] Exhibit C-68, p. 1.
[141] Exhibit C-75, p. 1.

153. There is no evidence of further communications between the parties until December 2007, nor does Ross Jacoby appear to have ever submitted a draft MoU to Tele2.

154. On 11 December 2007, Ian Ready sent the following communication to Ross Jacoby: *"I write in follow-up to the below to advise you of the actions I now plan to make concerning the CDMA system. As you are already aware: (a) the original license #9663 expired on 04/04/07 (b)Rossvyaznadzor have advised us (in their letter dated 28/05/07) that the license cannot be extended as such telephony service provided by radio access is not present in the Federal List of Services. Given this, I advise for your information that: 1. the process will commence to de-install the CDMA BS and ancillary equipment from sites to avoid further unnecessary rental costs. I plan for this activity to be completed by 31/01/08 latest. The CDMA equipment will be stored initially in our central stores facility whilst the decision is taken what to do with it. 2. the process will commence to formally wind-up SPT subsidiary company 'Multicom' (which at one stage had been envisaged as a possible vehicle to which to transfer the CDMA license)"*[142].

155. DigiTelCom/TelCo does not appear to have responded to Tele2's 11 December 2007 letter.

156. Tele2 closed its N-AMPS service on April 17, 2008, having migrated all customers to the GSM network, as it appears from a 13 August 2008 e-mail of Ian Reidy to Ross Jacoby: *"I write to inform you that Tele2-SPb formally closed its AMPS service on 17th April this year after having completed the migration of all remaining customers to our GSM service. We are now preparing plans to de-install and to physically dispose of all the AMPS switching equipment which we expect to complete by the end of September 2008. Although the CDMA license has long since expired, I still wanted to advise you of our plan to dispose of this switch as you will of course recall that this switch originally supported both AMPS and CDMA services. I also inform that we plan to de-install and similarly dispose of all remaining CDMA equipment (e.g. base station controllers) installed at the Kantemirovskaya site during the same period. This logically completes the previous process to de-install the CDMA-BS from sites advised in my below e-mail dated 11 December 2007. In the event that you have a potential requirement for any of this CDMA equipment for use on other projects (whether switching or controllers or BS), then please advise me prior to 29th August 2008 so that we can agree terms and arrange an appropriate de-installation/packing/storage program. With this notice, I*

[142]Exhibit C-75.

consider that all our obligations under the Agreement for the operation, use & transfer of the CDMA license dated 15th July 2003 have been fulfilled to the fullest extent which was possible. It is disappointing that despite our best joint-efforts, we were unable to extend the license due to such telephony service provided by radio access is not present in the Federal List of Services"[143].

157. Ian Reidy and Ross Jacoby appear to have met on 24 September 2008. Further to that meeting, Ian Reidy informed that *"all formalities have already been completed to return this spectrum to the state following closure of our AMPS service"*, and that *"the process to dispose of remaining AMPS and CDMA equipment is already at an advanced stage and will be completed shortly"*. Ian Reidy and Ross Jacoby also appear to have discussed the Roaming Agreement, and Ian Reidy advised Ross Jacoby that *"the specific 5 year period allowing DigiTelCom to designate operators to which to apply this agreement has already elapsed (Clause 1.12)"*[144].

158. Mr. Jacoby replied to Mr. Reidy that DigiTelCom had duly notified Tele2 of its designated Operators, and Mr. Reidy responded that Mr. Jacoby would have to discuss the matter with Tele2's CEO Donna Cordner but that the latter would not be available until the new year[145]. Mr. Jacoby submitted, in this respect, that there were *"several failed attempts to schedule with Ms. Cordner in early 2009."*[146]

159. On October 28, 2008, Mr. Reidy from Tele2 wrote to Mr. Jacoby asserting that DigiTelCom's rights under the Roaming Agreement had lapsed because the agreement specified a 5-year period allowing DigiTelCom to designate operators, which period had already lapsed[147].

VIII. Summary of the Parties' Positions

160. The Arbitral Tribunal will first recall the Parties' arguments concerning the joinder (**A**), and then the Arbitral Tribunal's jurisdiction (**B**). The Arbitral Tribunal will then summarize the parties' arguments on the merits (**C**).

[143] Exhibit C-76.
[144] Exhibit C-79.
[145] Exhibit C-80.
[146] CWS-1 Jacoby, § 140.
[147] Exhibit C-79.

A. JOINDER

1- Respondent's position

161. Respondent objects to the joinder of the three new claimants by DigiTelCom[148], which amounts to consolidating different arbitrations without its consent, a situation that will make the award unenforceable under the New York Convention[149].

162. The rules applicable to this arbitration (the ICDR Rules, the FAA and the New York Convention[150]) do not provide for any right to join new parties without all parties' agreement[151].

2- Claimants' position

163. Claimants maintains that Joinder is needed in this case to ensure that all necessary parties will participate in the arbitration, and in order to prevent future disputes on whether DigiTelCom is the proper party to recover any proven damages. There would not be any practical value in forcing the joined parties to commence separate proceedings when their rights derive from the same contracts.

164. According to the Claimants, the Arbitral Tribunal has discretion to consolidate multiple claims into one single arbitration[152]. In this case, the different claims concern the same parties and derive from the same facts. In addition, Tele2 consented to arbitrate with the joined parties when it signed agreements expressly contemplating that TelCo, KATEL and SoTel would beneficiate from them. Refusing the joinder would, in addition, prejudice the Claimants[153].

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[148] R-I, §§ 37-38; R-II, § 146.
[149] R-II, § 144.
[150] R-II, §§ 147-151.
[151] R-I, §§ 35-36; R-II, § 146.
[152] *Blimpie Int'l, Inc. V. Blimpie of the Keys*(Claimants' Response on jurisdiction, Annex 2), *Shaw's Supermarkets, Inc. v. United Food and Commercial Workers Union* (Claimants' Response on jurisdiction Annex 7).
[153] Claimants' Response on Jurisdiction, p. 9.

B. JURISDICTION

1- Respondent's Position

165. According to Respondent, SoTel, KATEL, and with respect to any claim under the CDMA License Agreement, DigiTelCom, are not parties to, and have no rights under, any arbitration agreement entered into by Tele2. Consequently, Tele2 requests that such claims be dismissed by the Arbitral Tribunal for lack of jurisdiction.

a) The SPA

166. Respondent affirms that the Arbitral Tribunal lacks jurisdiction over claims brought under the SPA by TelCo, KATEL and SoTel.

167. The only parties to the SPA are Tele2 and DigiTelCom, and even if TelCo, KATEL and SoTel were "third party beneficiaries", which Tele2 denies[154], such situation would not give to these companies any right under the Arbitration Clause.

168. The exclusion of TelCo, KATEL and SoTel is justified based on Clause 24 of the SPA, providing that *"the parties intend that a person who is not a party to this agreement has no right hereunder to enforce any term of this Agreement"*. Clause 15 expressly prohibits the assignment of rights, obligations and benefits[155].

b) The CDMA License Agreement

169. The Arbitral Tribunal has no jurisdiction over claims brought by DigiTelCom under the CDMA License Agreement[156]. It is in fact common ground that, pursuant to the last sentence of Clause 8.1 of the CDMA License Agreement, DigiTelCom had the right to assign to TelCo all of its rights under said Agreement, and did so[157].

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[154] Respondent states that a party which asserts rights as a third party beneficiary must demonstrate: *"(1) the existence of a valid and binding contract between other parties, (2) that the contract was intended for his benefit and (3) that the benefit to him is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate him if the benefit is lost"* R-I, §15; RL-1; RL-2.
[155] R-I, § 16.
[156] R-I, § 27-31.
[157] Statement of Defence, § 6; R-I, § 28, C-I, p. 7.

170. Since the assignment, DigiTelCom is no longer a party to the CDMA License Agreement and has no rights, benefits, obligations or liabilities under it. It can therefore not assert any substantive rights under said Agreement. Clause 15 of the CDMA License Agreement provides, to that effect, that: *"except to the extent expressly set forth herein, the parties intend that a person who is not a party to this Agreement has no rights hereunder to enforce any term of this Agreement"*.

171. Tele2's only counterparty under the CDMA License Agreement is TelCo. However, TelCo cannot bring claims under such Agreement against Tele2 because it has no right to join as claimant in this arbitration. Accordingly, all claims based on the CDMA License Agreement must be dismissed for lack of jurisdiction[158].

c) The Roaming Agreement

172. Respondent avers that Tele2 and DigiTelCom are the only parties to the Roaming Agreement, and that the Arbitral Tribunal has no jurisdiction on claims brought by KATEL and SoTel under said agreement[159].

173. Clause 9.1 of the Roaming Agreement prohibits its assignment or the assignment of the rights and obligations arising under or out of the same. Clause 17 also provides that *"except to the extent expressly set forth herein, the parties intend that a person who is not a party to this Agreement has no right to enforce any term of this Agreement*". Even if KATEL and SoTel were the Operators designated by DigiTelCom, the situation would be the same for under Clause 1.12 of the Roaming Agreement. Under that Agreement, the designated Operators should have entered into separate agreements with Tele2, which they failed to do.

174. DigiTelCom's reliance on the principle of "union in interests" between the Claimant and TelCo, KATEL and SoTel is ill-grounded for such principle is only used in torts and this is a contractual case. In addition, parties are only united in interest when the interest is such that they will stand or fall together and judgment against one will similarly affect the other[160]; there is no such unity in the instant case[161].

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[158] R-I, § 32.
[159] R-I, §§ 19-26.
[160] R-I, § 24; RL-6.
[161] *Anna Raschel v. Benito Rish et al.*(RL-7); *Ramsaywack v. Louis Allis Corp., Inc.* (RL-8).

175. Respondent in consequence avers that there is no arbitration agreement between Tele2 and SoTel, nor between Tele2 and KATEL, for said companies' claims must also be dismissed for lack of jurisdiction[162].

2- Claimants' Position

a) The CDMA License Agreement

176. Claimants submit in summary, that the Arbitral Tribunal has jurisdiction with respect to TelCo[163], and that if it has not, then DigiTelCom "*as the signatory of the agreement, nonetheless has the ability to represent the interests of its Nominee*"[164].

b) The Roaming Agreement

177. The Roaming Agreement specifically contemplates that DigiTelCom would designate two Operators and that Tele2 would thereafter enter into roaming agreements containing the same or similar terms as the Roaming Agreement[165]. DigiTelCom accordingly designated KATEL and SoTel as operators. According to Claimants, DigiTelCom however remained a party to the Roaming Agreement and *"demands arbitration as to its claims arising from that agreement"*[166].

178. As to KATEL and SoTel, they are third party beneficiaries of the Roaming Agreement, and are as such entitled to arbitrate their claims against Tele2 under the Arbitration Clause contained therein. This is in particular so because the issues in dispute under the Roaming Agreement are intertwined with those in dispute under the CMDA License Agreement[167].

179. Respondent makes reference to Clause 9.1 of the Roaming Agreement, prohibiting assignments. Claimants however note that Clause 17 of the Roaming Agreement (excluding non-parties) is only provided "*except to the extent expressly set forth*

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[162] R-II, p. 68-69.
[163] *Fedotov v. Peter T. Roach and Associates* (Claimants' Response on Jurisdiction, Annex 3).
[164] Claimants' Response on Jurisdiction, p. 4.
[165] Roaming Agreement, clauses 1.12 and 2.10.
[166] Claimants' Response on Jurisdiction, p. 5, § 2.
[167] Claimants' Response on Jurisdiction, p. 5; *Key International Manufacturing, Inc. v. Morse/Diesel, Inc.* (Claimants' Response on Jurisdiction, Annex 6); *Thomson-CSF S.A. v. American Arbitration Association*(Claimants' response on Jurisdiction, Annex 9);*Spear, Leeds & Kellogg v. Central Life Assurance Company* (Claimants' Response on Jurisdiction, Annex 8); *Fluor Daniel Intercontinental, Inc. v. General Electric co.* (Claimants' Response on Jurisdiction, Annex 4).

herein". Given that the designation of Operators was expressly contemplated in the Roaming Agreement, KATEL and SoTel, as "*intended third party beneficiaries*"[168], have the right to arbitrate their claims under said agreement[169].

C. MERITS

1- Claimants' Position

180. Claimants submit that Respondent breached several express provisions of (1.1) the SPA, (1.2) the CDMA License Agreement, and (1.3) the Roaming Agreement. Claimants also allege (1.4) that Respondent breached the implied covenant of good faith and fair dealing. Claimants further submit (1.5) that the Arbitral Tribunal should draw inferences against the Respondent based on the fact that it failed to produce witness evidence to support its positions with its first submission. Claimants finally assert that (1.6) each of these breaches caused foreseeable and quantifiable damages that Respondent should compensate, or that (1.7), as an alternative to damages, the SPA should be rescinded[170].

1.1-Tele2 breached the SPA

181. By failing to fulfill its obligations under the CDMA License Agreement and the Roaming Agreement, Tele2 breached the SPA's provisions as well as the implied covenant of good faith and fair dealing[171].

1.2-Tele2 breached the CDMA License Agreement

182. Claimants submit that, while pretending to cooperate, Respondent refused to allow DigiTelCom access to the CDMA network and precluded DigiTelCom from gaining ownership or control of the CDMA License, ultimately provoking the suspension and subsequent expiry with no extension of the CDMA License in March and April, respectively, 2007.

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[168] Claimants' Response on Jurisdiction, p. 7.
[169] Claimants' Response on Jurisdiction, p. 6-7; C-1(c) clause 21.2 ; *Key International Manufacturing, Inc. v. Morse/Diesel, Inc.* (Claimants' Response on Jurisdiction, Annex 6).; *Board of Managers of Riverview at College Point Condominium III v. Schorr Bros. development Corp.*(Claimants' Response on Jurisdiction, Annex 1).
[170] C-I, p. 18; C-II, p. 27.
[171] C-I, p. 6; C-II, p. 19.

183. According to Claimants, Tele2"*had two principal obligations, in the following order of importance: (1) maintain the CDMA network's functionality and grant DigiTelCom immediate access and control of that network, until the CDMA License could be transferred to DigiTelCom, thus allowing it to secure its full and exclusive use, benefit and enjoyment, including commercial operation; and (2) ultimately effect a transfer of the CDMA License to the SPT subsidiary (MultiCom) that was to be acquired by DigiTelCom, although all parties acknowledged that a license transfer may not have been possible*"[172].

184. As to the requirement that DigiTelCom find a commercial arrangement with Tele2,pursuant to section 2.3 of the CDMA License Agreement, to either purchase or lease the CDMA Existing Network, Claimants aver that such agreement was indeed concluded and was the Lease Agreement[173]. According to the Claimants, "*the entire purpose of the MultiCom lease was to ensure that, if the transaction unfolded as planned, the same entity would have rights to operations, the license and the equipment*"[174].

185. Tele2's lack of support is to be explained by the fact that Tele2 was too busy developing its own GSMstrategy[175], as well as by the constant changes of executives and directors of SPT and Tele2. Finally, according to Claimants, Tele2 feared that DigiTelCom would become a potential competitor in Russia[176].

a) Obligation to permit DigiTelCom the use, access and control of the CDMA Network (Sections 2.1, 2.4 and 3.2 of the CDMA License Agreement)

186. Claimants aver that Respondent breached this obligation by "*denying access to CDMA documentation (i); denying access to the CDMA network and equipment, including the Switch (ii); directing DigiTelCom to cease all efforts to take control of the operation and maintenance of the CDMA system (iii); shutting down the CDMA network altogether (iv); and refusing to allow DigiTelCom to negotiate with regulatory*

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[172] CPHB-II, p. 3.
[173]Exhibit C-108; Transcript Jacoby pp. 175-176, 238; C-61; CPHB-II, p. 4 "*Because DigiTelCom was to acquire ownership of MultiCom, the necessary commercial arrangement to operate the existing network was in place, and Claimant would be the beneficial owner of the CDMA License in the event it was eventually transferred to that entity*".
[174] CPHB-II, p. 6
[175] C-II; p. 5-7; C-94.
[176] C-II, pp. 7-8.

authorities and failing to support discussions with equipment suppliers with respect to the CDMA network and license (v)"[177].

i) Tele2 denied access to documentation

187. According to Claimants, SPT and Tele2 refused to provide the technical and regulatory documentation necessary for DigiTelCom to evaluate, operate, maintain and upgrade the CDMA network despite DigiTelCom multiple requests[178].Claimants submit that they tried to obtain such documentation since early 2004[179], but that Tele2 only made it partially available in July 2004[180].

ii) Tele2 denied access to the Base Stations and the Network

188. SPT and Tele2 refused to transfer control of the network to DigiTelCom and impeded DigiTelCom's access to the CDMA base stations and network equipment, which rendered DigiTelCom unable to inspect, repair, maintain or upgrade the CDMA system[181].

iii) Tele2 denied access to the Switch

189. From the date of the CDMA License Agreement, Tele2 refused at all times to allow DigiTelCom access to the switching station which controlled the Existing CDMA Network[182]. According to Claimants, the Switch is *"the brain of the network"*, and *"without a switch (or a part thereof), a network cannot be operated, maintained or even exist"*. As a result, the lack of access to the Switch rendered DigiTelCom unable to operate and maintain the Existing CDMA Network[183].

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[177] C-II, p.13.
[178] CWS-1 Jacoby, §§ 61-70; CWS-2 Palagi, §§ 22-23; CWS-3 Tereshchenko, §§ 31-42; CWS-4 Chepizhenko, §§ 32-34, 37-40; CWS-5 Jacoby 18(q), 18(s); CWS-7 Chepizhenko §§ 13, 18-19, 36.
[179] Exhibits C-16, C-31.
[180] Exhibits C-32, C-34 to C-40; CWS-1 Jacoby, §§ 61-70; CWS-3 Tereshchenko, § 31-42; CPHB-I, pp. 4 and 12.
[181] CWS-4 Chepizhenko, §§ 28, 30; CWS-5 Jacoby, §§ 12-13, 18; CWS-7 Chepizhenko, §§ 9-13, 17, 21-23; CPHB-I, pp. 4-5, 10; Transcript Stenberg, pp. 305, 314-315; Exhibits C-16; C-17; C-18; C-20; Transcript Chepizhenko, pp. 465-466.
[182] C-I, p. 8; CWS-1 Jacoby, §§ 47-49; CWS-7 Chepizhenko, §§ 14, 15, 17.
[183] C-I, p. 8; CWS-1 Jacoby, §§ 45-46; CWS-5 Jacoby, §§ 14-17; CWS-4 Chepizhenko, § 47; Transcript Chepizhenko, pp. 464:17-466:11.

iv) Tele2 directed Claimants to stop trying to access and maintaining the Existing CDMA Network

190. According to the Claimants, in July 2004, Yuri Dombrovsky, who was Tele2's Director, called Mr. Jacoby to ask him to stop trying to access the network[184].DigiTelCom allegedly agreed to proceed as requested by Tele2 because it did not want to litigate and was trusting Mr. Dombrovsky, who said that there were good chances to obtain the transfer of the CDMA License[185].

v) Tele2 did not provide TelCo with SPT's power of attorney to discuss with Russian authorities and to negotiate with equipment suppliers

191. According to Claimants, SPT and Tele2 refused to allow DigiTelCom to meet and have contacts directly with the Ministry on issues relating to the CDMA License and network[186].

192. Tele2 also failed to support discussions with equipment suppliers with respect to the CDMA network and CDMA License[187], thus frustrating DigiTelCom's efforts to restore the network. While DigiTelCom attempted to obtain an alternate Switch from Metrosvyaz/RTK, Tele2 refused to assist and cooperate in the technical discussions required to that effect[188].DigiTelCom also tried to import telecommunications equipment from Lucent Technologies and ZTE during 2006 and 2007, and negotiated a Memorandum of Understanding ("MOU") with those companies[189], but the negotiations failed because Tele2 denied DigiTelCom a power of attorney to negotiate on SPT's behalf with regard to the CDMA License and network.

193. Such conduct hindered DigiTelCom's ability to revive the network or secure a transfer of the CDMA License.

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[184] CWS-1 Jacoby, § 75.
[185] CWS-1 Jacoby, §§ 77-78; Exhibit C-57; Exhibit C-58; CPHB-I, p. 5; Transcript Stenberg, pp. 353, 433, 452; Dombrovsky, pp. 528-532.
[186] CWS-1 Jacoby, § 106; CWS-5 Jacoby, § 33; C-II, p. 3 (K).
[187] CWS-1 Jacoby, §§ 107-109.
[188] CWS-1 Jacoby, §107; Exhibit C-67.
[189] Exhibits C-82, C-83, C-68.

b) Obligation to maintain the Switch and a "live" Network (Sections 2.4, 2.8 and 3.2 of the CDMA License Agreement)

194. According to the Claimants, SPT and Tele2 did not maintain the network in good order, and ultimately shut it down some months before the Ministry was to inspect it in October 2006[190].

195. Tele2 first informed DigiTelCom that a problem had occurred on the network on 14 January 2004, when the base site controller broke down[191]. DigiTelCom avers to have then, thanks to its own human and financial resources, succeeded to restore the network's functionality[192].

196. On 16 May 2006 Tele2again informed DigiTelCom that *"the network is not operational"* and that *"SPT has no internal resources to put the system on air"*[193]. DigiTelCom submits that, after gaining access to the equipment, it realized that Tele2 had not only *"killed the switch"*, but also *"shut down the base stations and disengaged the base station controller, all without notice to DigiTelCom"*[194].

197. According to Claimants, the network was so poorly maintained by Tele2 that by 2006, when Tele2 shut it down, it was irreversibly non-functional despite DigiTelCom efforts to restore it, by locating Motorola engineers and obtaining spare parts and equipment until April 2007[195].

198. According to Claimants, *"if DigiTelCom had a live network, the Ministry would have either permitted the continued operation of the CDMA License, or awarded DigiTelCom an alternate path. Tele2 turned off the network so that it was no longer live and, as a result, the Ministry did not award DigiTelCom any other license or alternate path forward"*[196].

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[190] CWS-1 Jacoby, §§97-102, 113-117; CWS-5 Jacoby, §§ 30-32; CWS-7 Chepizhenko, §§25-35; CPHB-I, p. 14.
[191] C-8, CPHB-I, p. 4
[192] Transcript Jacoby p. 182; Stenberg pp. 310-311; Chepizhenko pp. 487-488, 507.
[193] Exhibit C-62.
[194] CPHB-I, p. 14; CWS-7 Chepizhenko, § 32; Transcript Chepizhenko, pp. 476-477.
[195] C-II, p. 3 (J); CWS-1 Jacoby, § 103; CWS-7 Chepizhenko, § 32; Exhibit C-66; CPHB-I, p. 4; Transcript Chepizhenko, pp. 476-477.
[196] C-II, p. 4 (Q); CWS-1 Jacoby, § 126; See also Transcript Tereshchenko, pp. 633-636; Sadler, pp. PP693, 695, 815; Chandler, pp. 823-824.

c) Obligation to direct SPT to cooperate and assist DigiTelCom (Sections2.5 and 3.1 of the CDMA License Agreement)

199. Claimants assert that despite numerous requests, SPT failed without any valid explanation to sign the CDMA License Agreement. SPT only signed the CDMA License Agreement on February 27, 2004, seven months after its execution by DigiTelCom and after many frustrated attempts and efforts from DigiTelCom's Directors and employees, including Ms. Nashinitsyna, Mr. Palagi, Mr. Donat and Mr. Tereshchenko[197].

200. Claimants later discovered that SPT's General Director was instructed by Tele2 not to sign the CDMA License Agreement and not to proceed with the CDMA License Agreement[198].

201. According to Claimants, the signature of SPT was necessary before the transaction could proceed, because without a written or verbal authorization from Tele2 or SPT, SPT`s technicians would not allow any meaningful access to DigiTelCom's technical team[199].

d) Obligation to involve DigiTelCom in the communications wthe Ministry (Section 2.5 of the CDMA License Agreement)

202. Claimants assert that Respondent breached its obligation to involve DigiTelCom in the communications with the Ministry in at least two occasions: first, when SPT responded without DigiTelCom's previous knowledge or authorization to the Inspection Service after receiving the Improvement Notice of 2003, and in 2006 when SPT responded yet again without DigiTelCom authorization to a letter of the Ministry requesting the number of subscribers[200].

i) The 2003 letter

203. Claimants allege that Tele2 did not inform DigiTelCom of the 2003 Improvement Notice, and that without asking DigiTelCom's approbation, SPT's Director, Serguei

[197] C-II, p.2 (A); CWS-1 Jacoby, §§32-34; CWS-3 Tereshchenko, §§22-30; CPHB-I, pp. 7-8; C-21; C27.
[198] C-II, p. 3 (H) and p. 14(3); CWS-1 Jacoby, §§84-86; CWS-3 Tereshchenko, §§48-49; CWS-5 Jacoby, §26; CWS-8 Zakhariev, §§13-14, 17, 19-20; CPHB-I, pp. 9-10.
[199] CWS-1 Jacoby, §32; CWS-5 Jacoby, §§12-14.
[200] C-II, p. 14.

Sukharev, sent the 22 December 2003 letter informing the Ministry that: "*the stockholders of Saint Petersburg Telecom OJSC made a decision to postpone further development of the radio access project within 800 MHz range. Accordingly, further increase of the network numbering capacity and acquisition of public pay telephones in the nearest time is not planned*"[201].According to Claimants, such letter "*conveyed the false message that the CDMA network was sitting idle and stagnant*" and "*was the beginning of Tele2 efforts to cause the cancellation of the CDMA licence*"[202].

204. In its first PHB, Claimants adds that even if each of those violations occurred on "*SPT's watch*", the latter took no steps to remediate them before the SPA Agreement was executed. According to the Claimants, the "*violations identified in the Improvement Notice were insignificant and easily resolvable*"[203].

ii) The 2006 letter

205. Claimants aver that Respondent again breached its obligation under section 2.5 of the CDMA License Agreement in 2006 when SPT wrote to the Ministry, without DigiTelCom knowledge or consent[204], that *"subscribers of the local telephone communication network suing the means of radio access are absent due to the fact that the equipment present is not up-to-date enough and it is temporary impossible to offer competitive services to the customers"*[205]. Claimants aver that such letter had only been approved *"as a draft, and as a concept for further discussion and evaluation"*, and that they *"never authorized Tele2 to send the letter"* to the Ministry[206].

1.3- Tele2 breached the Roaming Agreement

206. Claimants assert to have notified, on 6 October 2004, its designation of KATEL and SoTel as Operators of the Roaming Agreement, and that Tele2 failed to acknowledge such notice and to comply with its contractual obligations[207]. In particular, Tele2breached the Roaming Agreement by failing to nominate a committee member to start negotiations with the aim of entering into roaming agreements with KATEL and

[201] Exhibits C-6 and C-7.
[202] CWS-1 Jacoby, §§38-42.
[203] CPHB-I, p. 6-7; Transcript Stenberg, pp. 405-406; Dombrovsky, p. 535; Sadler pp. 826-827.
[204] C-I, p. 8; C-II, p. 14; CWS-1 Jacoby, §80.
[205] Exhibit C-70.
[206] CWS-5 Jacoby, §41; Transcript Jacoby, pp. 204-205.
[207] C-I, p. 4, § 2.

SoTel. In testimony, Mr. Jacoby asserted that KATEL and SoTel had been positioned to begin roaming "*in 2007-2008*"[208].

207. Claimants submit that Respondent failed to provide evidence that it did not receive the notice, while DigiTelCom proved Tele2's receipt by producing the Federal Express waybill[209]and Mr. Palagi's witness statement[210].According to Claimants, under New York law, the mailing of a letter "*creates a presumption that the addressee received it*"[211].

1.4- Claims relating to Tele2's breach of the implied covenant of good faith and fair dealing

208. Claimants aver that Respondent breached the recitals of the agreements in dispute[212], as well as the implied covenant of good faith and fair dealing[213].Tele2's breach of its implied duty of good faith and fair dealing is not a separate cause of action, but rather an instance of Tele2's breach of contract[214].

1.5-Adverse inference for not producing relevant witnesses

209. Generally, Claimants invoke the application of the "*missing witness charge*" pattern instruction[215]. Apart from Yuri Dombrovsky's five pages statement[216], Respondent's factual arguments are unsupported by any witness evidence. Therefore, the Arbitral Tribunal should draw the strongest possible negative inferences from Tele2's failure to call any witnesses who might shed light on key facts in dispute.

210. Claimants also submit that the only two witnesses offered by Respondent are not credible: Mr. Stenberg because he does not have personal knowledge of the critical facts of the case, and Mr. Dombrovsky because as a "*lobbyist*" he lacks understanding and knowledge regarding the technical aspects of the case[217].

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[208] CWS-1, Jacoby, § 135, C-II, p. 4.
[209]Exhibit C-52.
[210] C-II, p.16 § 1; CWS-6 Palagi; *Lankler Siffert & Wohl LLP v. Rossi*(CL-39);CPHB-I, p. 17, footnote 15.
[211]*Bronia Inc. v. Ho*(CL-12), 873 F Supp. 854, 859 (S.D.N.Y 1995).
[212] C-II, pp. 19-20, C-1 (a); C-1 (b) and C-1 (c).
[213] C-II, pp. 19-20.
[214] C-II, p.18.
[215]C-II, pp. 9-11, *"A party is not required to call any particular person as a witness. However, the failure to call a certain person as a witness may be the basis for an inference against the party not calling the witness [...]"People v. Gonzalez* (CL-49); *Cianciola v. New York*(CL-18), *People v. Savinon* (CL-51); *People v. Kitching* (CL-50).
[216] C-II, § 2; RWS-1 Dombrovsky.
[217]CPHB-I, pp. 29-34.

1.6- The Damages

211. Claimants submit that under New York Law, damages for breach of contract include direct damages and consequential damages, and to recover damages for lost profits, a party must show that:(i) the damages were caused by the breach, (ii) the particular damages were within the contemplation of the parties to the contract at the time, and (iii) the lost profits can be calculated with reasonable certainty[218].

212. According to Claimants, Tele2's breaches caused damages to Claimants, as calculated by Claimants' experts Messrs. Sadler and Chandler.

a) Damages related to the CDMA License Agreement

213. DigiTelCom suffered damages in relation with the CDMA License Agreement in an amount of US$ 36,248,392, corresponding to the loss incurred by DigiTelCom due the impossibility to set up a CDMA-based wireless network in St. Petersburg[219].

214. For the purposes of calculation, Mr. Chandler assumes that the start date for the damages related to the CDMA License Agreement is 1 January 2004.

215. In response to Respondent's arguments regarding the non-recovery of lost profits in new ventures, Claimants affirm that although there is a heightened standard of proof, there is no bar to recovery in such cases[220] for courts have recognized that *"the new business rule is not a per se rule forbidding the award of lost profits damages to new businesses"* and have affirmed arbitration awards of such damages[221]. Further, the characterization of DigiTelCom's venture as a "*new business*" is wrong for said company has developed and operated successful telecom operations in the former Soviet Union, including Central Asia, for many years, and its experience and knowledge of the industry made its plan *"far more likely to success than a typical new venture"*[222].

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[218] C-I, p. 10; C-II, pp.20-21; *Ashland Mgmt. Inc. v. Janien*(CL-8).
[219] CEWS-2, §8.
[220] C-II, p. 22;*Jewell-Rung Agency, Inc. v. Haddad Organization, Ltd.* (CL-35).
[221] C-II, p. 22-23; *Int'l Telepassport Corp. v. USFI, Inc.* 89 F.3d 82, 85-86 (Rd Cir. 1996) (CL-34); *Yusuf Ahmed Alghnim & Sons, W.L.L. v. Toys "R" Us, Inc.*(CL-65); *Westerbeke Corp. v. Daihatsu Motor Co., Ltd.* (CL-64).
[222] C-II, p. 23; CWS-5 Jacoby, §§ 2-11; CWS-9 Buevich; *Hirschfeld v. IC Securiteis Inc.* (CL-33).

b) Damages related to the Roaming Agreement

216. DigiTelCom suffered damages deriving from Tele2's breaches of the Roaming Agreement in an amount of US$ 6,400,646[223], i.e. the lost value of the roaming agreements that the Operators appointed by DigiTelCom should have signed with Tele2. For the purposes of calculation, Mr. Chandler assumes that the start date for the damages related to the Roaming Agreement is 1 January 2005.

217. As to the limitation of liability provided by the Roaming Agreement to US$ 1,000,000[224], Claimants assert that it is not applicable "*considering Tele2's willful and blatant disregard for its contractual obligations and for the rights of DigiTelCom*"[225].

218. According to Claimants, New York's public policy does not allow an unlimited application of such a limitation[226]. Therefore, despite the purported limitation of liability, DigiTelCom is entitled to recover all of the damages it suffered as a result of Tele2 breaches of the Roaming Agreement. Even is such limitation were applicable, Claimants would still be entitled to equitable relief[227] or be entitled to specific performance in the form of a decision by the Arbitral Tribunal that Tele2 is obligated to provide certain roaming rights at special rates[228].

c) Opportunity Costs

219. Alternatively, Claimants submit that DigiTelCom's losses can be assessed on the basis of the value of the stock that it sold to Tele2 pursuant to the SPA, as well as of the value of DigiTelCom's right of first refusal[229]. According to Mr. Chandler, such value is from 317 to 686 M US$[230].

d) The burden of uncertainty as to the amount of damages is on Tele2

220. Claimants asserts that the long-standing rule in New York law is that "*when the existence of damage is certain, and the only uncertainty is as to its amount, the plaintiff*

[223] CEWS-2, § 8.
[224] Exhibit C-1(c) Clause 20.
[225] C-I, pp. 12-13; *Sommer v. Federal Signal Corp.* (CL-58); *Gross v. Sweet* (CL-31); *Graphic Scanning Corp. v. Citibank* (CL-30); CPHB-I, pp. 40-41.
[226] *Graphic Scanning Corp. v. Citibank,* §26(CL-30).
[227] Exhibit C-1(c) Clause 13.
[228] C-I, p. 13.
[229] CEW-2, §§ 4, 12.
[230] CEWS-2, § 12.

will not be denied a recovery of substantial damages" and *"the burden of uncertainty as to the amount of damage is upon the wrongdoer"*[231].Claimants aver that they have established causation and the burden of uncertainty is therefore on Tele2[232].Tele2 failed to provide evidence that the Claimants did not suffer the losses established by Mr. Chandler.

e) Prejudgment interest

221. According to the Claimants, under New York Law, the awarding of prejudgment interest in contract claims is mandatory[233]and *"shall be computed from the earliest ascertainable date the cause of action existed*", or from a *"single reasonable intermediate date*" if damages were incurred at various times"[234].

222. The Arbitral Tribunal should therefore compute interest from the date when the agreements were first breached, i.e. 1 January 2004 for the CDMA License Agreement and 1 January 2005 for the Roaming Agreement[235].

223. In its first submission the Claimants affirmed that *"the statutory interest rate is simple interest at nine percent per annum"*[236], but in its second PHB, the Claimants modified this position by stating that *"Claimants acknowledge that the appropriate rate of interest associated with any award is 6.5%, not 9%. The 9% figure is the statutory interest rate in New York, and was used inadvertently"*[237].

1.7-Rescission of the Agreements as an alternative remedy

224. If the Arbitral Tribunal concludes that damages are not the appropriate remedy in this case, DigiTelCom is entitled to the alternative remedy of rescission[238].

225. In order to justify the equitable rescission of a contract, a party must allege fraud, failure of consideration, inability to perform the contract or a breach of the contract which

[231] C-II, p. 21; *Contemporary Mission, Inc. v. Famous Music Corp.* (CL-22).
[232] C-II, p. 22; CPHB-I, p. 39.
[233] N.Y. C.P.L.R. 5001(b); *Columbia Artist Mgmt., LLC v. Swenson & Burnakus, Inc.* (CL-20).
[234] C-I, p. 14; *Barry A. Baer, M.D., P.C. v. Anesthesia Assocs. of Mount Kisco* (CL-10).
[235] CEWS-1, §20; CEWS-2, §8.
[236] C-I, p. 13.
[237] CPHB-II, p. 10, footnote 16.
[238] C-II, p. 26.

substantially defeats the purpose thereof[239].Tele2's willful and fundamental breaches justify the rescission of the SPA and the collateral agreements[240].

226. With respect to Respondent's assertions that Claimants must show that there is no adequate remedy at law to request the rescission, Claimants reply that under New York law, *"in case of repudiation or of a breach going to the root of the contract, unless the damages can be ascertained with reasonable certainty, rescission is a matter of right, with restitution instead of compensation"*[241].

227. As to Respondent's allegations according to which rescission is not available because it is impossible to rescind the SPA without causing significant damage to Tele2, Claimants submits that *"the rule that rescission is unavailable where a party cannot be returned to the status quo ante will not be strictly enforced where the party against whom rescission is sought is a wrongdoer who is exploiting its change of position to shield its wrongdoing"*[242].This being the case, Claimants are entitled to rescission.

2- Respondent Position

228. Respondent first submits (2.1 to 2.3) that it did not breach any of the Agreements. It also rejects (2.4) Claimants' assertions regarding the implied covenant of good faith and fair dealing and affirms (2.5) that Claimants did not have suffered any recoverable damage.

2.1- Tele2 did not breach the CDMA License Agreement

229. Respondent first of all submits that Claimants' interpretation of the CDMA License Agreement is incorrect. Contrary to Claimants' position[243], the CDMA License Agreement did not allow Claimants to purchase or commercially operate or control the Existing Network as if they owned it. On the contrary, the purpose of the CDMA License Agreement was only to attempt to transfer the CDMA License or alternatively to allow DigiTelCom's to use it[244].

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[239] C-I, p.16; *Babylon Assoc. v. County of Suffolk* (CL-9).
[240] C-I, p. 17.
[241] C-II p. 25; *Callanan v. Keeseville* (CL-15); *Kaston v. Zimmerman* (CL-36).
[242] C-II, p. 26;*Sokolow, Dunaud, Mercadier & Carreras LLP v. Lacher* (RL-34).
[243] Transcript, pp. 12: 16-24; 107: 8-12; 108: 4-5; 234: 12-19; CWS-5 Jacoby, § 3; CWS-7 Chepizhenko, § 9.
[244]R-I, § 53; R-II, § 19-23; Transcript, pp. 79-89; RPHB-I, § 18-24.

230. In order to be able to provide commercial service under the CDMA License, DigiTelCom had either to sign a separate agreement with Tele2 to use the Existing Network or to implement a New Network[245]. However, DigiTelCom did neither of those two things.

231. The Lease Agreement, which in Claimants' submission constitutes such agreement to use the Existing Network[246], is in reality an intra-group agreement between SPT and MultiCom, to which DigiTelCom is not a party. As a consequence, DigiTelCom has no rights under the Lease Agreement. In addition, the scope of the Lease Agreement was to facilitate an approval from the Ministry to the transfer of SPT's CDMA License to MultiCom[247]. It was not meant to permit DigiTelCom to use the Existing Network.

232. Respondent also denies that it breached its obligations pursuant to the CDMA License Agreement.

a) Obligation to permit DigiTelCom the use, access and control of the CDMA Network

233. Respondent denies Claimants' allegations regarding (i) the access to documentation, (ii) the access to the Network.

i) Documentation

234. According to Respondent, there were two different kinds of requests of documents, relating to two different sets of documents. Respondent produced both as requested by Claimants.

235. On 4 February 2004 DigiTelCom requested additional documents relating to maintenance of the Existing CDMA Network, which were provided shortly thereafter[248]. On 5 April 2004, documents relating to the transfer of the CDMA License to MultiCom were requested, and the documents were provided on 13 July 2004[249].

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[245] Exhibit C-1 (b), Clauses 15 and 16; RPHB-I, § 21.
[246] Exhibit C-108; RPHB-I, pp. 22-23.
[247] RPHB-I, §§ 27-31.
[248] R-I, §§ 91-98.
[249] R-I, § 92; R-II, § 35.

ii) Access to the Network and the Switch

236. Tele2 never refused any request by the Claimants to access the network. To the contrary, the record shows that DigiTelCom's technicians were always provided with access to the base stations and the equipment[250], and were at all times able to identify any technical issue with respect to the network[251]. However, instead of solving such issues, Claimants abandoned the network in mid-April 2004. After that date, there are no more reports or correspondence originating from the Claimants with respect to maintenance questions.

237. As to the Switch, access to the same was not necessary to operate and maintain the Existing CDMA Network. In addition, Tele2 had no obligation under the CDMA License Agreement to give DigiTelCom access to the Switch. The Switch was expressly excluded from the elements of the network of which DigiTelCom was entitled to take control[252].

238. Claimants' argument that access to the Switch was necessary to commence commercial service[253]is ill-grounded as, according to the CDMA License Agreement, DigiTelCom was not allowed to establish any commercial service using the Existing CDMA Network[254]. As a consequence, Claimants should have entered into a separate agreement to dispose of the Tele2's Switch, which it failed to do.

iii) No agreement between the parties forTele2 to assume maintenance of the Network after 15 January 2004

239. Claimants' contention is that, in the occasion of conversation between Mr. Jacoby and Mr. Dombrovsky in July or "*late summer 2004*"[255], the parties agreed that DigiTelCom would cease all efforts to take control of the operation and maintenance of the network[256]is baseless. Tele2 submits that the parties never entered into such a verbal agreement with DigiTelCom to the effect that Tele2 would become responsible for the

[250] R-I, §§ 65-90; R-II, §§ 36-37; RPHB-I, §§ 51-56.
[251] Exhibits C-12 to C-14 and C-26.
[252] R-I, §§ 99-104.
[253] CWS-7 Chepizhenko, § 14.
[254] R-II, §§ 19-29, C-1(b) Clause 2.1.
[255]CWS-7 Chepizhenko, § 23.
[256] C-II, p. 13; CWS-1 Jacoby, §§ 61-70; CWS-2 Palagi, § 22-23; CWS-3 Tereshchenko §§ 31-42; CWS-4 Chepizhenko, §§ 32-34, 37-40; CWS-5 Jacoby 18(q), 18 (s); CWS-7 Chepizhenko, §§ 13, 18-19, 36.

maintenance of the Existing CDMA Network after 15 January 2004[257]. Mr.Dombrovsky confirms in his witness statements that there never was any verbal conversation between him and Mr. Jacoby to that effect[258].

240. Moreover, DigiTelCom's technicians were asked to leave Saint Petersburg in mid-April 2004, some months before an alleged verbal agreement between Mr. Jacoby and Mr. Dombrovsky took place[259].

241. In addition, any variation to the CDMA License Agreement, such as an extended obligation for Tele2 to maintain the CDMA Network, required written form to be legally binding[260], and Mr. Dombrovsky did not even have at the time the authority to enter into binding agreements on behalf of Tele2[261].

iv) MultiCom Business Plan

242. Contrary to Claimants' assertions[262], the MultiCom business plan does not show that Tele2 intended to invest into the Existing CDMA Network. It was only established to be presented to the relevant authorities in order to have the transfer of the CDMA License to DigiTelCom approved.

v) Powers of attorney

243. Tele2 did not refuse to allow DigiTelCom to negotiate with the relevant authorities and did not fail to support its discussions with equipment suppliers. In this respect, neither Tele2 nor SPT was under any obligation to execute powers of attorney authorizing DigiTelCom to act on their behalf. Clause 2.9 of the CDMA License Agreement[263] provides that DigiTelCom shall have the right to purchase new equipment. Nothing therefore prevented DigiTelCom from purchasing any necessary equipment itself and no power of attorney was needed to that effect.

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[257] R-II, § 38.
[258] R-II, § 8; RWS-1 Dombrovsky, § 7; RWS-2 Dombrovsky, § 2.
[259] RPHB-I, § 59.
[260] R-II, §§ 108-110.
[261] R-II, § 39; RWS-3 Stenberg, § 18; RWS-1 Dombrovsky, § 1.
[262] RWS-2 Dombrovsky, § 24, Exhibits C-50, C-4.
[263] CDMA License Agreement C-1(b), clause 2.9: *"DigiTelCom shall have the right to buy and install replacement parts or new parts and equipment for the CDMA Existing Network, and shall be deemed the owner of and have and retain title to all such replacement and new parts and equipment notwithstanding that the same has been inserted into and/or affixed to the CDMA Existing Network".*

244. Moreover, Tele2 never refused to sign powers of attorney. Tele2 only requested DigiTelCom to specify what kind of power of attorney it needed, and to provide a draft of the same, which DigiTelCom failed to do[264].

b) Tele2 did not breach its obligation to maintain the Switch(i), and had no obligation to ensure that the CDMA Network was live and ongoing after the six month period provided by Clause 3.2 of the CDMA License Agreement(ii)

i) Maintenance of the Switch

245. The responsibility for the maintenance of the Switch remained with Tele2 after 15 July 2003. However, at the time of the Ministry's inspection in 2006 and until the beginning of 2008, the Switch was still in operation.

246. As to the other elements of the Existing CDMA Network, pursuant to Clause 3.4 of the CDMA License Agreement, only Claimants were responsible for their maintenance. In this respect, DigiTelCom was aware since January 2004 that the base stations were either not working, de-energized or dismantled[265]. It therefore knew that the base stations were switched off, and did not transmit. On 11 February 2004, Ms. Nashnitsyna informed Mr. Jacoby that the CDMA Network was not operational[266].

247. Respondent avers that DigiTelCom knew the situation of the Existing CDMA Network before the conclusion of the CDMA License Agreement and well before it assumed full responsibility for the maintenance in January 2004[267].As a consequence, when DigiTelCom decided in January 2004 not to maintain the CDMA Network, it knew that the network was not operational. It is thus DigiTelCom's failure to act, not Tele2, that caused the Ministry to suspend the license.

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[264] R-I, § 131; Exhibit R-4; R-II, § 43.
[265] Exhibit C-14.
[266] Exhibit C-17.
[267] CWS-7 Chepizhenko, §§ 2-9; RPHB-I, §§ 37-41; Exhibit C-1 (b), Clause 2.8.

ii) Maintenance of the Network

248. Tele2 remedied the technical problem that arose with respect to the base station controller that occurred in January 2004[268]. In addition, contrary to Claimants' contentions, Motorola was contracted and paid by Tele2[269]. At any rate, it is undisputed that the CDMA network was re-activated after such intervention and was therefore functional at the end of February 2004.

249. After the six month period provided by Clause 3.2 of the CDMA License Agreement, Respondent had no obligation to maintain the Existing CDMA Network. Tele2'sobligation was limited to the Switch, which was also used for Tele2's N-AMPS operation. Maintenance of all other parts of the network was DigiTelCom's responsibility.

c) Tele2 did cause SPT to cooperate and assist DigiTelCom

250. Claimants' allegation according to which Tele2 instructed SPT not to sign the CDMA License Agreement and not to proceed with the implementation of the CDMA License Agreement are incorrect. Tele2's instructions to SPT were always to assist DigiTelCom to the fullest extent possible[270].

251. Even if the signature of the CDMA License Agreement was not required and was not necessary for DigiTelCom to assume responsibility for the Existing CDMA Network[271], SPT did sign the CDMA License Agreement, and both Tele2 and SPT complied at all times with their obligations. The record shows that when DigiTelCom informed Tele2 of any problem or difficulty with SPT, Tele2 immediately took action and the issues were solved[272].

[268] RPHB-I, § 43.
[269] RPHB-I §§ 43-48.
[270] R-II, § 51; RWS-3 Stenberg, § 17.
[271] R-I, § 59-64, referring to CWS-2 Palagi, § 18.
[272] R-II, § 52; Exhibit C-21.

d) Tele2 involved DigiTelCom in its communications with the Ministry

i) The 2003 letter

252. Claimants' assertion that DigiTelCom was not aware of SPT's letter of 22 December 2003 is incorrect. Evgeny Kurilov of Tele2 provided Gregory Donat of DigiTelCom with a draft of that letter along with a copy of the improvement notice on 22 December 2003[273], and DigiTelCom did not raise any objections to that draft.

ii) The 2006 letter

253. As to SPT's letter to the Ministry dated 27 December 2006, its wording was almost identical to a previous answer to the Ministry concerning the same issue, which draft had been approved by DigiTelCom[274]. Mr. Jacoby's testimony that he only approved the letter "*as a draft for further consideration and discussion*" is incorrect, for the record shows that he approved the letter after having made specific amendments, which have been taken into account[275].

e) Tele2 had no interest in breaching the CDMA License Agreement

254. Finally, contrary to Claimants' assertions[276], Tele2 had no interest whatsoever in preventing DigiTelCom from exercising its rights. In this respect, Tele2 was not concerned that the obsolete CDMA Network would compete with its GSM network. In addition, the City of Saint Petersburg had consented to the CDMA Agreement, and DigiTelCom's control and operation of the CDMA Network did not interfere with SPT's N-AMPS operations. Moreover, Tele2's GSM strategy did not prevent it from fulfilling its obligations under the CDMA Agreement and Tele2 was not required to commit financial resources to DigiTelCom's CDMA development[277].

[273] R-II, § 55; Exhibit C-19.
[274] Exhibit C-73; R-I, §§ 153-156.
[275] R-II, 59;ExhibitsR-21, R-22, C-73.
[276] CWS-5 Jacoby, §§ 24-28.
[277] R-II, § 60.

2.2-Tele2 did not breach the Roaming Agreement

255. Respondent asserts (a) that DigiTelCom did not validly designate KATEL and SoTel as operators, and (b) that in any event, Claimants have no valid claim under the Roaming Agreement. In addition (c), DigiTelCom has lost any rights under the Roaming Agreement.

a) DigiTelCom did not validly designate KATEL and SoTel operators

256. As to the alleged receipt of the notice appointing KATEL and SoTel[278], Respondent questions Claimants' Exhibit C-52 for (i) the alleged designation is not mentioned in any of the correspondence submitted by Claimants, (ii) the date of the purported notice is the same as the notice of the nomination of TelCo under the CDMA License Agreement, but while the first was sent "*via express mail & telecopy*" with a copy to the lawyers of Tele2[279], the purported notice under the Roaming Agreement was only sent "via Federal Express", (iii) the Federal Express waybill does not specify which document was delivered and DigiTelCom has not submitted any waybill and tracking information with respect to the notice of the nominee under the CDMA License Agreement. In addition, (iv) the notice is dated 6 October 2004, even if SoTel first started operations in 2007, (v) when the parties discussed this matter before, during the end of 2008 and Tele2 requested DigiTelCom to present documents to demonstrate the purported nomination, Mr. Jacoby stated that he would only be ready to present such document in court[280], and (vi) no copy of the nomination was never sent to Tele2's attorneys, Cleary, Gottlieb, Steen & Hamilton, as it was previously done with respect to the nomination of TelCo under the CDMA License Agreement and as required by Clause 18.1 of the Roaming Agreement.

b) There is no valid claim under the Roaming Agreement regardless of the designation of operators

257. Even if it had received the nominations, which is not the case, the obligations that Claimants allege that Tele2 breached do not exist[281]. For example, nothing in the Roaming Agreement obliges Tele2 to "acknowledge the designations" in any way after a designation notice has been duly received.

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[278] Exhibit C-52.
[279] Exhibit C-51.
[280] R-I, § 182.
[281] R-I, § 185; R-II, §§ 104-105.

258. Regarding the nomination of a person to participate in the technical committee provided under Clause 2.10 of the Roaming Agreement, the said nomination was to be done by each of the designated Operators and by Tele2.As it was KATEL and SoTel who were to benefit from the new agreements, the obligation to pursue such action rested on them.

259. Concerning the obligation to enter into new roaming agreements, it was not incumbent upon Tele2, pursuant to Clause 1.12 of the Roaming Agreement, to take any action to ensure that contracts are entered into with the operators. Rather, the language suggests that it is the Operators who should have taken the initiative to approach Tele2[282]. During the six years that have passed since the purported designation, Tele2 has not been contacted by DigiTelCom, KATEL or SoTel in this respect[283].

260. Regarding Claimants' arguments as to Tele2's alleged anticipatory or repudiatory breach of the Roaming Agreement[284], Respondent submits that under New York law, an anticipatory breach requires that the party in breach communicated its intention to forego performance[285], or that the aggrieved party show a clear and unequivocal intention not to perform[286]. In the present case, Tele2's behavior does not constitute such a clear and unequivocal repudiation of its duties under the contract[287].

c) DigiTelCom lost any rights under the Roaming Agreement

261. Since DigiTelCom made no attempts to have roaming agreements in place before the Roaming Agreement expired on 15 July 2008, the option which DigiTelCom had under the Roaming Agreement expired with the Agreement and DigiTelCom has no remaining rights under that contract[288].

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[282] R-I, § 186.
[283] R-I, § 188.
[284] C-I, footnote n° 1.
[285] *Salvato v. St. David's School* (RL-21).
[286] *HRL Union Ave Corp. v. New York City Housing Authority* (RL-22).
[287] R-I, § 191.
[288] R-I, §§ 193-194.

2.3-The SPA

262. Tele2 submits that by entering into the CDMA License Agreement and the Roaming Agreement, it fulfilled entirely its obligations under the SPA[289].

263. According to Tele2, the last "whereas clause" of the CDMA License Agreement[290] clearly means that the consideration of DigiTelCom's obligations under the SPA is the signature by Tele2 of the CDMA License Agreement. As a consequence, Claimants' assertion that performance by Tele2 of its obligations under the CDMA License Agreement is a component of the consideration to DigiTelCom under the SPA is ill-grounded. The last "whereas clause" refers to the fact that the CDMA License Agreement be executed and delivered, not to its performance. Under such provision, it is the performance of DigiTelCom's obligations under the SPA that was the consideration for Tele2's obligations under the CDMA License Agreement, not the contrary.

2.4-The covenant of good faith and fair dealing

264. According to Respondent, *"to base a cause of action on an alleged breach of the implied covenant of good faith and fair dealing, a claimant must allege facts to show that the respondent sought to prevent performance of the contract or to withhold its benefits from the claimant"*[291]. Under New York law, the claimant must also describe the specific actions on the part of the respondent that allegedly breached the implied covenant of good faith[292], which cannot be the same actions that purportedly breached express terms of the contracts[293]. Claimants failed to do that and base the alleged breach of the covenant of good faith and fair dealing on the same factual allegations as for its breach of contract claim. In addition, Claimants do not specify or explain how Tele2 breached the covenant[294].

265. Furthermore, in order to establish a breach of the implied covenant under New York law, Claimants should have shown that they were deprived of a contract right by an

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[289] R-I, § 213.
[290] Exhibit C-1 (b), last "whereas clause": *"Whereas, the execution and delivery of this Agreement is a condition to closing of the transactions contemplated by the Stock Purchase Agreement, and the consideration for the performance by Tele2 of its obligations hereunder is, in whole or in part, a component of that certain consideration stated and determined in the Stock Purchase Agreement"*, RPHB-I, §§ 129-131;
[291] R-1, § 162; *Aventine Inv. Mgmt., Inc. v. Canadian Imperial Bank of Commerce* (RL-12).
[292] R-I, § 162; *Stanford Square, L.L.C. v. Nomura Asset Capital Corp.* (RL-13).
[293] R-I, §§ 162-163, 214; *Interboro Packaging Corp. V. G.P. Plastics Corp.* (RL-14).
[294] R-II, § 125; *Aventine Inv. Mgmt., Inc. v. Canadian Imperial Bank of Commerce*(RL-12).

affirmative act, not merely a failure to act[295]. In the case at hand, this is not the case and, under New York law, a party's action to advance its own interests, even though it may incidentally lessen the other party's anticipated benefit from a contract, does not breach the covenant of good faith and fair dealing[296].

2.5-No recoverable damages

266. Respondent asserts that Claimants have not suffered any recoverable damage regarding (a) the CDMA License Agreement, (b) the Roaming Agreement, or (c) the SPA.

a) The CDMA License Agreement

a.a) Claimants' expert report is based on flawed assumptions and does not offer a correct valuation of damages

i)Flawed assumptions regarding the addressable market and services to be offered

267. In his damages calculation, Mr. Chandler incorrectly estimates the city bounds of St. Petersburg, the expected population growth and the market share of Claimants' purported CDMA operation[297].Further, despite the license limitation to fixed services, Mr. Chandler incorrectly uses market data for mobile service to predict future lost profits for Claimants' allegedly planned fixed services[298].

268. Mr. Chandler also incorrectly assumes that DigiTelCom would have been able to offer a wireless high-speed data service, when the CDMA License did not allow for the provision of such data transmission and Claimants lacked the necessary equipment[299].Mr. Chandler also incorrectly assumes that Claimants would have been able to extend their CDMA network by installing additional base stations and thereby gain a larger coverage, which was impossible in view of the September 2000 decision of the Ministry to only allow CDMA base stations previously installed and approved[300].

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[295] R-II, § 126; *Phoenix Racing, Ltd. v. Lebanan Valley Auto Racing Corp.* (RL-63).
[296] R-II, § 127; *M/A-Com Security Corp. v. Galesi*(RL-64), *Van Valkenburgh, Nooger & Neville, Inc. V. Hayden Publ'g Co.* (RL-65).
[297]R-I, § 172; R-II, §63; R-2 item 1; REWS-1, §§ 92-95; RPHB-I, §§ 113-123.
[298] CEWS-2, Exhibit C-101 B(1).
[299] R-II, § 64, RWS-2 Dombrovsky, § 11; Exhibit R-23; RPHB-I, §§ 82-103.
[300]Exhibit R-9.

ii) The CDMA License extension was rejected in 2007 and no alternative frequencies would have been granted

269. Mr. Chandler assumes that the CDMA License would have been extended after 2007 and after 2010[301], in spite of the fact that the frequencies used under the CDMA License would no longer have been available[302] due to the Russian authorities' decision to suspend all CDMA Licenses without any compensation[303].

270. In addition, SPT, following the instructions of DigiTelCom, did apply for a license extension, which was denied. The basis for the denial was not a violation of the terms and conditions of the CDMA License, but the new legislation which did not permit the services to be provided under the CDMA License[304].

iii) Mr. Chandler's assumption that CDMA was a viable business is unsupported and incorrect

271. Mr. Chandler's damage valuation is based on a fixed CDMA network which operated in Brazil from 1998 to 2001. Assumptions based on a network operated in a different market and at a different time are however incorrect. In addition, Tele2 has not been able to identify one single successful CDMA operation that is still in operation in Russia[305]. As a consequence, there is no support for the suggestion that DigiTelCom fixed CDMA venture would ever have been profitable.

iv) Mr. Chandler's assumption as to the numbers allocated to the CDMA License is incorrect

272. Mr. Chandler fails to consider that only 100 call numbers were allocated to the CDMA License and that any additional numbers would have had to be purchased[306]. His conclusions are therefore flawed[307].

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[301] Exhibit C-87; CEWS-2, §§ 56-60.
[302] R-I, § 158; R-II, § 66; Exhibit R-9; RPHB-I, §§ 104-112.
[303] RWS-2 Dombrovsky, § 13.
[304] R-I, §§ 159-161; Exhibit C-75.
[305] R-II, § 71; RWS-2 Dombrovsky, § 13.
[306] Exhibit R-28; REWS-2, §§ 123-125.
[307] R-II, § 78, *Trademark Research corp. V. Maxwell Online, Inc.* (RL-41).

a.b) Claimants have not been able to establish the prerequisites for damages

i) Lack of causation

273. Claimants failed to explain the causal nexus between the alleged breaches of the CDMA License Agreement and Claimants' purported damages. If Claimants suffered any damages, such damages were the direct consequence of DigiTelCom's own failures[308].The CDMA License was suspended because of the violations of the CDMA License requirements and it was DigiTelCom who was responsible of maintaining and supporting the network. It is therefore DigiTelCom's failure to comply with the CDMA License's requirements that caused the Ministry not to extend the CDMA License[309]. As to the CDMA License's expiration, it occurred according to its term and was not the result of any action or inaction of Tele2.

274. In addition, many of the breaches alleged by Claimants are said to have occurred in connection with the Ministry's inspection in 2006. Such breaches can therefore not have affected Claimants' purported plans to commence commercial operations in 2003[310].

ii) Claimants have not established that the CDMA business venture would have generated any profit

275. Claimants failed to establish that the CDMA venture would have generated any revenue. As a consequence, the existence of the alleged losses is uncertain and Claimants are entitled to no recovery[311].

ii.a) DigiTelCom did not have industrial and commercial experience to successfully operate the Network

276. Under New York law, recovery for loss of anticipated profit where the claimant is prevented from starting a business by breach of contract is generally precluded because the loss is then too speculative[312]. If a new venture seeks damages for anticipated profit, a much stricter standard is therefore imposed. This stricter standard is applicable in this case since Claimants do not have past successful experience in operating similar business in the relevant region.

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[308] R-I, §§ 165-167; *Diesel Props S.R.L. v. Greystone Business Credit II LLC.*(RL-16); R-II, §80; R-I, Section 11.1.
[309] R-I, § 166.
[310] R-II, § 81.
[311] R-I, §§ 168-173; R-II, §§ 82-88.
[312] R-II, § 83; *Deluise v. Long Island R. Co.* (RL-42).

277. In order to avoid such stricter standard, Claimants' would have to prove profitable operational experience in the same market and with the same product/service. In the case at hand, Claimants' alleged past experience is in the mobile market of the Kyrgyz Republic, a different market, and Claimants have not suggested that they have any experience in operating a fixed CDMA network in any market[313].

ii.b) DigiTelCom did not have the financial ability to maintain, operate and develop the CDMA Network

278. Claimants have not provided any evidence supporting that it would have been able to assume the necessary update and operational costs of the network[314]. Tele2 contests the testimony of Alexander Buevich to the contrary[315], and points out that DigiTelCom failed to acquire any telecommunication equipment in 2005-2007[316].

a.c) Claimants support the burden of proof in respect of the amount of their damages

279. Claimants have not provided a reasonable estimate of their alleged damages and can therefore not shift the burden of evidence upon Respondent[317]. This is especially true when, as in the present case, the claimant has not even provided persuasive evidence of the existence – as opposed to the amount – of its alleged damages[318].

b) The Roaming Agreement

i) Lack of proximate cause

280. Respondent submits that any damages suffered by Claimants as a consequence of the fact that the nominated Operators did not enter into separate roaming agreements with Tele2were caused by their own failure to take any initiative to that effect[319]. Even assuming that DigiTelCom sent the letter nominating the operators, it failed, or the purportedly appointed Operators failed, to subsequently take any action to enter into

[313] Exhibits R-29, R-30.
[314] R-I, § 171; R-II, § 88.
[315] CWS-9 Buevich, §§ 7-8.
[316] R-II, §§ 87-88.
[317] C-II, Point IV, Section A.
[318] R-II, § 89; *Ho Myung Moolsan, Co. Ltd. v. Manitou Mineral Water, Inc.* (RL-49).
[319] R-II, § 109.

separate roaming agreements[320]. Further, Claimants failed to mitigate their losses by partnering with other companies that could have offered them roaming rights[321].

ii) KATEL and SoTel could not have taken advantage of the benefits of the Roaming Agreement

281. At any rate, KATEL and SITEL lacked the technical ability to take advantage of the benefits of roaming on Tele2's GSM network[322].Even if, as asserted by Mr. Buevich, SoTel's clients had been able to roam on Tele2 network in "dual mode" phones[323], Claimants failed to explain why Kyrgyz subscribers would have purchased such expensive handsets to use SoTel's services instead of using the available GSM providers[324]. Tele2 further notes that SoTel still does not offer roaming to its customers[325], and contests that KATEL had a UMTS or GSMlicense[326].

282. As a consequence of the foregoing, Mr. Chandler's assumption that KATEL and SoTel would have been able to benefit from roaming on Tele2's GSM networks is unsustainable[327].

iii) Limitation of liability

283. Since Tele2 has not acted fraudulently, maliciously or recklessly, or was grossly negligent in any way, the limitation of liability in the Roaming Agreement must be upheld[328].

iv) Equitable relief is not available

284. DigiTelCom failed to establish that monetary compensation would not provide an adequate remedy in this case, and Tele2 is therefore under no obligation to provide equitable relief if the limitation of liability clause is upheld[329].

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[320] *TD Waterhouse Investor servs. Inc. v. Integrated Fund Serv. Inc.* (RL-23).
[321] *Hamilton v. Mac Pherson* (RL-59),*Donald Rubin, Inc. v. Schwartz* (RL-60).
[322] R-I, §§ 199-200.
[323] CWS-9 Buevich, § 13.
[324] R-II, § 110, and footnote 172.
[325] R-II, §111; R-I, § 199; Exhibit R-12, p.6.
[326] CWS-9 Buevich, § 15.
[327] R-II, § 112.
[328] R-I, §§ 204-206; R-II, § 116.
[329] R-I, § 209; R-II, § 117.

v) Gross laches

285. Claimants are further not entitled to specific performance because under New York Law, a party seeking to specifically enforce a contract must act promptly[330]. In the present case, DigiTelCom did nothing to enforce its rights under the Roaming Agreement until six years after the parties signed the agreement. Such inexcusable delay amounts to gross laches, which bars any other form of injunction or equitable relief[331].

c) The SPA

286. Respondent submits that even if the Arbitral Tribunal were to find that Tele2 breached the SPA, Claimants would still not be entitled to damages[332]. Respondent also avers that rescission is not an available remedy in this case.

i) No double recovery

287. If any of Claimants are awarded damages under the CDMA License Agreement and the Roaming Agreement, they will have been compensated and would not be entitled to additional damages for breach of the SPA[333]. Likewise, if the Arbitral Tribunal were to find that Tele2 did not breach the CDMA License Agreement and the Roaming Agreement, Claimants would not be entitled to any damages under the SPA.

ii) Present value of the interest transferred is not an appropriate basis to assess damages

288. DigiTelCom's use of a present value calculation benefits from the explosive growth and increase in value that SPT and Oblcom had since 2003. As a consequence, would its theories be accepted, DigiTelCom would be compensated for the present value of these companies as opposed to the value at the time when the shares were transferred. Under New York Law, application of rescissory damages under these circumstances is unfair and inappropriate[334]. Rather, the damages suffered by DigiTelCom must be measured according to its "out-of-pocket loss", *i.e.* the difference between the compensation that

[330] R-I, § 210, *Noy v. 765 9th Ave Corp.*(RL-26); *Richardson v. Vajiradhammapadip Temple* (RL-27).
[331] R-I, § 210.
[332] R-II, § 129.
[333] R-II, § 130.
[334] *In re United Brands Co.*(RL-66), *Chapman v. Board of County Com'rs of Douglass County* (RL-67).

DigiTelCom actually received and the value of the shares at the time of the transaction[335].

289. At the time, DigiTelCom valued its equity interest in SPT and Oblcom to US$ 9.5 million and the value of the potential license transfer to US$ 3 million[336].It is undisputed that the parties agreed on a share purchase price of US$ 6.5 million and that such amount was paid. In addition, the CDMA License Agreement and the Roaming Agreement were to be executed and delivered according to Clause 3.1 of the SPA. Accordingly, at the time, Tele2 valued the CDMA License to US$ 3 million and no value was attributed to the Roaming Agreement. It is therefore clear that DigiTelCom's out-of-pocket loss cannot exceed US$ 3 million.

iii) Rescission is not an available remedy

290. First of all, as there has been no failure of consideration under the SPA, DigiTelCom is not entitled to rescind it[337]. In addition, the consideration provided for in the SPA consisted of several parts, and under New York Law, the failure to provide only one part of the consideration dos not necessarily entitle the other party to avoid its obligations[338]. Therefore, even if the Arbitral Tribunal were to find that the actual fulfillment of the CDMA License Agreement and the Roaming Agreement constituted parts of the consideration under the SPA, the alleged breaches of these agreements would not be sufficient to warrant rescission.

291. Furthermore, under New York Law, in order to warrant rescission, the non-fulfillment must constitute a failure so fundamental that it defeats the parties' objective in entering into the contract[339]. In the instant case, however, the parties' intention was to transfer shares for a monetary consideration[340]. The fact that DigiTelCom managed to include in the consideration a right to attempt to transfer a license (which had no value) as well as rights for preferential roaming does not make any failure to provide these rights so fundamental as to defeating the object of the SPA. Under New York Law, rescission is not appropriate and indeed precluded in a situation such as the present case[341].

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[335] *In re United Brands Co*(RL-66).
[336] Exhibit C-5.
[337] R-I, § 217.
[338] R-II, § 137; *Su Mei, Inc. V. Kudo*(RL-68); *Niagara Frontier Transp. Authority v. Patterson-Stevens, Inc.* (RL-69).
[339] *Clanton v. Smith*(RL-70).
[340] Exhibit C-5.
[341] R-II, § 139; *Strategic Growth Int'l, Inc. v. Remotemdx, Inc.* (RL-71).

292. Moreover, rescission is not available where restoration of the *status quoante* is impractical because of a substantial change in the position of the parties. If the party against whom rescission is sought cannot be restored to the position it had prior to contracting without being injured, rescission is generally not appropriate. This is presently the case for Tele2's has been completely transformed and is now impossible to compare to the business in which DigiTelCom sold its interest in 2003[342].

IX. The Prayers for relief

A. CLAIMANT'SPRAYER FOR RELIEF

293. In its 27 August 2010 Memorandum of Law as well as in its Submission n° 2, Claimants requested the Arbitral Tribunal to:

> *"Find that Tele2 is liable for breach of contract and award to DigiTelCom all damages it establishes at the hearing, plus interest at the statutory rate of nine percent (9%) from the date of the breach, in addition to reasonable attorneys' fees DigiTelCom incurred in pursuing this claim. Alternatively, Claimant requests that the Panel order rescission of the Stock Purchase Agreement and return to DigiTelCom of the shares, and percentage interest, it held in SPT and Oblcom prior to the agreement, plus costs and reasonable attorney's fees incurred by DigiTelCom in its efforts to force Tele2's compliance with the agreements and in pursuing this claim."*

294. In its 10 February 2011 Clarification of Claimant's Damages, Claimants particularized its damages claim as follows:

> *"1. DigiTelCom seeks the following damages for the failure of consideration due it from Tele2 under the Stock Purchase Agreement:*
>
> *a) Monetary Damages: Present value of the Interest DigiTelCom Transferred to Tele2 for which it has received no consideration:*

[342] R-II, § 140.

i) *Payment for DigiTelCom's 25.4% equity interest in SPT that it transferred to Tele2, the present value of which interest is between $ 194,000,000 and $ 431,000,000; plus*

ii) *Payment for DigiTelCom's surrender to Tele2 of its Right of First Refusal to acquire the 14% equity interest owned by the city of St. Petersburg in SPT, the present value of which right is between $ 123,000,000 and $ 254,000,000.*

Total Present Value of Transferred Interests: $ 317,000,000 - $ 685,000,000.

b) Alternatively, Equitable Relief – Rescission, by reason of Tele2's failure of consideration under the Stock Purchase Agreement.

2. DigiTelCom and TelCo seek damages, individually and collectively, arising from Tele2 breach of the CDMA License Agreement, in the amount of $ 36,248,392. DigiTelCom is a signatory to the CDMA License Agreement and, as a result, has enforceable rights under that agreement. TelCo is DigiTelCom Nominee under the CDMA License Agreement and also has enforceable rights under it.

3. DigiTelCom, KATEL and SoTel seek damages, individually and collectively, by reason of Tele2 breach of the Roaming Agreement, in the amount of $6,400,646. DigiTelCom is a signatory to the Roaming Agreement and KATEL and SoTel are DigiTelCom designated operators under that agreement. As a result, each party has enforceable rights under the Roaming Agreement".

295. In its second PHB of 21 June 2011, Claimants particularized their claims for damages as follows:

1. Breach of the CDMA Agreement – US$ 36,248,392 (CEWS-2 at ¶11);

2. Breach of the Roaming Agreement – US$ 6,400,646 (CEWS-2 at ¶11);

3. Recovery of the costs associated with efforts to implement CDMA Agreement – US$ 1,670,000 (C-101(b); CEWS-2at ¶25; Sadler Tr. at 849-53);

4. Recovery of the costs and expenses incurred in connection with this action – US$ 1,003,062.27 (CL-69, Claimants' Fees, Costs and Expenses).

296. Claimants also modified its interest claim as follows: "*the appropriate rate of interest associated with any award is 6.5%, not 9%. The 9% figure is the statutory interest rate in New York, and was used inadvertently*"[343].

297. On 11 July 2011, at the request of the Arbitral Tribunal, Claimants confirmed that the amount of 1,670,000 US$ mentioned in point 3 of the dispositive section of their 21 June 2011 second PHB "*should be added to the quantification of their CDMA License Agreement claim in their 10 February 2011 submission and that their prayers for relief are as those included in their 10 February 2011 submission*".

298. In an exhibit to its second PHB of 21 June 2011, Claimants claim the following amounts on account of its fees and costs:

1 Harris Beach PLLC Legal Expenses: US$ 662,031.11;
2 Claimants' legal Expenses (excluding witness and party travel: US$ 334,927.36;
3 Claimants' Travel Expenses: US$ 6,103.80;
4 Total: US $ 1,003,062.27.

B. RESPONDENT'S PRAYERS FOR RELIEF

299. In its Submission n° 2, Respondent requested the Arbitral Tribunal to:

1. Dismiss DigiTelCom's claims under the CDMA License Agreement for lack of jurisdiction;
2. Dismiss KATEL's claims under the Roaming Agreement for lack of jurisdiction;
3. Dismiss SoTel's claims under the Roaming Agreement for lack of jurisdiction;
4. Deny all the reliefs sought by DigiTelCom (to the extent not dismissed);
5. Deny all the reliefs sought by KATEL (to the extent not dismissed);
6. Deny all the reliefs sought by SoTel (to the extent not dismissed);
7. Deny all the reliefs sought by TelCo (to the extent not dismissed); and

[343] CPHB-II, p. 10, footnote 16.

8. Order Claimants, jointly and severally, to compensate Tele2 for all its arbitration cost, including legal fees, and as between the parties, alone to bear the fees and costs due to the Arbitral Tribunal and the International Centre for Dispute Resolution.

300. As to costs, Respondent submits that: *"the parties have explicitly agreed how the costs are to be allocated"*, so *"the Tribunal is not free itself to determine how the apportioning of costs is to be made. The losing party is to bear the costs of the proceedings"*[344].

301. Respondent submitted its Statement on costs in Section 5 of its second PHB, as follows:

- SEK 10,153,480
- USD 14,277.37
- EUR 164,109.28
- RUR 1,156,250

302. Respondent seeks, in addition to such amounts, the arbitration costs that it has paid to the ICDR.

303. Finally, Respondent seeks interest on such costs at the New York statutory interest rate of nine per cent /annum from the date of the award until payment is made[345].

X. Reasoning of the Award

304. The Arbitral Tribunal will first of all address Respondent's arguments as to (**A**) the joinder, and (**B**) jurisdiction with respect to each of the claimant parties. The Arbitral Tribunal will then decide, (**C**) whether Tele2 breached the SPA and whether the SPA should be terminated. The Arbitral Tribunal will then deal with Claimants' arguments relating to Respondent's purported breaches of, (**D**) the CDMA License Agreement and,

[344] RPHB-II, § 37.
[345] RPHB-II, § 40.

(**E**) the Roaming Agreement. Finally, (**F**) the Arbitral Tribunal will deal with the costs of the arbitration.

A. THE JOINDER

305. Respondent submits that the Arbitral Tribunal's decision to join TelCo, KATEL and SoTel amounts to consolidating different arbitrations without its consent, a situation that will make the award unenforceable under the New York Convention[346].

306. The Arbitral Tribunal disagrees. As explained in its letters of 30 August 2010 and 2 December 2010, there is nothing to prevent the Arbitral Tribunal from joining the additional claimants in this arbitration.

307. First of all, it is not in dispute that the additional claimants have been properly represented in this arbitration by Harris Beach. Harris Beach has also confirmed that these two additional claimants have accepted the jurisdiction of the Arbitral Tribunal as constituted under the ICDR Rules.

308. Second, the Arbitral Tribunal has verified, and has been satisfied that, at the very early stage of the proceedings when joinder was requested, the same did not in any manner affect Respondent's interests. Harris Beach confirmed that TelCo, KATEL and SoTel have accepted the procedural timetable and substantially endorsed DigiTelCom's arguments, so that the joinder did not place Respondent in an excessively difficult position in presenting its case. In fact, the Arbitral Tribunal's opinion is that it would have been very difficult for the Claimant or Respondent to present its respective case fully without the three joined parties since they were so intertwined in various aspects of the three agreements at issue in the case.

309. As to the Arbitral Tribunal's powers, there is no provision in the Arbitration Clause or in the ICDR Rules to prevent the Arbitral Tribunal, at an early stage of the proceedings, to join additional parties that allege to be parties to the Arbitration Clause when such parties' participation to the proceeding seems appropriate and justified by considerations of procedural efficiency.

[346] R-II, § 144.

310. As stated in the Arbitral Tribunal's 2 December 2010 Procedural Order, the Arbitral Tribunal has implied powers, under the Rules, to join additional parties if possible and appropriate under the circumstances.

B. THE ARBITRAL TRIBUNAL'S JURISDICTION

311. It should first of all be recalled that the claims brought in this arbitration by the Claimants are based on three different agreements, the SPA, the CDMA License Agreement and the Roaming Agreement.

312. All three agreements include the same Arbitration Clause providing for arbitration under the ICDR Rules. The arbitration clause included in the three agreements in dispute is reproduced in § 2 of this award.

313. However, different entities are party to each of these three agreements.

1- The SPA

314. The SPA was executed on 9 June 2003 by DigiTelCom and Tele2.

315. It is not in dispute that the Arbitral Tribunal has jurisdiction to entertain DigiTelCom's claims against Tele2 under the SPA. Claimants TelCo, SoTel and KATEL do not submit to be part of the SPA and do not bring any claim under the SPA.

2- The CDMA License Agreement

316. The CDMA License Agreement was executed on 15 July 2003 by DigiTelCom and Tele2.

317. On 6 October 2004, DigiTelCom assigned the CDMA License Agreement to TelCo.

318. The 6 October 2004 assignment notice was drafted as follows: *"PLEASE TAKE NOTICE, that in accordance with Section 1.11 of the July 15, 2003 CDMA License Agreement, for the operation, use and transfer of the CDMA License held by AO "St. Petersburg Telecom" ("Agreement"), we are hereby informing you of DigiTelCom Ltd.'s ("DigiTelCom") decision to designate TelCo, Ltd., a Delaware corporation*

("TelCo"), to be the "Nominee", as defined under Section 1.1. of the Agreement. Therefore, please be advised that all of DigiTelCom's rights, benefits and obligations under the Agreement are assigned to, and assumed by TelCo"[347].

319. Respondent does not dispute the existence and effects of such assignment, and does therefore not dispute the jurisdiction of the Arbitral Tribunal with respect to TelCo. Respondent's jurisdictional objection with respect to TelCo is rather based on an alleged lack of power of the Arbitral Tribunal to order the joinder of additional parties after the constitution of the Arbitral Tribunal. Such objection has however already been dealt with in previous sections of this award[348].

320. As far as jurisdiction is concerned, Respondent's position is that Tele2's only counterparty under the CDMA License Agreement is TelCo[349]. As a consequence, the Arbitral Tribunal would be deprived of jurisdiction to hear DigiTelCom's claims based on the CDMA License Agreement.

321. There does not appear to be any disagreement between the parties as to the fact that the CDMA License Agreement was assigned by DigiTelCom to TelCo. In Claimants' submission, the Arbitral Tribunal's jurisdiction to hear DigiTelCom's claims based upon the CDMA License Agreement seem to be only alleged on an alternative basis: "*if TelCo is not allowed to participate in this arbitration, then DigiTelCom as the signatory of the Agreement nonetheless has the ability to represent the interests of its Nominee, an intended third party beneficiary under the agreement*"[350].

322. In the Arbitral Tribunal's view, the fact that the 6 October 2004 assignment notice had the effect of assigning to TelCo *"all of DigiTelCom's rights, benefits and obligations under the Agreement"*, does not deprive it of its jurisdiction with respect to the claims in dispute.

323. First, the Arbitral Tribunal certainly has jurisdiction to assess whether DigiTelCom validly transferred its rights and obligations under the CDMA License Agreement and the effects of such assignment.

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[347] Exhibit C-51.
[348] Award §§ 303-308.
[349] R-I, § 32.
[350] Claimants' Response on Jurisdiction, pp. 3-4.

324. Second, it is necessary to take into account the close link between the CDMA License Agreement and the SPA and the fact that, in Claimants' submission, "*any breach of the CDMA Agreement constitutes a breach of the Stock Purchase Agreement*"[351]. As a consequence, in view of the fact that the Arbitral Tribunal has jurisdiction to hear DigiTelCom's claims based on the SPA and the fact that DigiTelCom asks the Arbitral Tribunal to terminate the SPA[352] based on alleged breaches of Tele2's obligations under the CDMA License Agreement, DigiTelCom has a legitimate interest to make submissions on whether the CDMA License Agreement was performed by Tele2.

3- The Roaming Agreement

325. The Roaming Agreement was executed on 15 July 2003 by DigiTelCom and Tele2.

326. The Claimants allege that, on 6 October 2004, DigiTelCom designated KATEL and SoTel as Operators under the Roaming Agreement[353]. The 6 October 2004 notice reads as follows: "*PLEASE TAKE NOTICE, that in accordance with section 1.12 of the July 15, 2003 Preferred Partner Roaming Agreement, for the provision of world-wide roaming services to our affiliated two (2) Operators, as therein defined ("Agreement"), we are hereby informing you of DigiTelCom Ltd.'s ("DigiTelCom") designation of: (i) KATEL Limited Liability Company, a company organized under the laws of the Kyrgyz Republic ("KATEL"), and (ii) SoTel Ltd. Limited Liability Company, a company organized under the laws of the Kyrgyz Republic ("SoTel"), to be the "Operators", as defined under section 1.12 of the Agreement. Please be further advised that, when reasonably practicable, each KATEL and SoTel may contact you directly on their own for the purpose of establishing their agreed upon preferred partner roaming relationships under the Agreement*"[354].

327. Respondent denies that it never received such notification[355], Respondent further submits that, KATEL and SoTel never having been designated as Operators under the Roaming Agreement, there is as a consequence no arbitration agreement between Tele2 and such companies.

328. The Arbitral Tribunal disagrees.

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[351] Claimants' Response on Jurisdiction, p. 4.
[352] C-I, §§ 16-17 and C-II, §§ 24-27.
[353] C-I, p. 9; C-II, pp. 15-17.
[354] Exhibit C-52.
[355] R-I, § 178; R-II, §§ 97-101.

329. First of all, the Arbitral Tribunal has jurisdiction to decide whether KATEL and SoTel have been designated by DigiTelCom to Tele2 as Operators under the Roaming Agreement.

330. Second, Claimants' position is that KATEL and SoTel are not assignees of the Roaming Agreement but third party beneficiaries of the same. In this respect, Clause 1.12 of the Roaming Agreement refers to a designation by DigiTelCom of two Operators whose rights are either to enter into an agreement with Tele2 incorporating the terms and conditions of the Roaming Agreement or to enter into a new agreement on similar terms and conditions. As a consequence, clause 1.12 does not provide for an assignment of the Roaming Agreement, but for the nomination by DigiTelCom of third party beneficiaries.

331. Whether such nomination validly took place is a matter that needs not be decided as a question of jurisdiction and will be assessed in following sections of this award when the Arbitral Tribunal will address the merits. In order to assess its own jurisdiction, the Arbitral Tribunal has to assess the parties' respective claims and decide whether, assuming they are well-grounded, such claims fall under the parties' Arbitration Clause.

332. Assuming the alleged nomination of KATEL and SoTel took place, such companies would be third party beneficiaries of the Roaming Agreement. The question is then whether such third party beneficiaries have the right to invoke the Arbitration Clause included in the Roaming Agreement.

333. It should be noted, in this respect, that the Arbitration Clause is drafted in broad terms. The Arbitral Tribunal has jurisdiction to hear "*any*" controversy or *claim arising out or relating to*" the Roaming Agreement. Controversies or claims by a third party beneficiary under the Roaming Agreement will certainly be "*arising out or relating to*" the same.

334. In addition, it is generally accepted that a party which invokes the provisions of a contract by claiming third party beneficiary rights is entitled to invoke the arbitration clause contained in the contract[356].

[356] G. Born, "International Commercial Arbitration", *Kluwer* 2009, pp. 1178–1181; *Key Int'lMfg., Inc.v. Morse/Diesel, Inc.*, (Annex 6 to Claimants' Response on Jurisdiction); *Thomson-CSF, S.A. v. American Arbitration Ass'n*, (Annex 9 to Claimants' Response on Jurisdiction); *Spear, Leeds & Kellogg v. Central Life*

335. As a consequence of the foregoing, the Arbitral Tribunal has jurisdiction to hear SoTel and KATEL claims under the Roaming Agreement.

C. TELE2'S ALLEGED BREACHES OF THE SPAAND CLAIMANTS' REQUEST FOR "RESCISSION" OF THE SPA

336. Claimants' position is that, by failing to fulfill its obligations under the CDMA License Agreement and the Roaming Agreement, Tele2 breached SPA's provisions as well as the implied covenant of good faith and fair dealing[357]. Claimants' arguments with respect to Tele2's alleged breaches of the CDMA License Agreement and the Roaming Agreement, as well as of the implied covenant of good faith and fair dealing, will be addressed in following sections of this award.

337. Claimants do not allege that Tele2 would have failed to perform its obligations under the SPA. It is undisputed that Tele2 paid the price of the shares of SPT as provided by Clause 3 of the SPA. And DigiTelCom has not identified any provision of the SPA that Tele2 has failed to comply with.

338. Claimants' request that the SPA be rescinded because of Respondent's purported breaches of the CDMA License Agreement is rejected.

339. First of all, as shall be seen in following sections of this award, Tele2 did not breach its obligations under the CDMA License Agreement and the Roaming Agreement.

340. Second, the Arbitral Tribunal concurs with Respondent that the parties did not agree that compliance by Tele2 with its obligations under the CDMA License Agreement and the Roaming Agreement should be considered as a condition for the validity of the SPA. In this respect, the Arbitral Tribunal cannot ignore that the parties elected to execute three separate agreements. If the parties had intended that the validity of the SPA be subject to performance by Tele2 of its obligations under the other contracts, they would certainly have said so in the SPA, which is not the case.

341. To the contrary, the SPA in its fifth and sixth "whereas" refers as a consideration for the shares' sale to the fact that "*the parties will enter into an agreement in the form annexed*

Assurance Co., (Annex 8 to Claimants' Response on Jurisdiction); *Fluor DanielIntercontinental, Inc. v. General Electric Co.*, (Annex 4 to Claimants' Response on Jurisdiction).

[357] C-I, p. 6; C-II, p. 19.

hereto at schedule 4" (form of CDMA License Agreement) and to the fact that "*the parties shall enter into a Preferred Partner Roaming Agreement in the form annexed hereto as schedule 5*". Execution and delivery of the CDMA License Agreement and the Roaming Agreement are all that is provided for these two agreements as conditions precedent of the SPA's Completion, under Clauses 5.1(f) and 5.1(g) of the SPA.

342. Those "whereas" clauses refer to the *entering into* of the CDMA License Agreement and the Roaming Agreement as consideration. Such provisions do not refer to the performance of Tele2's obligations under the CDMA License Agreement and/or the Roaming Agreement as consideration for the sale by DigiTelCom of its shares or as conditions for the performance of DigiTelCom obligations under the SPA.

343. It is undisputed that the CDMA License Agreement and the Roaming Agreement have been executed as provided by the fifth and sixth "whereas" and by Clauses 5.1(f) and 5.1(g) of the SPA.

344. As a consequence, the Claimants are not entitled to seek termination or rescission of the SPA based on any purported failure by Tele2 to perform its obligations under the CDMA License Agreement and/or the Roaming Agreement.

D. TELE2'SALLEGED BREACHES OF THE CDMA LICENSE AGREEMENT

345. Before going into the details of the parties' allegations, it should be recalled that this dispute originated in DigiTelCom's will to divest from SPT and Oblcom, companies providing telecommunication services in Saint Petersburg and the Leningrad Region in Russia, respectively.

346. DigiTelCom had acquired a 25.4% stake in SPT in the summer of 2000. In 2002, Tele2 subsequently acquired a majority stake in SPT, and certain disagreements arose between the shareholders as to the company's strategy. Claimants have described such disagreements, during their opening statement at the 11 April 2011 hearing, as follows: "*the parties could not agree in brief in how to pursue a business plan, and that disagreement was rooted in what DigiTelCom believed was the Tele2/ Millicom approach to how they ran the business, principally by continuing to pile on debt with the*

company and not provide distributions that were appropriate to substantial minority shareholders"[358].

347. As part of the global deal that DigiTelCom and Tele2 then reached in order to allow DigiTelCom to exit both companies, Tele2 agreed to grant to DigiTelCom certain rights and DigiTelCom agreed to assume certain obligations with respect to the CDMA License.

348. Because the CDMA License had been issued to SPT (a company in which St. Petersburg Cable Television held a 14% stake), and because SPT was not a party to the CDMA License Agreement, Tele2could not and did not assign the CDMA License to DigiTelCom. Nor did, pursuant to the CDMA License Agreement, Tele2sell its CDMA network to DigiTelCom.

349. Of fundamental importance to the understanding of the case is that, for regulatory reasons, the CDMA License was not freely transferable to DigiTelCom or to any other third party. In effect, Section 38 of the CDMA License explicitly stated that it was not transferrable[359]. An authorization from the Ministry was thus necessary to that effect.

350. In addition, it is common ground that the CDMA network existing at the time of the CDMA License Agreement was not commercially operational, and that the administrative requirements for the validity of the CDMA License (as listed in the CDMA License) were therefore not complied with[360].

351. Finally, there seemed to be technical issues with the network's equipment and maintenance which both parties were aware of at the time the CDMA License was signed. Mr. Dombrovsky testified that "*there had never been any real investments made in the CDMA network*"[361].

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[358] Transcript, p. 11: 8-16.
[359] Exhibit R-2, p. 8.
[360] Transcript, pp. 258-259, Examination of Mr. Jacoby by the Arbitral Tribunal: "*The Chairman: I understand that since the time of the contract, and that is in July 2003, the existing network was never operated commercially? The Witness: No. The Chairman: At no point in time? The Witness: It could have been - The Chairman: Was it effective? My question is, was there a point in time between July 2003 until 2008 when the network was operating commercially? The Witness: Never a point in time. We were not successful in taking control*".
[361] RWS-1 Dombrovsky, § 4.

352. When, in January 2004, Tele2 advised DigiTelCom that there had been a crash in the base site controller computer software[362], and that the "*SW load of system was very old and not supported by Motorola's CNRCs*"[363], this did not come as a surprise to DigiTelCom and Mr. Palagi replied that DigiTelCom's Technical Director, Ms. Nina Nashnitsyna, would contact Mr. Sukharev or Mr. Sadovnikov to address the issues raised by the maintenance[364]. DigiTelCom's internal memorandum of 27 January 2004 clearly shows that most of the equipment was either not working, de-energized or dismantled[365].

353. Although DigiTelCom did not provide material evidence with respect to the level of due diligence it performed prior to entering into the agreements in dispute, it consequently appears that, at the time of the CDMA License Agreement, it was aware that the CDMA License was not transferable[366], that the network was not commercially operational, and that the equipment was in large part obsolete and suffering maintenance problems.

354. Against this backdrop, the parties carefully defined their respective duties and obligations in the CDMA License Agreement.

355. In broad terms, the CDMA License Agreement provides for Tele2's obligation to make its "*best efforts*" to procure that the CDMA License be transferred to a subsidiary of SPT called Multicom, which shares then had to be subsequently transferred to DigiTelCom[367].

356. Such operation was however subject to the transfer of the CDMA License being authorized by the Ministry. It is however common ground that such authorization was

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[362] Exhibit C-8.
[363] Exhibit C-11.
[364] Exhibit C-10.
[365] Exhibit C-12.
[366] Clause 38 of the CDMA License provides that: "*The License may not be transferred to another party*". Clause 2.8 of the CDMA License Agreement provides that: *"DigiTelCom expressly acknowledges that it has full knowledge of the terms of the CDMA License and all correspondence between SPT and the relevant regulatory authority, and further acknowledges that the relevant regulatory authority has powers to revoke or amend the terms of the CDMA License in accordance with its terms or at law*".
[367] C-1 (b), CDMA License Agreement, Clause 3.1.Claimants submitted as Exhibit C-94 a collection of 53 Tele2's press releases and company reports, from early 2003 through late 2010, regarding Tele2's extensive growth in the Russian mobile telecommunications market. Claimants made the point (Jacoby CWS-5, § 28) that this growth thereby caused Tele2 management not to have the resources or the desire to focus its "best efforts" on the needed contractual items needed to be accomplished by Tele2 under the CDMA License Agreement, to DigiTelCom's detriment. The Arbitral Tribunal was not persuaded by this allegation, which was not supported by persuasive evidence to that effect.

not obtained and that, in spite of the parties' efforts, the CDMA License could not be transferred to Multicom.

357. Claimants' counsel described the situation as follows during its opening statement at the 11 April 2011 hearing: "*Ultimately, the license transfer never occurs. The efforts to transfer the license really began in sort of I would say mid-2004, and continued into early 2006. In January of 2006, Mr. Jacoby tells the Tele2 representatives that 'We need to pursue a dual strategy because it looks as if the license transfer isn't going to occur'*"[368].

358. Although the Claimants allege that Respondent caused or contributed to the suspension and subsequent nonrenewal of the CDMA License by failing to coordinate with them in their responses to the Ministry (which question will be discussed below), they did not establish that Tele2 had failed to make the necessary applications for the transfer of the CDMA License by SPT to Multicom, or to procure its best efforts for such transfer to be authorized.

359. In Claimants' first PHB, they allege that "*Tele2 controlled the license transfer effort and, because it had no intention of seeing DigiTelCom's commercialization efforts succeed, there was never any legitimate hope that a transfer could be effected.*"[369].

360. However, Claimants' assertion that Tele2 "*insured that the effort would fail*"[370] is unsupported. Quite to the contrary, the record shows that Tele2 cooperated in the parties' attempts to secure the CDMA License's transfer.

361. On 24 January 2006, Mr. Jacoby for example declared "*To date, despite numerous promises, both our companies, have been unable to transfer the license and the frequencies from STP (sic) to Multicom*"[371]. Mr. Jacoby did not doubt that the necessary applications had been made and that Tele2 had cooperated in good faith to the attempted transfer. The problem at the time was not one of cooperation by Tele2. It was the Ministry's refusal to authorize the transfer.

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[368] Transcript p. 19: 4-12.
[369] CPHB-I, p. 13.
[370] Ibid.
[371] Exhibit C-54.

362. In March 2006, Mr. Stenberg wrote to Mr. Jacoby to propose to make new attempts to secure the transfer[372], and Mr. Jacoby responded "*we would like to continue with our efforts to transfer the license, in parallel to our moving forward under the evergreen agreement. We look forward to continued cooperation*"[373]. Any new attempt to transfer the license was however unsuccessful[374].

363. The evidence, mentioned above and elsewhere in the exhibits, shows that Tele2 satisfied its best efforts obligation by making the necessary applications for the transfer of the CDMA License and by cooperating with the Claimants to that effect (in fact at times encouraging the Claimants to be more proactive).

364. The CDMA License Agreement also provides in Clause 2.1 that, until such time when the CDMA License would be transferred, DigiTelCom would be entitled to operate the CDMA Existing Network and to utilize the frequency allocations made in respect of the CDMA License. The CDMA License Agreement mentions in a "whereas" clause that DigiTelCom would use the CDMA Network "*on an evergreen basis*"[375]. As discussed below, Clause 2.6 appears to implement that concept (although the term "evergreen" was not employed in that Clause).

365. The manner in which such "*evergreen*" concept was to operate was later discussed between the parties, in particular in March 2006 (i.e., nearly three years after the CDMA License Agreement was signed). In an email of 29 March 2006, after advising Mr. Jacoby that Tele2 had just submitted "*a fresh application to the Ministrylast week requesting that they transfer the CDMA license from SPT to Multicom*" and having informed that "*it is very unlikely that this would be possible*", Mr. Reidy advised that "*we should continue to move forward the evergreen agreement principle already discussed*"[376].

366. According to Mr. Reidy, the first step to be followed in order to implement the "*evergreen*" principle was the sale of Multicom to TelCo (DigiTelCom's nominee under

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[372] Exhibit C-57.
[373] Exhibit C-57.
[374] Exhibit C-61.
[375] CDMA License Agreement, fourth 'whereas' clause.
[376] Exhibit C-61.

the CDMA License Agreement)[377]. This was confirmed by Mr. Stenberg at the hearing[378].

367. In March 2004, Multicom had executed the Lease Agreement enabling it to use equipment constituting one base station controller and six base stations of the CDMA Existing Network[379]. Such equipment was insufficient to operate a telecommunications network[380], but it could be used as a base for DigiTelCom's or TelCo's operations.

368. However, DigiTelCom or TelCo did not follow up on the acquisition of Multicom. Mr. Stenberg confirmed at the hearing that neither DigiTelCom nor TelCo ever made any request to purchase Multicom or audit such companies' financial reports[381].

369. The "*evergreen*" concept could have been implemented while SPT was still operating the CDMA License. Basically, the system would have operated with an "apparent" and a "real" operator of the CDMA Network. Mr. Jacoby confirmed during his hearing that the parties' understanding of the system was that the evergreen would have been "*a system where SPT would have continued to operate the license and Digitel would have been behind the scene providing the finance and receiving the proceeds*"[382]. Such concept is reflected in Clause 2.6 of the CDMA License Agreement. Mr. Jacoby also confirmed that implementing such a system would have needed to establish some sort of legal framework[383]. Whether such a system would have been compatible with the applicable Russian regulations may be doubtful. At any rate, there is no persuasive evidence in the record that DigiTelCom or TelCo took any steps to the effect of implementing the "*evergreen*" concept.

370. Finally, Clause 2.4 of the CDMA License Agreement provides that DigiTelCom was responsible for "*taking physical control of maintaining (to its sole satisfaction) all machinery and equipment comprising the CDMA Existing Network, excluding the switch*".

371. The Arbitral Tribunal will deal in subsequent sections of this award with Claimants' allegations that Tele2 denied it access to the network. However, it should be emphasized

[377] Ibid.
[378] Transcript, p. 444: 16-17; p. 446: 18.
[379] Exhibit C-108.
[380] RPHB-I, § 28.
[381] Transcript, p. 447-448.
[382] Transcript, pp. 272: 19, 273:2-3.
[383] Transcript, pp. 273-274.

that DigiTelCom's or TelCo's right to take control of the CDMA Existing Network was limited by Clause 2.3 of the CDMA License Agreement, pursuant to which "*DigiTelCom shall not be entitled to establish a Commercial Service using the Existing CDMA Network without first reaching an appropriate commercial arrangement with Tele2 respecting such use, such as, for example, the purchase or lease of the CDMA Existing Network from Tele2*".

372. Pursuant to Clause 2.3, it was therefore up to DigiTelCom or TelCo to take steps to purchase or lease the CDMA Existing Network. As from 1 March 2004, equipment composing the CDMA Existing Network had been leased to Multicom in contemplation of the possible assignment to said company of the CDMA License. Yet, as said above, there is no material evidence in the record that DigiTelCom or TelCo took any step to purchase Multicom.

373. In absence of such a sale or lease of the CDMA Existing Network, DigiTelCom's or TelCo's right of control was limited to the "*maintenance*" of the network. DigiTelCom or TelCo were not permitted, pursuant to Clause 2.3, to establish commercial service. Given that DigiTelCom never took steps to acquire or lease the network, whether they have been prevented or not to take control of the maintenance may ultimately be viewed as irrelevant. Whatever level of control the Claimants had or would have had on the maintenance, this was of no avail in absence of an agreement between the parties on the sale or lease of the network, something that the Claimants never pursued.

374. In any case, the Arbitral Tribunal is not persuaded by Claimants' contentions that they were prevented by Tele2 from taking control of the maintenance, or that Tele2 did not care with the sufficient level of diligence for the maintenance of the equipment. The evidence does not support that contention.

375. On January 2004, DigiTelCom confirmed in writing its decision (previously announced during a meeting in December 2003) to "*undertake the maintenance of all machinery and equipment (excluding the switch)*". At the time, DigiTelCom announced that its technical staff would be in contact with Tele2's technicians to that effect[384]. Given that the network belonged to SPT, allowing DigiTelCom to take control of the maintenance clearly required a certain level of cooperation between the parties' technicians.

[384] Exhibit C-10.

376. The parties' respective technical teams seem to have properly cooperated since December 2003. In the Arbitral Tribunal's view, any delays or communication problems were minor and did in any event not damage DigiTelCom.

377. When the January 2004 crash occurred, Tele2 promptly informed DigiTelCom that "*This problem can't be solved by our own technical department*" and that Motorola's intervention was needed[385]. The problem was ultimately solved, and DigiTelCom congratulated SPT "*on the successful resolution of problems related to CDMA Network close-down*", albeit complaining that "*we cannot understand why during the CDMA Network recovery work you did not invite our specialists. This being said in the future we count on closer cooperation on all problems emerging*"[386].

378. Although Tele2's obligation as to the maintenance contractually ceased in January 2004, the level of care shown thereafter by the Respondent for the network seems to have been reasonable. When, on 8 April 2004, the air conditioning unit at the base station B002 failed, it requested permission to "*spend the funds necessary*" for purchasing a new system[387]and DigiTelCom failed to respond.

379. From the evidence, there does not appear to have been any major incident at the technical level between the parties' technical teams. Overall, the Arbitral Tribunal sees no basis to sustain that Tele2 would have been either negligent or uncooperative in the maintenance of the network.

380. Clause 2.4 also provides that, as an alternative to a purchase or lease of the Existing CDMA Network, DigiTelCom could have started commercial service by implementing a New Network. But, again, it elected not to do so.

381. There is evidence in the record that Claimants purchased spare parts from a variety of suppliers at the end of 2006 and beginning of 2007[388], but such equipment apparently related to the maintenance of the Existing network rather than to the creation of a New Network. There is also evidence that Claimants concluded a nondisclosure agreement in February 2005 with ZTE to cover disclosures relating to the supply of equipment necessary to the creation of a CDMA 2000 network, but the Claimants do not appear to have pushed that further (the Arbitral Tribunal will address in subsequent sections of

[385] Exhibit C-8.
[386] Exhibit C-16 (second document).
[387] Exhibit C-33.
[388] Exhibit C-66; CWS-1 Jacoby, § 104.

this award the debate on Claimants' request for a power of attorney relating to such negotiations). The Arbitral Tribunal also notes that DigiTelCom and TelCo presented no business plan with respect to the possible creation of a New Network.

382. Finally, the Arbitral Tribunal gives weight to the fact that the CDMA License was suspended by the Ministry on the basis that the CDMA Existing Network was not commercially operated[389], and that the CDMA License in the following month (April 2007) expired according to its term and was not renewed (seemingly due to a change in the applicable Russian regulations).

383. In 2000, the Ministry had decided that by 2010 the 800MHz frequency band, which was used by the CDMA License, was going to be used for television broadcasting instead of telecommunication. This decision eliminated the possibility to operate the CDMA Network after 2010. In 2005, the Ministry also issued a decree in which it amended the list of communication services. The new legislation did not allow for the type of service covered by the CDMA License. This new legislation was also stated as the reason for the Ministry's refusal of SPT's application to extend the CDMA License.

384. In any event, any renewal of the CDMA License after its term would have been subject to the licensee complying with certain regulatory requirements, including those contained in the CDMA License, which was not the case due, among others, to the lack of commercial operation of the network[390].

385. Such circumstances are not attributable to Tele2. DigiTelCom was aware since when the CDMA License Agreement was executed that the network was not commercially operated and it was aware of the requirements for maintaining the CDMA License (which was the Exhibit A of the CDMA License Agreement). As explained above, it was DigiTelCom responsibility to start commercial operations either by purchasing or leasing Tele2's Existing Network or by creating a new one. It did neither of those two things.

386. The Arbitral Tribunal, based on a careful study of all the evidence, has therefore come to the conclusion that Tele2 did not breach Section 2.8 of the CDMA License Agreement (providing that "*Tele2 shall not, and it shall direct SPT not to (unless so instructed by DigiTelCom) take any action or knowingly omit to take any action,*

[389] Exhibits C-71, C-74.
[390] Transcript p. 636: 8-25.

intended to cause a surrender, termination or adverse amendment of the CDMA License and/or SPT's interest therein") or any other obligation relating to the CDMA License.

387. The suspension and the loss of the CDMA License have not been caused by actions attributable to Tele2. The cause of Claimants' alleged losses are elsewhere: they are in part due to DigiTelCom's and TelCo's failure to establish commercial service and in part due to changes in the applicable regulatory context.

388. The Arbitral Tribunal will now specifically address Claimants' allegations relating to (**1**) Tele2's obligation to permit DigiTelCom to use, access and control the CDMA Network, (**2**) Tele2's obligation to maintain the Switch and a "live" network, (**3**) Tele2's obligation to direct SPT to sign the CDMA License Agreement, and (**4**) Tele2's obligation to involve DigiTelCom in its communications with the Ministry.

1- Tele2's obligation to permit DigiTelCom to use, access and control the CDMA Network

389. Claimants aver that Tele2 denied it access (**a**) to documentation, (**b**) to the base stations and the network, (**c**) as well as to the Switch. Claimants also submit that (**d**) Tele2 directed Claimants to stop trying to access and maintaining the Existing CDMA Network, and (**e**) failed to provide TelCo with a power of attorney by SPT.

a) Access to documentation

390. The contractual basis for Claimants' right of access to documentation appears to be Clause 2.4 of the CDMA License Agreement, according to which "*Tele2 agrees to give full and complete access to DigiTelCom, and to do such other things as is (are) necessary or desirable for DigiTelCom to conduct such maintenance*".

391. In broad terms, Claimants' allegation is that, despite multiple requests, SPT and Tele2 refused to provide the technical and regulatory documentation necessary for DigiTelCom to evaluate, operate, maintain and upgrade the CDMA Network[391].

392. The evidence does not support that contention.

[391]CPHB-I, p. 4: "*DigiTelCom's many requests for access to the network equipment, technical drawings, and documents reflecting Tele2's ostensible efforts to transfer the CDMA License were also ignored or rebuffed*".

393. A first list of documents that DigiTelCom intended to request from Tele2 is established in an internal memorandum by Ms. Nashnitsyna on 19 January 2004[392]. In a subsequent internal memorandum dated 29 January 2004, Ms. Nashnitsyna listed a set of documents relating to the CDMA License that she already received and stated "*we go on with our work*"[393]. As it appears from the memorandum, Ms. Nashnitsyna had been visiting SPT's premises on the same day and had been able to collect and process information[394].

394. Some days later, on 4 February 2004, DigiTelCom made a request to Mr. Sukharev, Director General of SPT, for additional documentation[395]. As it appears from an internal memorandum from Ms. Nashnitsyna, dated 9 February 2004, she had been chasing Mr. Sukharev, who replied that he needed to confirm her credentials and also needed some time "*to familiarize with the documents*"[396]. Two days later, on 11 February 2004, Ms. Nashnitsyna reported internally that Mr. Sukharev was working on her request for documents. Ms. Nashnitsyna added "*Here are some conclusions one may draw: Director General is reluctant to see our participation in this matter*"[397]. However, only a week had passed since DigiTelCom request on 4 February 2004. On 12 February 2004, Mr. Palagi officially confirmed Ms. Nashnitsyna's credentials and insisted on the communication of the technical documentation requested[398].

395. DigiTelCom again requested that the documents be provided in a letter dated 26 February 2004[399]. On 3 March 2004, Tele2 responded by confirming that the documentation requested had been communicated to DigiTelCom[400]. Two days later, DigiTelCom responded by pointing out that certain documents listed in Tele2's letter were missing[401]. There are however no further requests after 5 March 2004 by DigiTelCom or TelCo with respect to missing technical documents, and the Arbitral Tribunal therefore has no basis for concluding that the documents identified in DigiTelCom's letter of 5 March 2004 would not have been regularly provided. Given the insistence with which DigiTelCom had requested the documents in the previous

[392] Exhibit C-9. The Arbitral Tribunal notes that this is four days after the date when DigiTelCom had, pursuant to the CDMA License Agreement, to take control of maintenance.
[393] Exhibit C-13.
[394] Exhibit C-13: "*Today we went on with collecting and processing source information received from FORA*".
[395] Exhibit C-16 (first document).
[396] Exhibit C-17.
[397] Exhibit C-17.
[398] Exhibit C-18.
[399] Exhibit C-16 (second document).
[400] Exhibit C-30.
[401] Exhibit C-31.

weeks, there would certainly have been further written requests if SPT had failed to provide the missing documents identified in DigiTelCom's letter of 5 March 2004.

396. At any rate, even assuming that SPT was late or failed to provide certain technical documents, there is no material evidence of the harmful consequences that such situation would have had. DigiTelCom knew the network, was aware of its technical problems, and it does not make any specific allegation as what particular document it still needed and for what purpose.

397. As to the documents related to the transfer of the CDMA license to Multicom, Tele2 informed DigiTelCom on 13 July 2004 that such documents "*are in our office and ready to be mailed*"[402]. There is no further correspondence between the parties in this respect. The Arbitral Tribunal thus has no reason to conclude that the documents were not properly received by the Claimants.

b) Access to the base stations and to the Network

398. The Arbitral Tribunal does not find any persuasive evidence that, as submitted by the Claimants, DigiTelCom or TelCo were "*forbidden*"[403] from accessing the network equipment. As it appears from Ms. Nashnitsyna internal memorandum of 30 January 2004, DigiTelCom's technical team was able to access the site on 27 January 2004, to visit all sites and to inspect the equipment[404]. There is no persuasive evidence that, after that date, DigiTelCom or TelCo would have been denied access to the network. In addition, once again there was no affirmative evidence of how DigiTelCom or TelCo either planned to benefit or indeed would have benefitted under the CDMA License Agreement by having this access.

c) Access to the Switch

399. As to the Switch, the Arbitral Tribunal first of all notes that the CDMA License Agreement expressly excludes it from DigiTelCom's right of control[405]. As a consequence, DigiTelCom had no right to access the Switch.

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[402] Exhibit C-40.
[403] CPHB-I, p. 5.
[404] Exhibit, C-14.
[405] CDMA License Agreement, Clause 2.4.

400. As to Claimants' argument that access to the Switch was necessary to operate the network commercially[406], the Arbitral Tribunal first of all note that such access was not provided for in the CDMA License Agreement. In addition, this argument fails to consider that, pursuant to Clauses 2.3 and 2.4 of the CDMA License Agreement, DigiTelCom had no right to operate the Existing CDMA Network in the absence of an appropriate commercial arrangement with Tele2 with respect to the use of the network, something that DigiTelCom never attempted to implement.

401. There is also no material evidence that DigiTelCom or TelCo ever requested to be allowed to access the Switch, or that accessing the Switch was necessary for the maintenance of the Existing CDMA Network. In this respect, Respondent submits that it would, had it been requested to do so, have granted access to the Switch "*provided that it was qualified technicians or engineers that were to access and work on the switch*"[407].

d) Tele2 directed Claimants to stop trying to access and maintaining the Existing CDMA Network

402. Claimants allege that, in July 2004, Mr. Dombrovsky, of Tele2, called Mr. Jacoby to ask him to stop trying to access the network[408].According to the Claimants, as a consequence of such purported request, which was allegedly accepted by Mr. Jacoby, the responsibility for maintaining the Existing CDMA Network passed to Tele2, even after the six months period provided by Clause 2.4 of the CDMA License Agreement.

403. But Mr. Dombrovsky firmly denies having ever directed DigiTelCom to stop trying to access the CDMA network[409]. In addition, and in any case, the Arbitral Tribunal does not accept the consequences drawn by the Claimants from the alleged telephone conversation between Mr. Jacoby and Mr. Dombrovsky. As a matter of fact, according to Claimants, Tele2 would have accepted to take responsibility for the maintenance for an indeterminate period of time beyond the initial six months period provided by Clause 2.4[410]. The Arbitral Tribunal believes that, had that been the intention of the parties, there would at least have been an exchange of written communications between the

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[406] CWS-7 Chepizhenko, § 14.
[407] RWS-1 Dombrovsky, § 8.
[408] CWS-1 Jacoby, § 75; CWS-5 Jacoby, § 17.
[409] RWS-1 Dombrovsky, § 7.
[410] CWS-1Jacoby, § 76,: "*We agreed that DigiTelCom would stop attempting to access the CDMA switch and CDMA network, and that Tele2 would maintain and operate the system and the CDMA license until the license could be transferred*".

parties. In this respect, Clause 9 of the CDMA License Agreement contains the typical contractual provision that any amendment to the same had to be made in writing. It is not reasonable to assume that the parties would ignore such a key provision of the Agreement which would of course leave open such issues as the duration of this alleged Tele2 non-contractual commitment ("*until the CDMA License could be transferred*"), the payments to be made by DigiTelCom to Tele2, the liabilities between the parties as a result of such Tele2 obligations, etc.

404. As a consequence of the foregoing, the Arbitral Tribunal concludes that it has not been established that Mr. Dombrovsky and Mr. Jacoby agreed that DigiTelCom would waive its right to access the network and that Tele2 would take care of the maintenance until the CDMA License was transferred.

e) Tele2's alleged failure to provide TelCo with a power of attorney by SPT

405. Claimants submit that SPT refused to grant to DigiTelCom a power of attorney to negotiate on SPT's behalf with regard to the CDMA License and network. According to the Claimants, such conduct hindered DigiTelCom's ability to revive the network or secure a transfer of the CDMA License.

406. This question arose in conversations between Mr. Jacoby and Mr. Reidy of Tele2 at the beginning of December 2006. As it appears, Mr. Jacoby then requested to Mr. Reidy that SPT issue a power of attorney enabling TelCo to act on SPT's behalf with respect to the CDMA License. Mr. Jacoby's request seems, at the time, to have been insufficiently clear, and Mr. Reidy responded that "*Part of our problem has been in understanding precisely how such PoA would be used. When you first raised this proposal, you mentioned possible usage in negotiations with suppliers*". Mr. Reidy informed Mr. Jacoby that such power of attorney would not be appropriate as "*under the SPA Digitelcom is now itself responsible for the maintenance of the CDMA Existing Network and construction of the CDMA New Network, so Tele2 has already relinquished its rights to such activities and so should not therefore be granting a PoA to another for such activities. Moreover, Tele2 is concerned that in doing so, due to some future unforeseen circumstances, it would be exposed in some way to pay for equipment/services for which it no longer has the right to use*"[411].

[411] Exhibit R-4.

407. Mr. Reidy nonetheless seemed willing to cooperate and to support TelCo, and asked Mr. Jacoby to submit "*a draft of what you envisage and upon our receipt we shall assess, and possibly re-consider our decision*"[412]. Mr. Jacoby responded that he had instructed his lawyers "*to come up with a solution that suits us all*" and would get back to Mr. Reidy[413]. Mr. Reidy responded on 8 December 2006 as follows: "*As soon as I receive your proposed PoA, be assured that I will immediately forward to our legal council (sic) for review/comment*"[414]. Mr. Jacoby however never submitted any draft power of attorney to Tele2.

408. As a consequence of the foregoing, the Arbitral Tribunal rejects Claimants' argument that Tele2 breached any obligation by failing to procure that SPT sign a power of attorney. First, such obligation was not provided by the CDMA License Agreement. Second, the exact scope of the requested power of attorney has never been clearly defined by the Claimants. Finally, it is in reality Mr. Jacoby who failed to follow up on Mr. Reidy's bona fide offer to consider a draft of the power of attorney requested by the Claimants.

409. There is a consequence no need to address Mr. Ross Jacoby's contention that "*Tele2/SPT's refusal to grant DigiTelCom a power of attorney or authorization to represent SPT (as the license holder) in matters relating to the CDMA License resulted in a failure of discussions with ZTE, Lucent, and RTK/Metrosvyaz*" (CWS-5, §§ 6, 7 and 36).

2- Tele2's obligation to maintain the Switch and a "live" Network

410. Claimants submit that SPT and Tele2 did not maintain the network in good order and ultimately shut it down some months before the Ministry was to inspect it in October 2006[415], thus jeopardizing the chances that the Ministry would permit the continued operation of the CDMA License or award a new license[416]. Claimants also submit that

[412] Ibid.
[413] Ibid.
[414] Ibid.
[415] CWS-1 Jacoby, §§ 97-99, 113; CWS-5 Jacoby, §§ 30-33; CWS-7 Chepizhenko, §§ 25-35; CPHB-I, pp. 5, 14.
[416] C-II, p. 4 (Q); CWS-1 Jacoby, § 126; See also Transcript Tereshchenko, pp. 633-636; Sadler, pp. 693, 695, 815; Chandler, pp. 823-824.

Tele2 "*killed the switch*" because "*it had no further use for the switch and the N-AMPS network*"[417].

411. As to the Switch, first of all, the Arbitral Tribunal finds no persuasive evidence that Tele2 disconnected the Switch. In or around December 2006, DigiTelCom and TelCo were trying to revive the CDMA Existing Network in the context of the Ministry's inspection (the Ministry's letter of 13 November 2006 had granted time until 17 December 2006 to re-establish service). At that time, the CDMA Existing Network was not operational, but the Switch was still functional. This was confirmed by Mr. Chepizhenko during the second day of the hearings[418].

412. As to the network itself, clause 2.4 of the License Agreement limits Tele2's obligations to maintain the CDMA Existing Network to a period of six months after execution of the CDMA License Agreement, i.e. until January 2004. Clause 3.2 also provides that the parties' obligations survive "*throughout the entire transfer period in order to effect the 'live' 'ongoing' and 'seamless' transfer of the CDMA License*" as well as during "*a period of time after completion of the CDMA License transfer in order to ensure a smooth and uninterrupted transfer of operational 'hand-off' of the CDMA Network*".

413. Clause 3.2 operates as an exception to the six-month limitation provided by Clause 2.4. In other words, Tele2 is discharged of its obligation to maintain the CDMA Existing Network as from January 2004, but if the CDMA License has been transferred, Tele2's obligation continues until such time has the transfer is completed and thereafter in order to ensure a smooth transition. In the case at hand, it is common ground that the CDMA License was never transferred for reasons not attributable to Tele2 (i.e. the Ministry's refusal to allow the transfer), and Clause 3.2 is therefore not applicable. As a consequence, Tele2 is right in its submission that it was discharged from its obligation to maintain the CDMA Existing Network as from January 2004[419].

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[417] CPHB-I, p. 5.

[418] Transcript p. 476:

"Question by Claimants' Counsel: "Sir, what was the condition of the CDMA network in December 2006 when your team went to inspect and revive it?

A. The network was out of service. The controller was out of service. The switch was out of service. I'm sorry, it was controller which was out of service. There was no connection between the controller, and the switch and base stations were out of service as well.

Q. Were you able to revive the base station controller?

A. Yes. We were able to revive the base station controller and resume the connection between the controller and the switch".

[419] RPHB-I, § 42.

414. The CDMA License Agreement does not contain any representation and warranty as to the state of the CDMA Existing Network. Furthermore, as explained in previous sections of this award, DigiTelCom knew when entering into the CDMA License Agreement that the network was not operational and that the equipment was old and in part obsolete. Tele2's obligation under Clause 2.4 needs to be understood against this backdrop. Clearly, if the parties had intended that Tele2 had the obligation to ensure that the network was operational and in good state, they would have used clear language to that effect and provided for appropriate representations as to the state of the machinery and equipment. To the contrary, Clause 2.4 only provides for Tele2's obligation to "*maintain all machinery and equipment*". The term "*maintain*" means that Tele2 had the obligation to preserve the equipment and machinery in the state in which they were at the time of the CDM License Agreement.

415. There is nothing to indicate that Tele2 failed to comply with such obligation. When the January 2004 crash occurred, Tele2 and SPT took the necessary measures to remedy the problem and DigiTelCom congratulated them "*on the successful resolution*" of the problem[420].

416. Based on the foregoing, the Arbitral Tribunal rejects Claimants' arguments based on a purported failure of Tele2 to maintain the Switch and the network.

3- Tele2's obligation to direct SPT to sign the CDMA License Agreement

417. Claimants assert that despite numerous requests, SPT failed without any valid explanation to sign the CDMA License Agreement. SPT only signed the CDMA License Agreement on February 27, 2004. According to Claimants, SPT's signature of the contract was necessary in order for DigiTelCom to have access to the network[421].

418. The parties are in disagreement on the exact significance of SPT's signature of the CDMA License Agreement. Respondent submits that SPT was not a party to the CDMA License Agreement[422]. As a consequence, although the signature page of the contract mentioned SPT's signature, the same was not required and its absence had no consequence. Claimants, to the contrary, rely on the definition of the term "Affiliate" in

[420] Exhibit C-16 (second document).
[421] CWS-1 Jacoby, §32; CWS-5 Jacoby, §§12-14.
[422] R-I, § 59.

the CDMA License Agreement[423] and seem to suggest that SPT was a party to the CDMA License Agreement. The language of Clause 4.1 (c) also seems to suggest that the parties intended that SPT would be directly obliged by the CDMA License Agreement.

419. The Arbitral Tribunal, however, does not need to make a determination in this respect. It can easily be accepted that SPT's signature of the CDMA License Agreement was of certain relevance to DigiTelCom. SPT was in fact the licensee of the CDMA License. It is SPT which had to make the necessary applications for its transfer to Multicom. SPT was also the owner of the network, and an obligation to maintain and to transfer it would ultimately fall on it. Finally, the contemplated "evergreen" concept in the CDMA License Agreement would of course have needed SPT's consent and cooperation.

420. The Arbitral Tribunal also accepts that SPT's behavior with respect of its signature of the CDMA License Agreement was rather strange. As it appears, the new Director General Mr. Sukharev, who took his functions in November 2003, initially refused to sign the Agreement and requested DigiTelCom to ask his predecessor Mr. Zakhariev to sign it instead[424]. As a consequence, the CDMA License Agreement was signed twice by SPT, once by Mr. Zakhariev[425], and then on 27 February 2004 by Mr. Sukharev. It is also clear that SPT has not been as proactive as it could have been in its relationships with DigiTelCom until the beginning of 2004.

421. The Arbitral Tribunal fails to see, however, what adverse consequences such situation could have had on Claimants' rights. In fact, DigiTelCom does not seem to have been worried about SPT's signature of the CDMA License Agreement until December 2003 (five months after the Agreement was signed), when Mr. Palagi met Mr. Sukharev and requested SPT to sign the CDMA License Agreement. Mr. Sukharev only signed the CDMA License Agreement six weeks after he was asked to do so, but there is no persuasive evidence that such delay harmed DigiTelCom in any manner. As to the

[423]Transcript p. 26, Claimants' opening statement. Claimants in particular rely on the following provision of the definition of Affiliate: " *All references in this Agreement to rights, obligations, duties or undertakings of Tele2, or warranties and representations by Tele2, shall be deemed to mean and include Tele2 and Tele2's Affiliates, including SPT*".

[424] CPHB-I, p. 9.

[425] Exhibit R-17. Mr. Jacoby stated that "SPT's Maxim Zakhariev was not even aware of the CDMA Agreement" (CWS-5 Jacoby, § 12). The Arbitral Tribunal did not understand this comment since "Maxim Zakhariev, General Director," had signed the Agreement (Exhibit R-17). Strangely, Mr. Zakhariev stated that though he was asked to sign the Agreement in mid to late summer 2003, he "never signed it". (CWS-8 Zakhariev, § 20).

transfer of the CDMA License, the parties only started to deal with it in October 2004[426]. As shown in previous sections of this award, DigiTelCom has never been restricted in its access to the network. Finally, the February 2004 crash was promptly dealt with and resolved in spite of the fact that Mr. Sukharev had not yet signed the CDMA License Agreement.

4- Tele2's obligation to involve DigiTelCom in its communications with the Ministry

422. Claimants submit that Respondent breached its obligation to involve DigiTelCom in its communications with the Ministry. In particular, SPT responded without consulting DigiTelCom to the Ministry's 2003 Improvement Notice[427]. In 2006, SPT failed to seek TelCo's or DigiTelCom's approval to a letter responding to an inquiry by the Ministry relating to the number of subscribers to the network[428].

423. Clause 2.5 of the CDMA License Agreement provides that "*SPT and Tele2 shall not take any material action in respect to the preceding subclauses*[necessary or appropriate to ensure that the CDMA License is not cancelled, revoked or suspended] *without DigiTelCom's prior authorization*". In addition, Clause 2.5 provides in its fifth paragraph that "*Tele2 and SPT shall promptly communicate to DigiTelCom all inquiries and requests received from relevant regulatory authorities regarding the CDMA Network and/or the CDMA License and shall use reasonable diligence in coordinating with DigiTelCom all dealings with relevant regulatory authorities (whether arising from official inquiries or requests, or otherwise) regarding the CDMA Network and/or the CDMA License*".

424. Based on such provisions, there is little doubt that Tele2 had the obligation to consult or cause SPT to consult with DigiTelCom prior to sending formal communications to the Ministry with respect to the CDMA License.

425. The parties disagree as to whether DigiTelCom was informed of the letter sent by SPT to the Ministry on 22 December 2003 in response to the 26 November 2003 Improvement Notice. There is evidence that the letter to the Ministry was sent to Mr. Jacoby on 12 February 2004[429]. Mr. Svedberg's email to Mr. Jacoby of 12 February 2004 refers to "*documents given*" to Gregory Donat of DigiTelCom on 22 December

[426] Exhibit C-41.
[427] C-II, p. 14; CPHB-I, p. 7.
[428] C-I, p. 8; C-II, p. 14; CPHB-I, p. 18.
[429] Exhibit C-19.

2003 by Evgeny Kurilov of Tele2, attaching the letter signed on the same day to the Ministry or a draft of the same. Whether the document was received by Mr. Donat before or after the letter was sent to the Ministry on the same day, there is little doubt that DigiTelCom was not given a proper opportunity to review it before that day.

426. It does not appear, however, that the 22 December 2003 letter to the Ministry had adverse consequences on DigiTelCom's ability to exercise its rights under the CDMA License Agreement. In this respect, Claimants' contention that the 2003 letter would have precipitated the process that ultimately resulted in the suspension of the CDMA License is entirely speculative and unsubstantiated. When they received the letter, neither Mr. Donat (who had received the letter on the same day) nor Mr. Jacoby (who had received it on 12 February 2004) reacted negatively. In addition, the Ministry did not take any measure adverse to SPT as a consequence of that letter, and almost three years passed until the Ministry opened an inspection. Finally, it has not been submitted by the Claimants that the contents of SPT's letter to the Ministry would have been inaccurate, and the Claimants fail to make any submission in respect to the manner in which, in their view, SPT should have properly responded to the Ministry's improvement notice.

427. The situation with respect of the 27 December 2006 letter[430] is slightly different. It is common ground that such letter was not submitted in advance to DigiTelCom, and DigiTelCom reacted negatively some days later[431]. However, it appears that, in the context of the then ongoing inspection, the Ministry had some weeks earlier requested to Tele2 to confirm in writing some information relating to the state of the network. That information seems to have been requested as a matter of urgency[432]. It is common ground that the draft response to the Ministry was submitted to DigiTelCom and approved by Mr. Jacoby[433]. Such draft was sent by SPT to the Ministry on 13 November 2006. The contents of that response[434] were substantially identical to that of the letter sent on 27 December 2006[435]. Essentially, both letters referred to the fact that the network was not commercially operated due to the fact that the equipment was not up to date.

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[430]Exhibit C-70.
[431]Exhibit C-72.
[432]In an email of 13 November 2006 (Exhibit R-22), Ian Reidy informed Mr. Jacoby that "*Rosvyaznadzor are demanding we submit letter by 1400 local time*".
[433]Exhibit C-73: "*Thanks for the revised letter. Overall it is a good one*".
[434]Exhibit R-8.
[435]Exhibit C-72.

428. According to Mr. Jacoby, he only approved the 13 November 2006 letter as a draft and he did not understand that it would be sent to the Ministry (Claimants aver that such letter had only been approved *"as a draft, and as a concept for further discussion and evaluation"*, and that they *"never authorized Tele2 to send the letter"* to the Ministry[436]). Mr. Jacoby also submits that the letter has been established in the context of discussions with the Ministry relating to the possibility of importing "*an experimental CDMA 2000 1X EVDO network*"[437]. Be that as it may, the fact is that Mr. Jacoby knew that the draft he had approved in November had to be sent to the Ministry and he was properly informed by Mr. Reidy of the submission of the letter to the Ministry[438]. If the 26 December letter was harmful, so was equally the 13 November letter sent by SPT as approved by Mr. Jacoby.

429. At any rate, again, Claimants do not submit that the contents of SPT's 26 December letter would have been inaccurate. They also fail to make any submission with respect to how, in their view, Tele2 should have responded to the Ministry. And there is no persuasive evidence that, had Tele2 or SPT responded differently or remained silent, the Ministry would not have suspended the CDMA License in March 2007 or would have accepted to renew it. In addition, Tele2 had given ample warning to DigiTelCom in March and May 2006 about an upcoming Ministry inspection[439]. In a broader context, DigiTelCom of course knew at least from the signing of the CDMA License Agreement that the CDMA License expired in April 2007 and hence it had almost four years proactively to develop and implement a strategy to have the CDMALicense renewed.

430. As a consequence of the foregoing, the Arbitral Tribunal rejects Claimants' argument that Tele2 failure to consult with DigiTelCom had adverse consequences on the latter's ability to exercise its rights under the CDMA License Agreement.

E. TELE2'SALLEGED BREACHES OF THE ROAMING AGREEMENT

431. The provision in dispute of the Roaming Agreement is Clause 1.12, pursuant to which "*After the effective day of this Agreement and for a period of five years therefrom DigiTelCom shall have the right in its discretion to designate two (2) Operators for purposes of this Agreement*". Clause 1.12 provides that in such a case "*Each Operator shall as soon as reasonably practicable after it is so designated, enter into an*

[436] CWS-5 Jacoby, §41; Transcript Jacoby, pp. 204-205.
[437] CWS-5 Jacoby, § 41.
[438] Exhibit C-73: "*I can confirm that this version of letter has been submitted to Rossvyaznadzor*".
[439] Exhibits C-61 and C-62.

agreement with Tele2 incorporating the terms and conditions of this Agreement or enter into a new agreement on similar terms and conditions". Clauses 2, 3 and 4 of the Roaming Agreement provides for certain rights and obligations of the Operators.

432. Essentially, the Claimants allege that Tele2 ignored its designation of KATEL and SoTel as Operators of the Roaming Agreement, which deprived such companies from the opportunity of entering into roaming agreements with Tele2 pursuant to Clause 1.12 of the Roaming Agreement.

433. In its prayers for relief, the Claimants identify "*DigiTelCom, KATEL and SoTel*" as creditors of damages for the alleged breach by Tele2 of its obligations under the Roaming Agreement.

434. The Arbitral Tribunal, however, holds that if any of the claimant parties is entitled to damages under the Roaming Agreement it can only be KATEL and SoTel, and not DigiTelCom. As a matter of fact, the only right provided in favor of DigiTelCom by the Roaming Agreement is that of nominating operators, who are then direct beneficiaries of the rights provided by Clauses 2 and 3 of the Roaming Agreement. In other words, either DigiTelCom failed to nominate Operators under the Roaming Agreement and it cannot have any right of compensation under said Agreement, or it did and it is the nominated Operators that have *ius standi* to claim for compensation in case of breach of the obligations provided in their favor. This is precisely the reason why KATEL and SoTel have applied to be joined as additional claimants to this arbitration, which application has been accepted.

435. The parties are in disagreement on whether the nomination of KATEL and SoTel properly took place under the Roaming Agreement. Claimants rely on notices dated 6 October 2004 designating KATEL and SoTel under the Roaming Agreement[440]. Tele2, on the contrary, submits that the notice was never received.

436. The Arbitral Tribunal, however, needs not decide whether the notices were or were not received by Tele2. Clause 1.12 provides that: "*Each Operator shall as soon as reasonably practicable after it is so designated, enter into an agreement with Tele2 incorporating the terms and conditions of this Agreement or enter into a new agreement on similar terms and conditions*". In the Arbitral Tribunal's view, it was up to the

[440] Exhibit C-52.

nominated operators, under Clause 1.12, to request the opening of discussions for the purpose of establishing new roaming agreements with Tele2.

437. Even if they were nominated as operators, KATEL and SoTel failed to contact Tele2 to that effect. The file, in addition, is absolutely void of any correspondence or document, of any nature, emanating from or sent to KATEL and SoTel. There is not even a correspondence between DigiTelCom and Tele2 referring to the nomination of such companies under the Roaming Agreement.

438. Claimants aver that it was up to Tele2 to "*acknowledge the designations*"[441] and to contact KATEL and SoTel in view of complying with its obligations under Clause 1.12. The Arbitral Tribunal does not accept that. The language of Clause 1.12 clearly establishes that it was up to the Operators to take the initiative. If the parties had intended that Tele2 had the duty to contact the Operators after their nomination, the language used would have been: "*Tele2 shall, as soon as reasonably practicable after the Operators' designation, enter into an agreement with the Operators...*". Clause 1.12 is drafted to the contrary and places upon the Operators, not Tele2, the duty to take the necessary initiatives to establish the new roaming agreements.

439. The Operators' duty to take steps to enter into new roaming agreements had to be exercised "*as soon as practicable*". Moreover, the Operators would have the responsibility under the Roaming Agreement to work to establish a "technical committee" within 60 days after DigiTelCom's nomination of the Operators[442].Yet, the Operators remained totally silent for years after their purported nomination and until this arbitration started. The only consequence that the Arbitral Tribunal can draw is that, even if they were nominated in October 2004, KATEL and SoTel failed to comply with their obligation under Clause 1.12 to promptly contact Tele2 in order to establish the basis for their future cooperation. As a consequence, they waived any right that they may have been entitled to draw from their nomination under Clause 1.12 as Operators.

440. As a consequence of the foregoing, the Arbitral Tribunal finds no persuasive evidence that Tele2 breached its obligations under the SPA, the CDMA License Agreement or the Roaming Agreement, or that any of the Claimant parties suffered recoverable damages as a consequences of any failure by Tele2's performance obligations.

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[441] C-I, p. 9; C-II, pp. 14-15.
[442]Roaming Agreement C-1(c), Clause 2.10.

441. Nor is there any persuasive evidence that Tele2 breached its implied covenant of good faith and fair dealing in New York Law. The Arbitral Tribunal found that Claimants failed to discharge their burden of proving that Tele2 breached any of its obligations or failed to perform its duties in good faith. As a consequence, Claimants requests will be entirely dismissed, with no need to entertain their submissions as to Tele2's alleged failure to provide sufficient witness testimony in support of its positions.

F. COSTS

442. As to the costs of the Arbitration, the Arbitration Clause provides that:

> *"The Parties agree that the losing Party to such arbitration shall bear the costs of the proceedings, including reasonable attorney's fees of the prevailing party, subject to the award of the arbitrators".*

443. Respondent submits, in this respect, that: *"the parties have explicitly agreed how the costs are to be allocated"*, so *"the Tribunal is not free itself to determine how the apportioning of costs is to be made. The losing party is to bear the costs of the proceedings"*[443].

444. The Arbitration Clause is, with respect to costs, "*subject to the award of the arbitrators*". This covenant, in the Arbitral Tribunal's opinion, applies to whether the prevailing party's costs claim is reasonable rather than to the principle that the losing party should bear the costs.

445. Claimants are the losing party in this case. As a consequence, they should bear the Respondents' costs in their entirety.

446. Respondent prayer for relief regarding costs of arbitration and fees, is as follows:

> *"Respondent requests the Arbitral Tribunal to:*
> *Order Claimants, jointly and severally, to compensate Tele2 for all its arbitration cost, including legal fees, and as between the parties, alone to bear the fees and costs due to the Arbitral Tribunal and the International Centre for Dispute Resolution."*[444]

[443] RPHB-II, § 37.
[444] R-II, p. 71.

447. Respondent's cost claims (Section 5 of its second PHB) is as follows:

- Swedish Kronas (SEK): 10,153,480
- US Dollars ($): 14,277.37
- Euros (€): 164,109.28
- Russian Rubles (RUR): 1,156,250

448. After careful consideration of Respondent's claims on costs, the Arbitral Tribunal considers that the amounts claimed by Respondent are reasonable and justified.

449. Section 28.4 of the Rules provides that "*a monetary award shall be in the currency or currencies of the contract unless the Tribunal considers another currency more appropriate*".

450. In the instant case, Respondent claimed its costs in the currencies mentioned in § 447 above. The Arbitral Tribunal believes appropriate to grant such claim in the currencies so mentioned, as requested by the Respondent.

451. Respondent also requested the Arbitral Tribunal to add to those amounts the sums related to the arbitration costs that Respondent has paid to the ICDR.

452. In this respect, Section 31 of the Rules provides that "*the Tribunal shall fix the costs of arbitration in its award. The Tribunal may apportion such costs among the parties if it determines that such apportionment is reasonable, taking into account the circumstances of the case*".

453. In the instant case, the costs of the arbitration, as paid by the parties to the ICDR (fees and expenses of the arbitrators, costs of the Arbitral Tribunal, fees and expenses of the ICDR) are $ 400,685.49.

454. Respondent's share of such costs is US $ 193,342.73.

455. Such amount is also granted to the Respondent.

456. Finally, Respondent seeks interest on such costs at the New York statutory interest rate of nine per cent /annum from the date of the award until payment is made[445].

457. Section 28.4 of the Rules provides that "*the Tribunal may award such pre-award and post-award interest, simple or compounded, as it considers appropriate, taking into consideration the contract and applicable law*".

458. It is not disputed that the statutory interest rate in New York is 9%[446]. Given that New York law is applicable to the substance and that the seat of the arbitration is in New York, the Arbitral Tribunal holds that such is the appropriate rate to be applied to Respondent's cost claim.

Dispositive Section

459. ACCORDINGLY WE, THE UNDERSIGNED ARBITRATORS, do hereby, AWARD, as follows:

1. To dismiss all Claimants' claims.

2. To order to the Claimants, jointly and severally, to pay to the Respondent the following amounts as reasonable defense costs:

   - Swedish Kronas (SEK): 10,153,480
   - US Dollars ($): 14,277.37
   - Euros (€): 164,109.28
   - Russian Rubles (RUR): 1,156,250

3. The administrative fees and expenses of the International Centre for Dispute Resolution ("ICDR") totaling USD $15,250.00 shall be borne by Claimants, and the compensation and expenses of the arbitrators totaling USD $385,435.49 shall also be borne by Claimants.

[445] RPHB-II, § 40.
[446] CPHB-II, footnote 16, p. 10.

4. Therefore, Claimants shall reimburse Respondent the sum of USD $193,342.73, representing that portion of said fees, expenses, and compensation previously incurred by the Respondent.

5. That the amounts mentioned in § 2 and 4 above shall be paid within fifteen (15) business days from the date of this Award. After such time, interest shall accrue on the unpaid award or any unpaid part thereof at the rate of 9% per annum.

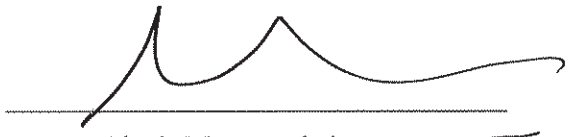
6. All other pleas for relief are rejected.

7. This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the Final Award of this Tribunal.

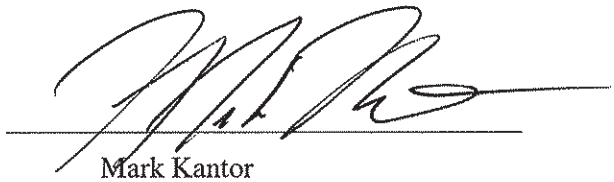
This Award is in full settlement of all claims / and counterclaims submitted to this Arbitration.

We hereby certify that, for the purposes of Article 1 of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Final Award was made in New York, U.S.A.

15.09.2011
Date


Alexis Mourre, chair

22/09/2011
Date


Mark Kantor

26/09/2011
Date

Thomas Shillinglaw

City of Paris

Country of France

I, Alexis Mourre, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Final Award.

15.09.2011
Date

Alexis Mourre

City of Washington

District of Columbia

I, Mark Kantor, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Final Award.

22/09/2011
Date

Mark Kantor

State of New Mexico

County of Santa Fe

I, Thomas Shillinglaw, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Final Award.

26/09/2011
Date

Thomas Shillinglaw