International Court of Arbitration
of the International Chamber of Commerce

ICC Case No. 18956/VHM/EMT

OTE INTERNATIONAL SOLUTIONS S.A. (Greece)

Claimant

vs

1. MEDCOM LLC (U.S.A.)
2. QT TALK LLC (U.S.A.)

Respondents

FINAL AWARD

Issued by

Dr Bernd Ehle
Sole Arbitrator

on 20 December 2013

Place of Arbitration: Geneva, Switzerland

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INTRODUCTION

1 This arbitration arose out of a dispute related to a Telecommunications Service Agreement entered into between OTE International Solutions S.A., trading as OTE Globe S.A. ("OTE"), and Medcom LLC ("Medcom") effective as of 15 October 2009.

2 Medcom assigned its rights and obligations under the Telecommunications Service Agreement to QT Talk LLC ("QT Talk") by Assignment and Assumption Agreement effective as of 21 February 2011.

3. OTE claims that Medcom and QT Talk are jointly and severally liable for payment of certain open invoices for telecommunication services in the aggregate amount of USD 486,994.94. Medcom and TSA claim that the Telecommunications Service Agreement was not validly entered into and that the amounts are not due.

I. THE PARTIES AND THE ARBITRAL TRIBUNAL

1.1 The Claimant

4. OTE International Solutions S.A. ("OTE" or the "Claimant"), trading as OTE Globe S.A., is an international telecommunications operator having its registered offices at 6-8, Agissilaou & Zinonos Eleatou Str, 151 23 Maroussi, Athens, Greece.

5. In this arbitration the Claimant was represented by Mr Marko Kraljevic, Clyde & Co LLP, The St Botolph Building, 138 Houndsditch, London EC3A 7AR, UK.

1.2 The Respondents

6. Medcom LLC ("Medcom" or the "First Respondent") is a provider of telecommunications services incorporated under the laws of Nevada having its registered offices at 45 Broadway, Suite 1440, New York, NY 100006, U.S.A.

7. QT Talk LLC ("QT Talk" or the "Second Respondent") is a provider of telecommunications services incorporated under the laws of Nevada having its registered offices at 45 Broadway, Suite 1440, New York, NY 100006, U.S.A.

8. In this arbitration the Respondents were represented by Mr Marcus Monteiro, Esq., Monteiro & Fishman LLP, 91 N. Franklin Street, Suite 108, Hempstead, New York 11550, U.S.A.

9 The Claimant and the Respondents are collectively referred to as "the Parties".

1.3 The Arbitral Tribunal

10. The sole arbitrator appointed by the ICC International Court of Arbitration (the "Court") is Dr Bernd Ehle, LALIVE, Rue de la Mairie 35, P.O. Box 6569, 1211 Geneva, Switzerland (the "Sole Arbitrator").

II. THE FACTS OF THE DISPUTE

11 In this section, the Sole Arbitrator summarizes the relevant facts to the present dispute which he finds are either not disputed or established based on the evidence before him.

12 On 10/11 March 2010, OTE and Medcom signed a Telecommunications Services Agreement effective as of 15 October 2009 ("**TSA**").

13 Pursuant to Article 1 of the TSA, OTE and Medcom agreed to connect their respective telecommunications systems in order for Medcom to send traffic to OTE, and OTE to send traffic to Medcom.

14 Article 5 of the TSA, entitled "Billing, payment procedures and disputes", provides as follows:

> "5.1 Not later than twenty (20) calendar days from the end of each month, each Party shall provide the other with an invoice valuing all traffic volumes per destination it has received to the rates agreed. All traffic will be billed in second increments. Parties shall pay undisputed amounts of the invoices within thirty (30) days from receipt of the relevant invoice. Parties shall issue tax-excluded invoices. (...)
>
> 5.2 Said invoice shall be deemed to have been accepted by the receiving Party unless notice of dispute is forwarded by such Party within thirty (30) calendar days following the date of the invoice concerned identifying clearly the reason for the dispute and providing at the same time specific evidence that demonstrates that particular invoice is incorrect and provided that the disputed amount represents at least one percent (1%) of the invoiced amount. (...)
>
> 5.6 Late payments shall accrue interest at the annual rate of EURIBOR +4%. Such interest shall accrue daily, for each late payment, beginning one Business Day after its due date until funds constituting such payment are paid in full. Interest shall continue to accrue notwithstanding the termination of this Agreement for any reason. In the event that applicable laws do not allow the imposition of interest at the rate specified herein, then late payments shall accrue interest hereunder at the highest rate permitted by law."

15. With effect from 21 February 2011, Medcom transferred, conveyed and assigned its rights and obligations under the TSA to Q1 Talk by means of and pursuant to an Assignment and Assumption Agreement signed on 22 April 2011 (the "Assignment"), which OTE signed and consented to.

16. The Assignment provides in paragraph 1 that Medcom and Q1 Talk were jointly and severally liable for any breach of the TSA that occurred after the assignment had taken place: "( ) Assignor shall remain liable for any obligation arising under the SA prior to the Effective Date of this Agreement, and Assignor and Assignee shall be jointly and severally liable for all obligations arising upon and after the Effective Date hereof."

17. The Parties were engaged in an ongoing discussion concerning the rates for the services as from 1 March 2010, and the first set of rates was eventually agreed on or about 3 and 4 May 2010.[1]

18. OTE provided telecommunication services to Medcom and/or QT Talk pursuant to the TSA, and submitted invoices in respect of those services covering the period from May 2010 to July 2012, in accordance with Article 5.1 of the TSA.[2]

19. At the same time, Medcom and/or QT Talk also provided telecommunication services to OTE pursuant to the TSA, and submitted invoices in respect of those services covering the period May 2010 to July 2012, in accordance with Article 5.1 of the TSA.[3]

20. The Respondents issued invoices to the Claimant in a total amount of USD 226,426.90 in respect of services provided under the TSA. The Claimant paid all of these invoices.

21. OTE issued invoices in a total amount of USD 563,926.77 in respect of services provided under the TSA. The Respondents paid certain invoices without protest. It did, however, not settle the following three invoices: invoice number A6208 for an amount of USD 183,372.93 dated 9 May 2012, invoice number A6328 for an amount of USD 234,559.63 dated 12 June 2012, and invoice number A6453 for an amount of USD 71,706.29 dated 6 July 2012 (the "Unpaid Invoices"). In total, the Unpaid Invoices amount to USD 489,638.85.

22. On 22 May 2012, OTE submitted to QT Talk a netting proposal for the period from March to April 2012, whereby sums due to QT Talk under Medcom/QT Talk invoices numbers 51/03 and 52/04, amounting to a total of USD 1,800.97, were netted off against sums due to OTE under invoice number A6208 in the amount of USD 183,372.93, with the result that the balance of USD 181,571.96 was due to OTE.[4]

23. On 5 June 2012, QT Talk responded by email stating that they agreed with the figures in the netting proposal.[5] However, despite OTE's numerous requests, Medcom and/or QT Talk failed to remit payment of the agreed balance of USD 181,372.93 to the Claimant.[6]

24. On 21 June 2012, OTE sent a Notice of Suspension informing QT Talk that since more than 30 days had elapsed from the due date in respect of invoice number A6208, QT Talk are in breach of their payment obligations pursuant to the TSA. OTE further stated that if QT Talk fails to remedy the breach within three days, OTE will suspend the provision of services until all due payments are made.[7]

[1] Email correspondence at pp. 46-167 of Tab 2 of Exhibit "CC2" to the Claimant's Reply Submissions.

[2] Invoices at pp. 17-67 of Exhibit "CC1" to the Claimant's Claim Submissions.

[3] Invoices at pp. 68-89 of Exhibit "CC1" to the Claimant's Claim Submissions.

[4] Document at pp. 94-95 of Exhibit "CC1" to the Claimant's Claim Submissions.

[5] Document at p. 100 of Exhibit "CC1" to the Claimant's Claim Submissions.

[6] Documents at pp. 96-102 of Exhibit "CC1" to the Claimant's Claim Submissions.

[7] Document at pp. 107-109 of Exhibit "CC1" to the Claimant's Claim Submissions.

25. When QT Talk had still not made the payment in respect of invoice number A6208, OTE advised the Respondents by email of 25 June 2012 that it would suspend the services as from 5.00 p.m. (Athens time) if payment was not received.[8]

26. On the same day, 25 June 2012, Mr Sander of QT Talk replied as follows: "I apologize for the delay. We are simply waiting on some large receivables . I will keep you updated on the status of reducing this balance."[9]

27. By letter dated 27 July 2012, the Claimant's counsel, Clyde & Co LLP, sent a letter to Medcom and QT Talk requesting payment of invoices number A6208 and A6328. In another letter dated 7 August 2012, Clyde & Co demanded payment of all three of the Unpaid Invoices: A6208, A6328 and A6453.

28. Medcom and QT Talk did not respond to OTE's letters nor make payments in respect of the Unpaid Invoices.

29. In parallel to these arbitration proceedings, the Claimant applied for security by way of attachment before the courts in New York. The New York Court determined that the requirements for an attachment had not been met and denied the application.

III. THE ARBITRATION PROCEEDINGS

30. The Claimant initiated the arbitration through its Request for Arbitration dated 14 September 2012 (the "**Request**"), received by the ICC on the same date. The Request is based on the arbitration agreement contained in Article 11 of the ISA, which provides as follows:

> *The laws of Switzerland shall govern this Agreement.*
>
> *The Parties shall attempt in good faith negotiations within thirty (30) days of one party notifying a dispute to the other to adjust and dispose of any disagreement or dispute, which may arise between them regarding the interpretation, the performance of, or the failure to perform under this Agreement. Should a composition not be reached between the Parties, the dispute shall be finally settled by arbitration according to the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules. The arbitration shall be held in Geneva Switzerland, and shall be conducted in English language.*

31. In its letter of 18 September 2012, by which it acknowledged receipt of the Request for Arbitration, the Secretariat of the ICC International Court of Arbitration (the "**Secretariat**") noted that the arbitration proceedings are governed by the Rules of Arbitration of the International Chamber of Commerce in force as from 1 January 2012 (the "**ICC Rules**") and notified the Request to the Respondents.

[8] Document at p. 111 of Exhibit "CC1" to the Claimant's Claim Submissions.
[9] Document at p. 111 of Exhibit "CC1" to the Claimant's Claim Submissions.

32. With letter dated 19 October 2012, the Secretariat informed the Parties that its communications to the Respondents of 5 October 2012 had not yet been received by Q1 Talk and that they were re-notified to Q1 Talk with the same letter.

33. With letter dated 9 November 2012, the Secretariat informed the Parties that its communications to the Respondents of 5 October 2012 had not yet been received by Medcom and that they were re-notified to Medcom with the same letter.

34. On 7 January 2013, the Secretariat informed the Parties that, according to the delivery receipt provided by the courier service, the Respondents had received the Request on 12 November 2012 and that the 30-day time limit for the Respondents to submit an Answer to the Request had expired on 12 December 2012, without such Answer having been submitted. The Secretariat noted that the arbitration would proceed despite no Answer having been filed and despite the Respondents refusing or failing to participate in the proceedings. The Secretariat further specified that this arbitration has not been referred to the Court pursuant to Article 6(3) and that the Arbitral Tribunal would decide any question of jurisdiction (Article 6(3)), after providing the Parties with an opportunity to comment. Moreover, the Secretariat noted that the Court would determine the number of arbitrators, pursuant to Article 12(2) of the ICC Rules.

35. On 18 January 2013, the Secretariat informed the Parties that on 17 January 2013 the Court had decided to submit the arbitration to a single arbitrator and that it had invited the Swiss National Committee to propose a Sole Arbitrator.

36. With letter dated 1 February 2013, the Secretariat sent the Parties a copy of the Statement of Acceptance, Availability, Impartiality and Independence, as well as the *curriculum vitae* of Dr Bernd Ehle, whom the Swiss National Committee had nominated as Sole Arbitrator. The Secretariat stated that, unless otherwise informed by 8 February 2013, it would proceed with the constitution of the Arbitral Tribunal.

37. At its session of 21 February 2013, the Court appointed Dr Bernd Ehle as Sole Arbitrator. With letter of the same day, the Secretariat informed the Parties of the appointment and transmitted the file to the Sole Arbitrator. The Secretariat also transmitted its letters dated 18 January, 1 February and 19 February 2013 to the Respondents by FedEx.

38. On 6 March 2013, the Sole Arbitrator sent a letter to the Parties announcing that he would circulate a draft of the Terms of Reference for their review, as required under Article 23 of the ICC Rules, and propose dates for a Case Management Conference as per Article 24 of the ICC Rules.

39. On 20 March 2013, the Sole Arbitrator provided the draft Terms of Reference to the Parties and proposed dates for holding a Case Management Conference.

40. By email dated 3 April 2013, the Claimant confirmed that it had no comments on the draft Terms of Reference and that it was available for a telephone conference on 10 or 11 April 2013.

41 By letter of the same day the Sole Arbitrator acknowledged receipt of the Claimant's email and noted that he had not received any communication from the Respondents. He invited the Claimant to sign the clean version of the Terms of Reference and return them to him by 12 April 2013. The Sole Arbitrator invited the Respondents to participate in the arbitration and to sign a copy of the Terms of Reference. The Case Management Conference was scheduled to be held on 10 April 2013.

42. On 5 April 2013, the Claimant sent to the Sole Arbitrator five copies of the signed Terms of Reference. The Respondents did not follow the invitation to sign the Terms of Reference.

43. On 10 April 2013 at 5.00 p.m. (Geneva time), the Case Management Conference was held by means of a telephone conference. During the telephone conference, the Sole Arbitrator and the Claimant's counsel discussed the organisation of the arbitration. The Respondents did not participate in the Case Management Conference nor sent an explanation for not participating.

44. On 11 April 2013, the Sole Arbitrator circulated the signed originals of the Terms of Reference signed on 10 April 2013. With the same letter, the Sole Arbitrator issued the Procedural Timetable, which fixed the time limits for the Claimant's Statement of Claim and the Respondents' Statement of Defence. The Sole Arbitrator also confirmed that, as discussed with the Claimant's counsel at the Case Management Conference, the arbitration could be conducted without holding an evidentiary hearing, i.e. on the basis of documentary evidence only, unless one of the Parties requested that a hearing be held.

45. On 17 April 2013, the Secretariat acknowledged receipt of the Terms of Reference to be submitted to the Court for approval, and of the Procedural Timetable.

46. With letter dated 7 May 2013, the Secretariat informed the Sole Arbitrator and the Parties that, at its session of the same day, the Court had approved the Terms of Reference signed by the Claimant and the Sole Arbitrator. The Secretariat invited the Respondents to sign the Terms of Reference as approved by the Court, and return them to the Secretariat within 15 days.

47. On 8 May 2013, in accordance with the Procedural Timetable, the Claimant filed its Claim Submissions and supporting documents.

48. On the same day, the Sole Arbitrator acknowledged receipt of the electronic copy of the Claimant's Claim Submissions and supporting documents and reminded the Respondents that, pursuant to the Procedural Timetable, they were to file their Statement of Defence by 5 June 2013.

49. By letter of 6 June 2013, the Sole Arbitrator noted that the Respondents had not filed their Statement of Defence within the time limit of 5 June 2013 and invited the Parties to indicate their availability for a telephone conference. He also stated that the Respondents were given a final opportunity to indicate by 11 June 2013 whether or not they intended to file a Statement of Defence.

50. On 7 June 2013, the Claimant confirmed their availability for a telephone conference on 12 June 2013.

51. On 10 June 2013, the Respondents began participating in the arbitration. The Respondents' counsel sent a letter indicating the availability for a telephone conference and announcing that the Respondents intended to file a Statement of Defence.

52. By email dated 11 June 2013, the Sole Arbitrator acknowledged receipt of the Parties' communications and made further inquiries regarding the organisation of the telephone conference.

53. On the same day, the Claimant requested that the Respondents be ordered to file their Defence by no later than the end of that week, given that the Respondents did not indicate when they would file their Statement of Defence nor offer any explanation for their failure to file a Statement of Defence thus far.

54. Still on the same day, the Sole Arbitrator sent an email acknowledging receipt of the Claimant's email and inviting the Respondents (a) to offer an explanation for their late participation in the arbitration and their failure to submit the Statement of Defence by 5 June 2013, and (b) to indicate how much time they considered necessary to submit their Statement of Defence, keeping in mind that the time limit as per the Procedural Timetable had already elapsed. The Sole Arbitrator also proposed new dates for the telephone conference.

55. By letter of 11 June 2013, the Respondents confirmed their availability for a telephone conference on 19 June 2013 and explained their late response by the fact that their preliminary records indicated a different balance due to the Claimant than that claimed. In their letter, the Respondents take the position that the Claimant's collection letters do not evidence the underlying charges. The Respondents requested 30 days to submit their Statement of Defence.

56. By email of 12 June 2013, the Claimant confirmed its availability for a telephone conference on 19 June 2013, but objected to the suggestion that the Respondents be granted 30 days to submit the Statement of Defence. The Claimant stated that the Respondents' counsel had been engaged in the matter since December 2012 and that the request for extension of time is an attempt to further delay the arbitration.

On 12 June 2013, the Sole Arbitrator issued Procedural Order No. 1 granting the Respondents until 28 June 2013 to submit their Statement of Defence, including all arguments and evidence. In making the decision, the Sole Arbitrator took into consideration, *inter alia*:

(i) That the Tribunal must balance the Parties' right to be heard and equal treatment with the efficiency of the proceedings;

(ii) Paragraphs (1), (2), (3) and (4) of Article 22 of the ICC Rules (Conduct of the Arbitration);

(iii) That the Respondents had the opportunity to review the data available to them and to prepare a usage report since they were notified of the Request for Arbitration in October 2012; that they had been in the position to

review the Statement of Claim and the documentary evidence filed by the Claimant since early May 2013; that the explanation which they offered for their late participation did not convince the Tribunal that the Respondents were unable to participate in the process earlier;

(iv) That the Claimant should not be put at a disadvantage by an excessive delay of the proceedings; and

(v) That, nonetheless, the Tribunal intended to grant the Respondents a reasonable opportunity to present their case. In light of the fact that the Respondents had the possibility to perform all preparatory work during the last few months, they are not granted the requested 30 days to submit their Statement of Defence, but only until 28 June (three weeks as from their letter dated 10 June indicating that they intend to file a Statement of Defence in this matter).

57. On 19 June 2013, the Sole Arbitrator and the Parties held a telephone conference. Following the telephone conference, the Sole Arbitrator circulated a revised Procedural Timetable with time limits for the Claimant's Reply and the Respondents' Rejoinder.

58. On 28 June 2013 (New York time), received by the Sole Arbitrator on 29 June 2013 (Geneva time), the Respondents filed their Statement of Defence.

59. On 11 July 2013, the Claimant requested that it be provided with a short time extension of seven days in which to file its Reply.

60. By email dated 11 July 2013, the Sole Arbitrator, in light of the circumstances, and in light of Procedural Order No. 1, extended the time limit for the Claimant to file its Reply until 19 July 2013. At the same time, the time limit for the Respondents to file their Rejoinder was extended accordingly by seven days until 2 August 2013.

61. On 19 July 2013, the Claimant filed its Reply Submissions.

62. By email of the same day, the Respondents objected to the Claimant's submission, stating that "Respondent's [sic] have not been provided with the purported 'supporting documents' which are claimed will arrive, at some point in the future, by courier. Additionally, as it now appears that Petitioner's will wrongfully be submitting a 'sizable' amount of documents for the first time on Reply, Respondent's request a 7 day time extension (being August 9, 2013), to submit its Rejoinder."

63. On 22 July 2013, the Claimant provided electronic copies of the exhibits referred to in its Reply Submissions and noted that, save for the schedule included at Tab 1, all of the documents included in the supporting documentation were common to both Parties.

64. By email dated 23 July 2013, the Sole Arbitrator confirmed receipt of (i) the electronic copy and hardcopy of the Claimant's Reply Submissions, (ii) the electronic copies and hardcopies of the exhibits to the Claimant's Reply Submissions, and (iii) the Respondents' email sent on 19 July 2013. The Sole Arbitrator stated that the Claimant's exhibits are admitted into evidence and that he trusted that the Respondents had also received copies of the Claimant's supporting documents. Furthermore, he

granted the Respondents the requested extension until 9 August 2013 to file their Rejoinder.

65. On 9 August 2013 (New York time), received by the Sole Arbitrator on 10 August (Geneva time), the Respondents filed their Rejoinder.

66. By letter of 16 August 2013, the Claimant commented on the Rejoinder. It objected *inter alia* to the Respondents' application to strike the Claimant's counsel's entire submission and invited the Sole Arbitrator to proceed to an award based on the arguments and evidence presented to date.

67. By letter of the same day, the Respondents replied to the Claimant's letter. The Respondents invited the Sole Arbitrator to reject extemporaneous correspondence and to allow the matter to be fully submitted and decided.

68. On 19 August 2013, the Claimant sent a letter stating that it was its understanding that the Respondents agreed that the Sole Arbitrator should proceed to an Award based on the arguments and evidence presented by the Parties.

69. On 19 August 2013, the Sole Arbitrator acknowledged receipt of the Respondents' Rejoinder of 9 August 2013, the Claimant's letter of 16 August 2013, the Respondents' letter of 16 August 2013 and the Claimant's letter of 19 August 2013. The Sole Arbitrator expressed his understanding of the Parties' agreement that there was no need for a hearing and that the Sole Arbitrator could proceed to an award based on the Parties' submissions and evidence filed thus far. The Parties were invited to object by 23 August 2013 if they did not agree. The Sole Arbitrator asked the Parties to refrain from making any further submissions.

70. By email dated 26 August 2013, the Respondents stated that they did not object to a "decision" based on the Parties' submissions, but maintained that an award was inappropriate on the submitted papers, and objected to the use of the word "award based on the Parties' submission".

71. By letter of 4 November 2013, the Sole Arbitrator declared the proceedings closed as per Article 27 of the ICC Rules and invited the Parties to make submissions on costs by 8 November 2013. The Sole Arbitrator indicated that he expected to submit his draft award to the Court for approval pursuant to Article 33 of the ICC Rules shortly thereafter.

72. Upon question from the Claimant, the Sole Arbitrator clarified on 5 November 2013 that the Parties' submissions on costs should contain both (i) schedules of costs setting out the amounts being claimed by way of costs and (ii) brief submissions on the allocation of costs between the Parties.

73. On 6 November 2013, the Respondents' counsel requested by email that any cost application be adjourned until after the Sole Arbitrator's decision is reached. It followed an exchange of emails between the Parties' counsel. On the same day, the Sole Arbitrator issued **Procedural Order No. 2**, in which he considered, *inter alia*, Article 37(4) and (5) of the ICC Rules and the common and best practice in

international commercial arbitration regarding cost submissions, and decided (1) that the Parties shall make submissions on costs by 8 November 2013, (2) that in their submissions on costs, the Parties shall set out the amount being claimed by way of costs, and briefly comment on the allocation of costs between the Parties, and (3) that each Party is granted until 13 November 2013 to make brief comments on the other Party's cost submission.

74. Both Parties filed their respective statements on costs on 8 November 2013.

75. The Claimant made comments on the Respondents' cost submission on 13 November 2013, and the Respondents made comments on the Claimant's cost submission on 14 November 2013, with apologies for the late submission.

76. By letter of 29 November 2013, the Secretariat informed the Sole Arbitrator that, at its session of 7 November 2013, the Court had extended the time limit for rendering the Final Award until 31 January 2014.

IV. THE PARTIES' POSITIONS AND RELIEF SOUGHT

77. This section of the Award contains a general overview of the Parties' positions. To the extent they are relevant for the Arbitral Tribunal's decision, the Parties' positions are presented in further detail in the parts of the Award where they are considered.

IV.1 The Claimant's Position

78. Medcom and QT Talk are jointly and severally liable for any breaches of the TSA that occurred after the effective date of the Assignment, i.e. after 21 February 2011.

79. Medcom and QT Talk failed to pay the balance due to OTE under the Unpaid Invoices issued for services provided by OTE under the TSA after 21 February 2011.

80. OTE's invoices complied with the requirements of Article 5.1 of the TSA as they contain sufficient information to enable the recipient to understand precisely what the charges relate to and the basis for such charges. OTE never received any request for additional information or any notice of dispute as per Article 5.2 of the TSA.

81. Since neither Medcom nor QT Talk disputed the Unpaid Invoices within the prescribed time period, these invoices are deemed to have been accepted in accordance with Article 5.2 of the TSA and each of the Unpaid Invoices is overdue for payment.

82. In their Statement of Defence, the Respondents for the first time purport to question whether the amounts claimed under the Unpaid Invoices are due. They neither deny that the Parties provided services of the type described in Annex A to the TSA, nor that they received the Claimant's invoices or that they were provided with the services to which the Unpaid Invoices relate. Furthermore, the Respondents do not claim to have submitted a notice of dispute in relation to any of the Unpaid Invoices in accordance with Article 5.2 of the TSA and they do not claim to have ever previously disputed or

queried the Unpaid Invoices. Since the invoices were not disputed they are deemed to be accepted.

83. OTE acknowledges that invoices number 81/03 and 82/04 in a total amount of USD 2,643.91 are also due and owing to QT Talk in respect of services provided to OTE under the TSA. Therefore, the net principal amount due to OTE under the TSA is USD 486,994.94.

84. The TSA is valid. It is a detailed written agreement that evidences a clear intention to create legal relations between the Parties. The Parties conducted hundreds of thousands of dollars worth of business pursuant to the TSA. The Parties affirmed the validity of the TSA by entering into the Assignment. The Parties were engaged in an ongoing discussion concerning rates as from 1 March 2010. The Respondents were notified of the rates on which the Unpaid Invoices are based in advance and accepted those rates.

85. The applicable price per minute is referred to in the Claimant's invoices. The information contained in these invoices was sufficient. The Respondents settled all other of the Claimant's invoices that were submitted in the same form and with the same type of information.

86. The evidence submitted is clear and overwhelming and there is no need for additional material.

IV.2 Relief Sought by the Claimant

87 The Claimant requests that the Tribunal issue an award:

(1) Ordering the Respondents to pay all outstanding amounts due under the TSA amounting to a net principal sum of USD 486,994.94;

(2) Ordering the Respondents to pay interest on those sums at an annual rate of EURIBOR +4% in accordance with Article 5.6 of the TSA in the amount of USD 20,828.12 up to 8 May 2013 and thereafter accruing daily at the rate of USD 68.22 until payment.

(3) Awarding the Claimant reimbursement for costs including legal costs.

IV.3 The Respondents' Position

88. The TSA specifically required the inclusion of 'Rates' for OTE telecommunications traffic that was run on the Respondents' network and vice versa. The Parties never consented to such rates for the telecommunications traffic with the result that the contract is missing one of its most central and material elements, there was no meeting of the minds. Therefore, the TSA is invalid under Swiss law.

89. The Respondents consider that the Claimant provided no proper proof or evidence to support its claims for damages. In order to evidence that an amount was properly due and owing, the raw data and metrics underlying the charges should be submitted and properly authenticated with an affidavit by a company representative. The alleged

charges as evidenced exclusively by payment demand letters from the Claimant's attorney of Clyde & Co. LLP are invalid as lacking in evidentiary value. The Claimant's claim must be rejected as unsupported.

90. It is Respondents' position that if the Claimant's lawyers of Clyde & Co. LLP represent having personal knowledge of the underlying facts, they must be disqualified. They have no first-hand knowledge of the underlying facts and therefore cannot authenticate any of the charges. They are improper and conflicted advocates. They may be called as witnesses and, as such, cannot be the Claimant's attorneys. The Tribunal must either strike the Claimant's counsel's entire submission as improperly submitted by interested attorney, or disqualify them from any further representation.

IV.4 Relief Sought by the Respondents

91. In their Statement of Defence,[10] the Respondents request a finding of fact and an Order from the Sole Arbitrator that:

(1) Because OTE relied exclusively on its breach of contract claim and because the purported contract fails to include the material element of price, it is rendered invalid, OTE's requested relief is denied;

(2) Because OTE's request for arbitration is unsupported by any evidence OTE's requested relief is denied;

(3) Any other relief sought by OTE is denied; and

(4) Respondents to recover all costs and attorneys' fees expended in defending this matter.

V. JURISDICTION

92. In this arbitration both Parties have sought relief on the merits and neither Party has challenged the Sole Arbitrator's jurisdiction. In addition, neither Party has argued that the Parties have not satisfied the conditions of Article 11 ISA relating to pre arbitral settlement negotiations.

93. Furthermore, Section 13.1 of the Terms of Reference confirms that the Sole Arbitrator has been validly appointed and that the Parties are not aware of any grounds to challenge the Sole Arbitrator.

94. The Sole Arbitrator therefore affirms that he has jurisdiction over the dispute.

[10] Respondents' Statement of Defence at p. 10.

VI. APPLICABLE LAW

95. Pursuant to Article 11 ISA, the contractual relationship between the Parties is governed by the laws of Switzerland.

VII. NO DISQUALIFICATION OF THE CLAIMANT'S COUNSEL

96. The Respondents argue that if the Claimant's lawyers of Clyde & Co. LLP represent having personal knowledge of the underlying facts, they must be disqualified. The Respondents also state that the Claimant's lawyers have no first-hand knowledge of the underlying facts and therefore cannot authenticate any of the charges. In the Respondents' view they are improper and conflicted advocates. They could be called as witnesses and, as such, cannot be the Claimant's attorneys. The Respondents submit that the Arbitral Tribunal must either strike the Claimant's counsel's entire submission as improperly submitted by interested attorneys, or disqualify them from any further representation.

97. As part of their inherent power and duty to conduct the arbitral proceedings before them fairly and to preserve the integrity of the proceedings, arbitral tribunals can, in certain exceptional circumstances, which often relate to cases of clear conflicts of interest, have the power to disqualify counsel.[11] Arbitral tribunals must balance the interests of the parties, including the fundamental procedural guarantees of equal treatment and the right to be heard in adversarial proceedings,[12] which includes the right to representation and assistance in the arbitration by counsel of the parties' own free choosing.[13]

98. The Arbitral Tribunal has reviewed Exhibits A, B and C to the Respondents' Statement of Defence dated 27 June 2013. It understands that the Respondents' arguments with respect to the Claimant's counsel are made on the basis of certain statements made by the Claimant's counsel in the attachment proceedings before the Supreme Court of the State of New York. These proceedings in New York are, however, irrelevant for the Arbitral Tribunal's assessment of evidence in the present arbitration. As explained in section VIII.3 below the Arbitral Tribunal is satisfied that the Claimant has submitted proper and sufficient documentary evidence in this arbitration to prove its payment claims. There was no need to take any further evidence: in particular, there was no need to take any witness evidence to prove the Claimant's claims. The Arbitral Tribunal

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[11] See, e.g., Tribunal's Ruling dated 6 May 2008 regarding the participation of David Mildon QC in further stages of the proceedings in ICSID Case No. ARB/05/24 (Hrvatska Elektroprivreda, d.d. v. The Republic of Slovenia).

[12] See Article 182(3) of the Swiss Private International Law Act ("PILA").

[13] See Article 6(3)(c) of the European Convention on Human Rights; Decision of the Swiss Federal Supreme Court 133 III 139 para. 6.1; Decision on Application for Disqualification of Counsel dated 18 September 2008 in ICSID Case No. ARB/03/25 (Fraport AG Frankfurt Airport Services Worldwide v. The Republic of the Philippines (Annulment Proceeding), at para. 38; Decision of the Tribunal on the Participation of a Counsel dated 11 January 2012 in ICSID Case No. ARB/06/3 (THE ROMPETROL GROUP N.V. v. ROMANIA), at paras. 16 et seq.; KNOLL, Commentary on Art. 182 PILA, in: Arbitration in Switzerland – The Practitioner's Guide, Arroyo (ed.), Wolters Kluwer 2013, p. 109, paras. 35-36; BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 2nd ed., Stampfli 2010, paras. 1011-1012; SCHLOSSER, Das Recht der internationalen privaten Schiedsgerichtsbarkeit, 2nd ed. J.C.B. Mohr (Paul Siebeck) 1989, para. 840.

notes that the Respondents agreed in August 2013 that there was no need to hold an evidentiary hearing (see paragraph 69 above).

99. In these international arbitration proceedings, the Claimant's counsel acted as counsel only and not as fact witnesses. The actions or statements of the Claimant's counsel in the above-mentioned New York court proceedings are of no relevance to the present arbitration. Therefore, on the balance of the Parties' interests, the Arbitral Tribunal saw no reason to disqualify the Claimant's counsel in this arbitration, and thus no reason to interfere with the Claimant's fundamental right to be heard, which includes its freedom to choose its legal representation. For the same reason, the Arbitral Tribunal did not strike the submissions made by the Claimant's counsel from the record.

VIII. THE CLAIMANT IS ENTITLED TO THE REQUESTED PAYMENT

100. The Claimant is entitled to receive payment from the Respondents of all outstanding amounts due under the TSA, amounting to a net principal sum of USD 486,994.94, plus interest.

VIII.1 The TSA is a valid agreement

101. The Respondents take the view that the Parties never agreed on the rates for the telecommunications traffic between them and, therefore, that the TSA is invalid under Swiss law.

102. The Claimant argues that the TSA is valid because (i) it is a detailed written agreement that evidences a clear intention to create legal relations between the Parties, (ii) the Parties conducted hundreds of thousands of dollars worth of business pursuant to the TSA, (iii) the Parties affirmed the validity of the TSA by entering into the Assignment, (iv) the Parties were engaged in an ongoing discussion concerning rates as from 1 March 2010, and (v) the Respondents were notified of the rates on which the Unpaid Invoices are based in advance and accepted those rates.

103. Upon examination of the documentary evidence before it, the Arbitral Tribunal holds that the TSA is a valid agreement and that the Respondents cannot rely on an alleged invalidity

104. Pursuant to Article 1(1) of the Swiss Code of Obligations ("CO"), the conclusion of a contract requires a mutual expression of intent by the parties, i.e. there must be a "meeting of the minds". The expression of intent may be express or implied (Article 1(2) CO).

105. The Arbitral Tribunal finds that, in the case at hand, there clearly was a meeting of the Parties' minds regarding all essential elements of the TSA, including the rates to be applied for the telecommunication services. Indeed, the signed TSA demonstrates the Parties' common intention to enter into legal relations. While Annex B to the TSA contains no rates, the Parties did agree on the prices for their services on a continuous

basis by (i) notifying certain rates to each other and amending these rates to reflect changes in the market prices,[11] (ii) conducting business worth hundreds of thousands of dollars on the basis of these rates and using the VOIP interconnection established pursuant to the TSA, (iii) issuing their respective invoices on the basis of these rates,[12] and (iv) undisputedly settling invoices calculated on the basis of these rates without objecting to or protesting against the rates applied.

106. There is no indication in the evidence on record that there was a patent or hidden lack of consent between the Parties; quite the contrary: the documents show that the Parties conducted the business between them exactly as envisaged and agreed in the TSA, and that they agreed on varying rates as they provided mutual services under the TSA.[16] The undisputed fact that, prior to filing their defence in this arbitration, the Respondents have never questioned the validity of the TSA, neither in the correspondence exchanged between the Parties nor by way of response to the Claimant's Notice of Suspension dated 21 June 2012,[17] underlines that there was no lack of consent between the Parties regarding the rates to be applied. Finally, the Arbitral Tribunal also follows the Claimant's argument that the Parties have again affirmed the validity of the TSA by entering into the Assignment, which was signed more than a year after the TSA. Therefore, the Claimant can base its claims on the TSA.

VIII.2 The Respondents are jointly and severally liable for breach of the TSA

107. It is undisputed that Medcom and/or QT Talk:

(i) received the Unpaid Invoices for services provided by OTF under the TSA after 21 February 2011;

(ii) were provided by the Claimant with the telecommunication services to which the Unpaid Invoices relate;

(iii) did not dispute the Unpaid Invoices as per Article 5.2 of the TSA, i.e. did not give notice of dispute within thirty calendar days following the date of the concerned invoices, identifying clearly the reason for the dispute and providing at the same time specific evidence that demonstrates that a particular invoice is incorrect and provided that the disputed amount represents at least one percent (1%) of the invoiced amount;

(iv) prior to filing the Statement of Defence never otherwise disputed or queried the Unpaid Invoices; and

(v) failed to pay the balance due to OTF under the Unpaid Invoices issued, being the aggregate amount of the Unpaid Invoices after deduction of the amount of USD 2,643.91 which is due and owing to QT Talk.

[11] See pp. 4-167 of Exhibit "CC2" to the Claimant's Claim Submissions.

[12] See e.g. pp. 17-18 and 68 of Exhibit "CC1" to the Claimant's Claim Submissions.

[16] See pp. 4-167 of Exhibit "CC2" to the Claimant's Claim Submissions.

[17] See pp. 105-109 of Exhibit "CC1" to the Claimant's Claim Submissions.

108. In light of these undisputed facts, and in application of the Parties' contractual agreement in Article 5.2 of the TSA, the Arbitral Tribunal finds that the Unpaid Invoices are deemed to have been accepted by Medcom and/or QT Talk. The Parties' contractual arrangement in Article 5.2 of the TSA is in compliance with Swiss law.

109. The documentary evidence on record, in particular the correspondence between the Parties, also shows that the Respondents were well aware of the invoices and acknowledged that they were in default, but may not have had the financial means to settle them.

110. OTE has acknowledged that the Respondents' invoices number 51/03 and 52/04 in a total amount of USD 2,643.91 are also due and owing to QT Talk in respect of services provided to OTE under the TSA. Therefore, the net principal amount due to OTE under the TSA is USD 486,994.94.

111. Pursuant to the terms of the Assignment, Medcom and QT Talk were and are jointly and severally liable for all obligations arising under the TSA after the effective date of the Assignment which is 21 February 2011.

112. Hence, the Respondents are jointly and severally liable for breach of the TSA and shall pay USD 486,994.94 to the Claimant.

VIII.3 The Claimant provided proper evidence for its claims

113. The Respondents consider that the Claimant provided no proper proof or evidence to support its claims for damages. They argue that the Claimant, in order to evidence that an amount was properly due and owing, should have submitted the raw data and metrics underlying the charges, and authenticated the date by means of an affidavit by a company representative. The Respondents also state that payment demand letters from the Claimant's attorney of Clyde & Co. LLP are invalid as lacking in evidentiary value.

114. The Claimant argues that the applicable price per minute is referred to in its invoices and that this information was sufficient evidence. The Claimant adds that the Respondents settled all the other of the Claimant's invoices, which had been submitted in the same form and with the same type of information.

115. The Arbitral Tribunal has examined the documentary evidence before it, in particular OTE's various Invoices for Services as well as the traffic information contained in the documents produced at pages 17-115 of Exhibit "CC1" to the Claimant's Claim Submissions and in Tab 2 of Exhibit "CC2" to the Claimant's Reply Submissions. The Arbitral Tribunal is fully satisfied with the evidence before it and needs no additional material to assess the claims. The documents submitted by the Claimant are sufficient to proof that the invoiced traffic has indeed taken place. Therefore, there was no need for the Claimant to produce any raw data and metrics underlying the charges, and also no need for authentication by means of an affidavit by a company representative.

116. The Arbitral Tribunal finds that the Claimant's invoices were in compliance with the requirements of Article 5.1 of the TSA as they contain sufficient information to enable

the Respondents to understand precisely what the charges relate to and the basis for such charges. It is undisputed that the Respondents settled all the other invoices issued by the Claimant that were submitted in the same form and with the same type of information.[19] It is also undisputed that the Respondents never disputed the authenticity of any of these documents and that they have never given notice of dispute regarding the Unpaid Invoices as per Article 5.2 of the TSA. If the Respondents had doubts or queries with respect to the accuracy of the Claimant's Unpaid Invoices, they should have raised these with the 30-day time limit under the billing, payment and disputes procedure stipulated in Article 5.2 of the TSA

117. The Arbitral Tribunal concludes that the Claimant is today owed by the Respondents the requested sum of USD 486,994.94, being the open balance of the Unpaid Invoices.

VIII.4 The Claimant is entitled to contractual interest

118. The Respondents must also pay interest on the principal claim amount of USD 486,994.94, as per the TSA

119. Article 5.6 of the TSA provides that "[l]ate payments shall accrue interest at the annual rate of EURIBOR +4%. Such interest shall accrue daily, for each late payment, beginning one Business Day after its due date until funds constituting such payment are paid in full. Interest shall continue to accrue notwithstanding the termination of this Agreement for any reason. In the event that applicable laws do not allow the imposition of interest at the rate specified herein, then late payments shall accrue interest hereunder at the highest rate permitted by law."

120. Swiss law as the applicable law allows the imposition of interest at the rate provided for in Article 5.6 of the TSA.

121. The Arbitral Tribunal has verified the Claimant's interest calculation at pages 134-135 of Exhibit "CC1" to the Claimant's Claim Submissions, including by means of the information available on the website of the European Banking Federation (http://www.euribor-ebf.eu), and found it to be correct.

122. Therefore, the Respondents must pay interest on the principal amount of USD 486,994.94 at an annual rate of EURIBOR +4% in the amount of USD 20,828.12 up to 8 May 2013 and thereafter accruing daily at the rate of USD 68.22 until payment

IX. THE COSTS OF THE ARBITRATION

IX.1 The Parties' Submissions on Costs

123. The Claimant claims reimbursement of the following amounts: GBP 44,738.62 (attorneys' fees), GBP 618.52 (disbursements) and GBP 1,863.38 (ICC Filing Fee of USD 3,000).

124. The Respondents claim reimbursement of USD 33,010 (attorneys' fees).

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[19] See, e.g., pp. 17-18 and 68 of Exhibit "CC1" to the Claimant's Claim Submissions.

IX.2 Decision on Costs

125. The Claimant requests that the Respondents be ordered to bear all costs of the arbitration proceedings.

126. The Respondents are of the view that since the TSA does not contain a provision covering costs, each party must bear its own cost. In the Respondents' view, this is evidenced, *inter alia*, by Article 12.1 of the TSA, which states that "[e]ach Party shall bear its own costs and expenses with respect to the negotiation and execution of this Agreement."

127. The Claimant argues that any purported reliance on Article 12.1 of the TSA is misconceived because this provision has nothing to do with the power of the Arbitral Tribunal to award of costs on the resolution of a dispute and merely relates to costs and expenses incurred in the "negotiation and execution" of the TSA.

128. The Arbitral Tribunal cannot follow the Respondents' argument regarding the allocation of costs. The arbitration agreement contained in Article 11 of the TSA refers to the ICC Rules of Arbitration without referring to the allocation of costs in the event of a dispute. There is no express mention of the costs of the arbitration anywhere else in the Telecommunications Services Agreement. As indicated by the Claimant, Article 12.1 of the TSA only relates to the negotiation and execution of the TSA and not to the allocation of costs in the event of arbitration proceedings. In addition, the limitations and exclusions set out in Articles 8 and 9 of the TSA are inapplicable to the Claimant's claim. Therefore, the ICC Rules of Arbitration, including Article 37 thereof, have been incorporated into the TSA by reference and apply to the Arbitral Tribunal's determination on costs.

129. In accordance with Article 37(4) and (5) of the ICC Rules, and in line with the established principle that costs follow the outcome of the case, the Arbitral Tribunal, within the discretion it enjoys when allocating the costs of the arbitration between the Parties, awards the Claimant reimbursement of all its costs of the arbitration.

130. The Tribunal finds that the Claimant's total costs are reasonable and appropriate for the pursuit of the Claimant's claims and therefore reimbursable. The total amount of costs which the Respondents must reimburse to the Claimant amounts to GBP 45,356.52 (GBP 44,738 for attorneys' fees plus GBP 618.52 for disbursements).

131. The Court, at its session of 5 December 2013 has fixed the costs of arbitration at USD 50,000. Given that the Claimant has paid an advance in the amount of USD 50,000 to the ICC, the Claimant is entitled to be compensated by the Respondents in the amount of USD 50,000. This amount includes the USD 3,000 filing fee, which the Claimant paid to the ICC Secretariat when filing its Request for Arbitration.

132. The Respondents must jointly and severally bear the entire costs of this arbitration, including their own costs.

On the basis of the considerations set out above the Arbitral Tribunal makes the following

FINAL AWARD

1. The Respondents shall pay to the Claimant the amount of USD 486,994.94, together with interest at the rate of EURIBOR +4% per annum in the amount of USD 20,828.12 up to 8 May 2013 and thereafter accruing daily at the rate of USD 68.22 until payment.

2. The Respondents jointly and severally bear the costs of the arbitration, including their own costs. The Respondents shall compensate the Claimant for its legal costs and fees in the amount of GBP 45,356.52 and for the advance on costs in the arbitration in the amount of USD 50,000.

3. All other claims and requests are dismissed.

Place of Arbitration: Geneva, Switzerland

Date: 20 December 2013

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Geneva, 20 December 2013

ICC Arbitration No. 18956/MHM/EMT – OTE INTERNATIONAL SOLUTIONS S.A. (Greece) v. 1. MEDCOM LLC (U.S.A.) and 2. QT TALK LLC (U.S.A.)

Dear Ms Tornese,

I refer to your email of today and am pleased to enclose six unbound originals of the Final Award.

Happy holidays and all the best for the year 2014!

Yours sincerely,

Bernd Ehle

Enclosures:

- 6 signed originals of the Final Award