INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ITALBA CORPORATION,

Claimant,

v.

THE ORIENTAL REPUBLIC OF URUGUAY,

Respondent.

REQUEST FOR ARBITRATION

February 16, 2016

HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, NY 10004
United States of America

1. Italba Corporation (***Italba***) is a protected U.S. investor in the Oriental Republic of Uruguay (***Uruguay***) under the Treaty Concerning The Encouragement And Reciprocal Protection Of Investment (the ***Treaty***), which Uruguay signed with the United States Of America (the ***United States***) on November 4, 2005 and which entered into force on November 1, 2006.[1]

2. Italba brings this arbitration pursuant to the Treaty and Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ***ICSID Convention***), to which the United States and Uruguay are parties, in order to obtain compensation for the damages Italba suffered following Uruguay's unfair and discriminatory treatment of Italba's investments in Uruguay. That treatment culminated in a shocking denial of justice: a Uruguayan government agency, having been found to have improperly terminated Italba's rights, frustrated the ruling of Uruguay's own courts by awarding Italba's rights to a competitor. This conduct resulted in the final unlawful expropriation of Italba's investments in Uruguay.

3. Pursuant to the attached resolution of its Board of Directors (Exhibit 2), Italba has duly authorized Hughes Hubbard & Reed LLP to initiate and pursue on its behalf arbitration proceedings against Uruguay under the Treaty and the ICSID Convention.

I. INTRODUCTION

4. Italba is a company incorporated under the laws of the State of Florida, United States. Italba has been doing business in the United States, the Caribbean, and Latin America since 1982. Currently, Italba provides broadband data services in Latin America. Italba has three subsidiaries incorporated in Uruguay: Trigosul S.A. (***Trigosul***), which provides wireless data services in Uruguay; Jorter S.A., which provides long distance telephone services in Uruguay; and Villaclara S.A., which provides satellite uplink services in Uruguay.

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[1] Treaty, Exhibit 1.

5. In October 2000, the Uruguay Ministry of Defense (***UMDN***) licensed Trigosul to provide wireless data services in the 3425-3450 MHz and 3525-3550 MHz broadband spectrum (the ***Spectrum***).

6. Three years later, a new telecommunications licensing scheme went into effect. The Unidad Reguladora de Servicios de Comunicaciones (***URSEC***) — an agency of the Uruguay government responsible for regulation of telecommunications — was charged with issuing updated licenses to companies such as Trigosul, which already held licenses to use certain broadband frequencies, so as to conform all existing licenses to the revised license categories established in the new legislation.[2]

7. However, URSEC never issued Trigosul an updated license, notwithstanding Trigosul's multiple reminders to URSEC of its obligation under the new licensing regulations to issue a conforming license to Trigosul and notwithstanding the fact that other investors in Trigosul's position were issued conforming licenses.

8. In July 2006, Trigosul met with an URSEC official to inquire as to why it had not received a conforming license as required under Uruguayan law. The URSEC official asked for a bribe in order to process Trigosul's request. Trigosul refused to pay the bribe. Since then, URSEC has never issued Trigosul the conforming license it was obligated to issue under Uruguayan law. No official explanation has ever been provided for this failure.

9. Uruguay's failure to issue a conforming license to Trigosul significantly hampered Italba's efforts to make use of the rights to the Spectrum previously granted to Trigosul.

10. Uruguay's unfair and discriminatory conduct continued in 2011, when URSEC and the Uruguay Ministry of Industry, Energy, and Mining (***MIEM***) revoked Trigosul's license to use the Spectrum and to provide wireless data services in Uruguay, claiming that Trigosul had failed to comply with the terms of its license.

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2 *Aprueban Reglamento Sobre El Espectro Radioeléctrico* and Decrees 114-2003 & 115-2003 (Mar. 25, 2003) at Decree 114-2003, Art. 38, Exhibit 3 (the ***Telecommunications Licensing Regulations***).

11. Trigosul duly challenged the decisions of URSEC and MIEM in the Uruguayan Tribunal de lo Contencioso Administrativo (the ***Administrative Court***). In 2014, the Administrative Court overturned the revocation of Trigosul's rights, finding that URSEC and MIEM's revocation of Trigosul's rights was unjustified and that the revocation was therefore null and void.[3]

12. However, after Trigosul notified URSEC that its rights to the Spectrum had been reinstated by the Administrative Court Judgment — a decision that is final, binding, and not subject to appeal — Italba learned that URSEC considered reinstatement impossible because, while Trigosul's case against URSEC and MIEM was pending in the Administrative Court, URSEC re-allocated Trigosul's rights to use the Spectrum to a competitor company known as Dedicado. Since then, URSEC has made no effort to reinstate Trigosul's rights, as ordered by the Administrative Court, and Uruguay has made no effort to provide Italba with monetary compensation for its losses occasioned by Uruguay's conduct.

13. The jurisdictional and substantive bases for Italba's request for compensation in this case are incontrovertible:

    a. Italba is a U.S. investor with investments in Uruguay that are protected under the Treaty (Section IV.A).

    b. Italba has accepted (and thereby perfected) Uruguay's offer to arbitrate pursuant to the Treaty (Section IV.B).

    c. Uruguay has breached its obligations under the Treaty by: (*i*) failing to treat Italba fairly and equitably; (*ii*) unlawfully expropriating Italba's investments in Uruguay; (*iii*) failing to provide Italba full protection and security; and (*iv*) failing to accord Italba treatment no less favorable that it accords to other investors (Sections II & III).

14. In Section V, Italba proposes the constitution of a three-member Tribunal to adjudicate this dispute and addresses other procedural matters. In Section VII, Italba sets out the relief requested in these proceedings.

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[3] Judgment of the Tribunal de lo Contencioso Administrativo (Oct. 23, 2014), Exhibit 4 (the ***Administrative Court Judgment***).

15. The factual and legal claims and arguments contained herein should not be taken as limiting the right of Italba to take other actions necessary to protect its rights. In addition, Italba reserves the right to specify, supplement, or amend the factual and legal claims and arguments contained herein, including in light of further measures that Uruguay may take in breach of its obligations under the Treaty.

II. THE DISPUTE

A. Trigosul Was Granted A License To Use The Spectrum To Provide Wireless Data Services.

16. On January 17, 1997, UMDN licensed Italba's President and Chief Executive Officer (***CEO***), Gustavo Alberelli, to provide point-to-point and multi-point wireless data transmission services in Uruguay at frequencies of 1865-1870, 1895-1900, 1945-1950, and 1975-1980 MHz.[4] UMDN approved the transfer of that license from Dr. Alberelli to Trigosul on February 8, 2000.[5]

17. In October 2000, UMDN issued Decree No. 282/000, which reserved the majority of the 1700-2200 MHz frequency band for the development of Personal Communication Services, a type of wireless technology that combines all-in-one wireless phone, messaging, and data services.[6] As a result, the Uruguay National Communications Secretariat revoked the allocation of the 1865-1870, 1875-1900, 1945-1950, and 1975-1980 MHz frequencies to Trigosul and instead granted Trigosul a license to provide wireless data transmission services in the 3425-3450 MHz and 3525-3550 MHz broadband spectrum.[7] Trigosul did not receive any compensation for the revocation of its rights to the 1865-1870, 1895-1900, 1945-1950, and 1975-1980 MHz frequencies. In fact, Trigosul was required to pay 632,674 Uruguayan pesos (approximately USD $56,000) as an advance payment of the fees due for the first two years of Trigosul's

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4 Resolution 75-219 (Jan. 17, 1997), Exhibit 5.
5 Resolution 142/000 (Feb. 8, 2000), Exhibit 6.
6 Decree No. 282/000 (Oct. 3, 2000), Exhibit 7.
7 Resolution 278/2000 (Oct. 4, 2000), Exhibit 8; Resolution 444/000 (Dec. 12, 2000), Exhibit 9.

operation in the Spectrum[8] and to buy costly new equipment to match the new frequencies.[9]

18. URSEC was created a few months later, on February 21, 2001, as the arm of Uruguay's executive branch responsible for regulating telecommunications.[10] Among other things, URSEC was tasked with granting and regulating licenses to use radio frequencies in Uruguay.[11] In this capacity, the newly-created URSEC issued a resolution confirming Trigosul's license to operate in the Spectrum.[12] Trigosul began commercial operation of its wireless data transmission system on June 20, 2003.[13]

B. URSEC Failed To Respond To Multiple Reminders From Trigosul That It Was Required To Issue Trigosul An Updated License Conforming To Uruguay's New Telecommunications Licensing Regulations.

19. In November 2002, Uruguay's government proposed and approved new telecommunications licensing regulations. The regulations went into effect in March 2003.[14] The regulations set out a new licensing scheme, under which all entities operating in Uruguay's radio frequencies would be issued a license in one of several new categories. The regulations charged URSEC both with granting new licenses and with updating existing licenses to conform to the new categories in the regulations.[15]

20. Pursuant to these regulations, Italba expected URSEC to issue Trigosul a license that conformed to the categories expressed in the new regulations, but Trigosul did not receive anything. Trigosul's general manager, Luis Herbon, arranged and attended numerous meetings with URSEC officials to inquire as to why Trigosul had not yet received its conforming license, including a meeting with the President of URSEC in

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8 Resolution 444/000 (Dec. 12, 2000), Exhibit 9, at 3.
9 *See* Memorandum of Understanding Between Prime Wave Communications (Division of L3 Communications Corporation) and Trigosul S.A. of Uruguay (May 18, 2001), Exhibit 10.
10 Ley No. 17.296 (Feb. 21, 2001), Exhibit 11.
11 *Id.* at Art. 86.
12 Resolution 193/024 (Oct. 18, 2001), Exhibit 12.
13 Resolution 303/034 (Sept. 11, 2003), Exhibit 13.
14 Telecommunications Licensing Regulations, Exhibit 3.
15 *Id.* at Decree 114-2003, Art. 38.

early 2004. These officials repeatedly told Trigosul that URSEC was in the process of issuing conforming licenses and that Trigosul would eventually receive one.

21. On July 6, 2005, after more than two years of inquiring with URSEC as to the status of its license and receiving nothing, Trigosul made a written request to URSEC for a conforming license in accordance with the Telecommunications Licensing Regulations.[16]

22. In January 2006, Trigosul sent a follow-up letter to URSEC, reiterating its request for a conforming license.[17] In the letter, Trigosul informed URSEC that it was in danger of losing USD $6.5 million in investments due to URSEC's delay in updating Trigosul's license because the investor would not move forward with the transaction until Trigosul had received its updated license. URSEC never responded to Trigosul's requests.

23. In July 2006, Dr. Gustavo Alberelli met with URSEC's then-Director, Alicia Fernandez, regarding Trigosul's request for a conforming license. Ms. Fernandez offered to "expedite" the issuance of a conforming license to Trigosul in exchange for USD $25,000. Trigosul did not pay the bribe.

24. In February 2009, the President of Uruguay signed Executive Order IE 810, which amended the categories of licenses contained in the Telecommunications Licensing Regulations.[18] URSEC still did not issue Trigosul a conforming license.

25. As a result of URSEC's failure to issue Trigosul a conforming license, Italba was hampered in its ability to conclude contemplated joint ventures with investors. For example, in February 2002, a company named Eastern Pacific Trust (***EPT***) presented a letter of intent to Italba, outlining EPT's proposal to invest up to USD $1 million in a joint venture between EPT and Italba that would provide wireless data transmission services in Uruguay.[19] Italba devoted significant time and resources to negotiating the joint venture transaction with EPT over the course of the next several months, but could

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16 Letter from Trigosul to URSEC (July 6, 2005), Exhibit 14.
17 Letter from Trigosul to URSEC (Jan. 26, 2006), Exhibit 15.
18 Executive Order IE 810 (Feb. 17, 2009), Exhibit 16.
19 Letter from EPT to Italba and Trigosul (Feb. 3, 2002), Exhibit 17.

not close the transaction until it received Trigosul's updated license.[20] In May 2003, EPT informed Italba that, because Trigosul had not yet received a conforming license from URSEC, EPT could not continue with the joint venture transaction.[21] Similarly, as Trigosul referenced in its January 2006 letter to URSEC, Italba was in discussions with Brasil Telecomm regarding a joint venture that would have brought $6.5 million in investments to Italba.[22] Brasil Telecomm ultimately decided not to go forward with the deal because Trigosul had not received its updated license from URSEC. In the years that followed, other deals with prospective investors were similarly thwarted by URSEC's conduct.

C. URSEC And MIEM Revoked Trigosul's Rights To The Spectrum Without Any Legal Basis Or Justification.

26. On December 30, 2010, URSEC's General Counsel issued a memorandum recommending the revocation of Trigosul's license to provide wireless data services in Uruguay.[23] The memorandum set forth two bases for this recommendation. *First*, URSEC alleged that Trigosul had failed to comply with its obligation to provide data services. URSEC based this allegation on a failed inspection that it had conducted a month earlier at the address it claimed to have on file for Trigosul's offices. URSEC's inspectors had found that Trigosul did not have an office at that address and had concluded that Trigosul was no longer in operation. *Second*, URSEC alleged that Trigosul had not paid the required fees for its use of the Spectrum.

27. Trigosul promptly responded to both of these allegations by letter to URSEC. With respect to the first allegation, Trigosul noted that URSEC's finding that Trigosul was no longer operating was based on an inspection carried out at the wrong address. On July 30, 2010 — five months before the date of the inspection — Trigosul had formally

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20 *See* Letter from A. Cherp (EPT) to Italba and Trigosul (Jan. 8, 2003), Exhibit 18 (EPT "cannot move forward with concluding our agreements with Trigosul until we receive the certified copy of the actual License to be issued by URSEC"); Letter from A. Cherp (EPT) to Italba and Trigosul (Apr. 10, 2003), Exhibit 19 ("[W]e have not received the certified copy of your new telecommunication license granted by URSEC . . . . [W]e are not able to go to the next step without this document and accordingly we will lose the potential funding for your Telecommunication project.").

21 Letter from A. Cherp (EPT) to Italba and Trigosul (May 12, 2003), Exhibit 20.

22 *See* Letter from Trigosul to URSEC (Jan. 26, 2006), Exhibit 15.

23 URSEC Memorandum (Dec. 28, 2010), Exhibit 21.

notified URSEC that it was moving its offices to a different address. Trigosul was operating out of offices at the new address. With respect to the second allegation, Trigosul stated that it had, in fact, paid the required fees for use of the Spectrum and was fully up-to-date on all payments. The letter attached documents evidencing both of these points.[24]

28. On January 19, 2011, URSEC issued a report stating, without explanation, that "los argumentos invocados por Trigosul S.A. no aportan nuevos elementos que enerven lo oportunatemente informado." The report failed to address any of Trigosul's points regarding the inaccuracy of URSEC's assertions and, for the first time, added a third alleged basis for the recommendation to revoke Trigosul's license: that Trigosul had allowed another company, Service E Instalaciones S.A. (***SEI***), to use the Spectrum without due authorization from URSEC. Ultimately, the report recommended that Trigosul's license to operate in the Spectrum and provide wireless data services in Uruguay be revoked.[25]

29. The next day, URSEC entered a resolution revoking Trigosul's license to operate in the Spectrum, citing the three reasons that it had set out in its January 19, 2011 report.[26] Trigosul formally responded to the revocation on March 1, 2011, repeating its responses on the first two alleged bases for the revocation and adding, with respect to the third alleged basis, that Trigosul had notified URSEC on October 6, 2010 that it had engaged SEI to install and implement two nodes in the Spectrum on a test-mode basis and that SEI had never commercially operated or provided any broadband data services in the Spectrum.[27] URSEC did not respond to the letter. On July 8, 2011, MIEM revoked Trigosul's license to provide wireless data services in Uruguay.[28]

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24 Letter from Trigosul to URSEC (Jan. 12, 2011), Exhibit 22.
25 URSEC Report (Jan. 19, 2011), Exhibit 23.
26 Resolution (Jan. 20, 2011), Exhibit 24.
27 Letter from Trigosul to URSEC (Mar. 1, 2011), Exhibit 25.
28 Resolution (July 8, 2011), Exhibit 26.

D. URSEC Continues To Ignore An Administrative Court Judgment Reinstating Trigosul's Rights.

30. In October 2011 and March 2012, following a failed mediation attempt with URSEC, Trigosul filed claims against URSEC and MIEM, respectively, in the Administrative Court, requesting that the court overturn the January 20, 2011 and July 8, 2011 resolutions releasing the Spectrum and revoking Trigosul's authorization to provide wireless data services.

31. In October 2014, the Administrative Court rendered a decision finding that URSEC and MIEM had no legitimate basis for revoking Trigosul's rights and declaring that the resolutions revoking those rights were null and void.[29] Specifically, the Administrative Court, reviewing the evidence, found that:

    a. Trigosul had informed URSEC about the change in its address, and consequently URSEC's inspection at Trigosul's old address was materially flawed;

    b. URSEC's failure to acknowledge Trigosul's response on this issue in its January 19, 2011 report and in its arguments before the Administrative Court was further evidence of URSEC's wrongful behavior;

    c. Trigosul had proved that it was up-to-date on its payments to URSEC; and

    d. SEI had only installed test nodes and had not provided any services in the Spectrum.

    Accordingly, the Administrative Court ruled that the grounds on which URSEC and MIEM had based the revocation of Trigosul's rights were false and that the revocation was therefore unlawful.[30]

32. The Administrative Court declared that the challenged resolutions of URSEC and MIEM were null and void, with the effect that Trigosul's rights were immediately reinstated.[31]

33. Pursuant to the Administrative Court Judgment, Trigosul prepared to begin commercial operation in the Spectrum again. On December 23, 2014 and January 19, 2015, Trigosul

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29 Administrative Court Judgment, Exhibit 4.
30 *Id.* at 15-20.
31 *Id.* at 20-21.

wrote letters to URSEC, seeking URSEC's approval of new equipment that Trigosul had purchased.[32] URSEC responded by email on January 21, 2015, requesting that Trigosul complete certain forms.[33] Trigosul sent the completed forms to URSEC on January 26, 2015,[34] but never heard anything further from URSEC on this issue.

34. On February 5, 2015, Trigosul wrote to the President of URSEC, reminding him that the Administrative Court Judgment had reinstated Trigosul's rights to operate in the Spectrum and requesting that, in accordance with the judgment, URSEC add Trigosul back to the Registro de Prestadores de Servicios de Trasmisiones de Datos and take all further steps necessary to reinstate Trigosul's rights to operate in the Spectrum.[35] URSEC did not respond.

35. Instead, Italba learned that, while Trigosul's administrative case against URSEC and MIEM was pending, URSEC re-allocated the right to use the Spectrum to Dedicado, a telecommunications company in direct competition with Trigosul.[36] Dedicado continues to hold a license from URSEC to use the Spectrum.

36. To date, URSEC has not taken any steps to reinstate Trigosul's rights or otherwise comply with the Administrative Court Judgment. At the same time, Uruguay has taken no steps to compensate Italba for the expropriation of its investment.

III. URUGUAY'S VIOLATION OF THE TREATY

37. The measures outlined in Section II above have deprived Italba of the value of its extensive investments in Uruguay.

38. These measures violate Uruguay's international law obligations under the Treaty, namely:

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32 Letter from Trigosul to URSEC (Dec. 23, 2014), Exhibit 27; Letter from Trigosul to URSEC (Jan. 19, 2015), Exhibit 28.

33 Email from D. Capdevielle (URSEC) to L. Herbon (Trigosul), copying G. Silva (URSEC) (Jan. 21, 2015), Exhibit 29.

34 Letter from L. Herbon (Trigosul) to URSEC (Jan. 26, 2015), Exhibit 30.

35 Letter from Trigosul to URSEC (Feb. 5, 2015), Exhibit 31.

36 Resolution 220/029 (Sept. 5, 2013), Exhibit 32.

a. Uruguay's obligation to accord U.S. investors and their investments fair and equitable treatment;

b. Uruguay's obligation not to expropriate U.S. investments or subject U.S. investments to measures equivalent to expropriation without due process, a public purpose, and the payment of prompt, adequate, and effective compensation;

c. Uruguay's obligation to accord U.S. investors and their investments full physical security and protection; and

d. Uruguay's obligation to accord U.S. investors and their investments treatment no less favorable than it accords, in like circumstances, to domestic and other foreign investors and investments.

A. Uruguay Has Treated Italba's Investments Unfairly And Inequitably.

39. Article 5 of the Treaty provides, in relevant part:

> *(1) Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.*
>
> *(2) . . . The obligation in paragraph 1 to provide:*
>
> *(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world[.]*

40. URSEC's multiple and continuing failures to comply with Uruguay law in its treatment of Trigosul constitute a serious breach of due process and a denial of justice in violation of Article 5 of the Treaty. URSEC has arbitrarily refused to issue Trigosul a license in conformity with Uruguay's Telecommunications Licensing Regulations and demanded that Italba pay a bribe in order to motivate URSEC to comply with Uruguayan law.

41. Uruguay's pattern of discrimination culminated in *(a)* URSEC's transfer of Trigosul's rights to the Spectrum to Dedicado — an action that completely frustrated the Administrative Court Judgment voiding URSEC's unjustified revocation of Trigosul's rights; and *(b)* URSEC's subsequent failure to return Trigosul's rights following the Administrative Court Judgment.

42. URSEC's total disregard for applicable rules and regulations has frustrated Italba's legitimate expectations that its investments in Uruguay would be subject to the protections of Uruguayan law and treated in accordance with that law. Accordingly, Uruguay has failed to provide fair and equitable treatment to Italba, as required under the Treaty.

B. Uruguay Has Unlawfully Expropriated Italba's Investments.

43. The Treaty guarantees that the investments of U.S. investors in Uruguay will not be expropriated or subjected to measures equivalent to expropriation, except in accordance with Article 6. Article 6 provides, in relevant part:

> *(1) Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:*
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> *(a) for a public purpose;*
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> *(b) in a non-discriminatory manner;*
>
> *(c) on payment of prompt, adequate, and effective compensation; and*
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> *(d) in accordance with due process of law and Article 5(1) through (3).*
>
> *(2) The compensation referred to in paragraph 1(c) shall:*
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> *(a) be paid without delay;*
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> *(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("the date of expropriation");*
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> *(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and*
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> *(d) be fully realizable and freely transferable.*
>
> *(3) If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation,*

plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.[37]

44. The Administrative Court held that URSEC and MIEM's revocation of Trigosul's rights to the Spectrum was without any legal basis or justification and was therefore null and void. Accordingly, as of the date of the Administrative Court Judgment, Trigosul's rights should have been reinstated; however, such reinstatement was frustrated by URSEC's transfer of Trigosul's rights to Dedicado. Having chosen not to reinstate Trigosul's rights, it was incumbent on Uruguay to compensate Italba for the taking of those rights. Because it failed to do so, Uruguay has unlawfully expropriated Italba's investments in Uruguay in breach of Article 6 of the Treaty by taking Italba's rights without any public purpose, due process, or offer of compensation.

C. Uruguay Has Failed To Provide Italba Full Protection And Security.

45. Article 5 of the Treaty provides, in relevant part:

> *Each Party shall accord to covered investments treatment in accordance with customary international law, including . . . full protection and security.*

46. Article 5 defines "full protection and security" to require "each Party to provide the level of police protection required under customary international law." While the Treaty's definition of "full protection and security" appears to encompass only a guarantee of physical security, under Article 4 of the Treaty, Uruguay must accord to U.S. investors and their investments treatment no less favorable than it accords to other foreign investors and their investments:

> *(1) Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.*

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[37] Uruguay maintains a freely usable currency. *See* U.S. Department of State, Bureau of Economic and Business Affairs, *2015 Investment Climate Statement – Uruguay* (May 2015), http://www.state.gov/e/eb/rls/othr/ics/2015/241788.htm.

> *(2) Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*

47. Uruguay's bilateral investment treaties with other nations contain a definition of "full protection and security" that includes the obligation to provide full legal, as well as physical, protection to foreign investors and investments.[38] Accordingly, under Article 4 of the Treaty, Uruguay's guarantee of "full protection and security" to U.S. investors and investments must include the same guarantee of full legal protection that Uruguay has accorded to other investors and investments.

48. As described above, URSEC's failure to treat Italba's investment in accordance with Uruguayan law and URSEC's frustration of the Administrative Court Judgment constitute a denial of the legal protection that Uruguay guaranteed to U.S. investors and investments under Articles 4 and 5 of the Treaty.

D. Uruguay Has Failed To Accord Italba Treatment No Less Favorable Than The Treatment Accorded In Like Circumstances To Other Investors.

49. The Treaty requires Uruguay to treat U.S. investors and their investments in Uruguay in a manner no less favorable than it treats Uruguay investors and their investments or other foreign investors and their investments.

50. Specifically, Article 3 of the Treaty ("National Treatment") provides, in relevant part:

> *(1) Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like*

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[38] For example, Article 4 of the Venezuela-Uruguay Acuerdo Para La Promoción y Protección Reciproca de Inversiones provides, in relevant part:

> *Cada Parte Contratante, de conformidad con las normas y criterios del Derecho Internacional, acordara a las inversiones de inversores de la otra Parte Contratante en su territorio, un trato justo y equitativo, les garantizara seguridad y protección jurídica plenas y se abstendrá de obstaculizar con medidas arbitrarias o discriminatorias su administración, gestión, mantenimiento, uso, disfrute, ampliación, venta o liquidación.*

> *circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.*
>
> *(2) Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*

51. Similarly, Article 4 of the Treaty ("Most-Favored Nation Treatment") provides:

> *(1) Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.*
>
> *(2) Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.*

52. As set forth above, URSEC failed to treat Italba's investment in the same manner that it treated investments made by other telecommunications companies operating in Uruguay. In accordance with the Telecommunications Licensing Regulations, URSEC issued updated licenses to other telecommunications companies in similar circumstances to Trigosul, but — despite multiple requests and without any justification — did not issue an updated license to Trigosul. In addition, while Trigosul's case against URSEC was pending in the Administrative Court, URSEC re-allocated the Spectrum to a company in direct competition with Trigosul. In both cases, URSEC treated investors in the same economic sector as Italba, carrying out the same type of economic activities, more favorably than it treated Italba's investment. Accordingly, Uruguay has breached Articles 3 and 4 of the Treaty.

IV. THE CENTRE HAS JURISDICTION OVER THIS INVESTMENT DISPUTE.

53. The fundamental elements of the Centre's jurisdiction, as set out in Article 25(1) of the ICSID Convention, are: (*a*) an investment dispute; (*b*) between a State party to the ICSID Convention and a national of another Contracting State; where (*c*) both parties have consented to the submission of their dispute to ICSID arbitration. All of these elements are satisfied in this case.

54. As set forth above, Italba and Uruguay have a legal dispute arising directly from Uruguay's violation of Italba's rights under the Treaty.

55. The dispute arises between Uruguay (a Contracting State) and Italba (an enterprise organized under the laws of another Contracting State, the United States).

56. Uruguay and Italba have consented to submit this dispute to ICSID arbitration. Uruguay has done so by virtue of the Treaty. Italba has expressed its consent by means of letters to Uruguay dated August 5, 2015 and October 15, 2015.[39]

A. Italba's Investments In Uruguay Are Protected Under The Treaty.

57. Article 2(1) of the Treaty provides that the "Treaty applies to measures adopted or maintained by a Party relating to: (*a*) investors of the other Party; [and] (*b*) covered investments." Italba qualifies as an "investor" and its investments qualify as "covered investments" under the Treaty.

1. Italba Is A Protected Investor.

58. Article 1 of the Treaty defines the term "investor of a Party" to include "an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party."

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[39] Letter from Italba to Uruguay International Economic Affairs Secretariat & President of Uruguay (Aug. 5, 2015), Exhibit 33; Letter from A. Yanos to Uruguay Minister of Economy and Finance (Oct. 15, 2015), Exhibit 34.

59. An "enterprise of a Party" is defined as "an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there."

60. Italba is a corporation constituted under the laws of the State of Florida, United States. Italba has been operating in the United States since May 1982 and has its corporate headquarters in Miami, Florida.[40] Accordingly, Italba qualifies as a U.S. enterprise subject to the protections of the Treaty.

2. Italba's Investments Are Covered Investments.

61. Article 1 of the Treaty defines the term "covered investment" to mean, "with respect to a Party, an investment in its territory of an investor of the other Party in existence as of the date of entry into force of this Treaty or established, acquired, or expanded thereafter."

62. "Investment" is defined as follows:

> *[E]very asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:*
>
> *(a) an enterprise;*
>
> *(b) shares, stock, and other forms of equity participation in an enterprise;*
>
> *(c) bonds, debentures, other debt instruments, and loans;*
>
> *(d) futures, options, and other derivatives;*
>
> *(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;*
>
> *(f) intellectual property rights;*
>
> *(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and*

[40] Italba Articles of Incorporation (May 10, 1982), Exhibit 35.

> *(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.*

63. Italba's interests in Uruguay qualify as investments in the sense of the Treaty. In particular, Italba's investments include Trigosul, its subsidiary enterprise in Uruguay; shares, stock, and other forms of equity participation in Trigosul; licenses, authorizations, permits, and similar rights granted to Trigosul under Uruguay law; and other tangible and intangible, movable and immovable property, and related property rights held by Trigosul.

B. The Parties Consented To ICSID Arbitration Under The Treaty.

64. Uruguay's consent to ICSID arbitration with U.S. investors like Italba is established in Articles 24(3) and 25 of the Treaty. Article 24(3) provides in material part:

> *[A] claimant may submit a claim . . . (a) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the non-disputing Party are Parties to the ICSID Convention.*

65. Article 25 of the Treaty provides that:

> *(1) Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Treaty.*
>
> *(2) The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:*
>
> *(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;*
>
> *(b) Article II of the New York Convention for an "agreement in writing;" and*
>
> *(c) Article I of the Inter-American Convention for an "agreement."*

66. As of the date of this Request, both Uruguay and the United States remain parties to the ICSID Convention.

67. Italba's acceptance of Uruguay's offer to arbitrate investment disputes under the Treaty is evidenced by: (*a*) its letter dated August 5, 2015 to the Uruguay International Economic Affairs Secretariat and the President of Uruguay; and (*b*) its letter dated October 15, 2015 to the Uruguay Minister of Economy and Finance. In these letters, Italba formally notified Uruguay, in accordance with Article 24 of the Treaty, that a dispute with respect to Italba's investments in Uruguay had arisen and expressed its unconditional consent to submit the dispute to arbitration before ICSID in accordance with Article 25 of the Treaty.

V. CONSTITUTION OF THE ARBITRAL TRIBUNAL, PLACE, AND LANGUAGE OF THE ARBITRATION

68. In accordance with Article 37(2)(b) of the ICSID Convention and pursuant to Rule 2(1)(a) of the ICSID Arbitration Rules, and in light of the substantial amounts involved in these proceedings, Italba proposes that the Tribunal be composed of three (3) arbitrators, one arbitrator to be appointed by each party and the president to be appointed by agreement of the parties within thirty (30) days after the nomination by Uruguay of its party-appointed arbitrator.

69. In accordance with Article 62 of the ICSID Convention, the seat of the arbitration is to be Washington D.C., ICSID's headquarters.

70. The Treaty is silent on the question of the language of the arbitration, and the parties have not reached an agreement on this issue in accordance with Rule 22 of the ICSID Arbitration Rules. Italba proposes English as the language of the arbitration. Italba also proposes that exhibits and authorities in Spanish may be submitted by the parties without translation into English.

VI. NAME AND ADDRESSES OF THE PARTIES

71. Italba is a company incorporated since May 1982 under the laws of the State of Florida, United States with its registered office at:

8540 SW 132nd Ct.
Miami, FL 33183
USA
Tel: +1 (305) 386-2593

72. All correspondence and notices relating to this case should be addressed to:

Alexander Yanos
Fara Tabatabai
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One Battery Park Plaza
New York, NY 10004
USA

Tel: +1 (212) 837-6000
Fax: +1 (212) 422-4726
Email: alex.yanos@hugheshubbard.com
fara.tabatabai@hugheshubbard.com

73. ICSID is respectfully requested to serve copies of this Request for Arbitration on Uruguay at the following address:

Director
Dirección de Asuntos Económicos Internacionales
Ministerio de Relaciones Exteriores
Avenida 18 de Julio 1205
Colonia 1206
Montevideo
Uruguay

VII. THE CLAIMANT'S REQUEST FOR RELIEF

74. On the basis of the foregoing, without limitation and reserving Italba's rights to supplement these prayers for relief, including without limitation in the light of further action by Uruguay, as well as Italba's rights as a national of a Contracting Party to the ICSID Convention with claims concerning investments in Uruguay arising while the

ICSID Convention remains in force and effect, Italba respectfully requests that the Tribunal:

a. DECLARE that Uruguay has breached:

   i. Article 5 of the Treaty by failing to accord Italba's investments in Uruguay fair and equitable treatment;

   ii. Article 6 of the Treaty by unlawfully expropriating Italba's investments in Uruguay and/or taking measures equivalent to unlawful expropriation with respect to Italba's investments in Uruguay;

   iii. Article 5 of the Treaty by failing to afford Italba's investments in Uruguay full protection and security;

   iv. Articles 3 and 4 of the Treaty by failing to accord Italba treatment no less favorable than it accorded to other investors in like circumstances.

b. ORDER Uruguay to pay damages to Italba for its breaches of the Treaty in an amount to be determined at a later stage in these proceedings, including by payment of compound interest at a commercially reasonable rate for the applicable currency, accrued from the date of the expropriation until the date of payment in accordance with Articles 6(3) and 34 of the Treaty;

c. AWARD such other relief as the Tribunal considers appropriate; and

d. ORDER Uruguay to pay all of the costs, attorney's fees, and expenses of this arbitration, including Italba's legal and expert fees, the fees and expenses of any experts appointed by the Tribunal, the fees and expenses of the Tribunal, and ICSID's other costs, in accordance with Article 34(1) of the Treaty.

DATED: February 16, 2016

Respectfully submitted,

By: 

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