INTERNACIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

IN THE MATTER OF

RICARDO FILOMENO DUARTE VENTURA LEITÃO MACHADO

(Portugal)

Claimant

and

REPUBLIC OF ANGOLA

Respondent

ICSID Case No. ARB/24/8

Respondent's Reply on Manifest Lack of Legal Merit under Rule 41

27 February 2025

VIEIRA DE ALMEIDA cfa advogados haag LAW FIRM

TABLE OF CONTENTS

GLOSSARY OF TERMS AND ABBREVIATIONS[1]

AMENDED VERSION OF THE BIT (OR AMENDED VERSION OF THE ANGOLA-PORTUGAL BIT)	Amended version of the Agreement between the Republic of Portugal and the Republic of Angola on the Reciprocal Promotion and Protection of Investments, dated 16 July 2021, with entry into force on 22 December 2021
ANGOLA-PORTUGAL BIT (OR BIT)	Agreement between the Republic of Portugal and the Republic of Angola on the Reciprocal Promotion and Protection of Investments, dated 22 February 2008, which entered into force on 24 April 2020, and was amended on 16 July 2021, with the amendment entering into force on 22 December 2021
CLAIMANT	Mr. Ricardo Filomeno Duarte Ventura Leitão Machado
CLAIMANT'S RESPONSE (OR CLAIMANT'S RESPONSE TO RULE 41 OBJECTION)	Claimant's Response to Rule 41 Objection dated 30 January 2025
FAKE LETTERS	Fake Letters allegedly created by Mr. Wilson da Costa from PRODEL and ENDE, dated 12 October 2017, which falsely indicated that the Respondent had agreed to acquire the Four Unsolicited Turbines
FIRST AMERICAN DECISION	Opinion and order issued by the United States District Court for the Southern District of New York on 19 May 2021 (AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 20 cv 3569)
FOUR UNSOLICITED TURBINES	Four turbines with the serial number #7266027, #7267025, #7267575; and #7267577 acquired with the Respondent's funds, without its consent or knowledge
ENDE	*Empresa Nacional de Distribuição de Eletricidade*
FET	Fair and Equitable Treatment
FPS	Full Protection and Security
ICSID ARBITRATION RULES	Arbitration Rules apply to proceedings under the ICSID Convention, version of 2022

[1] Terms and abbreviations already defined in the Respondent's Request under Rule 41 retain their original designations and were not reannounced in the text of the present Reply.

IGAPE	*Instituto de Gestão de Activos e Participações do Estado* – Institute for the Management of the State's Assets and Shares
INVOICE SUMMARY	Document drafted on 22 December 2017, by GE and AEnergy, detailing the allocation of withdrawal funds from the Facility Agreement related to the 13 Contracts between them
MAIN ACTION	Action brought by the Respondent before the Luanda Provincial Court on 2 March 2020 against AEnergy requesting the recognition of the State's ownership right over the Four Unsolicited Turbines, compensation for damages and subsidiarily, the return of the amount used by AEnergy under the Facility Agreement (Case No. 034/2020-D).
MINEA	Ministry of Energy and Water of Angola
MINFIN	Ministry of Finance of Angola
MR. WILSON DA COSTA	CEO of GE Power Angola and allegedly responsible for the Fake Letters, as claimed by AEnergy
NY COMPLAINT	Complaint filed by AEnergy on 7 May 2020 before the SDNY (AEnergy v. Republic of Angola, et al, Case No. 22-CV-3569)
PREVENTIVE SEIZURE PROCEEDINGS	Interim measures brought on 4 October 2019 by the Respondent against AEnergy, requesting an *ex-parte* seizure of the Four Unsolicited Turbines (Case No. 074/2019-E)
PRODEL	*Empresa Pública de Produção de Eletricidade*
REQUEST FOR ARBITRATION	Request for Arbitration dated 20 February 2024
RESPONDENT	The Republic of Angola
RESPONDENT'S OBJECTION (OR RESPONDENT'S REQUEST UNDER RULE 41)	Respondent's Submission on Manifest Lack of Legal Merit under Rule 41 dated 15 November 2024
SDNY	Southern District Court of New York
TRUSTEE	*Instituto de Gestão de Activos e Participações do Estado* (Institute for the Management of the State's Assets and Shares). The entity designated by Luanda Provincial Court to be the trustee of the seized Four Unsolicited Turbines.
VCLT	Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969. Entered into force on 27 January 1980

13 CONTRACTS	13 Contracts awarded by MINEA to AEnergy worth USD 1,148,531,741.00 covering services and supply of electric generating equipment, turbines, generators, transformers, rotors, other accessory equipment, consumables, and spare parts

1 Introduction

1. The task before the Tribunal is straightforward: to ascertain whether the facts triggering the dispute are those that took place before or after 22 December 2021.

2. According to Article 2(1) of the Angola-Portugal Amended Version of the BIT, the treaty does not apply to "*disputes and/or claims arising from facts that occurred before its entry into force*." This criterion is extremely strict, encompassing only disputes arising from facts that occurred after 22 December 2021. Simply put, Angola and Portugal committed to protecting only untainted investments made by each other's investors. Investments already entangled in disputes are explicitly excluded from the treaty's protection.

3. The current dispute is excluded from BIT protection for this very reason.

4. The facts of this case began well before 22 December 2021. The Claimant continues to spin different narratives about the alleged appropriation of the same Four Unsolicited Turbines, but one fundamental truth remains: the Parties have been in dispute over their title, possession, and/or access to their benefits and economic use – in the Claimant's view, their expropriation - since 2019.

5. This dispute traces back to May 2020 (with relevant facts daring to as far as August 2019), with the issuance of Presidential Order No. 155/19, enabling the termination of the Claimant's 13 Contracts, or to December 2019, when the Four Unsolicited Turbines were seized and removed from AEnergy's warehouse. These are the pivotal facts that prompted the Claimant's proceedings against the Respondent. They led the Claimant to argue, as early as May 2020, that Angola had violated international law, by expropriating the Four Unsolicited Turbines.

6. The Respondent never admitted to the expropriation of the Four Unsolicited Turbines. However, the scope of these special proceedings prevents the Respondent from addressing this issue. However, the limited scope of these special proceedings prevents the Respondent from addressing this issue.

7. Even if one were to believe the latest version of the Claimant's story and focus on the importance of the installation and deployment of the Four Unsolicited Turbines, Presidential Order No. 177/21, dated 26 October 2021, is the official decision (a pre-Amended BIT fact) that permitted

these post-BIT events to happen.

8. The date of installation and deployment of the Four Unsolicited Turbines is disputed. However, since the decisive moment for the expropriation clearly occurred on or before 26 October 2021, these disputed dates are irrelevant.

9. To assert that the dispute began afterwards is not only a blatant lie – that in itself defies logic – but undermines the legal certainty of the ISDS system, which is built on the principle of non-retroactivity.

***

10. The Respondent will start its Reply by acknowledging that the Parties agree on the applicable legal standards to the Request under Rule 41. (**Section 2**)

11. Secondly, the Respondent will address the *ratione temporis* rule contained in the Angola-Portugal BIT. As referred, the criterion is extremely strict and only includes disputes arising from facts that occurred after 22 December 2021. However, the Claimant disregards this strict standard and presents numerous caselaw that cannot be relied upon by the Tribunal, as they apply different BITs with different rules. (**Section 3**)

12. When correctly interpreting the Angola-Portugal BIT, the Tribunal will conclude that by 22 December 2021, the alleged expropriation of the Four Unsolicited Turbines was already the subject of a dispute, and the respective cause of action necessarily had to exist earlier. Consequently, the Tribunal lacks *ratione temporis* jurisdiction. (**Section 3.1**)

13. But even if the Tribunal finds that the Claimant brought a different dispute, none of the events he cited can constitute a stand-alone expropriation under the BIT. Specifically, Presidential Order No. 177/21, authorized the initiation of a public procurement process for the installation of the Four Unsolicited Turbines. This marks the moment when the decision to install the Turbines (and according to the Claimant, to expropriate them) was made. Since this decision was published on 26 October 2021, it again places the present dispute outside the protection offered by the BIT. (**Section 3.2**)

14. Finally, Claimant's FET and FPS ("**Full Protection and Security**") claims are also outside the

jurisdiction of this Arbitral Tribunal, as the Claimant does not attempt to classify the alleged facts as events occurring after the entry into force of the Amended Version of the BIT. (**Section 3.3**)

15. These arguments establish a clear lack of legal merit and should, therefore, be sufficient for the Tribunal to dismiss the entirety of Mr. Machado's claims. Nevertheless, the Claimant flooded these proceedings with numerous inaccurate factual and legal issues, requiring the Respondent to reply. This behavior should not distract the Tribunal from the primary and evident legal issue - the *ratione tempore* objection raised by the Respondent.

16. An objection under Rule 41 such as the one in question is legal in nature, meaning that the Tribunal is limited to assessing legal issues based on the facts brought before it by the Claimant, unless they are incredible, frivolous, vexatious or inaccurate or made in bad faith.

17. The Claimant's allegation of facts is made in bad faith. The Claimant is clearly trying to convert this Request into a factual discussion when it is inhibited from doing so. The Respondent's Request under Rule 41 was drawn upon based on the facts alleged by the Claimant in these proceedings and by his company in other proceedings launched before different jurisdictions. These are the (only) facts that the Tribunal needs to take into account at this stance.

18. When the Claimant asks the Tribunal to disregard his or his company's statements, he is acting in bad faith. The statements made by the Claimant in these investment proceedings and in other judicial proceedings brought against the Respondent undoubtedly bind him. Furthermore, these statements are legally relevant to determining the jurisdiction of the Tribunal. They prevent the Claimant from arguing otherwise, as that would constitute bad faith. (**Section 4**)

19. A final issue, which only now can be addressed due to the limited scope of the Claimant's Notice of Dispute, concerns the Claimant's lack of legal standing. The Claimant does not have legal standing to pursue FET and FPS claims, as the Angola-Portugal BIT does not permit shareholders to make direct claims related to these (alleged) breaches. (**Section 5**)

2 The Parties agree on the applicable legal standard to this Rule 41 Request

20. The Parties do not dispute the applicable legal standard to dismiss patently unmeritorious claims under Rule 41 of the ICSID Arbitration Rules. Specifically (i) the term "*manifest*" is defined as an

objection that is clear and obvious, which does not equate to being simple;[2](ii) the lack of merit is legal;[3] (iii) the objection must be based on the facts as alleged by the Claimant, unless they are "*incredible, frivolous, vexatious or inaccurate or made in bad faith*".[4]

21. In fact, the only disagreement between the Parties concerns the scope of the concept of "*facts as alleged by the Claimant*" in the present dispute. This disagreement arises because the Claimant argues that the Respondent has "*put forward other alleged facts, falling within a different time period*",[5] which do not fall under the temporal scope of the Angola–Portugal BIT.

22. However, the Respondent did not "*put forward other alleged facts*". On the contrary, it merely based its objection on the facts alleged by the Claimant in these and other proceedings brought by him or his company in different jurisdictions.

23. Meaning that, the Respondent's objections in the current proceedings are based on the facts as alleged by the Claimant, diverging only when those facts are clearly "*inaccurate or made in bad faith*". Specifically, when those facts correspond to mere speculations and/or conflict with the narrative previously put forward by the Claimant or his company before the U.S. Courts.

3 The Claimant disregards the stringed *ratione temporis* criterion established by Article 2(1) of the Amended Version of the BIT

24. The Claimant contends that the Tribunal does not manifestly lack *ratione temporis* jurisdiction to hear its case, arguing that the Amended Version of the BIT makes "*no distinction between investments made before or after the* [Amended Version of the] *BIT's entry into force*".[6]

25. While this assertion is correct, Article 2(1) of the Amended Version of the BIT does not leave all doors open. Instead, it establishes a stringent *ratione temporis* criterion that the Claimant is

---

2 Claimant's Response to Rule 41 Objection, p. 5, § 19.

3 Claimant's Response to Rule 41 Objection, p. 4, § 14.

4 Claimant's Response to Rule 41 Objection, p. 4, § 14.

5 Claimant's Response to Rule 41 Objection, p. 6, § 23.

6 Claimant's Response to Rule 41 Objection, pp. 20-21, § 80.

blatantly disregarding:[7]

> *This Agreement applies to all investments made by investors of one Party in the territory of the other Party, in accordance with the applicable law of the latter.* ***However, it does not apply to disputes and/or claims arising from facts that occurred before its entry into force****.*

26. By the time the Amended Version of the BIT entered into force, Angola and Portugal committed to protecting only untainted investments made by each other's investors. In other words, any investments that were already entangled in disputes and/or pre-Amended BIT facts that could later evolve into claims and/or disputes were specifically excluded from the treaty's protections. The purpose is, of course, to draw a line under the prosecution of historic claims.[8]

27. In contrast, the BITs underpinning the decisions cited by the Claimant do not incorporate the same stringent *ratione temporis* criterion as the one outlined in Article 2(1) of the Amended Version of the Angola-Portugal BIT:

CITED CASELAW	*RATIONE TEMPORIS* CRITERION REGARDING THE TEMPORAL SCOPE OF TREATY COVERED DISPUTES	APPLICABLE TREATY
Astrida Benita Carrizosa v. Republic of Colombia **(RL-0013)**	Applies to both pre-BIT and post – BIT investments and excludes any pre-treaty "act or fact" but is silent on pre-treaty disputes.	Colombia – India BIT (2009); Colombia – Switzerland BIT (2006); Colombia – United States Trade Promotion Agreement
Frontier Petroleum Services Ltd. V. The Czech Republic **(CLA-41)**	Applies to both pre-BIT and post-BIT investments and covers any disputes relating to investments without any temporal limitation	Canada – Czech and Slovak Federal Republic BIT (1990)
Antoine Biloune and Marine Drive Complex	N/A	N/A

---

7 **CLA - 0025**, Article 2(1) of the consolidated version of the Angola-Portugal BIT, p. 1 of the PDF (original version and English translation).1 of the PDF. Portuguese official version: ("*O presente Acordo aplica-se a todos os Investimentos realizados por investidores de uma das Partes no território da outra Parte, em conformidade com o Direito aplicável desta última, não se aplicando, contudo, aos diferendos e/ou reclamações que resultem de factos ocorridos antes da sua entrada em vigor*").

8 **RL-0015**, *Spence International Investments, LLC, Berkowitz, et. al v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2), Interim Award, 25 October 2016, p. 131, § 222: ("*it will be necessary to assess whether the claim that is alleged can be sufficiently detached from pre-entry into force acts and facts so as to be independently justiciable*.")

CITED CASELAW	*RATIONE TEMPORIS* CRITERION REGARDING THE TEMPORAL SCOPE OF TREATY COVERED DISPUTES	APPLICABLE TREATY
Ltd v. Ghana Investments Centre and the Government of Ghana **(CLA-50)**		
Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan **(CLA-51)**	Applies to both pre-BIT and post-BIT investments and covers any disputes relating to investments without any temporal limitation	Kazakhstan-Turkey BIT (1992)
Société Générale v. Dominican Republic **(CLA-53)**	Applies to both pre-BIT and post-BIT investments and covers any disputes relating to investments without any temporal limitation	Dominican Republic – France BIT (1999)
Técnicas Medioambientales Tecmed, S.A. v. United Mexican States **(CLA-54)**	Applies to both pre-BIT and post-BIT investments and covers any disputes relating to investments without any temporal limitation	Mexico –Spain BIT (1995)
Compañia del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica **(CLA-48)**	Covers any disputes relating to investments between States and Nationals of other Contracting States without any temporal limitation	Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention)
Ascom Group S.A., Anatolie Stati, Gabriel Stati and Terra Raf Trans Traiding Ltd. v. Republic of Kazakhstan (I) **(CLA-55)**	Covers any disputes relating to investments between States and Nationals of other Contracting States without any temporal limitation	Energy Charter Treaty (ECT)
Generation Ukraine Inc. v. Ukraine **(CLA-56)**	Applies to both pre-BIT and post-BIT investments and covers any disputes relating to investments without any temporal limitation	Ukraine – United States of America BIT (1994)
Compañía de Aguas del Aconquija S.A. v. Argentine Republic (I) **(CLA-47)**	Applies to both pre-BIT and post-BIT investments and covers any disputes relating to investments without any temporal limitation	Argentina – France BIT (1991)

CITED CASELAW	*RATIONE TEMPORIS* CRITERION REGARDING THE TEMPORAL SCOPE OF TREATY COVERED DISPUTES	APPLICABLE TREATY
Azurix Corp. v. Argentine Republic (I) **(CLA-46)**	Applies to both pre-BIT and post-BIT investments and covers any disputes relating to investments without any temporal limitation	Argentina – United States of America BIT (1991)
Hydro S.r.l., Costruzioni S.r.l., Francesco Becchetti, Mauro De Renzis, Stefania Grigolon, Liliana Condomitti v. Republic of Albania **(CLA-47)**	Applies to both pre-BIT and post-BIT investments and covers any disputes relating to investments without any temporal limitation	Albania – Italy BIT (1991)

28. Specifically, regarding the case *Astrida Benita Carrizosa v. Colombia*,[9] while it is true that the BIT in that case also excludes any pre-treaty "act or fact", it is silent on the exclusion of the pre-treaty disputes. In contrast, the Amended Version of the Angola-Portugal BIT expressly excludes from its scope of application those "*disputes and/or claims arising from facts that occurred before its entry into force*". Consequently, the Amended Version of the Angola-Portugal BIT establishes a reinforced criterion, namely a double-exclusion clause, which precludes the Tribunal's jurisdiction over both pre and post-Amended BIT disputes/claims based on pre-Amended BIT facts. Therefore, while this Tribunal may draw inspiration from the *Astrida Benita Carrizosa* tribunal's findings related to the principle of non-retroactivity and the necessity of a post-treaty conduct to constitute a stand-alone breach, the part where that tribunal concluded that it was "*not persuaded that the temporal scope of its jurisdiction is limited to disputes that have arisen after the entry into force of the TPA*"[10] evidently does not apply to the present case.

29. The decision in *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*[11] which the Claimant heavily relies upon is also not helpful to the present legal issue. The 1995 Mexico–Spain

---

9 **RL-0013**, *Astrida Benita Carrizosa v Republic of Colombia*, ICSID Case No ARB/18/5, Award dated 19 April 2021.

10 **RL-0013**, *Astrida Benita Carrizosa v Republic of Colombia*, ICSID Case No ARB/18/5, Award dated 19 April 2021, p. 43, § 135.

11 **CLA-54**, *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award dated 29 May 2003.

treaty governing that dispute did not include a similar criterion to the Amended Version of the Angola-Portugal BIT. Instead, it broadly covered "*investments made prior to its entry into force by the investors of a Contracting Party […]*".[12] The remaining cases do not offer better assistance.

30. Hence, it is evident that the Claimant employs broader standards than those applicable to the present case in a desperate attempt to persuade the Tribunal that it does not manifestly lack *ratione temporis* jurisdiction.

31. Conversely, the Respondent relies on a recent case with an identical *ratione temporis* criterion to the present case: the *Mabco Constructions SA v. Kosovo* case.[13] Article 2 of the Swiss-Kosovo BIT contains the exact same double exclusion clause:[14]

> *Article 2 Scope of application*
>
> *The present Agreement applies to investments in the territory of one Contracting Party established or acquired in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of this Agreement.* ***It does however not apply to claims or disputes arising out of events which occurred prior to its entry into force****.*

32. The *Mabco* tribunal began its analysis by noting that Article 2 is "*unlike most BIT provisions to this general effect*".[15] This finding reinforces the Respondent's argument: the caselaw relied on by the Claimant are not applicable to the present case.

33. Indeed, the Claimant's tactic of relying on the latest of several events, specifically the installation and deployment of the Four Unsolicited Turbines, clearly stems from the knowledge that these are the only facts that could arguably have occurred "*during the course of 2022*". Ultimately, the Claimant has been artificially breaking down its claim into increasingly finer sub-components

---

12 **CLA-54**, *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award dated 29 May 2003, p. 14, § 53.

13 **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, 30 October 2020.

14 **RL-0018**, Agreement between the Swiss Confederation and the Republic of Kosovo on the Promotion and Reciprocal Protection of Investments, which entered into force on 13 June 2012, p. 4.

15 **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, 30 October 2020, p. 132, § 460.

over time in an attempt to make them fit within the Tribunal's *ratione temporis* jurisdiction.

34. For the purposes of the Respondent's *ratione temporis* allegation under Rule 41, and in light of Article 2(1) of the Amended Version of the Angola-Portugal BIT, the Tribunal is invited to decide whether it is manifest that the BIT carves out from its scope of application (i) any investments that were already entangled in disputes, and/or (ii) pre-Amended BIT facts that could later evolve into claims and/or disputes. Since the Parties agree that the Amended Version of the BIT does not apply to facts predating its entry into force,[16] the answer to both issues is manifestly affirmative.

35. Therefore, the critical *ratione temporis* question is whether it is manifest that by 22 December 2021 the Four Unsolicited Turbines were already caught in a dispute over their title, possession, or access to their benefit and economic use. If the Tribunal concludes that they were, then Article 2(1) of the Amended Version of the Angola-Portugal BIT clearly prevents the Claimant from rehashing its old claim, *i.e.*, the Tribunal lacks *ratione temporis* jurisdiction (**Section 3.1**).

36. For the sake of argument, even if the Tribunal were to find that the Claimant has brought a different dispute and/or claim relating to a different cause of action over the same Four Unsolicited Turbines, it would still lack *ratione temporis* jurisdiction. This is because none of the events invoked by the Claimant can – legally – constitute a stand-alone expropriation under the Amended Version of the BIT (**Section 3.2**).

37. Lastly, the Claimant's FET and FPS claims do not meet the *ratione temporis* criterion due to the absence of any post-Amended BIT events and/or the Claimant's reliance on fabricated evidence (**Section 3.3**).

3.1 By 22 December 2021, the alleged expropriation of the Four Unsolicited Turbines was already entangled in a dispute

38. As was alleged in the Respondent's Request and will be further established in **Section 4**, by 22 December 2021, AEnergy was already embroiled in a dispute against the Respondent concerning the title, possession, and access to the benefits and economic use of the Four Unsolicited

---

16 Claimant's Response to Rule 41 Objection, p. 20, § 82.

Turbines.

39. ICSID Tribunals have established that "[t]he critical element in determining the existence of one or two separate disputes is whether or not they concern the same subject matter".[17] Thus, to determine whether this Tribunal has jurisdiction, it is essential to identify the cause of the present dispute and compare it to AEnergy's old dispute.

40. By the time the Amended Version of the BIT entered into force, the Claimant's so-called investment was already tainted by facts giving rise to the present dispute. Moreover, Angola's conduct—allegedly in violation of international law—was already being (wrongfully) contested in another (incorrect) jurisdiction.

41. In the Claimant's own words:[18]

> *It is the Claimant's case that the installation and deployment of the Four Turbines marked an inflection point. Until that moment, it could be argued –and, indeed, Angola did vehemently argue– that the Four Turbines had not been appropriated but were being kept in custody on behalf of the Provincial Court of Luanda. The installation and deployment of the Four Turbines, together with the complete abdication of custodial responsibilities by the Provincial Court of Luanda and the depositary, IGAPE, settled the matter: the Four Turbines were no longer in custody but had been appropriated by Angola.*

42. The Claimant does not even try to deny that the (ex)(a)propriation of the Four Unsolicited Turbines was already vehemently disputed between the Parties long before their installation and deployment, specifically in May 2020, with relevant facts dating as far back as August 2019.[19] It is astonishing that the Claimant now attempts to circumvent the manifest fact that these

---

17 **RL-0019**, *Industria Nacional de Alimentos v. Peru*, ICSID Case No. ARB/03/4, Award, 7 February 2005, pp. 20-21, § 50. Also, **RL-0020**, *CMS Gas Transmission Co. v. Argentina*, Case No. ARB/ 01/ 8, Decision of the Tribunal on Objections to Jurisdiction, 17 July 2003, p. 32, § 109: ("*As long as they affect the investor in violation of its rights and cover the same subject-matter, the fact that they may originate from different sources or emerge at different times does not necessarily mean that the disputes are separate and distinct*").

18 Claimant's Response to Rule 41 Objection, pp. 39-40, § 187.

19 **R-0017**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss, 2 November 2020, p. 32; **C-11**, Presidential Order No. 155/2019, regarding the unilateral termination of the 13 Contracts between AEnergy and Angola, 23 August 2019.

disputes share the same cause of action.

43. The Respondent acknowledges that "*it is the Claimant's prerogative to define its causes of action*".[20] However, that does not mean that the Claimant can selectively focus on post-Amended BIT factual allegations while disregarding those pre-Amended BIT events that ultimately gave rise to the dispute over the title, possession, and access to the benefits and economic use of the same Four Unsolicited Turbines. In essence, the Claimant is barred from cherry-picking facts and/or parsing its claims with the specific intent of fitting them into the stringent *ratione temporis* criterion established by Article 2(1) of the Amended Version of the BIT.

44. This rationale underpins the Respondent's argument that the Claimant (i) relies on manifestly inaccurate facts that cannot independently constitute stand-alone breaches, and (ii) acts in blatant bad faith regarding AEnergy's declarations in the U.S. Proceedings. The Respondent's decision to correct and reframe these factual inaccuracies aligns fully with the ICSID practice on objections due to manifest lack of legal merit.[21]

3.2 The bulk of the events related to the Claimant's expropriation claim manifestly predates the Amended Version of the BIT

45. In this section, the Respondent will highlight that the Claimant concedes his case rests on pre-Amended BIT impugned conducts (**Section 3.2.1**) and will establish that the installation and deployment of the Four Unsolicited Turbines are not independent contested measures under the Amended Version of the BIT (**Section 3.2.2**).

3.2.1 The Claimant concedes that his case rests on pre-Amended BIT impugned conducts

46. In his Response, the Claimant asserts that his case "*rests on a series of measures taken by Angola*

---

20 Claimant's Response to Rule 41 Objection, p. 20, § 83.

21 **RL-0003**, *Trans-Global Petroleum, Inc v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, p. 34, § 105; **RL-0008**, *The Bank of Nova Scotia v. Peru*, ICSID Case No. ARB/22/30, Decision on Respondent's Rule 41 Application, 31 May 2024, pp. 24-25 § 102.

which have led to Angola's definitive appropriation of the Four Turbines".[22] Not by coincidence, immediately following this assertion, the Claimant refers to the following event: "[s]*ince the Four Turbines were preventively seized and IGAPE was appointed as trustee to preserve and safeguard them, Mr Machado has remained mostly in the dark*".[23]

47. Likewise, in his Request for Arbitration, the section "*the facts from which the present dispute arises*" begins with the following event:[24]

> *The declaratory proceedings filed by Angola against Aenergy before the local Angolan courts at the beginning of 2020 was being processed with extraordinary slowness and did not make significant progress in the following two years. Thus, at the beginning of 2022, no diligence had yet been carried out, much less had a date been set for the corresponding hearing.*
>
> *Meanwhile, the preventive seizure of the Four Turbines that was granted, it should be recalled, in December 2019 continued to be effective, and Aenergy could not dispose of the said machinery, which supposedly remained under the custody of IGAPE, appointed as judicial custodian by the Provincial Court of Luanda.*

48. The Respondent couldn't agree more: the seizing of the Four Unsolicited Turbines constitutes the event from which the present dispute arises.[25]

49. This sequence is but one of many demonstrations that the Claimant's case manifestly hinges on Angola's impugned conduct predating the amendment of the BIT, a fact that not even the Claimant is able to successfully hide from the Tribunal. The necessary conclusion is that the present dispute is manifestly outside this Tribunal's jurisdiction.

3.2.2 The installation and deployment of the Four Unsolicited Turbines are not independent

---

22 Claimant's Response to Rule 41 Objection, p. 20, § 84.

23 Claimant's Response to Rule 41 Objection, p. 20, § 84.

24 Request for Arbitration, Section IV(B), p. 9, §§ 40-41.

25 It should be noted that AEnergy has also claimed that the expropriation occurred in August 2019 "*by Presidential decree and when MINEA declared, on behalf of PRODEL and ENDE, that it 'holds the property' and would repossess the turbines 'unlawfully' being held by AE*", **R-0017**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss, 2 November 2020, p. 32.

contested measures

50. The Claimant suggests that the Parties have different views on the relevant moment of an expropriation.[26] This is a misunderstanding.

51. The Respondent generally concurs with the standard put forth by the Claimant regarding the relevant moment for the assessment of an expropriation: in abstract, the determinative factor is the effect and impact of the contested measures.[27] In this context, the legal issue at stake does not present a difficult question nor does it require an exhaustive analysis of international legal principles. Consequently, this complies with the requirements of Rule 41 of the ICSID Arbitration Rules.

52. Thus, it seems that the Parties concur that a decision or order to expropriate could, in the abstract, constitute a relevant moment of expropriation, provided it impacts the title, possession, or access to the benefits and economic use of a property.

53. However, due to the stringent *ratione temporis* criterion set forth in Article 2(1) of the Amended Version of the BIT, the general standard for an expropriation includes an additional standard: the impugned measure impacting the title, possession, or access to the benefit and economic use of a property (the "expropriation criterion") cannot be rooted in pre-Amended BIT events that lead to a dispute and/or claim (an "Amended Version of the BIT criterion").

54. Consequently, the Claimant cannot – legally – ignore pre-Amended BIT facts that gave rise to its dispute and/claim. Similarly, it cannot artificially separate intrinsically linked pre- and post-Amended BIT events into two distinct components.

55. Therefore, the Respondent will show that the alleged installation and deployment of the Four Unsolicited Turbines cannot constitute an independent contested measure giving rise to this purportedly new, but essentially old, expropriation claim (**Section 3.2.2.1**). As for the remaining 2022 events, both Parties concur that they cannot qualify as treaty violations (**Section 3.2.2.2**).

---

26 Claimant's Response to Rule 41 Objection, p. 34, § 154.

27 Claimant's Response to Rule 41 Objection, pp. 32-33, §§ 145-151.

3.2.2.1 Presidential Order No. 177/21 is the Claimant's expropriation "but for" event

56. According to the Claimant's contention in the present proceedings, the installation and deployment of the Four Unsolicited Turbines in 2022 would constitute, in itself, a stand-alone expropriation:[28]

> *152. […] The initial seizure pursuant to the preventive order by the Provincial Court of Luanda does not mark the moment of the expropriation. […]. Likewise, when the court-designated depositary IGAPE stored the turbines at the premises of PRODEL […] the turbines remained in judicial custody, ready to be returned to AEnergy eventually. By the same token, when the turbines were moved by PRODEL between their premises, the turbines remained in judicial custody and could have been returned to the Claimant without significant loss of value.*
>
> *153. It was only when the Four Turbines were installed in Angola's power plants and connected to the grid and when IGAPE and the Provincial Court of Luanda outwardly signalled –by ignoring the Claimant's requests for information– that they condoned the taking and would do nothing to restore the turbines to judicial custody, that it was determined that there was no reasonable prospect that the Four Turbines would ever be returned. This was the moment at which Angola's actions ripened into an expropriation.*

57. This assessment of the facts is, of course, grossly inaccurate, as one crucial State measure is conspicuously omitted from this recollection: Presidential Order No. 177/21, published on 26 October 2021.[29] Through this Order, the President of Angola authorized the initiation of a public procurement process for the "*[p]rovision of services for the dismantling, assembly, installation and commissioning of*" the Four Unsolicited Turbines in three different locations in Angola.[30]

58. Simply put, without Presidential Order No. 177/21, the installation and deployment of the Four Unsolicited Turbines could never have taken place:

a. Presidential Order No. 177/21 authorized the expenditure and formalized the opening of the Emergency Contracting Procedure for entering into an agreement for the provision of services related to the dismantling, assembly, installation and

---

28 Claimant's Response to Rule 41 Objection, pp. 33-34, §§ 152-153.

29 **C-21**, Presidential Order No. 177/21, published on 26 October 2021.

30 **C-21**, Presidential Order No. 177/21, published on 26 October 2021, Art. 1(b), p. 1.

commissioning of TM2500 GEN8 turbines at the Thermal Power Station of Anexa, Lubango, Huíla;[31]

b. Presidential Order No. 177/21 authorized the expenditure and formalized the opening of the Emergency Contracting Procedure for entering into an agreement for the provision of services related to the construction, installation and commissioning of GE TM2500 GEN 8 turbines at the Thermal Power Station of Ondjiva, Cunene;[32]

c. Presidential Order No. 177/21 authorized the expenditure and formalized the opening of the Emergency Contracting Procedure for entering into an agreement for the provision of services related to the dismantling, assembly, installation and commissioning of a GE TM2500 GEN8 turbine, at the Thermal Power Station of Malembo, Cabinda;[33] and

d. Presidential Order No. 177/21 delegated to MINEA the authority to carry out all decision-making and tutelary approval acts within the scope of the Order, including the award, signing and approval of the corresponding contracts.[34]

59. Based on the Claimant's own case, on 26 October 2021, the President of Angola made the official decision to execute agreements for the imminent installation and deployment of the Four Unsolicited Turbines. This official decision manifestly constitutes the very foundation that allowed the so-called 2022 relevant facts (as alleged by the Claimant) to come to existence.

60. *First*, this official decision and the decision in the *Mabco Constructions SA v. Kosovo* case fall squarely into the same category. Indeed:[35]

a. The *Mabco* expropriation claim revolved around the withdrawal of shares of the

---

31 **C-21**, Presidential Order No. 177/21, published on 26 October 2021, Art. 1(b), p. 1.

32 **C-21**, Presidential Order No. 177/21, published on 26 October 2021, Art. 1(d), p. 1.

33 **C-21**, Presidential Order No. 177/21, published on 26 October 2021, Art. 1(f), p. 2.

34 **C-21**, Presidential Order No. 177/21, published on 26 October 2021, Art. 2, p. 2.

35 **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, 30 October 2020, pp. 133-134, §§ 465-467.

Grand Hotel in Pristina, Kosovo, with relevant events ranging from October 2011 to July 2012;

b. the Swiss-Kosovo BIT entered into force on 13 June 2012 and has an identical double exclusion *ratione temporis* clause;

c. Kosovo took the official decision to order execution of the withdrawal of shares in May 2012 (a pre-BIT event); and

d. The actual withdrawal of the shares was only executed in July 2012 (a post-BIT event);

61. Given this context, the *Mabco* tribunal found that Kosovo's official decision to order execution of the withdrawal of shares "*was already sufficiently definitive*" and manifestly marked the arising of the dispute itself, and not only a mere fact that led up to it.[36] That tribunal also found that Kosovo's subsequent actions were merely executory in nature.

62. For these reasons, the *Mabco* tribunal found that "*by virtue of BIT Article 2, it* lack[ed] *jurisdiction over Mabco's expropriation claim* ratione temporis",[37] a decision that the present Tribunal should also reach.

63. *Second*, Presidential Order No. 177/21 clearly answers the Claimant's unfolded doubts "*as to when, how and by whom the supposed official decision to install the Four Turbines was made*".[38]

64. *Third,* the Claimant's allegation of being unaware of any such official decision is a blatant lie:[39]

a. This exhibit was submitted to the present dispute by the Claimant himself;[40] and

---

36 **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, 30 October 2020, p. 134, § 467.

37 **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, 30 October 2020, p. 134, § 468.

38 Claimant's Response to Rule 41 Objection, p. 34, § 156.

39 Claimant's Response to Rule 41 Objection, p. 34, § 156.

40 **C-21**, Presidential Order No. 177/21, published on 26 October 2021.

b. In his Response, the Claimant argues that:

i. "[it] *became aware of* [the Four Unsolicited Turbines'] *use by Angola through these presidential orders*";[41]

ii. "*the presidential orders submitted by the Claimant refer to a tender process directed at third parties, in preparation of a future expropriation*";[42] and

iii. "[Presidential Order] *alone, renders it highly likely that the installation of the turbines in all three power plants took place during 2022*".[43]

65. According to the Claimant's own narrative, there is no denying that the Presidential Order 177/21 is the fact that gave rise to the dispute over the installation and deployment of the Four Unsolicited Turbines (the Claimant's expropriation case).

66. Thus, even if the Tribunal were to reject the Respondent's argument that the facts concerning the seizing and storage of the Four Unsolicited Turbines are part of a single expropriation claim based on a single cause of action that led to their installation and deployment (*quod non*), the conclusion remains the same: the inaugural moment of the State's interference with AEnergy's alleged property (Presidential Order No. 177/21) remains a pre-Amended BIT event.

67. Put differently, Presidential Order No. 177/21 is the "but for" event of the Claimant's expropriation claim, a further proof that the present claim arises from facts that occurred before the entry into force of the Amended Version of the BIT. Consequently, the Tribunal must find that the Claimant's expropriation claim based on the installation and deployment of the Four Unsolicited Turbines is a non-starter and dismiss it for manifest lack of legal merit.

---

41 Claimant's Response to Rule 41 Objection, p. 13, § 48.

42 Claimant's Response to Rule 41 Objection, p. 35, § 160.

43 Claimant's Response to Rule 41 Objection, p. 12, § 45.

3.2.2.2 The Claimant concedes that the remaining 2022 events do not amount to a stand-alone expropriation

68. The Claimant concedes that neither (i) Presidential Order No. 60/22, of 16 March, nor (ii) MINEA's press release of 18 March 2022 can *per se* constitute a stand-alone expropriation.[44]

69. Therefore, if the Tribunal concludes that the installation and deployment of the Four Unsolicited Turbines are rooted in pre-Amended BIT facts, the Claimant will be left with no other post-Amended BIT events that could amount to a stand-alone expropriation claim. In other words, this case is unequivocally destined for its early dismissal.

3.3 The Claimant FET and FPS claims are non-starters

70. In his Response, the Claimant does not even try to place the alleged facts that would constitute FET and FPS violations as post-Amended BIT events. Through nine pages,[45] there's a deafening silence regarding the day, month and year of each of Angola's impugned conducts.

71. The only pieces of evidence submitted by the Claimant are the letters of April and May 2022[46] which, as has already been established by the Respondent,[47] constituted a manifest attempt to manipulate post-treaty facts to rehash the Claimant's old claim, following his repeated defeats before U.S. Courts and the entry into force of the Amended Version of the Angola-Portugal BIT, on 22 December 2021.

72. The Claimant's silence regarding the timeline of the events speaks volumes: Mr. Machado does not have FET and FPS claims.

73. In sum, the Claimant ignores the stringent *ratione temporis* criterion of Article 2(1) of the Amended Version of the BIT, as the facts unequivocally demonstrate that the dispute began well

---

44 Claimant's Response to Rule 41 Objection, p. 35, §§ 158-160.

45 Claimant's Response to Rule 41 Objection, p. 46, §219.

46 **C-23**, Aenergy's request to the Provincial Court of Luanda, dated 22 April 2022; **C-24**, Letter from Aenergy to IGAPE, dated 22 April 2022; **C-25**, Aenergy's request to the Provincial Court of Luanda, dated 24 May 2022.

47 Respondent's Request under Rule 41, pp. 48-49, §§ 170-173.

before 22 December 2021. Thus, the Claimant's last-ditch efforts to artificially parse and redefine the timeline of events must fall flat. Nothing further should be necessary. However, out of an abundance of caution, the Respondent will demonstrate that the Claimant's factual allegations are made in bad faith (**Section 4**), that his FET and FPS claims lack legal standing (**Section 5**) and, finally, that Mr. Machado put himself in a total blackout (**Section 6**). Consequently, the Tribunal must definitively conclude that the Claimant's claims—whether based on expropriation, FET, or FPS—are non-starters and should be dismissed for lack of legal merit.

4 The Claimant's factual allegations are made in bad faith

74. The Claimant insists on discussing the facts related to the installation of the turbines and alleging that it is the Respondent's burden to prove those facts. This is disingenuous. Mr Machado's strategy aims to transform the Respondent's Request under Rule 41 into a factual dispute, thereby prompting its dismissal on that basis.[48]

75. A submission under Rule 41 is fundamentally a legal matter, requiring the Tribunal to focus on legal issues rather than on determining the facts. Therefore, the Tribunal should not rely on the facts alleged by the Claimant if they are clearly unfounded, incredible, frivolous, vexatious, inaccurate, or made in bad faith (**Section 4.1**).

76. In his pleading, the Claimant asserts that AEnergy's statements made in other proceedings should not impact the present arbitration, as he, Mr. Machado, is not bound by or prevented from making different factual allegations than those made by AEnergy in different contexts, with different causes of action, applicable laws, involved parties and facts. The Claimant also noted that the courts handling AEnergy's claims did not reach any final decisions but rather declined to proceed due to *forum non conveniens*.[49]

77. Despite these assertions, the truth is that the Claimant is acting in bad faith by attempting to

---

48 Claimant's Response to Rule 41 Objection, pp. 4-5, §§ 14-18; pp. 9-18, §§ 37-72; p. 36, § 166; and pp. 45-46, §§ 212-218. The Claimant is clearly trying to convert this Request into a factual discussion when it is inhibited from doing so.

49 Claimant's response to Rule 41 Objection, p. 2, § 6 and p. 35, §163.

portray the present dispute as distinct from AEnergy's case in the S.D.N.Y. The reality is that, despite the Claimant's strategy, the current arbitration is an indirect claim by Mr. Machado that mirrors the dispute presented by AEnergy before the S.D.N.Y. The Respondent will demonstrate that the dispute before the S.D.N.Y. and the dispute in the current arbitration are identical, involving the same cause of action, rights, and relief sought. Consequently, the facts acknowledged by AEnergy in the S.D.N.Y. case demonstrate that the Claimant's factual allegations in the present dispute are made in bad faith, in an attempt to differentiate it from the initial dispute (**Section 4.2**).

78. Furthermore, both AEnergy and the Claimant are altering their legal strategy by presenting new or different facts that substantially diverge from those originally asserted by AEnergy in May 2020. This represents a clear attempt to establish jurisdiction under different forums, including the ICSID. Such efforts further demonstrate that Claimant's allegations are made in bad faith (**Section 4.3**).

4.1 The Tribunal must disregard allegations made in bad faith

79. The Claimant is struggling to turn this Request into a factual discussion, which the Tribunal cannot permit. The Tribunal should rely on the facts presented by the Claimant only if they are not incredible, frivolous, vexatious, inaccurate, or made in bad faith. The Claimant does not dispute that.[50]

80. According to Emmanuel Gaillard, when certain types of conducts cause unease, they are initially addressed through general principles such as "abuse of rights" or "good faith". Furthermore, Gaillard argues that arbitrators should not simply accept parties' allegations at face value but should also consider the broader context of a party's behavior, looking beyond the literal

[50] Claimant's response to Rule 41 Objection, p. 4, § 14; **CLA-7**, *AFC Investment Solutions S.L. v. Republic of Colombia*, ICSID Case No. ARB/20/16, Award on Respondent's Preliminary Objection Under Rule 41(5) of the ICSID Arbitration Rules (with informal English translation), 24 February 2022, p. 123, § 174; **RL-0003**, *Trans-Global Petroleum, Inc v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, p. 30, § 96.

application of the law.[51]

81. In the present case it is crystal clear that the Claimant's allegations are made in bad faith and contravene the principle of good faith. A rule that is a key component of most legal orders, and a general principle of international law, as referenced in the decision in *Merril & Ring v. Canada*:[52]

> *Good faith and the prohibition of arbitrariness are no doubt an expression of such general principles and no tribunal today could be asked to ignore these basic obligations of international law.*

82. This principle of good faith is recognized in the VCLT as a rule of interpretation. Indeed, a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.[53]

83. In particular, regarding the interpretation of the convention to arbitrate, such convention must be construed in good faith as it was decided in *Amco Asia Corporation et al v. Indonesia* in the following terms:[54]

> *[…] like any other conventions, a convention to arbitrate is not to be construed restrictively, nor, as a matter of fact, broadly or liberally. It is to be construed in a way which leads to find out and to respect the common will of the parties… Moreover, and this is again a general principle of law – any convention, including conventions to arbitrate, should be construed in good faith.*

84. Moreover, under Article 26 of the VCLT, every treaty in force is binding upon the parties to it and must be performed by them in good faith,[55] and such principle governs the relations between States, but also the legal rights and duties of those seeking to assert an international

---

51 **RL-0021**, Emmanuel Gaillard, *Abuse of Process in International Arbitration*, in ICSID Review, Vol. 32, No. 1 (2017), p. 37.

52 **RL-0022**, *Merril & Ring v. Canada*, ICSID, Award, 31 March 2010, § 187; See also **RL-0023**, *Phoenix Action Ltd. V. The Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, §§ 106-107.

53 **RL-0011**, Vienna Convention on the Law of Treaties, 23 May 1969, Article 31(1).

54 **RL-0024**, *Amco Asia Corporation et al v. Indonesia*, ICSID Case No. ARB/81/1, Decision on Jurisdiction, 25 September 1983, § 14.

55 **RL-0011**, Vienna Convention on the Law of Treaties 23 May 1969, Article 26.

claim under the Treaty.[56]

85. As it is mentioned in *Phoenix Action, Ltd. V. The Czech Republic*, the principle of good faith requires: [57]

> *To deal honestly and fairly with each other, to represent their motives and purposes truthfully, and to refrain from taking unfair advantage.*

86. In particular, the Parties are required "to represent their motives and purposes truthfully, and to refrain from taking unfair advantage."[58]

87. Consequently, as decided in *Phoenix Action, Ltd. V. The Czech Republic*, the Parties shall not abuse the rights granted by treaties, and more generally, every rule of law includes an implied clause that it should not be abused. [59]

88. The breach of the principles of good faith through allegations made in bad faith is clear in the present case. It is a textbook example of bad faith, very similar to the scenario described by Emmanuel Gaillard:[60]

> *[…] a claimant's motivation for initiating arbitration may simply be to harass and exert pressure on another party. For instance, shareholders at various levels of the corporate chain might initiate multiple arbitrations in respect of the same dispute to exert maximum pressure on the host State and to exhaust its resources*.

89. As previously mentioned, the Arbitral Tribunal must reject the Claimant's allegations made in bad faith. As we detail below, these allegations have been crafted with the intent to abuse rights, specifically constituting an abuse of process, which is a principle recognized in international law. This abuse occurs when one party employs procedural instruments for purposes that deviate from the legitimate objectives for which those procedural rights were created, as is the case

---

56 **RL-0023**, *Phoenix Action Ltd. V. The Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, §107.

57 **RL-0023**, *Phoenix Action Ltd. V. The Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, §107.

58 **RL-0025**, *David Aven et Al. v. The Republic of Costa Rica*, Case No. UNCT/15/3, Final Award, 18 September 2018, § 224.

59 **RL-0023**, *Phoenix Action Ltd. V. The Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, §107.

60 **RL-0021**, Emmanuel Gaillard, *Abuse of Process in International Arbitration*, in ICSID Review, Vol. 32, No. 1 (2017), p. 27.

here.[61]

90. As Emmanuel Gaillard contends, when a reproached procedural behavior could not be remedied through the doctrine of *lis pendens*, abuse of process may apply:[62]

> *An arbitrator's recourse to the abuse of process principle could similarly allow for the dismissal of claims initiated for purposes ulterior to the resolution of a genuine dispute, such as for media attention or in order to harass or exert pressure; something that results in the misuse of the arbitral procedure.*

91. The current case does not involve a minority shareholder disputing the facts presented by the expropriated local company and filing a claim for their reflective losses. Instead, as we will explain in more detail below, Mr. Machado, the sole owner of the local company, is bringing a claim on behalf of the local company, while exploiting the legal distinction between himself and AEnergy, all to for the sake of, in manifest bad faith, creating the illusion of differing views between himself and the company he controls. By relying on this legal distinction, he is cherry-picking some of AEnergy's actions, facts, and allegations while disregarding others, in an effort to obtain jurisdiction under the BIT.

92. This is even more evident from the shifts in legal arguments and relevant facts made by Mr. Machado through AEnergy in different proceedings and in these ICSID proceedings directly, with the sole purpose of obtaining jurisdiction in different forums. Mr. Machado cannot manipulate the facts as he sees fit. This shift is evidence of bad faith.

93. Mr. Machado's abusive attempt must be prevented by the Arbitral Tribunal, as it was in the case *ST-AD GmbH v. The Republic of Bulgaria*, whose similarities are striking. A German company acquired an ownership stake in a Bulgarian company that was already involved in ongoing disputes with Bulgaria over the acquisition of a piece of land. Four years after acquiring its interest in the company, the claimant initiated an arbitration against Bulgaria under the applicable BIT, alleging that its investment had been expropriated. The Arbitral Tribunal found

---

61 **RL-0021**, Emmanuel Gaillard, *Abuse of Process in International Arbitration*, in ICSID Review, Vol. 32, No. 1 (2017), p. 34.

62 **RL-0021**, Emmanuel Gaillard, *Abuse of Process in International Arbitration*, in ICSID Review, Vol. 32, No. 1 (2017), p. 36.

that it lacked jurisdiction *ratione temporis* over the claimant's claims, as all the alleged BIT violations had occurred before the claimant acquired its investments. The claimant's attempt to manufacture a dispute after that date, by requesting a second decision from the Supreme Cassation Court based on the same facts and the same submission previously presented by the local company, was thus rejected. [63]

94. In the exact words of the Arbitral Tribunal: [64]

> *The Tribunal considers that a tactic based on the resubmission of an application that has been denied before a claimant becomes an investor after it has acquired such status is unacceptable. It creates an illusion of an event that happened when a protected investor was on the scene. But like all illusions, it is a misleading illusion.*

95. In sum, if the Arbitral Tribunal finds that the Claimant is making allegations in bad faith (which he is), it should reject such allegations. As we will detail below, the Claimant is bound by AEnergy's acknowledgments and cannot make new allegations solely to gain ICSID jurisdiction. Like all illusions, this is a misleading one.

4.2 The Claimant is bound by AEnergy's acknowledgement in the SDNY.

96. The Claimant asserts that he is not bound by the factual allegations made by AEnergy in the SDNY case, as these allegations pertain to a separate dispute involving different parties, a different cause of action, different rights, and different applicable law.[65]

97. According to the Claimant, there are two distinct disputes, described as follows:[66]

a. **AEnergy's dispute**: AEnergy claims against Angola for expropriating its Four Unsolicited Turbines under U.S. law. This expropriation allegedly occurred through the Preventive Seizure Proceedings, which constitutes a judicial expropriation, based

---

63 **RL-0026**, *ST-AD GmbH v. Republic of Bulgaria*, UNCITRAL, PCA Case No. 2011-06, Award on Jurisdiction, 18 July 2013, pp. 74-83, §§ 298-333.

64 **RL-0026**, *ST-AD GmbH v. Republic of Bulgaria*, UNCITRAL, PCA Case No. 2011-06, Award on Jurisdiction, 18 July 2013, p. 79, § 317.

65 Claimant's Response to Rule 41 Objection, p. 2, § 6, p. 35, §163 and p. 44, §207.

66 Claimant's Response to Rule 41 Objection, pp. 36-37, § 170.

on the premise that Angola declared itself the owner of the turbines. The Claimant refers to this as the "*judicial expropriation case*".[67]

b. **Mr. Machado's dispute**: Mr. Machado claims that the Four Unsolicited Turbines were subject to a *de facto* expropriation when they were removed from IGAPE's custody and subsequently installed, which he argues constitutes a violation of his rights under the BIT. The Claimant refers to this as the "*de facto* expropriation case".[68]

98. The Claimant's attempt to differentiate AEnergy's dispute before the SDNY. court from the current dispute before the ICSID is disingenuous. In fact, both disputes are the same, with only a strategic difference introduced by the Claimant.

99. *First*, the cause of action in both disputes is identical. In the proceedings before the SDNY, AEnergy unequivocally stated it "*has been entirely deprived of the control, use, and economic value of the four turbines, as well as other AE-owned equipment stored in the Republic of Angola, all without compensation*".[69] Similarly, in the present case, although the Claimant contends a difference in the cause of action, he effectively characterizes it as the physical and economic appropriation of the four turbines by Angola, through MINEA, treating them as its own property without compensating the actual owner.[70]

100. *Second*, both AEnergy and the Claimant assert that the facts underpinning their cause of action amount to a measure with consequences equivalent to an expropriation without effective and adequate compensation — labeling the situation as a *de facto* expropriation.

101. Despite the Claimant's futile attempt to differentiate AEnergy's "judicial expropriation case" from Mr. Machado's "de facto expropriation case," the truth remains that AEnergy itself characterized its dispute as a *de facto* expropriation. AEnergy asserted that "*the property was taken arbitrarily and without due process, by means of an illegal and abusive ex-parte injunction*

---

67 Claimant's Response to Rule 41 Objection, p. 37, § 175.

68 Claimant's Response to Rule 41 Objection, pp. 36-37, § 170.

69 **R-0006**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A. v. Republic of Angola, et al and General Electric Company, et al., 20 cv 3569, dated 7 May 2020, p. 65, § 216.

70 Request for Arbitration, p. 1, § 5; Claimant's Response to Rule 41 Objection, p. 32, § 145.

proceeding designed to brush over the de facto expropriation, which followed the illegal termination of AE-MINEA Contracts".[71]

102. *Third,* contrary to the Claimant's assertion that AEnergy's judicial expropriation case was based solely on US law, both AEnergy and Mr. Machado assert that the *de facto* expropriation violated international law. Indeed, AEnergy argued in its dispute before the SDNY. that the taking of its property, including the four turbines, occurred without compensation and in violation of international law.[72]

103. *Fourth,* in both disputes, the claims in question ultimately pertain to AEnergy's rights over the Four Unsolicited Turbines. This is due to the BIT's provisions on expropriation, which allow the Claimant to seek compensation on behalf of AEnergy, the owner of the assets in question, in particular, the Four Unsolicited Turbines.[73]

104. Indeed, Article 7(4) of the Angola-Portugal BIT allows indirect claims, establishing that "if a Party expropriates the assets of a company incorporated or constituted in accordance with its law in force and in which the investors of the other Party hold assets, bonds or other forms of participation, the provisions of this Article shall apply."[74]

105. As mentioned by Gabrielle Kaufmann--Kohler, the claim for reflective loss – the diminution of the value of their shares – must be distinguished from a derivative claim where shareholders are allowed to litigate on behalf of the company and where the cause of action remains vested in the company.[75]

106. It is evident from the Claimant's Request for Arbitration that Mr. Machado is seeking

---

71 **R-0006**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A. v. Republic of Angola, et al and General Electric Company, et al., 20 cv 3569, dated 7 May 2020, p. 65, § 219.

72 **R-0006**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A. v. Republic of Angola, et al and General Electric Company, et al., 20 cv 3569, dated 7 May 2020, p. 65, § 218, see also Count Four, §§ 249-260.

73 Request for Arbitration, pp. 15-16, §§72-74.

74 **CLA-25**, Consolidated version of the Angola-Portugal BIT, Article 7(4), p. 21 of the PDF.

75 **RL-0027**, Gabrielle Kaufmann-Kohler, *Multiple Proceedings – New Challanges for the Settlement of Investment Disputes*, in Contemporary Issues in International and Mediation, The Fordham Papers, 2013, p. 5.

compensation for the Four Unsolicited Turbines that belong to AEnergy, rather than for any damage to the value of his shares, i.e., a reflective loss.

107. Thus, Article 7(4) of the Angola-Portugal BIT, interpreted in accordance with the principle of good faith, cannot be construed as permitting Mr. Machado to bring AEnergy's claim before ICSID through cherry picking AEnergy's actions, facts, and allegations, while ignoring others. This includes disregarding AEnergy's acknowledgment that it was deprived of the control, use, and economic value of the Four Unsolicited Turbines in December 2019.

108. As referenced in *Phoenix Action v. Czech Republic*, no one shall abuse the rights granted by treaties, arriving at the conclusion that every rule of law inherently includes an implied clause that it should not be abused. [76] Such implied rule is reflected in Article 7(4) of the BIT.

109. Therefore, the only difference between the claim presented by AEnergy before the S.D.N.Y in May 2020 and the ICSID claim pertains to the timing when AEnergy allegedly was deprived of control, use, and economic value of the Four Unsolicited Turbines. [77]

110. In the SDNY proceedings, AEnergy acknowledges that it was deprived of control, use, and economic value of the Four Unsolicited Turbines in December 2019, when Angolan authorities seized the property at AEnergy's warehouses, including the turbines, small spare engines, oil, equipment, and parts. [78]

111. In contrast, in the ICSID claim, Mr. Machado argues that AEnergy was deprived of control, use, and economic value of the Four Unsolicited Turbines in 2022 when Angola completed the necessary authorizations to initiate the procurement process for the installation works and subsequently integrated the Four Unsolicited Turbines into the national grid, while IGAPE and

---

76 **RL-0023**, *Phoenix Action Ltd. V. The Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, §107.; See also **RL-0025**, *David Aven et AL. v. The Republic of Costa Rica*, Case No. UNCT/15/3, Final Award, § 227.

77 Claimant's Response to Rule 41 Objection, p. 44, §§ 207-208.

78 **R-0006**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A. v. Republic of Angola, et al and General Electric Company, et al., 20 cv 3569, dated 7 May 2020, p. 65, § 216 and Count Four, pp. 75-77, §§ 249-260.

the Provincial Court of Luanda failed to exercise their custodial duties and judicial authority. [79]

112. This change of heart by Mr. Machado is clearly an attempt to rehash his old claim. He cannot bring the same claim that AEnergy made before the S.D.N.Y. while disregarding AEnergy's acknowledgments of the facts underlying the *de facto* expropriation.

113. The assertion by Mr. Machado that AEnergy was not deprived of control, use, and economic value of the Four Unsolicited Turbines in December 2019, when Angolan authorities seized the property at AEnergy's warehouses, but rather in 2022 when Angola allegedly integrated the turbines into the national grid, is completely made in bad faith. It is a clear attempt to align the facts underlying the dispute with the temporal scope of the BIT.

4.3 The Claimant is prevented from asserting different allegations

114. The Claimant argues that it is his prerogative to define his causes of action, including the submission of claims and factual allegations as he deems appropriate. He further contends that the Respondent cannot substitute the Claimant's claims and factual allegations with different ones, and then argue that events not presented by the Claimant do not fall within the Tribunal's jurisdiction.[80]

115. The Respondent is not the party substituting the Claimant's claims and factual allegations with different ones. Instead, it is Mr. Machado, as the sole owner of AEnergy, who has submitted differing claims and distorted both legal and factual allegations, despite these being related to the same alleged expropriation of the Four Unsolicited Turbines.

116. As summarized in the Respondent's Request under Rule 41, Mr. Machado, either personally or through AEnergy, has made multiple differing allegations, across various forums and at different times, as well-documented in the table below:

---

79 Claimant's Response to Rule 41 Objection, pp. 22-23, § 95.

80 Claimant's Response to Rule 41 Objection, p. 20, § 83.

COURT/TRIBUNAL	ALLEGED DATE OF THE EXPROPRIATION	RELEVANT EVENT	RELEVANT STATE ENTITY
SDNY Proceedings (Complaint of 07.05.2020)	December 2019	a) Seizure of the turbines; and b) Taking of the turbines, spare small engines, oil, equipment, parts, etc from AEnergy's warehouse.	The Angolan Republic; MINEA, PRODEL, and ENDE.
SDNY Proceedings (Memorandum of 02.11.2020)	August 2019	a) Issue of Presidential Order enabling the termination of the Claimant's contracts; and b) Declaration of the State's ownership of the turbines.	President of Angola and MINEA
U.S. Court of Appeals (08.09.2021)	Around May/June 2021	Deployment of the turbines by state-owned power companies.	PRODEL, ENDE, IGAPE and the Angolan judiciary
District Court of Columbia (15.02.2023)	a) Around June 2021; and b) 18 March 2022	a) Installation of the turbines into the power grid; and b) Press article mentioning the installation by the Angolan government of the Four Turbines.	a) IGAPE and PRODEL; b) Angolan Ministry of Energy
ICSID proceedings	During the course of 2022	a) Seizing, permanently installing, and using the seized equipment from AEnergy; b) Publication of Presidential Order No. 60/22; and c) Press article mentioning the installation by the Angolan government of the Four Turbines.	All of the above

117. Even the Claimant admits that he, either personally or through AEnergy, is altering the factual and legal basis of the case. However, the Claimant argues that this is due to Angola shifting its position on (i) the ownership of the Four Unsolicited Turbines, and (ii) the lack of clarity regarding their whereabouts.[81]

118. This is, of course, untrue. Angola has consistently maintained that AEnergy purchased the Four Unsolicited Turbines on its behalf. For that reason, in the Main Action, the Respondent has requested the Angolan Court to confirm this sale and transfer ownership of the turbines accordingly.

119. From the outset, Angola has never claimed that the Four Unsolicited Turbines should be repossessed because they were already its property. The initial documents presented in the proceedings make it clear that, while it was necessary to take all measures to protect the public interest and secure possession of the Four Unsolicited Turbines, at no point did the State claim that possession should be taken because the Four Unsolicited Turbines were already Angola's property.[82]

120. Angola decided to take possession of the Four Unsolicited Turbines through the Preventive Seizure Proceedings, while issues regarding their ownership were being resolved by the Angolan Courts, in order to prevent AEnergy from selling those turbines to third parties, among other reasons specified in the request for seizure.[83]

---

81 Claimant's Response to Rule 41 Objection, p. 45, §§ 210-211.

82 **C-11**, Presidential Order No. 155/19, regarding the unilateral termination of the 13 Contracts between AEnergy and Angola, 23 August 2019, p. 6 of the PDF, §2: "The Minister of Power and Water is hereby authorised (…) to take all precautions that are adequate to protect the public interest, namely in what pertains to the possession of the four turbines acquired under the GE Capital Limitada credit line."; **R-0013**, Termination letter, dated 2 September 2019, pp. 17-18 of the PDF: "*This termination is without prejudice to (…) the MINISTRY OF ENERGY AND WATERS' administrative possession of the equipment that constitutes the respective scopes, in accordance with Article 320(5) of Law no. 9/16 of June 16, and all appropriate measures to ensure the protection of the public interest, particularly with regard to the possession of the equipment acquired under the Contracts, the undue possession by AENERGIA, S.A., and the four turbines acquired under the GE Capital financing, and the continued performance of the Contracts*."

83 **C-15**, Statement of Claim regarding the seizure of the 4 turbines, dated 4 October 2019, pp. 28-29 of the PDF, Article 49: "The Government's right to the property of the four turbines shall be, certainly, legally declared in the main judicial procedure, which shall be promptly filed before the competent authorities"

121. Even the request made in the Main Action is clear in this regard, demanding that the Angolan Courts ratify the purchase by AEnergy on behalf of Angola and transfer the ownership of the Four Unsolicited Turbines to the country.[84]

122. In the NY Complaint Angola took this same position, claiming that: "None of these writs are 'final' determinations of ownership. Indeed, title to the property taken remains with the Plaintiffs [AEnergy], though possession has been placed into the hands of a court appointed Trustee, IGAPE, pending further adjudication" .[85]

123. The Respondent confirmed this understanding in the response to the dispute notification:[86]

> *23. The Republic of Angola has always acknowledged that the turbines in question are of AEnergy S.A.'s property, and that was precisely why the said turbines were object of the seizure injunction and surrendered to IGAPE, its legal guardian. […]*
>
> *24. The Angolan Government's claim to the turbines, as it is clear, namely, from the seizure request, is not a right to its title, but rather the right to purchase said turbines. Said right must be confirmed judicially by a court of law. In order to safeguard that right, pending the judicial procedure to affirm said right (the main action to which the seizure proceedings are accessory) the seizure of the turbines was thus judicially ordered.*

124. Thus, the stance has never changed: the ownership of the Four Unsolicited Turbines needs to be confirmed by the Angolan Courts, and their seizure was intended to safeguard that right pending the judicial procedure.

125. Furthermore, the Claimant argues that the Respondent is not being transparent regarding the whereabouts of the Four Unsolicited Turbines, which forces him to make various shifts in his

---

84 **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), pp. 47-48: "*As such, and pursuant to all applicable dispositions of the Law that the Court deems applicable, this suit of law must be ruled favourably to the Government, as its pleas have been duly proven, and the property rights of the Angolan Government over the 4 (four) turbines and their full electrical and mechanical BoP, which were object of a seizure injunction (…) must be recognized*".

85 **R-0032**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A. v. Republic of Angola, et al and General Electric Company, et al., 20 cv 3569, Angola's Motion to Dismiss Complaint, dated 18 September 2020, p. 26.

86 **C-16**, Angola's response to Mr. Machado's notification for the amicable settlement of the dispute (with informal translation into English), p. 13 of the PDF, §§ 23-24.

factual and legal allegations. However, AEnergy's position had shifted in the Memorandum of 2 November 2020 for no apparent reason, before the alleged installation of the Four Unsolicited Turbines.

126. Moreover, the Claimant shifted from his previous arguments to those related to the installation of the Four Unsolicited Turbines in September 2021. This change occurred well before AEnergy first requested information regarding the whereabouts of the Four Unsolicited Turbines from IGAPE and the Luanda Provincial Court in April 2022, curiously enough, only after the BIT was already in force.[87]

127. Therefore, the somersaults made by AEnergy and Mr. Machado in the proceedings are not related to any actions or behavior of the Respondent; they are related to their objective of securing jurisdiction, first in the U.S. Courts and now before the ICSID.

128. This is clear from the outset, AEnergy claimed in its NY Complaint on 7 May 2020 that the Four Unsolicited Turbines were expropriated in December 2019, when Angolan authorities seized the property at AEnergy's warehouses.[88]

129. The first somersault happened in its Memorandum of 2 November 2020. There, AEnergy backtracked on its allegation, claiming that the appropriation of the Four Unsolicited Turbines occurred by way of the Presidential Order No. 155/19 which is an executive action that unilaterally and discriminatorily declared ownership over the Four Unsolicited Turbines.[89]

130. Contrary to the Claimant's allegations,[90] the shift from AEnergy's NY Complaint presented on 7 May 2020 to the arguments made on 2 November 2020 cannot be explained by a supposedly new assertion by the Respondent regarding the ownership of the turbines. Indeed, AEnergy on

---

87 **C-23**, Aenergy's request to the Provincial Court of Luanda (with informal translation into English); **C-24**, Letter from Aenergy to IGAPE (with informal translation into English).

88 **R-0006**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A. v. Republic of Angola, et al and General Electric Company, et al., 20 cv 3569, dated 7 May 2020, p. 65, § 216.

89 **R-0017**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss, 2 November 2020, pp. 30-33 and pp. 26-29; **C-11**, Presidential Order No. 155/19, regarding the unilateral termination of the 13 Contracts between AEnergy and Angola, 23 August 2019.

90 Claimant's Response to Rule 41 Objection, p. 45, § 211.

7 May 2020 was already aware of Presidential Order No. 155/19, dated 23 August 2019. Only Mr. Machado knows the reason for this somersault.

131. The second shift occurred after the First American Decision on 19 May 2021, where the Court dismissed AEnergy's NY Complaint, stating that it was an instance of forum shopping. The Court also considered Angola to be a suitable alternative forum, rejecting AEnergy's allegations of procedural inadequacies and corruption within the Angolan judicial system.[91]

132. Consequently, AEnergy needed to find a different argument. Instead of focusing on the Preventive Seizure Procedure, in the context of the appeal launched in reaction to this decision, AEnergy began to argue that the installation of the Four Unsolicited Turbines in May/June 2021 constituted a permanent expropriation, shifting its focus to the installation and deployment.[92]

133. The third somersault is even more evident. On 21 December 2021 the new version of the BIT came into force, allowing Mr. Machado to submit an ICSID arbitration on behalf of AEnergy. However, he needed to fabricate a new dispute based on other facts.

134. Therefore, to rebut the first position of AEnergy, Mr. Machado claims that the initial seizure does not mark the moment of the expropriation, as by its inherent legal nature, the measure was preventive and there were reasonable prospects that the property would be returned once the court made its final decision.[93]

135. To rebut the allegations made in the first shifting of AEnergy, i.e., the appropriation occurred by Presidential decree No. 155/19 which is an executive action that unilaterally and discriminatorily declared ownership over the Four Unsolicited Turbines, Mr. Machado now claims that the moment of the decision is not relevant as no such official decision exists, and this is a *de facto*

---

91 **R-0016**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Opinion and Order Southern District of New York, 19 May 2021, pp. 2, 19, 24 and 27-30.

92 **R-0018**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-Cv, Brief on Appeal from the United States District Court for the Southern District of New York, 8 September 2021, pp. 2, 9 and 43-44.

93 Claimant's Response to Rule 41 Objection, p. 33, § 152.

expropriation. [94]

136. To counter the second shift by AEnergy, Mr. Machado now asserts that AEnergy's allegation regarding the installation of the turbines in May/June 2021 was based on Google Earth images and other circumstantial evidence. [95]

137. In sum, contrary to the Claimant's assertions, it is not the Respondent who is substituting the Claimant's claims and factual allegations with different ones. Rather, it is Mr. Machado and his local company who are altering their claims and allegations in order to artificially secure jurisdiction.

138. Moreover, as demonstrated, any shifts by Mr. Machado and AEnergy are not based on the Respondent's behavior but on specific procedural maneuvers. These maneuvers cannot be accepted by the Arbitral Tribunal as they are made in bad faith, abusing the Claimant's procedural rights.

5 The Claimant's FET and FPS claims lack legal standing

139. Due to the limited scope of the Claimant's Notice of Dispute concerning the alleged breaches of the FET and FPS standards,[96] the Respondent only became aware of the specific nature of these claims upon receiving the Claimant's Response to Rule 41 Objection ("**Claimant's Response**").

140. It is now clear that these claims, in addition to falling outside of the *ratione temporis* jurisdiction of this Arbitral Tribunal, also manifestly lack legal standing.

141. Regarding the FET claim, the Claimant argues that[97]:

> *104. Specifically, IGAPE (the public company appointed as trustee of the preventively seized turbines) and the Provincial Court of Luanda (the judicial body overseeing the proceedings in which the preventive seizure of the Four Turbines*

---

94 Claimant's Response to Rule 41 Objection, p. 34, § 154 and 156.

95 Claimant's Response to Rule 41 Objection, pp. 37-38, § 178.

96 Request for Arbitration, p. 15, §§ 69-71.

97 Claimant's Response to Rule 41 Objection, pp. 24-25, §§ 104-106.

> *was ordered) have failed to keep custody and preserve the Four Turbines, and to protect Aenergy's property rights.*
>
> *105. The Respondent installed the Four Turbines and connected them to the national grid, where they are being used to this day. Aenergy was never notified. This, in addition to an unlawful expropriation, constitutes a breach of the FET standard.*
>
> *106. Further, IGAPE and the Provincial Court of Luanda have turned a deaf ear to Aenergy's repeated requests for information.*

142. In turn, regarding the FPS claim, Claimant argues that[98]:

> *134. First the installation and use of the Four Turbines has caused them physical harm*
>
> *[…]*
>
> *139. Second, the illegal installation of the Four Turbines, without proper due process, has harmed Mr. Machado's legal rights. The preventive seizure sought to preserve the Four Turbines until a decision in the underlying proceedings was reached. Installing the Four Turbines and using them runs counter to this aim and was carried out in violation of Claimant's due process rights, as the Claimant was never notified or given a chance to object to their installation.*

143. It stems from the Claimant's allegations that the alleged breach of the FET and FPS standards arises from ongoing legal proceedings involving AEnergy, rather than the Claimant. Moreover, the bulk of the Claimant's submissions regard the seizure of the Four Unsolicited Turbines from AEnergy's control, as well as IGAPE's actions as the designated Trustee.

144. However, these allegations completely overlook the fact that, under the Angola-Portugal BIT, shareholders can only pursue FET and FPS claims if the cause of action is the impairment of his shareholders rights and losses of value of their shares. In other words, the Angola-Portugal BIT allows only shareholders to make claims on behalf of the local company in exceptional cases, specifically for expropriation claims:[99]

---

98 Claimant's Response to Rule 41 Objection, pp. 30 and 31, §§ 134 and 139.

99 **CLA-25**, Consolidated version of the Angola-Portugal BIT, p. 6 of the PDF.

> *Article 7 – Expropriation*
>
> *[…]*
>
> *4 - If a Party expropriates the assets of a company incorporated or constituted in accordance with its law in force and in which the investors of the other Party hold assets, bonds or other forms of participation, the provisions of this Article shall apply.*

145. This exception is not extended to the FET and FPS claims:[100]

> *Article 4 – Investment promotion and protection*
>
> *[…]*
>
> *2 - Investments made by investors of each Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party.*
>
> *3 - Neither Party shall subject to arbitrary or discriminatory measures the management, maintenance, use, enjoyment, or disposal of investments made in its territory by investors of the other Party.*

146. In this regard, it is important to recall the findings of the Arbitral Tribunal in the *Poštová banka, a.s., Istrokapital SE v. Hellenic Republic* case, where the Arbitral Tribunal noted that:[101]

> *[…] a shareholder of a company incorporated in the host State may assert claims based on measures taken against such company's assets that impair the value of the claimant's shares. However, such claimant has no standing to pursue claims directly over the assets of the local company, as it has no legal right to such assets.*

147. Tellingly, and reaching the same exact conclusion, the ST-AD GmbH v. Republic of Bulgaria Arbitral Tribunal held that "[i]t has been repeatedly held by arbitral tribunals that an investor has no enforceable right in arbitration over the assets and contracts belonging to the company

---

100 **CLA-25**, Consolidated version of the Angola-Portugal BIT, p. 3 of the PDF.

101 **RL-0028**, *Poštová banka, a.s., Istrokapital SE v. Hellenic Republic*, ICSID Case No. ARB/13/8, Award, 9 April 2015, p. 51, § 245.

in which it owns shares."[102]

148. In the case at hand, the Claimant's alleged legal standing arises from Mr. Machado's capacity as AEnergy's shareholder, as the company's shares would constitute his investment under Article 3(2)(b) of the Angola-Portugal BIT.

149. However, the Claimant has framed its FET and FPS claims as claims on behalf of AEnergy,[103] completely disregarding the fact that Article 7(4) of the Angola-Portugal BIT is an exception. Consequently, at best, the Claimant could claim compensation for FET and FPS breaches only if such breaches resulted in a loss in the value of Mr. Machado's shares in AEnergy.

150. In sum, in the absence of a provision similar to Article 7(4) of the Angola-Portugal BIT applicable to FET and FPS claims, the Claimant lacks legal standing for claiming compensation regarding any (alleged) direct damages suffered by AEnergy. Hence, this Arbitral Tribunal should dismiss the entirety of the FET and FPS claims.

6 The Claimant is in the darkest light

151. The Claimant argues that the Respondent paints him in a bad light.[104] However, it is not the Respondent's fault but the Claimant's own actions that have led to this perception.

152. *First*, as already claimed, GE and AEnergy allocated Angola's funds to services and goods different from those agreed upon through the Invoice Summary, in a non-transparent manner, which hindered transparency and accountability and enabled the purchase with Angola funds of the Four Unsolicited Turbines.[105]

153. *Second*, it has been reported in the news that AEnergy reached an agreement with GE regarding all their claims, one of which pertains to the arbitration between AEnergy and GE concerning

---

102 **RL-0026**, *ST-AD GmbH v. The Republic of Bulgaria*, PCA Case No. 2011-06 (ST-BG), Award on Jurisdiction, 18 July 2013, pp. 69-70, § 278.

103 Claimant's Response to Rule 41 Objection, pp. 27, 30 and 31, §§ 117, 119, 134 and 139.

104 Claimant's Response to Rule 41 Objection, pp. 46-49, §§219-230.

105 Respondent's Request under Rule 41, pp. 9-11, §§ 28-32. See also **R-0033**, AEnergy's Answer to the Request for Arbitration and Counterclaims, 27 November 2020, pp. 4-12, §§ 6-36.

the purchase of the Four Unsolicited Turbines.[106]

154. Therefore, it is possible that AEnergy was compensated for the price of the Four Unsolicited Turbines. If this case proceeds—which it should not—the Respondent will request access to the settlement between AEnergy and GE, as it will be highly relevant to the dispute.

155. *Third* and most important, the Claimant assert in the Request for Arbitration that AEnergy and the Claimant were victims of Mr. Wilson Da Costa.[107] However, while it is true that Da Costa was found guilty in the U.S.A. of falsifying the Fake Letters, the jury also concluded that Da Costa, due to his efforts, received 5 million dollars in kickback payments from Ricardo Machado, the Claimant.[108] Therefore, the Claimant is not a victim; quite the opposite. The true victim in this case is Angola.

156. Interestingly, this fact was omitted by the Claimant in its Response, which included a report from Law360 on those proceedings, but failed to mention the official release from the U.S. Attorney's Office.[109]

7 Costs

157. The Claimant requests that if the Tribunal dismisses some or all of the objections raised by the Respondent under Rule 41, it should promptly quantify the costs at the conclusion of this special procedure.[110]

158. Thus, Mr. Machado seeks full costs from the Respondent, asserting that "the Respondent's

---

106 **R-0034**, "AEnergy and General Electric (GE) reach an agreement in the United States", VerAngola, 28 November 2023; **R-0033**, AEnergy's Answer to the Request for Arbitration and Counterclaims, 27 November 2020, pp. 4-12, §§ 6-36.

107 Request for Arbitration, p. 7, § 32.

108 **R-0035**, U.S. Attorney's Release, "*Former GE Executive Convicted At Trial Of Fraud And Identity Theft*", 19 November 2024; **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, 14 February 2025, Chapter D. "*Evidence of Side Payments to Da Costa from AE's Founder*".

109 **C-0028**, "*Former GE Exec Guilty of Faking Docs In $1.1. B Power Deal*", Law360; **R-0035**, U.S. Attorney's Release, "*Former GE Executive Convicted At Trial Of Fraud And Identity Theft*", 19 November 2024.

110 Claimant's Response to Rule 41 Objection, pp. 49 and 50, § 232 and 237.

objections are meritless in light of the Claimant's actual case"[111] and have "substantially delayed the proceedings by adding two rounds of unnecessary submissions and additional work for the Tribunal and the Secretariat".[112]

159. But does so, in a blatant demonstration of bad faith, despite (i) the significant and numerous flaws in its submissions, (ii) its manifest lack of legal basis under the Angola-Portugal BIT, (iii) the several factual allegations done in bad faith, and, more gravely, (iv) the abuse of the ICSID dispute settlement mechanism in another attempt at *forum shopping*.

160. Hence, the Respondent strongly rejects these unfounded allegations. The Republic of Angola takes its procedural rights seriously and does not use them in an unsubstantiated manner in order to delay the proceedings.

161. In fact, Rule 41 of the ICSID Arbitration Rules is conceived to provide respondents with a mechanism to defend themselves from frivolous claims. Thus, it is respondents' prerogative to decide whether they will make use of this right. That is what the Republic of Angola did in these proceedings.

162. If one were to accept the Claimant's rationale, that the costs should be automatically quantified and allocated to the respondents in case of dismissal of the Rule 41 Objection, then the purpose of this Rule would be frustrated.

163. Accordingly, when the special procedures under Rule 41 are dismissed, arbitral tribunals have predominantly deferred the decision on the costs to the end of the proceedings and have ordinarily applied the "costs where they fall"[113] rule, or, in certain cases, the "costs follow the event" rule when the respondent prevailed in the final award.[114] This is due to the fact that an objection under Rule 41 may be dismissed, yet the respondents could still succeed at the

---

111 Claimant's Response to Rule 41 Objection, p. 50, § 235.

112 Claimant's Response to Rule 41 Objection, p. 50, § 236.

113 **RL-0029**, *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea*, ICSID Case No. ARB/13/33, Award, 5 May 2015, §§ 406-416; **RL-0030**, *Brandes Investment Partners, LP v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB/08/3, Award, 2 August 2011, §§ 119-120.

114 **RL-0031**, *Transglobal Green Energy, LLC and Transglobal Green Panama, S.A. v. Republic of Panama*, ICSID Case No. ARB/13/28, Award, 2 June 2016, §§ 125-129.

conclusion of the proceedings, which is relevant in the allocation of costs.

164. In turn, in cases where respondents have prevailed in their Rule 41 Objection, tribunals have often applied the "costs follow the event" rule, ordering claimants to bear the costs of the arbitration and the legal costs to the successful party.[115]

165. Since the Claimant's claims manifestly lack legal merit and/or were made in bad faith in a blatant abuse of the ICSID dispute settlement system, he should bear all costs arising from these Rule 41 proceedings. Even if the Tribunal dismisses the Respondent's Objection under Rule 41 (*quod non*), the decision on costs should still be deferred to the end of the proceedings because the Respondent's claims should and will ultimately prevail on the merits of the case.

8 The Respondent's requests for relief

166. Based on the above arguments, the Respondent respectfully requests that the Tribunal render an Award as follows:

a. **DECLARE** that the Claimant's claims are manifestly without legal merit;

b. **DISMISS** the Claimant's claims in their entirety;

c. **ORDER** the Claimant to pay all costs and expenses of these arbitration proceedings, including fees and expenses of the Arbitral Tribunal and the cost of the Respondent's legal representation, plus pre-award and post-award interest thereon; and

d. **GRANT** any further relief against the Claimant as the Tribunal deems appropriate.

---

115 **RL-0032**, *Almasryia for Operating & Maintaining Touristic Construction Co. L.L.C. v. State of Kuwait*, ICSID Case No. ARB/18/2, Award on the Respondent's Application under Rule 41(5) of the ICSID Arbitration Rules, 1 November 2019, §§ 61-63; **RL-0009**, *Lotus Holding Anonim Şirketi v. Republic of Turkemenistan*, ICSID Case No. ARB/17/30, Award, 6 April 2020, §§ 207-210, 213.

On behalf of the Republic of Angola,

Vieira de Almeida & Associados, Sociedade de Advogados SP RL

Mariana França Gouveia

Carla Gonçalves Borges

Catarina Carvalho Cunha

Iñaki Carrera

Betyna Jaques

CFA Advogados, Lda.

Carlos Maria Feijó

Henrique Abecasis, Andresen Guimarães & Associados - Sociedade de Advogados, SP, RL

Henrique Abecasis