

# MOCK CASE

GoARB  
Madrid 2018<sup>1</sup>

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<sup>1</sup> Based on FDI Moot 2010 edition and adapted by Maria Lilian Franco for IASC. Certain attachments mentioned, but not relevant for the case, have not been provided. Those attachments have been marked with a “\*”.

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Brownlie Partners  
4400 Massachusetts Ave NW,  
Washington, DC 20016, US  
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1 August 2017

By courier  
Secretariat  
International Centre for Settlement of Investment Disputes (ICSID)  
1818 H Street, N.W.  
MSN J2-200  
Washington D.C. 20433  
United States

Subject: Request for Arbitration

Dear Madam/Sir

Pursuant to the Arbitration Rules of the International Centre for Settlement of Investment Disputes (ICSID) and on behalf of my client, Televative Inc. please find enclosed to this letter the Request for Arbitration, against the Republic of Beristan. A copy of the Power of Attorney authorizing me to represent Televative Inc in this arbitration is also enclosed.

Also, find enclosed proof of the advance payments of US\$ 25,000 for the Centre's administrative expenses.

Sincerely yours,

Mr. Andy Murray  
Mrs. Mélanie Smith  
Mr. Sebastian Terán  
BROWNLIE PARTNERS

Attachments:

- Request for Arbitration
- Power of Attorney\*
- Proof of Payment of Advances\*

TELEVATIVE INC. (Claimant)

vs.

REPUBLIC OF BERISTAN (Respondent)

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## REQUEST FOR ARBITRATION

### I. INTRODUCTION

1. Claimant is a corporation duly organized in the State of Opulentia named Televative Inc. [**"Televative"**]. It is a leading multinational enterprise that specializes in satellite communications technology and systems. It is a leading developer of new technologies in this field.
2. Televative hereby submits this Request for Arbitration against the Republic of Beristan [**"Beristan"** or the **"Respondent"**] under the Arbitration Rules of the International Centre for Settlement of Investment Disputes [**"ICSID Rules"**] and in accordance with Arts. 25 and 36 of the Convention on the Settlement of Investment Disputes between States and nationals of Other States [**"ICSID Convention"**].
3. Televative's Request for Arbitration is based on the Bilateral Investment Treaty between the State of Opulentia and the Republic of Beristan signed on March 20, 1996 [the **"BIT"**].

### II. CIRCUMSTANCES OF THE DISPUTE GIVING RISE TO THE CLAIM

4. The Republic of Beristan has transformed itself from an agrarian society into one of the most dynamic industrial economies of the region. It is now the 6<sup>th</sup> largest economy and one of the major trading countries of the world. Foreign direct investment is often cited as a key to its technological development. In 2005, the Government of Beristan launched a policy to encourage the development of a satellite network the aim of which was agriculture, emergencies and environment.
5. In March 2007, the Republic of Beristan constituted a State-owned company: Beritech S.A. [**"Beritech"**]. The Beristan Government owns a 75% interest in Beritech, while the remaining 25% is owned by a small group of wealthy Beristan investors with close ties to the Government. The Director of Beritech is the Beristan Minister of Telecommunications.
6. On October 18, 2007 Beritech and Televative signed a joint venture agreement that resulted in the constitution of the company Sat-Connect LTD [**"Sat-Connect"**] under Beristan law to develop a satellite network and accompanying terrestrial systems and gateways and provide connectivity and communications for users of this system in the region. Televative owns a 40% minority share in Sat-Connect, while Beritech owns a 60% majority stake.
7. Over a period of two years, beginning on October 18, 2007 and ending on August 27, 2009, Claimant's transfers of technology were fundamental to Sat-Connect's success in developing the satellite. In those two years, Televative was the driving force behind the

efforts to develop the technology. This can be attested by examining the substantial investments made in the satellites built for Beristan. Their cost was approximately US\$ 60 million. Furthermore, it was primarily Televative's engineers who designed and assembled the satellites and developed the applications to use them. The imagery provided by the satellites is of high quality.

8. All this process came to a halt on August 12, 2009, when Mr. David Ferrer, a Beristan government official who works for the Ministry of Defense, accused Televative's personnel of leaking unspecified but "critical" information of the Sat-Connect project to the Government of Opulentia. Both Televative and the Government of Opulentia flatly deny this, and neither Mr. David Ferrer, nor anyone else at the Beristan Government, has offered any evidence to substantiate the claim.
9. On August 27, 2009, Beritech attempted to buy out Claimant's interest in Sat-Connect. Respondent commenced a swift and improper buyout and seizure of Claimant's investments after Claimant had transferred its valuable know-how to Beritech.
10. On August 28, 2009, Beritech ordered Claimant to hand over possession of Sat-Connect and remove all seconded personnel. Shortly thereafter, on September 11, 2009, the Beristan army deployed its civil engineering section, the Civil Work Force ["CWF"], to occupy Sat-Connect's premises. The CWF ordered Claimant's personnel to leave the premises immediately.
11. Claimant's monetary investment in Sat-Connect is US\$47 million, which was the amount the Respondent had offered to buy-out. However, this sum does not include compensation for potential future profits as well as the intellectual property, know-how, and trade secrets developed by Sat-Connect as a result of Claimant's significant efforts. Claimant quantifies these intellectual property rights at more than US\$100 million. Respondent failed to provide fair and equitable treatment to which Claimant is entitled under the Beristan-Opulentia BIT by reason of the arbitrary and unfair expulsion of Claimant, and conducted an unlawful expropriation of Claimant's investments.
12. On September 11, 2016, Beritech served notice of its desire to settle amicably, and failing that, to proceed to arbitration. On September 12, 2016, Claimant submitted a notice of dispute to Respondent under the BIT, in which Claimant notified Respondent of its desire to settle amicably, and failing that, to proceed to arbitration pursuant to Art. 11 of the BIT.

### III. BREACH OF BILATERAL INVESTMENT TREATY

13. Art. 10 of the BIT provides that an investor can initiate ICSID arbitration to resolve disputes with respect to investments.

### IV. PRAYER FOR RELIEF

14. In light of the foregoing, Claimant respectfully requests this Tribunal to find that:

- (i) This Tribunal has jurisdiction over this dispute;

- (ii) Respondent breached the Joint Venture Agreement;
- (iii) Respondent violated its obligations under the BIT; and
- (iv) To order Respondent to pay Claimant US\$ 150 million in damages.

This request of arbitration is submitted in five signed copies pursuant to Rule 23(a) of the ICSID arbitration rules.

Andy Murray  
Mr. Andy Murray  
Mrs. Mélanie Smith  
Mr. Sebastian Terán  
BROWNLIE PARTNERS

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1818 H Street, N.W.  
MSN J2-200  
Washington, D.C. 20433  
United States

Subject: Answer to Request for Arbitration

Dear Sirs:

We represent the Republic of Beristan in the arbitration brought by Televative Inc. Our power of attorney is enclosed.

We hereby forward to you five copies of the Answer to the Request for Arbitration of the Republic of Bestistan.

Sincerely

Maripier Morin  
John Garcés  
Moises Smith  
WÄLDE LLP

TELEVATIVE INC. (Claimant)

vs.

REPUBLIC OF BERISTAN (Respondent)]

---

**Answer to Request for Arbitration**

**I. ARGUMENTS ON JURISDICTION**

1. The Tribunal does not have jurisdiction to hear this case since the requirements of the BIT are not met. In the current case a legal dispute indeed exists since there is a controversy as to whether the JV agreement has been breached. However, Respondent submits that the legal dispute at hand falls within the scope of the contractual obligations under the JV Agreement and is not in any way connected with the treaty claims.
2. The most fundamental distinction between treaty and contract claims is the source of the right on which the claim is based. The basis (or a “cause of action”) of a treaty claim is a right established and defined in an investment treaty, while the basis of a contract claim is a right created and defined in a contract.
3. In the present case, the cause of action of Televative’s claims is the JV Agreement only. Claimant’s assertions are based on one single event: the invocation of a buyout clause by Beritech, a company which is legally distinct from Beristan. The buyout clause was invoked and conducted in full compliance with the contract. Consequently, the source of the right is of a purely commercial nature and lies within the sphere of municipal contract law, and is not in any way connected with the BIT.

**II. ARGUMENTS ON THE MERITS**

**Claimant violated the confidentiality clause of the Joint Venture Agreement**

4. Claimant violated the confidentiality clause of the JV Agreement through the actions of its personnel. In accordance with clause 4 (1) of the JV Agreement, all information relating to the JV Agreement and Sat-Connect shall be treated as confidential.
5. On August 21, 2016, The Beristan Times, an independent journal, published an interview with a highly placed Beristan government official. The reveal of such information falls within the scope of the clause 4(2) of the JV Agreement. Consequently, Claimant bears responsibility for its seconded personnel’s disclosure of confidential information. Therefore, Claimant violated the confidentiality clause of the JV Agreement. The same day in the afternoon, the chairman of the Sat-Connect board of directors, Michael Smithworth, made a presentation to the directors in which he discussed the allegations that had appeared



in the article published in The Beristan Times.

6. The buyout clause of the JV Agreement states that if Televative commits a material breach of the JV Agreement, Beritech shall be entitled to purchase Televative's interest in the Sat-Connect project. Beritech, with the support of the majority of Sat-Connect's board of directors, resorted to Clause 8 of the JV Agreement, to compel a buyout of Televative's interest in the Sat-Connect project. Beritech then served notice on Televative on August 28, 2016, requiring the latter to hand over possession of all Sat-Connect site, facilities and equipment within 14 days, and to remove all seconded personnel from the project.

**Respondent has not expropriated Claimant's Investment.**

7. Claimant alleges that Respondent unlawfully expropriated its investment in the Sat-Connect project. In the case at hand there was no official governmental act that constituted an expropriation. Therefore, no expropriation has occurred.
8. According to international law, an indirect expropriation may occur when measures taken by a State deprive the investor of the use and benefit of its investment even though he or she may retain nominal ownership of its respective rights. Respondent would like to draw the Tribunal's attention to the fact that when the Executive Order was exercised, Claimant had already lost title to its investments as a result of the execution of the buyout decision.

**Respondent has not violated the fair and equitable treatment standard.**

9. Claimant alleges that its personnel was discriminated by being expelled from the Sat-Connect project. However, these allegations are unsubstantiated, as the reason for the removal of Televative's personnel was the lawful invocation of the contractual buyout clause. There is no evidence that acts of Civil Work Force were in any way connected with the race, religion, culture or nationality of Claimant's personnel. Televative is a multinational company, having personnel of different nationalities. Thus, it cannot be reasonably construed that Beristan had the intent to discriminate or discriminated Televative or its personnel on any basis. Consequently, Respondent did not violate the fair and equitable treatment standard.

**III. PRAYER FOR RELIEF**

Respondent respectfully requests the Tribunal to adjudge and declare:

- (i) That the Tribunal has no jurisdiction over this dispute in view of Clause 8 of the JV Agreement;
- (ii) That the Tribunal has no jurisdiction over Claimant's contractual claims arising under the JV Agreement by virtue of the Beristan-Opulentia BIT;
- (iii) That Respondent has not breached the JV Agreement by preventing Claimant from completing its contractual duties and that Beritech has properly invoked

the buyout clause of the JV Agreement; and

- (iv) That Respondent's actions and omissions do not amount to expropriation or to a violation of fair and equitable treatment.

Maripier Morin  
John Garcés  
Moises Smith  
WÄLDE LLP

*TELEVATIVE INC. v. REPUBLIC OF BERISTAN*  
*(ICSID Case No. ARB/06/2017)*  
**Procedural Order No. 1**

**Introduction**

The first session of the Arbitral Tribunal was held on 15 January 2018 at 14:00 p.m.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

The Members of the Tribunal  
Michelle Palace, President  
Cristina Ordoñez, Arbitrator  
Romain Droitcourt, Arbitrator

ICSID Secretariat  
Ravi Mutuwaraswami, Secretary of the Tribunal

Attending on behalf of the Claimant  
Andy Murray  
Mr. Andy Murray  
Mrs. Mélanie Smith  
Mr. Sebastian Terán  
BROWNLIE PARTNERS

Attending on behalf of the Respondent  
Maripier Morin  
John Garcés  
Moises Smith  
WÄLDE ASSOCIATES LLP

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on December 27, 2017, as amended by the parties on January 3<sup>rd</sup>, 2018 and the Draft Procedural Order circulated by the Tribunal Secretary.

Following the session, the Tribunal now issues the present Order:

## **Order**

Pursuant to the ICSID Arbitration Rules, this first Procedural Order sets out the Procedural Rules that govern this arbitration.

1. **Applicable Arbitration Rules**

1.1 These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. **Constitution of the Tribunal and the Tribunal Members' Declarations**

2.1 The Tribunal was constituted on September 27, 2017 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

2.2 The Members of the Tribunal timely submitted their signed declarations.

3. **Fees and Expenses of the Tribunal Members**

3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or pro rata; and

3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.

3.3. Each Tribunal Member shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. **Presence and Quorum**

4.1 The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication.

5. **Rulings of the Tribunal**

5.1 Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.

5.2 The President is authorized to issue Procedural Orders on behalf of the Tribunal.

6. Power to Fix Time Limits

6.1 The President may fix and extend time limits for the completion of the various steps in the proceeding.

6.2 In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

7.1. The Tribunal Secretary is Ravi Mutuwaraswami, Legal Counsel at ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.

7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ravi Mutuwaraswami  
ICSID  
MSN J2-200  
1818 H Street, N.W.  
Washington, D.C. 20433  
USA  
Tel.: + 1 (202) 46776644  
Email: r.mutuwaraswami@worldbank.org

8. Representation of the parties

8.1 Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal Secretary promptly of such designation.

For Claimant	For Respondent
Andy Murray Mr. Andy Murray Mrs. Mélanie Smith Mr. Sebastian Terán Brownlie & Partners 4400 Massachusetts Ave NW, Washington, DC 20016, US Tel (001) 146-9850 brownliepartners@law.com	Maripier Morin John Garcés Moises Smith Wälde Associates LLP 500 Columbus Ave NW, Washington, DC 20016, US Tel (001) 461-9933 gm@wäldellp.com

9. Appointment of Costs and Advance Payment to ICSID

9.1 The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.

9.2 By letter of May 15<sup>th</sup>, 2017 ICSID requested that each party pay US\$ 150.000 to cover the initial costs of the proceeding. ICSID received Claimant and Respondent's payment on May 20<sup>th</sup>, 2017.

9.3 ICSID shall request further advances as needed. Such request shall be accompanied by a detailed interim statement of account.

10. Place of proceedings

10.1 Washington shall be the place of the proceedings.

10.2 The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.

10.3 The Tribunal may deliberate at any place it considers convenient.

11. Procedural Language, Translation and Interpretation.

11.1 English is the procedural language of the arbitration.

11.2 Documents filed in any other language must be accompanied by a translation into English.

11.3 The Tribunal shall make any order or decision in English.

12. Routing of Communications

12.1 The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.

12.2 Each party's written communication shall be transmitted by email or other electronic means to the Tribunal Secretary, who shall send them to the opposing party and the Tribunal.

12.3 On the day of hearings, the parties shall courier to the Tribunal Secretary 3 hard copies in A4 format of the Memorial and Counter-Memorial.

13. Number of Copies and Method of Filing of parties' Pleadings

13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and a list of documents, and upload the pleadings with the supporting documentation to the file sharing platform that will be created by ICSID for purposes of this case.

13.2. On the day following the electronic filing, the parties shall courier to the Tribunal Secretary:

13.2.1. one unbound hard copy in A4/Letter format<sup>2</sup> of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);

13.2.2. hard copies in A4 format of the entire submission, including the pleading, witness statements, expert reports, and documents (but not including legal authorities);

and

13.2.3. USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, witness statements, expert reports, documents, and legal authorities.

13.3. Also on the day following the electronic filing, the parties shall courier to the opposing party at the address(es) indicated at §8.1 above:

13.3.1. one hard copy in A4 format of the entire submission, including the pleading, witness statements, expert reports, and documents (but not including legal authorities); and

13.3.2. one USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, witness statements, expert reports, documents, and legal authorities.

13.4. The addresses of the Tribunal Members are as follows:

Dr. Michelle Palace 45 Mason Street California 78333 USA	Mr. Romain Droitcourt Sainte Marie 787 Paris 75001 France	Mrs. Cristina Ordoñez Sarmiento 566 Lima 678898 Peru
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14. Publication

14.1 The parties consent to ICSID publication of the award and of any orders or decisions issued in the present proceeding.

Dr. Michelle Palace

President of the Tribunal

15 January 2018

*TELEVATIVE INC. v. REPUBLIC OF BERISTAN*  
*(ICSID Case No. ARB/06/2017)*  
**Procedural Order No. 2**

Taking into account the parties' views, the Tribunal decides and orders:

**1. The Hearings**

1.1 The Hearing shall be held on 7<sup>th</sup> July 2018. The Hearing shall commence at 9.00 a.m.

1.2 During the Hearing the parties shall only address the following issues:

- (a) Whether the Tribunal has jurisdiction over Claimant's contract-based claims arising under the JV Agreement by virtue of Article 9 of the Beristan-Opulentia BIT;
- (b) Whether Respondent's actions or omissions amount to expropriation; and
- (c) Whether Respondent's actions or omissions amount to a violation of fair and equitable treatment.

1.3 The Tribunal may address questions to the parties at any time.

1.4 The principle of equal time as between the parties shall be observed in the conduct of the Hearing.

1.5 It is left to each Party to determine how much time of its total allotted time it wishes to spend on each legal issue.

Dr. Michelle Palace  
President of the Tribunal  
15 June 2018



## **THE BERISTAN TIMES**

### ***MEET BERISTAN'S NEWEST TITAN OF TECHNOLOGY: TELEVATIVE INC. HAS ARRIVED***

By: Rafael Nadal

Televative Inc. opened an office in Beristan that will spark new ideas for technology. While cities across the world are seeking to host Televative-based headquarters, the world's largest technology company opened here. Televative Inc. is a successful multinational enterprise that specializes in satellite communications technology and systems. Televative is a privately held company that was initially incorporated in Opulentia on 30 January 1995.

Elon Reeve Musk, Televative Inc.'s founder, officially lauched the project in a ceremony in which Televative executives, elected officials and members of the media — by voice command.

The Director of the State-owned company Beritech, S.A. who has close ties to the Beristan Government, was invited to the ceremony and mentioned that, in order to develop the Government's policy of Technology, they would be interested in strategic alliances with Televative Inc.

## **THE BERISTAN TIMES**

### **TECHNOLOGY: BERITECH S.A. JUST MOVED TO DEVELOP SATELLITE SERVICES**

August 21, 2016

By: Rafael Nadal

The Government of Beristan latest project includes satellite services. In the Opulentian Congress of Technology, we had the opportunity to interview Mr. Novak Djokovic, the CEO of Televative Inc., who is working in the innovation and technologies field, particularly expanding the accuracy of the imagery of satellites.

He has revealed that Televative Inc. is working with the government and is developing a new project related to space. He mentioned that Televative is now in the market of satellites and has the most innovative satellites, which provide high-resolution imaging capacity.

*"We are working on space-services that will soon be a reality. We have strategically made alliances with the Government"*. He mentioned that several segments of the Beristan armed forces would be able to use the satellite system. The satellites are capable of monitoring more than 100 types of crops nationwide, can help to respond to forest fires and flooding events, and can be useful for crisis and rescue operations or to coordinate with local authorities".

## **THE BERISTAN TIMES**

### ***TECHNOLOGY: GOVERNMENT EXPELS BERITECH EMPLOYEES***

By: Rafael Nadal  
September 15, 2016

Beristan Military Personnel Expel Beritech S.A. staff from all offices, sites and facilities of the Sat-Connect Project. On August 28, 2016, Beritech was ordered to hand over possession of Sat-Connect and to remove all seconded personnel.

Shortly thereafter, on September 11, 2016, the Beristan army deployed its civil engineering section, the Civil Work Force ("CWF"), to occupy Sat-Connect's premises. CWF ordered Claimant's personnel to leave the premises immediately. Beritech swiftly replaced that personnel with Beristan nationals. We have tried to contact the spokesman of the Government to obtain more information.

This action represents a great threat to the country's stability as the Government attempts to shut down companies and endanger thousands of Beristan jobs.

The CEO of Televative Inc, Mr. Novak Djokovic, mentioned that they have invested approximately US\$100 Million. The project was almost completed, which meant that a lucrative and strategic activity, such as satellite communications, could not be carried forward without the technology of a foreign company.

**ANNEX 1**  
**TREATY BETWEEN THE REPUBLIC OF BERISTAN AND THE UNITED**  
**FEDERATION OF OPULENTIA CONCERNING THE ENCOURAGEMENT AND**  
**RECIPROCAL PROTECTION OF INVESTMENTS**

The Republic of Beristan and the United Federation of Opulesia (hereinafter referred to as the "Contracting Parties") desiring to establish favorable conditions for improved economic co-operation between the two countries, and especially for investment by nationals of one Contracting Party in the territory of the other Contracting Party; hereby agree as follows:

Article 1

DEFINITIONS

For the purposes of this Agreement:

1. The term "investment" shall be construed to mean any kind of property invested before or after the entry into force of this Agreement by a natural or legal person being a national of one Contracting Party in the territory of the other, in conformity with the laws and regulations of the latter.

Without limiting the generality of the foregoing, the term "investment" comprises:

- a) movable and immovable property and any other right "in rem" including, in so far as they may be used for investment purposes, real guarantees on others' property;
  - b) shares, debentures, equity holdings and any other negotiable instrument or document of credit, as well as Government and public securities in general;
  - c) credit for sums of money or any right for pledges or services having an economic value connected with investments, as well as reinvested income as defined in paragraph 5 hereafter;
  - d) copyright, commercial trade marks, patents, industrial designs and other intellectual and industrial property rights, know-how, trade secrets, trade names and goodwill;
  - e) any right of a financial nature accruing by law or by contract and any license, concession or franchise issued in accordance with current provisions governing the exercise of business activities, including prospecting for cultivating, extracting and exploiting natural resources.
2. The term "investor" shall be construed to mean any natural or legal person being a national of a Contracting Party who effected, is effecting, or intending to effect, investments in the territory of the other Contracting Party.
  3. The term "legal person", in reference to either Contracting Party, shall be construed to mean any entity established in the territory of one of the Contract in accordance with the respective national legislation such as public establishments, joint-stock corporations or partnerships, foundations or associations regardless of whether their liability is limited or

otherwise.

4. The term "income" shall be construed to mean the money that has yielded or is still to yield by an investment, including in particular, profits, interest income, income from capital investment, dividends, royalties, returns for assistance and technical services and miscellaneous other considerations, including reinvested income and capital gains.

## Article 2

### PROTECTION OF INVESTMENTS

Both Contracting Parties shall at all times ensure treatment in accordance with customary international law, including fair and equitable treatment and full protection and security of the investments of investors of the other Contracting Party.

## Article 3

### NATIONAL TREATMENT AND THE MOST FAVOURED NATION CLAUSE

1. Both Contracting Parties, within the bounds of their own territory, shall offer investments effected by, and the income accruing to, investors of the other Contracting Party no less favorable treatment than that accorded to investments effected by, and income accruing to its own nationals or investors of Third States.
2. The treatment accorded to the activities connected with the investments shall not be less favorable than that accorded to similar activities connected with investments made by their own investors or by investors of any Third Country.

## Article 4

### NATIONALIZATION OR EXPROPRIATION

1. The Investments to which this Agreement relates shall not be subject to any measure which might limit permanently or temporarily their joined rights of ownership, possession, control or enjoyment, save where specifically provided by law and by judgments or orders issued by Courts or Tribunals having jurisdiction.
2. Investments of investors of one of the Contracting Parties shall not be directly or indirectly nationalized, expropriated, requisitioned or subjected to any measures having similar effects in the territory of the other Contracting Party, except for public purposes, or national interest, against immediate full and effective compensation, and on condition that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.
3. The full and effective compensation shall be equivalent to the real market value of the investment immediately prior to the moment in which the decision to nationalize or expropriate is announced or made public, and shall be calculated according to internationally acknowledged evaluation standards. Whenever there are difficulties in ascertaining the market value the compensation shall be calculated on the basis of a fair appraisal of the establishment's constitutive and distinctive elements as well as of the firm's activities components and results. Compensation shall include interest calculated on a six-month LIBOR basis accruing from the date of nationalization or

expropriation to the date of payment. In the event of failure to reach an agreement between the investor and the Contracting Party having liability, the amount of the compensation shall be calculated following the settlement of dispute procedure provided by Article 11 of this Agreement. Once the compensation has been determined it shall be paid promptly and authorization for its repatriation in convertible currency issued.

4. The provisions of paragraph 1 of this Article shall also apply to income from an investment, and, in the event of winding-up, to the proceeds of liquidation.

#### Article 5

##### COMPENSATION FOR DAMAGES AND LOSSES

Should Investors of one of the two Contracting Parties incur losses in their investments in the territory of the other Contracting Party, due to war or other forms of armed conflict, states of emergency or other similar events, the Contracting Party in which the affected investment has been made shall offer adequate compensation. Compensation payments shall be freely transferable in convertible currency without undue delay.

The Investors concerned shall receive the same treatment as the nationals of the Contracting Party having liability, and, at all events shall be treated no less favorably than investors of Third States.

#### Article 6

##### REPATRIATION OF CAPITAL, PROFITS AND INCOME

1. Each of Contracting Parties shall guarantee that after investors have complied with all their fiscal obligations, as well as all relevant administrative procedures, they may transfer the following abroad, without undue delay, in any convertible currency:
  - (a) capital and additional capital amounts used to maintain and increase investments;
  - (b) net income, dividends, royalties, payments for assistance and technical services, interest and any other profits;
  - (c) the proceeds of the total or partial sale liquidation of an investment;
  - (d) funds to repay loans relating to an investment and interest due thereon;
  - (e) remuneration and allowances paid to nationals of the other Contracting Party in respect of subordinate work and services performed in relation to an investment effected in its territory, in the amount and manner prescribed by current national legislation and regulations.
2. While considering the provisions of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article, the same treatment that is accorded to investments effected by investors of Third States, if this is more favorable.

## Article 7

### TRANSFER PROCEDURES

The transfers referred to in Articles 4, 5, and 6 shall be effected without undue delay and, at all events, within six months, provided that all fiscal obligations have been met. Transfers shall be made in a convertible currency at the prevailing exchange rate applicable on the date of the transfer.

## Article 8

### ESSENTIAL SECURITY

Nothing in this Treaty shall be construed:

1. to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or
2. to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or for the protection of its own essential security interests.

## Article 9

### OBSERVANCE OF COMMITMENTS

Each Contracting Party shall continuously guarantee the observance of any obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

## Article 10

### SETTLEMENT OF DISPUTES BETWEEN INVESTORS AND THE CONTRACTING PARTIES

1. For the purpose of resolving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party that concern an obligation of the former under this Agreement in relation to an investment of the latter, if the dispute cannot be settled amicably within six months of the date of a written application, the investor in question may in writing submit the dispute, at his discretion, for settlement to:
  - (a) the Contracting Party's Court, at all instances, having territorial jurisdiction;
  - (b) an ad hoc Arbitration Tribunal, in accordance with the Arbitration Rules of the UN Commission on International Trade Law ("UNCITRAL");
  - (c) the International Centre for the Settlement of Investment Disputes, for the application of the arbitration procedures provided by the Washington Convention of 18th March 1965 on the Settlement of Investment Disputes between States and Nationals of other States.

2. Each Contracting Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written submission of the investor under paragraph 1(b) or (c) above. Such consent, together with the written submission of the investor given under paragraph 1, shall satisfy the requirement for:
  - (a) written consent of the parties to the dispute for purposes of Chapter II of the ICSID Convention (Jurisdiction of the Centre) and for purposes of the Additional Facility Rules; and
  - (b) an "agreement in writing" for purposes of Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 ("New York Convention").

## Article 11

### SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

1. Any disputes which may arise between the Contracting parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably through diplomatic channels.
2. In the event that the dispute cannot be settled within three months from the date on which one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of them, be laid before an ad hoc Arbitration Tribunal as provided in this Article.
3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the receipt of the request for arbitration, each Contracting Party shall appoint a member of the Tribunal. These two members shall then select a national of a Third State to act as Chairman. The Chairman shall be appointed within three months from the date on which the other two members are appointed.
4. The Arbitration Tribunal shall rule with a majority vote, and its decisions shall be binding. Both Contracting Parties shall pay the costs of their own arbitrator and of their own costs at the hearings. The President's costs and any other costs shall be divided equally between the Contracting Parties. The Arbitration Tribunal shall lay down its own procedures.

## Article 12

### APPLICATION OF OTHER PROVISIONS

1. Whenever any issue is governed both by this Agreement and by another International Agreement to which both the Contracting Parties are parties, or whenever it is governed otherwise by general international law, the most favourable provisions, case by case, shall be applied to the Contracting parties and to their investors.
2. Whenever, as a result of laws, regulations, provisions or specific contracts, one of the Contracting Parties has adopted a more advantageous treatment for the investors of the



other Contracting Party than that provided in this Agreement, they shall be accorded that more favorable treatment.

### Article 13

#### ENTRY INTO FORCE

This Agreement shall become effective on the date on which both Contracting Parties have notified the other of the effected performance of their respective constitutional procedures.

IN WITNESS WHEREOF, the undersigned being duly authorized thereto by their respective Governments, have signed the present Agreement.

This treaty entered into force the twentieth day of March, in the year one thousand nine hundred ninety-six.

FOR THE REPUBLIC OF BERISTAN	FOR THE UNITED FEDERATION OF OPULENTIA
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## **ANNEX 2**

### **EXCERPT FROM JOINT VENTURE AGREEMENT BETWEEN BERITECH S.A. AND TELEVATIVE INC. DATED 18 OCTOBER 2007**

#### **Clause 4 – Confidentiality**

- (1) All matters relating to this Agreement and the Sat-Connect project, including all Confidential Information, shall be treated by each of the parties, including the JV company Sat-Connect, as confidential. Each of the parties and Sat-Connect agree that it will keep confidential, will not disclose, and will not allow to be disclosed any said matters or Confidential Information, directly or indirectly, to any person or entity not authorized under this Agreement, without the prior written approval of the Sat- Connect board of directors except (i) where the information properly comes into the public domain, (ii) as required by law, or (iii) as may be necessary to enforce the terms hereof.
- (2) Confidential Information shall include all trade secrets, data, know-how, materials, products, technology, formulae, computer programs, specifications, compositions, improvements, inventions, discoveries, current and planned research and development, systems, structures, architectures, manuals, business plans, software, marketing plans, financial information, and other information developed during the Sat-Connect project, or disclosed or submitted, orally, in writing, or by any other media, to the Sat-Connect project by one of the parties. The parties shall not use any of the Confidential Information for any purpose other than for or in connection with the purposes of this Agreement.
- (3) Any dissemination of Confidential Information shall be only with written prior approval and in connection with the purposes of this Agreement, and shall be only to the employees, agents or affiliates who have a need to know said Confidential Information in order to carry out proper purposes and responsibilities related to this Agreement and the Sat-Connect project. Further, any such dissemination will be made only after such employees, agents and affiliates have agreed to comply with the terms and provisions of this Clause 4.
- (4) Any breach of this Clause 4 shall be deemed a material breach of the Agreement. This Clause will survive for 3 years after the expiration or termination of this Agreement or dissolution of the Sat-Connect project.

**Clause 8 – Buyout**

If at any time Televative commits a material breach of any provision of this Agreement, Beritech shall be entitled to purchase all of Televative's interest in this Agreement. Under such circumstances, Televative's interest in this Agreement shall be valued as its monetary investment in the Sat-Connect project during the period from the execution of this Agreement until the date of the buyout.

**Clause 17 – Dispute Settlement**

The Agreement shall be governed in all respects by the laws of the Republic of Beristan. In the case of any dispute arising out of or relating to this Agreement, any party may give notice to the other party of its intention to commence arbitration. The parties must then attempt to settle the dispute amicably and, unless they agree otherwise, cannot commence arbitration until 60 days after the notice of intention to commence arbitration. The dispute shall then be resolved only by arbitration under the rules and provisions of the 1959 Arbitration Act of Beristan, as amended. Each party waives any objection, which it may have now or hereafter to such arbitration proceedings and irrevocably submits to the jurisdiction of the arbitral tribunal constituted for any such dispute.