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INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
Washington, D.C.

In the Arbitration between

E.T.I. EURO TELECOM INTERNATIONAL N.V.,
Claimant,

- and -

REPUBLIC OF BOLIVIA,
Respondent.

Case No._____

REQUEST FOR ARBITRATION

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I. INTRODUCTION

1. E.T.I. Euro Telecom International N.V. (the "Claimant"), a national of the Kingdom of the Netherlands, submits this Request for Arbitration (the "Request") to the Secretary-General of the International Centre for Settlement of Investment Disputes ("ICSID" or the "Centre") in accordance with Article 36, paragraph 1 of the Convention for the Settlement of Investment Disputes between States and Nationals of Other States (the "Convention").

2. As described below, the Request concerns a legal dispute between the Claimant and the Republic of Bolivia (the "Respondent"), under the terms of the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Republic of Bolivia (the "BIT"),[1] arising directly out of the Claimant's investment in Empresa Nacional de Telecomunicaciones Entel S.A. (the "dispute"). Empresa Nacional de Telecomunicaciones Entel S.A. ("ENTEL") is the leading telecommunications services provider in Bolivia.

3. Following this Introduction, the other sections of this Request deal with (I) the Parties; (II) the consent by the Claimant and the Respondent (together, "the Parties") to the jurisdiction of the Centre; (III) the existence of a legal dispute between the Parties arising directly out of an investment; (IV) the jurisdiction of the Centre; (V) the constitution of the Tribunal; (VI) other particulars; and (VII) submissions. This Request is accompanied by the Annexes listed at paragraph 76 below.

II. THE PARTIES

Name and Address of the Parties

4. The Claimant is E.T.I. Euro Telecom International N.V., a legal or juridical person (such terms being synonymous) constituted in accordance with the law of the Netherlands. The Claimant's address is:

Strawinskylaan 1627
1077 XX Amsterdam
The Netherlands
Attn: Jerry Surowiec
Facsimile: +31-20-30-10951
Telephone: +31-20-30-10950
E-mail address: j.surowiec@timint.nl

5. The Respondent is the Republic of Bolivia. The Respondent's address is:

c/o His Excellency
Evo Morales Ayma
Presidente Constitucional de la Republica
Palacio de Gobierno
La Paz, Bolivia

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[1] Signed on March 10, 1992; entered into force on November 1, 1994. A copy of the BIT is attached as Annex A.

and

c/o His Excellency
David Choquehuanca Céspedes
Ministero de Relaciones Exteriores y Culto
Plaza Murillo - c. Ingavi esq. c. Junín
La Paz, Bolivia
Telephone: +(591)(2) 2408900 - 2409114 -2408397 - 2408595 - 2408405
Facsimile: + (591)(2) 2408642 -2408905 - 022112163
E-mail: mreuno@rree.gov.bo

The Respondent is a Contracting State

6. The Respondent has been a Contracting State to the Convention (a "Contracting State") since July 23, 1995 and remains a Contracting State at the date of the Request.[2]

7. On May 2, 2007, the World Bank, the depositary of the Convention, received the Respondent's notice of denunciation of the Convention.[3] In accordance with Article 71 of the Convention, the denunciation will take effect on November 3, 2007. In accordance with Article 72 of the Convention, however, the Respondent's notice of denunciation does not affect Respondent's rights or obligations under the Convention arising out of Respondent's consent to the jurisdiction of the Centre given by Respondent before the notice of denunciation was received by the depositary. The Respondent gave its consent to the jurisdiction of the Centre on November 1, 1994 upon the entry into force of the BIT. The Respondent's denunciation of the Convention, therefore, does not affect its rights or obligations arising out of its consent, including its obligation to have the present dispute settled through arbitration in accordance with the Convention.

The Claimant is a National of Another Contracting State

8. The Convention does not provide a complete set of criteria for determining the nationality of a juridical person. Place of constitution or incorporation and place of registered seat have been generally accepted as criteria for determining the nationality of juridical persons under international law. Having been constituted in the Netherlands, the Claimant is a national of the Netherlands in accordance with those generally accepted criteria.

9. In addition, it is generally accepted that the parties to a dispute may agree on the nationality of a juridical person for the purposes of the Convention within reasonable bounds. It is well-settled that an agreement on place of constitution or incorporation

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2 The Convention uses the expression "Contracting State" to refer to each State party to the Convention in the meaning given to "party" by Article 2(1)(g) of the Vienna Convention on the Law of Treaties: "'party' means a State which has consented to be bound by the treaty and for which the treaty is in force".

3 *See* the ICSID News Release dated May 16, 2007, accessible from ICSID's web site at http://www.worldbank.org/icsid/highlights.05-16-07.htm.

as the applicable criteria is reasonable and would be binding on the Parties under the Convention.

10. In this case, the Parties have agreed, pursuant to Article 1(b)(ii) of the BIT, that the term "nationals" of a Contracting State to the BIT shall include, with regard to each Contracting State, legal persons constituted in accordance with the law of that Contracting State. This agreement of the Parties applies to conciliation and arbitration under the Convention by virtue of Article 9(6) of the BIT. In accordance with the agreement of the Parties, therefore, the Claimant is a national of the Netherlands.

11. The Netherlands has been a Contracting State since October 14, 1966 and remains a Contracting State at the date of the Request.

12. The Claimant is a national of the Netherlands, and has been a national of the Netherlands since it was constituted in accordance with the laws of the Netherlands in March 1995.

13. The Claimant is, therefore, a national of another Contracting State (that is, a national of a Contracting State other than the Respondent) as provided for in Article 25(2) of the Convention.

14. The beneficial owner of Claimant is Telecom Italia S.p.A. ("TI"), a company organized under the laws of the Republic of Italy. TI's beneficial ownership interest in the Claimant is held as follows. TI owns 100% of Telecom Italia International N.V. ("TII"), a company organized under the Laws of the Netherlands, which holds investments in several telecommunications companies worldwide. TII owns 100% of International Communication Holding N.V. ("ICH"), also a company organized under the Laws of the Netherlands. ICH, in turn, owns 100% of the Claimant.

15. In light of the well-accepted international law principles and the unambiguous terms of the BIT described above, there can be no reasonable dispute that the Claimant is a national of the Netherlands given that the Claimant is constituted in accordance with the laws of the Netherlands. Nonetheless, the Claimant anticipates that the Respondent may assert that Claimant is a national not of the Netherlands, but of Italy. Although, for the reasons set out above, any such argument would be unfounded, Claimant notes that the Treaty Between the Government of the Republic of Italy and the Government of the Republic of Bolivia Regarding the Promotion and Protection of Investments, signed April 30, 1990, and entered into force February 22, 1992 (the "Italy-Bolivia BIT"), is in full force and effect. The Italy-Bolivia BIT provides Claimant with substantially the same rights to proceed before the Centre as the BIT, and would, if applicable, likewise constitute consent by Respondent to the jurisdiction of the Centre, as described below.

16. The Claimant has taken all necessary internal actions to authorize the Request, as evidenced in the resolution of its Board of Directors attached as Annex B, and in conformity with Institution Rules 2(1)(f) and 2(2).

III. THE PARTIES' CONSENT TO THE JURISDICTION OF THE CENTRE

The Respondent's Consent

17. The Respondent has given its consent to submit the dispute to the Centre, for arbitration in accordance with the Convention, in Article 9(6) of the BIT, which provides:

> "If both Contracting Parties have acceded to the Convention on the Settlement of Investment Disputes between States and Nationals of other States of March 18, 1965, any disputes that may arise from investment between one of the Contracting Parties and a national of the other Contracting Party shall, in accordance with the provisions of that Convention, be submitted for conciliation or arbitration to the international Centre for Settlement of Investment Disputes."

18. The Respondent's consent became effective upon the combination of the entry into force of the BIT, on November 1, 1994, and the entry into force for the Respondent of the Convention on July 23, 1995. The Respondent's consent given in Article 9(6) of the BIT has already been determined to provide the basis for the jurisdiction of the Centre in an arbitration proceeding entitled *Aguas del Tunari S.A. v Republic of Bolivia* (ICSID Case No. ARB/02/3). The Arbitral Tribunal in that proceeding issued a decision dated October 21, 2005, upholding its jurisdiction. A copy of the Decision on Respondent's Objections to Jurisdiction in that matter is available at http://www.worldbank.org/icsid/cases/adt_en.pdf.

The Claimant's Consent

19. The Claimant gave its consent to submit the dispute to the Centre, for conciliation or arbitration in accordance with the Convention, by, *inter alia*, its letter to the Respondent dated April 30, 2007, a copy of which is attached as Annex C. In its letter dated April 30, 2007, the Claimant raised the dispute with the Respondent in the precise terms of the BIT, and accordingly became bound as of that date to submit the dispute for conciliation or arbitration to the Centre in accordance with Article 9(6) of the BIT.

20. This Request for Arbitration restates in writing the Claimant's consent to submit the dispute to the Centre for arbitration in accordance with the Convention. If for any reason the Claimant's letter dated April 30, 2007 were determined not to constitute a written consent in accordance with the Convention, then this Request constitutes such written consent.

The Date of Consent of the Parties

21. The Respondent acted to consent to submit the dispute to the Centre on November 1, 1994, such consent becoming effective on July 23, 1995. The Claimant acted to consent to submit the dispute to the Centre on April 30, 2007. It follows that the "date of consent" of the Parties for the purposes of the Convention is April 30, 2007, the date on which the second of the Parties acted to give consent, in accordance with Institution Rule 2(3). Alternatively, the "date of consent" is October 12, 2007, the date of this Request for Arbitration.

22. It follows, accordingly, that the Parties have consented in writing to submit the dispute to the Centre for settlement by arbitration in accordance with the Convention, as set forth in Article 9(6) of the BIT and that the Claimant is entitled to initiate arbitration proceedings by means of this Request in accordance with the Convention.

IV. THERE IS A LEGAL DISPUTE BETWEEN THE PARTIES ARISING DIRECTLY OUT OF AN INVESTMENT

There Is a Legal Dispute between the Parties

23. To qualify as a "legal dispute" for the purposes of Article 25(1) of the Convention, a dispute:

> "must concern the existence or scope of a legal right or obligation or the nature or extent of the reparation to be made for breach of a legal obligation."[4]

24. The dispute in this case concerns the Respondent's breaches of its obligations under the BIT and the Respondent's violations of the Claimant's rights under the BIT, with respect to the Claimant's investment in Bolivia, as well as the Respondent's obligation to pay compensation to the Claimant as reparation for the Respondent's breaches of the BIT.

25. The dispute thus concerns the scope of the Claimant's rights and the scope of the Respondent's obligations under the BIT and the extent of reparations to be made by the Respondent for breach of its legal obligations under the BIT. There is therefore a legal dispute between the Parties.

The Claimant has made a substantial investment in Bolivia

26. In the 1990s, the Respondent instituted a program to reform and reorganize the State-owned sectors of the economy. The Respondent's program included plans for the privatization of certain State-owned enterprises through the sale of a controlling interest in their stock, together with a commitment by the purchaser to cause the acquired enterprise to make investments in infrastructure in accordance with the agreement of the parties. In light of such commitments to invest by the prospective purchasers of shares, the program was known in Bolivia as the program for the "capitalization" of State-owned enterprises. The capitalization program was implemented through the Respondent's Law No. 1544, dated March 21, 1994.

27. One of the enterprises subject to the capitalization program was the incumbent telecommunications service provider, "ENTEL". Founded in 1965 as a State-owned company, ENTEL became a State enterprise under ministerial control in 1966. The development of infrastructure and services over the following 30 years was moderate at best. In June 1995, ENTEL again became a partially State-owned company for the purposes of the Respondent's capitalization program. Following its successful capitalization, in which the Claimant acquired a controlling interest through subscribing for and paying into the company a capital increase of USD 610 million,

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[4] Report of the World Bank Executive Directors submitting the Convention to the signature and ratification of the World Bank member States, March 18 1965, at paragraph 26.

ENTEL experienced the largest infrastructure investment program in the history of Bolivian telecommunications. In 1996, ENTEL entered the Bolivian mobile telephony market, of which it now has by far the largest share due to leading technology and infrastructure. ENTEL retained its long distance monopoly until November 2001, when long distance service was deregulated and opened to competition.

28. On June 6, 1995, the Respondent invited the Claimant to participate in an international tender for bids to acquire a 50% shareholding in ENTEL with management control. The Claimant duly submitted its bid pursuant to the tender, and, on September 29, 1995 the Respondent notified the Claimant that its bid had been preferred. On November 27, 1995, the Claimant entered into a Share Subscription Agreement (the "Share Subscription Agreement") among Claimant, Respondent and ENTEL to subscribe and acquire a 50% shareholding in ENTEL, as well as management control. In accordance with the Share Subscription Agreement, the Claimant subsequently invested USD 610 million in ENTEL, and ENTEL issued new shares to ETI so that ETI held 50%. The remaining 50% of the shareholding in ENTEL was managed by two Bolivian pension fund administrators on behalf of the entire over-age population of Bolivia (approximately 47.5%) and by the employees of ENTEL (approximately 2.5%). The shares held by the pension fund administrators, however, have now been transferred to the Respondent by virtue of Supreme Decree No. 29101.

29. In accordance with the terms of its investment, the Claimant proceeded to cause ENTEL to make substantial investments in Bolivia's telecommunications infrastructure. By August 2007, ENTEL had made such investments, on a consolidated basis, in an amount exceeding USD 725 million.

30. The Respondent, by its Supreme Decree No. 28172 dated May 19, 2005 and Ministerial Resolution No. 194 dated August 12, 2005, confirmed that ENTEL and the Claimant had fulfilled their obligations under the Share Subscription Agreement. In reliance on those official actions by the Respondent, on September 25, 2005 the shareholders of ENTEL carried out a reduction in its capital and a distribution of the corresponding amounts of capital to all of its shareholders.

31. As a result of Claimant's investment in ENTEL, and the benefits that flowed from ENTEL's association with Telecom Italia, one of the most prominent telecommunications operators, Respondent and the inhabitants of Bolivia enjoy a dramatically improved telecommunications infrastructure. ENTEL's achievements include a significant increase in the penetration of telephone services in Bolivia; the development of new, modern and efficient services, including internet and mobile telephone services; consistent growth as a leading telecommunications company in the region; a source of employment and high-value technical training for Bolivian citizens; and, through the shareholding of Bolivian stakeholders (until such shares were transferred to Respondent), becoming a secure, efficient and economically sound source of revenue for such stakeholders. For example, in October 2006, ENTEL undertook to provide mobile phone coverage and internet access to more than 1,000 local communities throughout the nine administrative districts of the territory of Bolivia over a period of 24 months.

The Claimant has an investment for the purposes of the Convention

32. The Convention does not define the term "investment". The ordinary meaning of the term, however, includes the purchase of an equity interest in a company. When such a purchase is substantial and made abroad for the long term, as in the case of the Claimant's purchase of a 50% equity participation in ENTEL, it qualifies under well-accepted usage as a form of foreign direct investment.[5] In the consistent jurisprudence of arbitral tribunals constituted pursuant to the Convention, it has never been questioned that foreign direct investment qualifies as a form of "investment" for the purpose of Article 25(1) of the Convention.[6]

33. In addition, and without limitation, by virtue of Article 1(a)(ii) of the BIT, the Parties have agreed to include, *inter alia*, "rights derived from shares, bonds and other kinds of interests in companies and joint ventures," such as the rights that the Claimant enjoys from its shareholding in ENTEL, as forms of investments for the purposes of the BIT. This definition applies to Article 9(6) of the BIT, which sets forth Respondent's consent to arbitrate before ICSID, in accordance with the provisions of the Convention, "any disputes that may arise from investment between one of the Contracting Parties and a national of the other Contracting Party . . . ." In light of the fact that the term "investment" is not defined in the Convention, leading commentary and the jurisprudence of arbitral tribunals has given effect to this type of agreement when it falls, as it does in this case, within reasonable bounds.

34. Accordingly, the Claimant has an investment for the purposes of the Convention.

The Respondent took measures against the Claimant's investment in violation of the BIT

35. On January 22, 2006, President Evo Morales, the leader of the "Movement Towards Socialism", took office in Bolivia on an electoral platform advocating significant State intervention in the Bolivian economy. The Respondent's initial implementation of this platform was aimed at the nationalization of the hydrocarbons industry. On May 1, 2006 the Respondent issued Supreme Decree No. 28701 nationalizing the country's hydrocarbon resources.[7]

36. In June 2006, the Respondent published a national development plan which contemplated the re-nationalization of various formerly State-owned enterprises that had been privatized under the capitalization program in accordance with Law No. 1544, enacted on March 21, 1994. Rather than enact new legislation to implement that change of policy, however, the national development plan foresaw that re-nationalization would take place through administrative action through the reversion to the State, where applicable, of the shares managed by the pension fund administrators on behalf of the over-age population of Bolivia and through the purchase of additional shares necessary to give the State at least a 51% shareholding in each company.

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5 *See* World Bank Guidelines on the Treatment of Foreign Direct Investment, 1992.

6 *See Fedax N.V. v. Venezuela* (ICSID Case No. ARB/96/3), Decision on Jurisdiction dated July 11, 1997; *Telenor Mobile Communications AS v Republic of Hungary* (ICSID Case No. ARB/04/15), Award dated September 13, 2006, at paragraph 60.

7 *Reprinted in* 45 International Legal Materials 1020 (2006).

37. In the months following the publication of the national development plan, the Respondent initiated a campaign of unfair and inequitable conduct intended to impair the value of the Claimant's equity interest in ENTEL and to pressure the Claimant to surrender its interest in ENTEL to the Respondent for little or no compensation, as outlined below.

38. First, on July 7, 2006, the Respondent notified ENTEL that it was imposing on ENTEL the equivalent, at current exchange rates, of USD 25 million in purported withholding taxes associated with the capital distribution made to the Claimant as part of the 2005 capital reduction described above. The Respondent made that claim despite the fact that the transaction was not taxable (two prominent international accounting firms had provided their opinions, at the time of the capital reduction and associated capital distribution, in this respect); the previous confirmation by appropriate agencies of the Bolivian government that all conditions necessary for such distribution had been met; and the fact that the Respondent had made no previous suggestion that that transaction was taxable. The Respondent now claims that a total of USD 25 million (at current exchange rates) in withholding taxes is due in connection with that transaction, together with USD 26 million (at current exchange rates) in penalties and interest.

39. On April 1, 2005; on May 11, 2007; and on May 15, 2007 Respondent, through the "Superintendencia de Telecomunicaciones" ("SITTEL"), the agency of the Bolivian government in charge of regulating and overseeing the Bolivian telecommunications market, stated that it was imposing substantial fines on ENTEL, purportedly because of ENTEL's failure either to provide telecommunications service of adequate quality to various areas in Bolivia or for the alleged failure to meet service deployment commitments. According to Sittel, the alleged failures took place, in substantial part, in the years 1998 through 2003. For each of those years, ENTEL made a timely, detailed and satisfactory filing with SITTEL of all required reports regarding the provision of telecommunications service and the fulfilment of deployment commitments, and SITTEL took no adverse action against ENTEL with respect to such matters prior to April 1, 2005. SITTEL's current claims are unfounded and untimely.

40. On March 30, 2007, the Respondent published Supreme Decree No. 29087, establishing an ad hoc commission (the "Commission") mandated to negotiate the "recovery" of ENTEL for the Bolivian State within a period of thirty days. The Commission consisted of three ministerial and two vice-ministerial members of the Bolivian Government. It has been presided over by the Respondent's Minister of the Presidency, Sr. Juan Ramón Quintana.

41. The Claimant was surprised and concerned by the sudden promulgation of Supreme Decree No. 29087. The Claimant was also surprised and concerned by the brief, thirty-day timeframe provided in Supreme Decree No. 29087 for the Commission to carry out its mandate of acquiring the Claimant's shares in and control of ENTEL. The thirty day period provided for in the Decree was an unrealistically aggressive time frame within which to conduct such a process, and it would have been essentially impossible to do so in a fair and equitable manner.

42. The preamble of Supreme Decree No. 29087 referred to a supposed "process of technical, financial and legal review, the results of which show serious indications of

irregularities in the management and operations of ... ENTEL S.A., which affect its financial investments and undermine the national tax system" (Claimant's translation). Supreme Decree No. 29087 states that this review was carried out by SITTEL and the Respondent's Ministry of Public Works, Services and Housing. The Claimant, however, was never notified about that supposed review, or about the procedures followed in the course of this supposed review. It is implausible that the Respondent could have conducted such a review without the Claimant's or ENTEL's participation or knowledge.

43. On April 4, 2007, the Commission wrote to the Claimant inviting it to meet in La Paz on April 11, 2007 for "negotiations." The Commission's invitation contained no agenda, no background documentation and no specific proposals from the Respondent. Nonetheless, the Claimant was willing to listen in good faith to what the Respondent, through the Commission, had to say about its plan to recover ENTEL for the Bolivian State through negotiations with the Claimant. The Claimant therefore sent a delegation to La Paz to meet with the Respondent's Commission. The Claimant held meetings with the Respondent's Commission from April 11 to April 13, 2007.

44. On April 11, 2007, the Respondent's Commission began the discussions with cordial introductory remarks. The main subject of discussion was the Respondent's request that the parties maintain confidentiality in regard to their discussions, to which the Claimant agreed. Then, on April 12, the Respondent proceeded to launch a vehement attack against the Claimant and its delegation at the meeting. This included incendiary and abusive statements to the press by Minister Quintana against the Claimant while the meeting was still underway, despite Respondent's previous insistence on confidentiality. The Respondent continued its hostile media campaign against the Claimant for several days thereafter.

45. On April 13, 2007, the Respondent presented the Claimant with a set of power point slides titled "Recuperation of ENTEL in Favour of the Bolivian State: Findings" (Recuperación de ENTEL a favor del Estado Boliviano: Hallazgos). Instead of setting out any proposals for the Claimant to consider, this document set out a series of alleged, but completely unfounded, "irregularities" of which the Respondent accused the Claimant.

46. At no point in its initial meetings with Respondent's representatives did the Respondent propose to discuss a plan with the Claimant for the negotiated acquisition of the Claimant's controlling interest in ENTEL. At no point did the Respondent acknowledge the Claimant's successful management of ENTEL. Instead, it appears that the Respondent had invited the Claimant to La Paz for the sole purpose leveling baseless accusations at it, including making such accusations through the media.

47. A further meeting was scheduled to be held in La Paz on April 23, 2007. Despite the Respondent's continuing failure to provide either an agenda or any proposals for how it might go about acquiring the Claimant's interest in ENTEL, or the amount to be paid in compensation, the Claimant prepared in good faith to attend this meeting. However, a few hours before the meeting was due to begin, the Respondent issued two further presidential decrees directly affecting the Claimant's investments in ENTEL. These decrees were the following:

a. Supreme Decree No. 29101, which purports to abrogate Supreme Decree 24025 dated June 7, 1995 (on the constitution of ENTEL's partially State-owned predecessor, ENTEL S.A.M.); Supreme Decree No. 24133 dated September 29, 1995 (on the subscription of capital in ENTEL S.A. through the Share Subscription Agreement); and Supreme Decree No. 24700 dated July 7, 1997 (on the trusts managed by the pension fund administrators). The Supreme Decrees that Supreme Decree No. 29101 purports to abrogate were enacted in connection with the original capitalization of ENTEL and the Claimant's purchase of shares in ENTEL. Their purported abrogation directly undermines the security of the Claimant's investment in Bolivia. Supreme Decree No. 29101 furthermore purports to transfer to the Bolivian State the shares in ENTEL managed by two pension fund administrators; and

b. Supreme Decree No. 29100, which purports to abrogate Supreme Decree No. 28172 dated May 19, 2005, Ministerial Resolution No. 194 of August 12, 2005 and all other resolutions based on that abrogated Decree. Supreme Decree No. 28172 and Ministerial Resolution No. 194 were the basis upon which the Respondent had certified that the Claimant and ENTEL had fulfilled their commitments under the Share Subscription Agreement, including all required investments in and through ENTEL, and upon which the Respondent terminated the Share Subscription Agreement, on the grounds that it had been fully performed. In reliance on the Decree and Resolution, ENTEL lawfully decreased its share capital with an associated distribution of capital on a pro rata basis to its shareholders, including the pension funds and other minority shareholders. Supreme Decree No. 29100 furthermore purports to declare Supreme Decree No. 28172 unconstitutional and illegal and declares that acts derived from it "are punishable in accordance with the national legal order, due to which they should be prosecuted by the appropriate means" (Claimant's translation).

48. Claimant notes that, before the promulgation of Supreme Decree No. 29100, a determination by the Courts of Bolivia that Supreme Decree No. 28172 and Ministerial Decree No. 194 were invalid and unenforceable was sought. In January 2006, the Tribunal Constitucional, the highest court in Bolivia, confirmed the validity of such acts.

49. The Respondent's Supreme Decrees Nos. 29100 and 29101, together with the other actions described above, effectively destroyed the value of the Claimant's investment in ENTEL. They inappropriately and incorrectly call into question the legality and propriety of the Claimant's conduct and that of its officers and other representatives. The timing of the promulgation of the Supreme Decrees suggests that the Respondent intended deliberately to surprise the Claimant with them during the meeting scheduled to be held on the same day with the Commission.

50. Notwithstanding Claimant's expressed willingness to meet with representatives of the Respondent to attempt an amicable discussion and resolution of the issues, Respondent never responded substantively to Claimant's proposals as to the place or agenda of any such meeting, and never advanced any such proposals of its own. Accordingly, it proved impossible to hold any further meetings.

51. On April 27, 2007, the Bolivian on-line newspaper *El Deber* published an interview with the Respondent's Minister of Public Works, Services and Housing, Sr. Jerges Mercado. It was Minister Mercado's Ministry which had, together with the Respondent's telecommunications regulator, undertaken the supposed "review" of ENTEL's operations and investments. Minister Mercado stated that it was his mandate to recover the 50% of ENTEL's shares which are owned by the Claimant, but that Respondent did not contemplate paying for such shares. He added that the Respondent had made a proposal to the Claimant regarding its shares in ENTEL. However, no such proposal had been made.

52. Minister Mercado's statements revealed several things about the Respondent's actions. First, the Respondent had begun a process of nationalizing all of the Claimant's shares in ENTEL and not only those needed to gain control of ENTEL. Second, that instead of seeking to negotiate with the Claimant in good faith to acquire its shares in ENTEL as a vibrant and successful company, the Respondent opted to make unfounded allegations against the Claimant's management of ENTEL, and to pressure Claimant through, *inter alia,* unfounded tax claims and fines, in order to coerce the Claimant to relinquish its investment without compensation.

The Dispute Arises Directly out of an Investment

53. On April 30, 2007, the Claimant wrote to the Respondent to raise the dispute under the terms of the BIT. In its letter, the Claimant placed the Respondent on notice that the Respondent's actions in connection with the Claimant's investment in Bolivia had breached various provisions of the BIT, including:

    a. Article 3(1), requiring the Respondent to ensure fair and equitable treatment to the Claimant's investment and not to impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal of the Claimant's investment;

    b. Article 3(2), requiring the Respondent to accord to the Claimant's investment full security and protection in any case not less than that accorded to investments of the Respondent's own nationals or to investments of nationals of any third State, whichever is the most favourable to the Claimant;

    c. Article 3(4), requiring the Respondent to observe any obligation it may have entered into with regard to the Claimant's investment; and

    d. Article 6, requiring the Respondent not to take any measure depriving, directly or indirectly, the Claimant of its investment unless, inter alia, the measures are taken under due process of law, are not discriminatory or contrary to any undertaking which the Respondent may have given and are accompanied by provision for the payment of just compensation representing the genuine value of the Claimant's investment to be paid without undue delay.

54. The Claimant's investment falls within the terms of the BIT. Under the BIT, the Respondent has assumed a number of binding international legal obligations with respect to the Claimant's investment. The Respondent's breaches of its obligations under the BIT, and the Respondent's consequent duty to provide reparation to the Claimant for those breaches, have given rise to the dispute. It follows, therefore, that

the dispute arises directly out of an investment as required by Article 25(1) of the Convention.

55. In its letter dated April 30, 2007, the Claimant invited the Respondent to settle the dispute amicably through consultation, as envisaged by Article 9(1) of the BIT. Acting in good faith, the Claimant proposed to the Respondent to resolve the major part of the Respondent's allegations by means of reports to be prepared by independent advisors of international standing, to be jointly appointed by the Parties. The Respondent, however, declined to accept the Claimant's proposals, and declined to respond to the Claimant's follow-up communications for advancing consultations. It has not been possible to settle the dispute amicably with the Respondent through consultation.

56. Once applicable, Article 9(6) of the BIT imposes no additional conditions or waiting periods for submitting a dispute to arbitration under the Convention. Article 9 provides for two distinct procedures for settling investment disputes under the BIT. The two procedures are available to eligible investors successively and not concurrently.

57. The first procedure, set forth in Article 9(2) to 9(5) of the BIT, consisted in submitting investment disputes, after a six-month period in which settlement should be attempted, to an ad hoc arbitration tribunal. This first procedure applied up until the time at which the Respondent became an ICSID Contracting State on 23 July 1995.

58. The second procedure, set forth in Article 9(6) of the BIT, has applied from 23 July 1995 onwards and consists in submitting "any disputes" between the Parties "that may arise from investment" to ICSID "for conciliation or arbitration". The phrase "conciliation or arbitration" on its face allows either form of settlement to be chosen by the Claimant.

59. Because an amicable settlement through consultation has already proven to be unavailable, the Claimant is compelled to seek redress through arbitration in accordance with the Parties' consent. The Claimant seeks the full value of the loss caused to it by the Respondent's actions.

60. The Claimant's investment in ENTEL is now effectively worthless by virtue of the Respondent's statements that it would nationalize the Claimant's shares in ENTEL, the promulgation of Supreme Decree No. 29087, and the other steps taken by the Respondent to interfere with the Claimant's operation, management, maintenance, use, enjoyment and disposal of its investment as described above.

61. The Claimant reserves its right to state its claim in full at the appropriate juncture of the proceeding, including a full quantification of its damages and including by means of the pleadings, argument and presentation of evidence contemplated by Rules 31 and 32 of the Arbitration Rules adopted in accordance with the Convention.

V. THE DISPUTE IS WITHIN THE JURISDICTION OF THE CENTRE

62. Article 36(3) of the Convention provides that the Secretary-General shall register a request for arbitration unless she finds that, on the basis of the information contained in the request, the dispute is "manifestly outside" the jurisdiction of the Centre.

63. The extent of the jurisdiction of the Centre is governed by Article 25(1) of the Convention, which provides as follows:

> "The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally."

64. As discussed above at paragraphs 23 to 25, there is a legal dispute between the Parties.

65. As discussed above at paragraphs 26 to 34, the Parties' dispute arises directly out of an investment.

66. As discussed above at paragraphs 6 to 15, the Parties are, on the one hand a Contracting State (the Respondent) and on the other hand a national of another Contracting State (the Claimant).

67. As discussed above at paragraphs 17 to 22, the Parties have consented in writing to submit the dispute to the Centre to be settled by arbitration in accordance with the Convention.

68. It follows that in this case the dispute meets all the requirements of Article 25(1) of the Convention to fall within the jurisdiction of the Centre. The dispute is therefore not "manifestly outside" the jurisdiction of the Centre.

VI. CONSTITUTION OF THE TRIBUNAL

69. The Parties have not agreed to provisions regarding the number of arbitrators or the method of their appointment.

70. In accordance with Arbitration Rule 2(1)(a), the Claimant hereby proposes to the Respondent that the Arbitral Tribunal be composed of three arbitrators, one arbitrator to be appointed by each of the Parties and the third arbitrator, who shall be the President of the Tribunal, to be appointed by agreement of the party-nominated arbitrators. In the case of Claimant, the nominated arbitrator shall not be a national or resident of the Netherlands, and in the case of Respondent, the nominated arbitrator shall not be a national or resident of Bolivia. Each party shall nominate its arbitrator within 30 days of the registration of this request. If the parties' two party-nominated arbitrators are not able to agree on the President of the Tribunal within 60 days after registration of this request, then the President of the Tribunal, who shall not be a national or resident of either the Netherlands or Bolivia, shall be appointed by the Chairman of the Administrative Counsel of ICSID. Except as expressly set forth herein, the provisions of Arbitration Rule 4 shall apply.

71. In accordance with Arbitration Rule 2(1)(b), the Respondent should respond to this proposal within 20 days of its receipt of the Notice of Registration.

VII. OTHER PARTICULARS

A. *Appointment of counsel*

72. The Claimant hereby, and pursuant to a Power of Attorney and Appointment of Counsel, appoints as counsel with full powers of representation in connection with the Request and the ensuing arbitration proceeding Robert L. Sills and Steven J. Fink of Orrick, Herrington & Sutcliffe LLP.

B. *Language*

73. Pursuant to Arbitration Rule 22, Claimant selects English as the language to be used in the proceeding, and requests Respondent to agree that English will be so used.

C. *Required copies and payment*

74. In accordance with Institution Rule 4, this Request is submitted in an original and five copies.

75. This Request is accompanied by the prescribed lodging fee of USD25,000.

76. This Request is accompanied by the following Annexes:

a. The BIT.

b. Resolution of E.T.I.'s Board of Directors.

c. Letter from Claimant to Respondent, dated April 30, 2007.

VIII. SUBMISSION

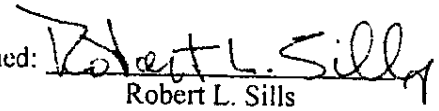
77. On the basis of the above information, the Claimant requests that the Secretary-General of the Centre:

a. Acknowledge receipt of this Request;

b. Transmit a copy of the Request and its accompanying documentation to the Respondent; and

c. Proceed to register the Request as soon as possible in the Arbitration register, and on the same date notify the Parties of the registration, in accordance with Institution Rule 6(1).

Dated: October 12, 2007

Signed: 

Robert L. Sills

By and on behalf of E.T.I. Euro Telecom International N.V.