International Centre for Settlement of Investment Disputes

Case No. ARB/24/8

Ricardo Filomeno Duarte Ventura Leitão Machado (Portugal)

Claimant

v.

Republic of Angola

Respondent

REPLY

21 May 2026

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List of defined terms

Aenergy	Aenergy, S.A.
Angola	The Republic of Angola
BIT	Bilateral investment treaty between the Republic of Portugal and the Republic of Angola, dated 22 February 2008, entered into force on 24 April 2020, and amended on 16 July 2021, with the amendment entering into force on 22 December 2021 (**Exhibit CLA-25**)
Claimant	Ricardo Filomeno Duarte Ventura Leitão Machado
Contracts	Thirteen contracts awarded by MINEA to Aenergy for the supply of power generation equipment, turbines, generators, transformers, rotors, other accessory equipment, consumables and spare parts for a total of USD 1,148,531,741
CPC	Angolan Civil Procedure Code (**Exhibit CLA-13)**
Credit Facility	Loan Agreement between Angola and GE Capital for the financing of the Contracts signed on 21 August 2017 (**Exhibit R-0001** [excerpt])
DOJ	United States Department of Justice
ENDE	*Empresa Nacional de Distribuição de Electricidade* – Angola's National Electricity Distribution Company
FET	Fair and equitable treatment
Four Turbines	Four GE TM2500 GEN8 turbines, with manufacturer codes MNG #7266027, #7267025, #7267575, and #7267577, and related and additional equipment
FPS	Full protection and security
FWA	Framework Agreement between Aenergy and GE Packaged Power, Inc. executed in June 2016 (**Exhibit C-38**)

GE	General Electric Company
GE Capital	GE Capital EFS Financing, Inc.
IGAPE	*Instituto de Gestão de Activos e Participações do Estado* – Angola's Institute for the Management of the State's Assets and Shares
Lubango Power Plant	Thermal power plant located in the city of Lubango, Huíla Province, Angola
Malembo Power Plant	Thermal power plant located in the city of Malembo, Cabinda Province, Angola
MINEA	Ministry of Energy and Water of Angola
Mr Machado	Ricardo Filomeno Duarte Ventura Leitão Machado
Notice of Dispute	Notice of Dispute submitted by Mr Machado to Angola on 9 June 2022 (**Exhibit C-26**)
Ondjiva Power Plant	Thermal power plant located in the city of Ondjiva, Cunene Province, Angola
PIP	Public Investment Program
PPO	Public Prosecutor's Office
PRODEL	*Empresa Pública de Produção de Eletricidade* – Angola's Public Electricity Production Company
Provincial Court of Luanda	Provincial Court of Luanda, Angola, Civil and Administrative Chamber, Second Division
Respondent	The Republic of Angola
Rule 41 Rejoinder	The Claimant's rejoinder on manifest lack of legal merit under Rule 41 submitted on 27 March 2025
Rule 41 Reply	The Respondent's reply on manifest lack of legal merit under Rule 41 submitted on 27 February 2025
State	The Republic of Angola
Statement of Claim	The Claimant's statement of claim submitted on 11 September 2025

Statement of Defence	The Respondent's statement of defence submitted on 27 November 2025
Supply Contracts	Four contracts signed between Aenergy and GE Global Parts & Products GmbH and GE Packaged Power, Inc. on 29 June 2016, 30 June 2016, 30 March 2017 and 2 June 2017, for the sale of equipment and services (**Exhibits AP-10, AP-11, AP-12, AP-13**)
Tchicumina Power Plant	Thermal power plant located in the city of Saurimo, Lunda Sul Province, Angola
VCLT	Vienna Convention on the Law of Treaties signed on 23 May 1969 (**Exhibit RL-0011**)
Xitoto Power Plant	Thermal power plant located in the Namibe Province, Angola

I. Introduction

1. This Reply is submitted in response to the Statement of Defence filed by the Republic of Angola on 27 November 2025. In his Statement of Claim, Mr Machado demonstrated that Angola unlawfully expropriated the Four Turbines – brand-new turbines owned by Aenergy, the Claimant's company – by installing them in state-owned power plants and connecting them to the national power grid, while the court-appointed trustee and the supervising court abdicated their custodial responsibilities. Angola's Statement of Defence challenges the Tribunal's jurisdiction, the Claimant's standing, and the merits of his claims. As the Claimant will demonstrate in this Reply, none of Angola's objections withstands scrutiny.

2. On jurisdiction, Angola asks the Tribunal to accept that Aenergy was a "mere intermediary" – one that made no substantial contribution, assumed no genuine investment risk, and maintained no durable commitment to Angola. The record shows otherwise. Aenergy was GE's exclusive distributor for power generation equipment in Angola, employed hundreds of people, held over a billion dollars in contracts, and maintained a multi-year commercial presence in the country. Far from acting as a passive go-between, Aenergy purchased the Four Turbines in its own name, paid for them with its own funds – including millions of dollars by way of advance payments – and assumed all commercial risk under the Supply Contracts, including the full risk of resale.

3. Angola further asks the Tribunal to hold that it lacks jurisdiction *ratione temporis* on the ground that the dispute arises from events that pre-date the BIT's entry into force. Yet Angola has now conceded that the constitutive facts underlying the Claimant's claims – the installation and connection of the Four Turbines to the national grid, and the failure by IGAPE and the Provincial Court of Luanda to discharge their custodial responsibilities – occurred in or after 2022, well after the BIT entered into force on 22 December 2021.

4. From there, Angola would have the Tribunal believe that the Four Turbines were purchased through fraud. They were not. The fraud was committed by Mr da Costa – not the Claimant – and, in any event, title to the Four Turbines had already transferred to Aenergy before the fraud took place, foreclosing any suggestion that the fraud bore on their acquisition. Angola's reliance on Mr da Costa's fraud is therefore both misplaced and legally irrelevant. Angola was not even the victim of the fraud: it suffered no financial loss, as the Four Turbines were never included in the Contracts and were never financed with Angolan funds.

5. Turning to the expropriation itself, Angola maintains that the continuous operation of brand-new turbines in state-owned power plants for years on end amounts to nothing more than a "temporary" and "reversible" custodial measure. The facts tell a different story. The turbines were unlawfully installed and put into operation, integrated into the national grid in what Angola's own contractors describe as a

"permanent regime", and subjected to catastrophic levels of degradation. Years have elapsed without any step toward returning them or bringing their use to an end. The proposition that the indefinite, unauthorised operation of seized assets to the point of destruction is consistent with their preservation and eventual return defies any reasonable understanding of what a custodial measure entails.

6. In the same vein, Angola contends that IGAPE, the court-appointed trustee, discharged its duties faithfully. Yet this is a trustee who withheld all information from the owner of the Four Turbines while actively coordinating with the Angolan Government the deployment of those very turbines. It acquiesced in their installation and continuous operation despite knowing that equipment under identical conditions had already suffered severe degradation – and took no step to preserve the assets or notify the supervising court that they were exposed to danger.

7. Finally, Angola insists that the court which appointed that very trustee has not, through its prolonged and total abdication of its supervisory responsibilities, effectively converted a provisional custodial measure into a permanent deprivation without any adjudication on the merits. Yet this is a court that has remained entirely passive for over four years – failing to respond to Aenergy's requests for information, exercising no supervision over the trustee, and taking no step to prevent the appropriation of the assets it had itself ordered to be seized. In all that time, it has convened no hearing, issued no ruling, and given no procedural direction of any kind in respect of the unauthorised installation and continuous operation of the Four Turbines – thereby rendering every domestic remedy structurally unavailable to the Claimant.

8. In short, Angola's case is built on distortions of fact, mischaracterisations of the law, and a selective presentation of the record. As will be set out below, the Tribunal has jurisdiction to hear this dispute (section II); Mr Machado has standing to bring all of his claims (section III); and Angola has breached its obligations under the BIT – including the prohibition on unlawful expropriation, and the standards of fair and equitable treatment and full protection and security (section IV). Accordingly, Mr Machado is entitled to full reparation in the amount of USD 181,527,062, or such higher amount as the Tribunal may determine at the date of the award (section V).

II. Jurisdiction

A. Jurisdiction *ratione materiae*

1. The Tribunal has jurisdiction *ratione materiae*

9. As set out in the Statement of Claim, this Tribunal has jurisdiction *ratione materiae* over both of the Claimant's protected investments – the Four Turbines under article 3(2)(a) of the BIT and Mr Machado's shares in Aenergy under article 3(2)(b) of the

BIT.[1] The Claimant relies on and incorporates by reference the analysis set out in the Statement of Claim, which is not reproduced here in the interest of economy.

10. The Respondent objects to the Tribunal's jurisdiction *ratione materiae* on the grounds that the Salini criteria are not met and that the investment was made through fraud. However, as the Claimant will demonstrate below, both contentions are incorrect.

2. The Respondent's objections based on the Salini test do not hold

11. The Respondent's main objection to the Tribunal's jurisdiction *ratione materiae* is that the Four Turbines do not qualify as an investment within the meaning of article 25 of the ICSID Convention.[2] Angola invokes the "double-barrel approach", under which the definition of investment in the BIT is not, by itself, sufficient to establish the Tribunal's jurisdiction *ratione materiae*, but must be supplemented by reference to inherent criteria said to be derived from article 25 of the ICSID Convention.[3]

12. The Respondent argues that, in the absence of an express definition of investment in the ICSID Convention, tribunals are required to apply the criteria developed by ICSID tribunals, namely the Salini test.[4] According to the Respondent, the Claimant's investment fails to satisfy the elements of that test and therefore does not qualify as a protected investment within the meaning of the ICSID Convention.[5]

13. However, as will be developed further below, the Respondent's reliance on the Salini test is misplaced. The Salini criteria do not constitute jurisdictional requirements capable of overriding the definition of investment agreed by the Contracting States in article 3(2) of the BIT. In any event, even if the Salini test were applicable, the Claimant's investment satisfies each of its elements: Aenergy made a substantial contribution, the investment meets the duration requirement, and Aenergy assumed genuine investment risk.

a. The Salini test does not apply

14. Article 25 of the ICSID Convention provides that "*the jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment*".[6] The term "investment" is not defined in the ICSID Convention. This is not an accident. The *travaux préparatoires* of the Convention reveal that several proposals to

[1] Statement of Claim, section III.D, ¶¶77-81.
[2] Statement of Defence, ¶202.
[3] Statement of Defence, ¶¶203-204.
[4] Statement of Defence, ¶¶204-205.
[5] Statement of Defence, ¶227.
[6] ICSID Convention, article 25(1) ("*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*").

incorporate a definition of "investment" were considered but ultimately rejected.[7] The term was deliberately left undefined, on the understanding that its content would be determined by agreement between the Contracting States.[8] There is accordingly no basis under article 25 of the ICSID Convention to impose jurisdictional requirements beyond those stipulated in the applicable treaty.

15. This conclusion is supported by a consistent line of authority. In *Biwater v. Tanzania*, the tribunal held that the Salini criteria "*are not fixed or mandatory as a matter of law*" as they "*do not appear in the ICSID Convention*".[9] The tribunal further observed that the Salini test is "problematic" as it "*risks the arbitrary exclusion of certain types of transaction from the scope of the Convention*" and can lead "*to a definition that may contradict individual agreements*".[10]

16. The tribunal in *Deutsche Bank v. Sri Lanka* – which the Respondent cites in support of its position –[11] followed the reasoning of the tribunal in *Biwater*:[12]

> *"There is therefore no basis for a strict application in every case of the five criteria that were originally suggested by the Arbitral Tribunal in Fedax v. Venezuela and restated (notably) in Salini v. Morocco".*

17. Similarly, in *Abaclat v. Argentina*, the tribunal observed:[13]

> *"Considering that these criteria were never included in the ICSID Convention, while being controversial and having been applied by tribunals in varying manners and degrees, the Tribunal does not see any merit in following and copying the Salini criteria. The Salini criteria may be useful to further describe what characteristics contributions may or should have.* ***They should, however, not serve to create a limit, which the Convention itself nor the Contracting Parties to a specific BIT intended to create****".*

18. Christoph Schreuer has similarly noted that features such as the Salini criteria "*should not necessarily be understood as jurisdictional requirements but merely as typical characteristics of investments under the Convention*".[14]

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[7] **CLA-124**, History of ICSID Convention, Volume II-2, 2006, pp. 334-335.
[8] **CLA-124**, History of ICSID Convention, Volume II-2, 2006, p. 319 ("*The Executive Directors did not think it necessary or desirable to attempt to define the term 'investment', given the essential requirement of consent by the parties, and the mechanism through which Contracting States can make known in advance, if they so desire, the classes of disputes which they would or would not consider submitting to the Centre*").
[9] **CLA-42**, *Biwater Gauff (Tanzania) Limited v. Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶312.
[10] **CLA-42**, *Biwater Gauff (Tanzania) Limited v. Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008, ¶314.
[11] Statement of Defence, ¶205.
[12] **CLA-100**, *Deutsche Bank AG v. Sri Lanka*, ICSID Case No. ARB/09/02, Award, 13 October 2012, ¶294.
[13] **RL-0069**, *Abaclat and others v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, ¶364 (emphasis added).
[14] **RL-0035**, Christoph H. Schreuer, The ICSID Convention: A Commentary, Second Edition, Cambridge University Press, 2009, ¶153. *See also* **CLA-125**, *Philip Morris v. Uruguay*, ICSID Case No. ARB/10/7, Decision on Jurisdiction, 2 July 2013, ¶206**.**

19. It follows that the Salini test does not impose additional jurisdictional requirements beyond the definition of investment agreed by Angola and Portugal in the BIT. The relevant inquiry is whether the Claimant's investment meets the requirements set out in the BIT – which, as demonstrated in the Statement of Claim, it plainly does.[15]

20. In any event, and for the sake of completeness, the Claimant will demonstrate below that, even if the Salini test were applicable, its elements are met in the present case. In particular: (i) Aenergy made a substantial contribution to acquire the Four Turbines, committing its own financial resources and deploying its personnel, expertise and commercial infrastructure in Angola, (ii) the investment satisfies the duration requirement, given the long-term nature of Aenergy's commercial presence in Angola, and (iii) Aenergy assumed genuine investment risk, as evidenced by the gap between the turbines it purchased from GE and those it ultimately sold to Angola.

b. The Claimant made a substantial contribution

(i) The relevant standard

21. The Respondent argues that, for a transaction to qualify as an investment, it must reflect a contribution by the investor that carries economic value and bears a nexus to the host State, and that such contribution must be concrete and material, with an economic objective.[16]

22. However, no such standard follows from the authorities cited by the Respondent. None of the cases upon which Angola relies impose a requirement that the contribution be "concrete", "material" or bear an "economic objective" in the restrictive sense that the Respondent suggests. To the contrary, the cited authorities consistently adopt a broad and flexible understanding of what constitutes a "contribution".

23. For instance, the tribunal in *L.E.S.I. v. Algeria* referred to "*financial commitments*" but expressly cautioned that "*it would be too restrictive an interpretation not to admit other sacrifices*".[17] Similarly, the *ad hoc* committee in *Patrick Mitchell v. DRC* observed that "[t]*he first characteristic of investment is the commitment of the investor, which may be financial or through work; indeed, in several ICSID cases the investor's commitment mainly consisted in its know-how*".[18] In *Fedax v. Venezuela*, the tribunal referred to a "*substantial commitment*",[19] and in *Bayindir v.*

[15] Statement of Claim, section III.D, ¶¶77-81.
[16] Statement of Defence, ¶207.
[17] **RL-0044**, *Consortium Groupement L.E.S.I.- DIPENTA v. République Algérienne Démocratique Et Populaire*, ICSID Case No. ARB/03/08, Award, 10 January 2005, ¶14(i).
[18] **RL-0045**, *Patrick Mitchell v. Democratic Republic of Congo*, ICSID Case No. ARB/99/7, Annulment Decision, 1 November 2006, ¶27.
[19] **RL-0046**, *Fedax N.V. v. Republic of Venezuela*, ICSID Case No. ARB/96/3, Decision on Jurisdiction, 11 July 1997, ¶43.

Pakistan, to a "*substantial financial contribution*".[20] In *Salini v. Morocco*, the tribunal described the contribution element as encompassing contributions "*in money, in kind and in industry*",[21] and specified that the Salini elements are interdependent and should be assessed globally.[22]

24. The standard that the Respondent purports to derive from the case law thus finds no support in the very authorities it invokes. What these decisions do establish is that the concept of "contribution" is broad and flexible, capable of encompassing a wide range of commitments – financial, material, or otherwise – provided they carry some economic value.

25. The Respondent further contends that "*tribunals have frequently declined jurisdiction where the parties' relationship is limited to isolated sales of goods, without additional elements typical of an investment*".[23]

26. The Respondent relies on *Joy Mining v. Egypt* to argue that a single sale-of-goods transaction, and the ordinary procurement of equipment, could not constitute an investment under article 25 of the ICSID Convention.[24] However, that characterisation is inaccurate.

27. The tribunal in *Joy Mining* did not deny jurisdiction on the sole ground that the contract was a sale-of-goods transaction. Rather, it conducted a holistic assessment of the contract against the criteria of duration, regularity of profit and return, risk, substantial commitment, and significant contribution to the host state's development, and concluded that none of those criteria were meaningfully satisfied.[25]

28. The holistic approach adopted by the *Joy Mining* tribunal is the correct one. As the *Salini* tribunal explained, these elements are to be assessed globally, not in isolation.[26] The *Joy Mining* decision therefore does not stand for the proposition that a sale-of-goods transaction is categorically excluded from the scope of "investment"; rather, it confirms that the relevant assessment is a holistic one, examining whether the transaction as a whole reflects a meaningful commitment of resources to a venture in the host State.

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[20] **RL-0047**, *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, ¶120.
[21] **RL-0034**, *Salini Costruttori S.p.A and Italstrade S.p.A v. The Kingdom of Morocco*, ICSID Case No. ARB/00/4; Decision on Jurisdiction, 16 July 2001, ¶53.
[22] **RL-0034**, *Salini Costruttori S.p.A and Italstrade S.p.A v. The Kingdom of Morocco*, ICSID Case No. ARB/00/4; Decision on Jurisdiction, 16 July 2001, ¶52.
[23] Statement of Defence, ¶207.
[24] Statement of Defence, ¶208.
[25] **RL-0040**, *Joy Mining Machinery Limited v The Arab Republic of Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction, 6 August 2004, ¶¶53-63.
[26] *See* ¶23 above.

29. The relevant inquiry is therefore whether the investor has made a genuine commitment of resources to a venture in the host State, rather than an arrangement devoid of any meaningful economic engagement.[27]

(ii) The Claimant's investment meets the standard

30. Angola argues that the Claimant did not make any substantial contribution in connection with the Four Turbines on the grounds that Aenergy (i) acted as a mere intermediary between GE and the Respondent, and (ii) made no financial commitment of its own.[28]

31. As the Claimant will demonstrate in the following subsections, both contentions are incorrect. Aenergy was not a mere intermediary: it purchased the Four Turbines in its own name and with its own funds, assuming substantial financial commitments in the process.

(a) Aenergy was the exclusive distributor of GE products in Angola and not a mere intermediary

32. Angola contends that Aenergy did not make any financial contribution because it acted solely as an intermediary between GE and Angola. According to Angola, Aenergy's intermediary role is confirmed by the terms of the Framework Agreement between Aenergy and GE (the "**FWA**"), under which the Claimant allegedly had "*a clear obligation to sell the Turbines exclusively to the Respondent*".[29]

33. Angola's characterisation of Aenergy as a mere intermediary is contradicted by the commercial reality of Aenergy's operations and by the plain text of the contracts entered into in connection with the project.

34. An intermediary – such as a broker or agent – arranges transactions between parties without itself acquiring title to the goods or assuming the associated commercial risks. A distributor, by contrast, purchases products in its own name and on its own account, assuming ownership of the products and bearing the full risk of resale.[30]

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[27] **RL-0034**, *Salini Costruttori S.p.A and Italstrade S.p.A v. The Kingdom of Morocco*, ICSID Case No. ARB/00/4; Decision on Jurisdiction, 16 July 2001, ¶¶52-53; **RL-0023**, *Phoenix Action Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009, ¶¶82-83; **CLA-20**, *Alpha Projektholding v. Ukraine*, ICSID Case No. ARB/07/16, Award, 8 November 2010, ¶327; **CLA-69**, Principles of International Investment Law (Second edition), Rudolf Dolzer and Christoph Schreuer, Oxford University Press, 2012 (excerpts), pp. 75-76.

[28] Statement of Defence, ¶209.

[29] Statement of Defence, ¶211.

[30] **CLA-126**, Notion of Framework Agreements, Julian Juhasz, January 2026, p. 9 ("*A distribution contract typically involves a supplier, who undertakes to supply the goods on a continuing basis, and a distributor, who undertakes to distribute these goods to third parties in its own name and on its own behalf. The*

35. Aenergy was GE's exclusive distributor for power generation equipment in Angola – a role fundamentally different from that of a broker, agent or intermediary. It purchased the Four Turbines – together with other turbines – in its own name, for its own account, and at its own commercial risk.

36. Under the FWA, Aenergy was granted the exclusive right to distribute GE-manufactured turbines in Angola. It contracted with GE in its own name, assuming all obligations and risks under the Supply Contracts, and in turn contracted with MINEA, again in its own name, assuming all obligations and risks under the 13 Contracts. At no point did Aenergy act or purport to act on behalf of GE *vis-à-vis* MINEA, or on behalf of MINEA *vis-à-vis* GE. Aenergy was the principal on both sides of the transaction.

37. The plain text of the FWA refutes Angola's characterisation. The FWA describes Aenergy as "*an established developer which has been working intensively for the last 3 years in several initiatives with the Angolan Government and main industry players* […] *by using and consolidating GE technology in Angola*".[31] It further records the parties' agreement for Aenergy to act as "*a channel partner for GE in Angola* [who] *wishes to benefit from advantageous pricing in light of those significant quantities to be purchased*".[32] These are the hallmarks of a distributor, not an intermediary. Had Aenergy been intended to act as a mere intermediary, the FWA would have reflected this. It does not.

38. Moreover, the exclusivity clause in the FWA prohibited GE from selling turbines to any party other than Aenergy within Angola[33] and prohibited Aenergy from purchasing competing products.[34] These are standard features of exclusive distribution agreements, entirely consistent with Aenergy's role as a distributor.[35] They do not render Aenergy a "mere intermediary" of GE or of Angola. Aenergy was not contractually obliged to sell any specific quantity of turbines to Angola, as

distributor is legally independent, i.e., acts in its own name and on its own behalf, which distinguishes distribution contracts from all types of agency contracts.")

[31] **C-38**, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016, recital 2, p. 2.

[32] **C-38**, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016, recital 3, p. 2.

[33] **C-38**, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016, article III.E, p. 5.

[34] **C-38**, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016, article III.D, p. 4.

[35] **CLA-127**, Framework Agreements as Sales Contracts under Art. 1 CISG?, Julian Juhasz, January 2026, p. 30 ("*Distribution contracts* […] *frequently include so-called exclusivity clauses. Such exclusivity clauses can take various forms: the seller may be obliged to only sell the goods to* […] *one distributor in a certain geographical area. An exclusivity clause may also give the buyer (distributor) the sole right to distribute, i.e., re-sell, the goods in a specific market – often in a geographical sense.* […] *An exclusivity clause may also oblige the buyer to exclusively buy the goods from the seller.*")

further explained below.[36] Rather, it had a strong commercial incentive to develop the Angolan market for GE technology – which is precisely what distributors do.

39. The Respondent relies on *Joy Mining v. Egypt* to argue that a single sale-of-goods transaction, and the ordinary procurement of equipment, cannot constitute an investment pursuant to article 25 of the ICSID Convention.[37] However, *Joy Mining* is readily distinguishable. In that case, the contract was a standard equipment supply agreement, the price had been paid in full at an early stage, and the duration of the commitment was not significant.[38] By contrast, Aenergy's investment in Angola was embedded in a multi-year commercial relationship, involved long-term contractual obligations across 13 contracts with a combined value of USD 1,148,531,741, required the sustained deployment of Aenergy's own personnel and resources, and was expressly designed to contribute to Angola's long-term energy development strategy. In any event, as explained above, *Joy Mining* does not stand for the proposition that a sale-of-goods transaction is categorically excluded from the scope of the term "investment".[39]

40. The substantive nature of Aenergy's operations was confirmed by the United States Department of Justice ("**DOJ**"), which noted that Aenergy had "*hundreds of employees*" and "*multiple contracts with the Angolan government*" before 2019, and that "*AE's business was destroyed after Da Costa's lies and false allegations of double billing eroded the trust between AE and Angola*".[40] A mere intermediary does not employ hundreds of people, does not perform services directly through its own personnel, nor does it sustain a business that can be "destroyed" by the loss of a client relationship. These facts are irreconcilable with Angola's characterisation of Aenergy as a mere go-between.

41. In any event, even if one were to accept that Aenergy's role bore some features of intermediation (*quod non*), this would not deprive the Four Turbines of their status as a protected investment. It is undisputed that Aenergy entered into contracts with GE and with MINEA in its own name and for its own account, assumed all obligations and inherent risks under those contracts, and performed them with its own means and personnel. The risk assumed by Aenergy is indisputable. Angola's characterisation of Aenergy's role is therefore immaterial and, in any event, manifestly inapt to negate Aenergy's substantial contribution or its assumption of investment risk.

[36] *See* ¶¶85-86 below.
[37] *See* ¶26 above.
[38] **RL-0040**, *Joy Mining Machinery Limited v The Arab Republic of Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction, 6 August 2004, ¶¶19, 31, 55-57.
[39] *See* ¶28 above.
[40] **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, 19 March 2025, p. 19.

(b) Aenergy used its own funds to purchase the Four Turbines

42. Angola alleges that Aenergy did not commit any meaningful assets or capital to the country in connection with the supply of the Four Turbines. According to Angola "[i]*t was the Respondent who paid for the Four Unsolicited Turbines from funds available through the Facility Agreement concluded between GE Capital and the Respondent*".[41]

43. Angola further contends that:[42]

> *"As the District Court of Columbia confirmed, the Claimant and his associates forged letters in order to access Angola's funds under the Facility Agreement. As previously mentioned, the Four Unsolicited Turbines which were not included in the 13 Contracts, were subsequently incorporated into the Facility Agreement through this fraudulent scheme. Through the Forged Letters, the Claimant was able to use the funds under the Facility Agreement to acquire the Four Unsolicited Turbines, without due authorization from the Respondent".*

44. The Respondent's arguments do not withstand scrutiny.

45. *First*, prior to any disbursement under the Credit Facility, Aenergy made advance payments to GE in the amount of USD 60 million to purchase 12 turbines,[43] which included the Four Turbines. This is confirmed by GE's own contemporaneous internal records: "*$60M has already been paid by AE as advance*".[44] The downpayment corresponding to the Four Turbines was invoiced by GE to Aenergy in March 2017 and paid by Aenergy in full, as confirmed by GE's contemporaneous statement of accounts.[45] This advance payment alone demonstrates that Aenergy committed its own financial resources to the acquisition of the turbines. The remaining balance was likewise paid in full by Aenergy with its own funds, as explained in the following paragraphs.

46. *Second*, Angola's statement that the Four Turbines were paid for directly with Angola's funds under the Credit Facility, bypassing Aenergy entirely, mischaracterises how the Credit Facility worked.[46]

47. The Credit Facility was structured so that Angola, as borrower, would use the disbursed funds to discharge its payment obligations to Aenergy under the 13 Contracts, and Aenergy would in turn use those receipts to discharge its own

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[41] Statement of Defence, ¶212.
[42] Statement of Defence, ¶213.
[43] **C-43**, GE Debt Credit Request, 28 June 2026, p. 2 ("*GE Capital to provide $1.1BN unsecured loan to the Government of Angola related to supply and services of 12 x TM2500 fast power project awarded to AEnergia*").
[44] **C-43**, GE Debt Credit Request, 28 June 2026, p. 3.
[45] **C-45**, GE Invoice F4826150 re downpayment, 31 March 2017; **C-46**, Statement of Accounts GE 2018, 18 September 2018.
[46] Statement of Defence, ¶¶ 47-48, 212.

payment obligations to GE under the Supply Contracts. The fact that, for operational convenience, certain payments were made directly from GE Capital to GE entities – rather than flowing through Aenergy's accounts – does not alter the legal character of those payments. Indeed, money paid by Angola to GE entities in discharge of a debt that Angola owed to Aenergy is, in substance, Aenergy's money.

48. As the Credit Facility itself makes clear, the purpose of the facility was to fund both the amounts payable "*from the Purchaser* [Aenergy] *to the Supplier* [GE] *for Goods and Services under the Supplier Contracts and from the Offtakers* [Angola] *to the Purchaser* [Aenergy] *for Goods and Services under the On-Sale Contracts* [the 13 Contracts]".[47] The payment mechanism was expressly contemplated by all parties, including Angola, and applied with full transparency.

49. *Third*, Angola's allegation that Aenergy participated in Mr da Costa's forgery of the letters in order to improperly channel funds from the Credit Facility towards the purchase of the Four Turbines does not advance its case. It is undisputed that the Four Turbines were never included in the scope of the 13 Contracts and were therefore never financed under the Credit Facility – a point on which Angola itself repeatedly insists.[48]

50. The disbursements made under the Credit Facility corresponded exclusively to invoices approved by MINEA in respect of goods and services actually delivered under the 13 Contracts – none of which included the Four Turbines. Angola's own utilisation request referenced only the specific Aenergy invoices that MINEA had approved, covering only eight turbines.[49] This was confirmed by GE in 2019: "*The AE invoices on a stand-alone basis support payment for 8XTMs*".[50]

51. Consequently, Angola's assertion that Aenergy "*acted as a mere conduit between the seller, GE, and the buyer, the Respondent (both for the turbines and for the funds used to pay for the turbines)*" is plainly incorrect.[51] It is a fact that Aenergy made advance payments to GE for the Four Turbines and that the remaining balance was paid with funds owed to Aenergy for other goods delivered and services rendered under the 13 Contracts. Accordingly, the Four Turbines were paid in full by Aenergy, with its own funds.

[47] **R-0052**, Facility Agreement, 21 August 2017, clause 3.1(a), p. 20.
[48] Statement of Defence, ¶¶31, 42, 56, 60,
[49] **R-0002**, Invoices approved by MINEA, 30 August 2017, pp. 41 (invoice 2/2017), 46 (invoice 8/2017), 61 (invoice 23/2017), 68 (invoice 33/2017); **R-0003**, Utilization Request, 24 December 2017, which referenced invoices 1/2017 to 50/2017.
[50] **C-33**, E-mail from Willy Ireri to Sharad Jain (GE Capital), 14 January 2019.
[51] Statement of Defence, ¶214.

c. The Claimant's investment meets the duration requirement

(a) Applicable standard

52. According to the Respondent, the duration requirement of the Salini test entails that the investment reflect a medium to long-term horizon, indicating sustained economic engagement in the host State, rather than a one-off commercial sale. Angola further argues that the duration element is not satisfied where the investor acquires an asset that the parties know *a priori* will be disposed of shortly thereafter.[52]

53. The Respondent cites *KT Asia v. Kazakhstan*, which concerned a short-lived shareholding structure, to argue that Mr Machado's investment does not meet the duration requirement because it was never the Claimant's intention to hold the Four Turbines on a medium or long-term basis.[53]

54. However, the *KT Asia* tribunal itself cited Christoph Schreuer to explain that, for the purposes of the duration element, what is required is that "*the expectation of a long-term relationship is clearly there*", and held that "*it is the intended duration period that should be considered to determine whether the* [duration] *criterion is satisfied*".[54] The duration element is thus not to be assessed by reference to the physical holding period of any single asset, but by reference to the investor's intended commitment to the host State.

55. This approach is supported by a consistent line of authority. The tribunal in *Deutsche Bank v. Sri Lanka,* citing *Romak v. Uzbekistan*, held that "[d]*uration is to be analysed in light of all the circumstances, and of the investor's overall commitment*",[55] and the tribunal in *Manchester v. Poland* similarly held that "[w]*hether the duration criterion is satisfied will depend on the nature and surrounding circumstances of the operation concerned*".[56]

56. The relevant inquiry is therefore not how long the investor physically holds a particular asset, but whether the investment was made in the context of, and with the expectation of, a sustained economic relationship with the host State.

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[52] Statement of Defence, ¶¶215-217.
[53] Statement of Defence, ¶218.
[54] **RL-0048**, *KT Asia Investment Group B.V v. Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, 17 October 2013, ¶209.
[55] **CLA-100**, *Deutsche Bank AG v. Sri Lanka*, ICSID Case No. ARB/09/02, Award, 13 October 2012, ¶303.
[56] **RL-0053**, *Manchester Securities Corp. v. The Republic of Poland*, PCA Case No. 2015-18, Award, 7 December 2018, ¶377.

(b) The Claimant's investment meets the applicable standard

57. According to Angola, the duration requirement is not met because Aenergy never intended to hold the Four Turbines on a medium or long-term basis and its role amounted to nothing more than that of a "*convenient 'go-between'*" in the transaction between Angola and GE.[57]

58. Angola's argument conflates the duration of Aenergy's physical holding of the Four Turbines with the duration of Aenergy's overall investment in Angola, while disregarding the long-term nature of the commercial relationship and contractual obligations that Aenergy undertook *vis-à-vis* Angola. The contemporaneous documentary record – including third-party internal documents prepared in connection with the project's financing, the 13 Contracts, the FWA and the Supply Contracts – demonstrates that Angola's characterisation is untenable.

59. Aenergy was founded in 2012 with the express purpose of participating in the development of Angola's energy and transportation infrastructure. As explained in the Request for Arbitration, Aenergy's founder assembled a team of experienced professionals and, in 2013, entered into a commercial partnership with GE in the energy and transport sectors. By June 2014, Aenergy had become the distributor of GE Transportation in Angola for the railway transport sector and diesel power generation systems (Gensets), and in June 2016 it became GE's exclusive distributor for the sale of power generation equipment and the provision of maintenance services in Angola.

60. This is confirmed by a contemporaneous internal memorandum prepared by GE in connection with the structuring of the Credit Facility, which records that Aenergy was "*founded in 2012 to participate in the development of infrastructures in the energy and transportation industries*".[58] The breadth of Aenergy's activities across multiple sectors – spanning power generation, railway transport and diesel generation systems – is wholly inconsistent with Angola's characterisation of Aenergy as a party engaged in a one-off transaction.[59] The FWA, executed in June 2016, formalised an exclusive commercial partnership between Aenergy and GE that was designed to span multiple years and multiple projects. In 2018, the exclusive distribution arrangement was extended to Mozambique and Cameroon.[60]

61. The 13 Contracts, with a combined value of USD 1,148,531,741, further confirm the long-term nature of Aenergy's commitment. They involved the supply, installation and provision of ongoing services in respect of power generation equipment across Angola, with Aenergy committing its own personnel and

[57] Statement of Defence, ¶219.
[58] **C-43**, GE Debt Credit Request, 28 June 2026, p. 17.
[59] Statement of Defence, ¶¶217-219.
[60] **C-47**, Amendment No. 2 to the Framework Agreement, 30 December 2026, pp. 2-3.

resources to the performance of those obligations over an extended period. The Four Turbines were acquired as part of this broader, long-term investment strategy. This is not the profile of a party engaged in a transient commercial transaction.

62. The 13 Contracts themselves reflect the long-term nature of Aenergy's investment. These contracts included, among others, long-term operation and maintenance obligations,[61] repair warranties and technical assistance obligations,[62] and on-site training programmes.[63] They also expressly reflected Aenergy's long-term commitment to Angola:[64]

> *"For AENERGY, training and investment in infrastructure such as technical and practical training and capacity-building centres are a long-term commitment. This commitment stems from the certainty and strategic vision that Angola will be a sustainable country and a reference for the countries of the region, if it has training and qualification as a fundamental vector for the development of national professionals in key sectors such as the electricity sector.*
>
> […]
>
> *AEnergia is committed to the sustainable development of the Country* […] *continuously and devotedly responding to requests from the Executive Branch".*

63. These obligations are irreconcilable with the characterisation of Aenergy as a party engaged in a one-off sale of goods.

64. The long-term nature of Aenergy's investment is further corroborated by the contractual and institutional framework within which it operated. The Memorandum of Understanding entered into between MINEA and GE on 24 June 2013, in which Aenergy participated as a key supporting party, expressly records that "*MINEA and GE supported by Aenergia, S.A. ('AE') have started negotiations for the establishment of a solid cooperation under which GE and AE will take a relevant role for the support of the 'Strategic Plan for Energy and Water 2013-2017'*",[65] and lists among the areas of cooperation strategic planning, training and development, and services and maintenance – all inherently long-term in nature. On its part, the FWA expressly granted Aenergy exclusivity over "*parts*" and

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[61] *See*, *e.g.*, **C-48**, Contract 1 (Central Térmica de Menongue), 23 July 2017, clauses 1.4 and 7.1.a), pp. 35, 38; **C-49**, Contract 6 (Soyo I), 23 July 2017, clause 5 b) p. 29; **C-50**, Contract 4 (Central Térmica de Malembo), 23 July 2017, clause 1, p. 19; **C-51**, Contract 7 (Banco de Peças), 23 July 2017, clause 4.3, p. 24.

[62] *See*, *e.g.*, **C-50**, Contract 4 (Central Térmica de Malembo), 23 July 2017, clause 1, p. 19; **C-49**, Contract 6 (Soyo I), 23 July 2017, clause 5b) p. 29; **C-51**, Contract 7 (Banco de Peças), 23 July 2017, clause 4.4, p. 24.

[63] *See*, *e.g.*, **C-48**, Contract 1 (Central Térmica de Menongue), 23 July 2017, clause 27, p. 47; **C-50**, Contract 4 (Central Térmica de Malembo), 23 July 2017, clause 1.2.g), p. 19; **C-49**, Contract 6 (Soyo I), 23 July 2017, clause 14, p. 35; **C-51**, Contract 7 (Banco de Peças), 23 July 2017, clause 1c), p. 21.

[64] **C-52**, Technical and Financial Proposal of Contract 7, 20 January 2026, p. 24. [*See also* similar statements in **C-53**, Technical and Financial Proposal of Contract 11, 2 July 2017, p. 79; **C-54**, Technical and Financial Proposal of Contract 12, 21 February 2017, p. 78; **C-55**, Technical and Financial Proposal of Contract 13, 27 February 2026, p. 13.

[65] **C-37**, Memorandum of Understanding between GE and the Government of Angola, 24 June 2013, recital F, p. 13.

"*maintenance services*" for GE turbines in Angola[66] – a concession that only makes commercial sense in the context of a long-term relationship.

65. The long-term nature of the investment is equally apparent from the Supply Contracts between Aenergy and GE, which contain the following recital:[67]

> *"Seller's* [GE's] *Parent Company is committed to support the Ministry of Energy and Water of Angola to achieve the country's 2,000 MW of electric power generation capacity target by 2017 and contribute towards the provision of investment opportunities in Angola".*

66. The Supply Contracts demonstrate that the commercial relationship between Aenergy, GE and Angola was not conceived as a series of isolated, one-off transactions, but as part of a structured, multi-year programme aimed at transforming Angola's energy infrastructure.[68]

67. Angola's own official planning documents confirm that this programme was designed to extend well beyond any single five-year cycle. The Action Plan of the Energy and Water Sector 2018-2022 expressly situates Angola's energy objectives within the long-term development strategy "Angola 2025", requiring that all programmes and projects "*take into account the long-term development strategy 'Angola 2025'*".[69]

68. The Government Programme set a target of increasing Angola's installed power generation capacity by 150%.[70] Notably, the Action Plan records that, as of the 2018-2022 period, a programme of urgent generation reinforcement "*within lines of credit from GE, Afreximbank and China is still in progress*"[71] – a direct reference to the very programme in the context of which Aenergy's turbines were acquired. The development of a country's power generation capacity is, by its very nature, a long-term undertaking, wholly incompatible with the characterisation of Aenergy as a party engaged in a short-term or ephemeral commercial operation.

69. Moreover, Mr Machado's other protected investment – his shareholding in Aenergy – also satisfies the duration requirement. As explained above,[72] Aenergy was incorporated in Angola in 2012 with the express purpose of participating in the long-term development of Angola's energy and transportation infrastructure. Mr Machado has held his shares in Aenergy continuously since its incorporation –

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[66] **C-38**, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016, clause III.F, p. 5.
[67] **AP-11**, Contract for Sale of Equipment and Services (No. 1049882), 30 March 2017, p. 2; **AP-12**, Contract for Sale of Equipment and Services (No. 1018058), 2 June 2017, p. 2; **AP-13**, Contract for Sale of Equipment and Services (No. 1206406), 30 June 2017, p. 2.
[68] **C-37**, Memorandum of Understanding between GE and the Government of Angola, 24 June 2013, Recital H, p. 3.
[69] **C-36**, Action Plan of the Energy and Water Sector 2018-2022, 1 July 2018, p. 18.
[70] **C-36**, Action Plan of the Energy and Water Sector 2018-2022, 1 July 2018, p. 20.
[71] **C-36**, Action Plan of the Energy and Water Sector 2018-2022, 1 July 2018, p. 39.
[72] *See* ¶59 above.

a period of over 13 years. A shareholding in a company established in the host State for the purpose of conducting sustained commercial operations is, by its very nature, a long-term investment. The duration element is therefore also satisfied in respect of this investment.

70. Angola relies on *KT Asia v. Kazakhstan* to argue that the duration requirement is not met where an investor holds an asset on an "*intended short-term basis*".[73] As explained above, this case does not assist the Respondent, as the *KT Asia* tribunal itself held that the relevant criterion is the expectation of a long-term relationship, not the physical holding period of any single asset.[74]

71. Additionally, the present case bears no resemblance to *KT Asia*. In that case, the claimant was a shell company incorporated for the sole purpose of holding shares in a Kazakhstani bank pending their immediate sale to third-party investors in a private placement. The shares were to be held for "*at least 3/4 weeks*" before being sold on – a planned holding period of weeks, not months or years.[75] The tribunal found that the claimant had no intention of holding the investment for any material period and that its role was purely transactional, characterising it as a "*convenient staging point in the movement of shares on for ultimate sale*".[76]

72. Aenergy did not acquire the Four Turbines as a short-term financial instrument to be immediately disposed of. To the contrary, they were acquired as part of a broader commercial strategy for the Angolan market, in the context of an exclusive distribution arrangement formalised under the FWA and a portfolio of long-term contractual obligations.

73. Taken together, the above referenced documents paint a consistent and coherent picture: Mr Machado's investments in Angola were embedded in a framework of strategic cooperation explicitly designed to span multiple years and to contribute to the long-term development of Angola's energy sector. The duration element is accordingly satisfied.

d. The Claimant assumed a risk when he made his investment

(i) The applicable standard

74. The Respondent contends that a transaction qualifies as an investment only if the investor assumes risks stemming from the pursuit of an activity over an extended

[73] Statement of Defence, ¶218.
[74] *See* ¶¶53-54 above.
[75] **RL-0048**, *KT Asia Investment Group B.V v. Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, 17 October 2013, ¶210.
[76] **RL-0048**, *KT Asia Investment Group B.V v. Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, 17 October 2013, ¶213.

period, including political, commercial, environmental, and other risks.[77] According to the Respondent, only genuine economic operations that entail effective exposure to investment risks in the host State merit treaty protection.[78]

75. The Claimant does not dispute that the risk element may take many forms[79] and must, as explained above, be assessed in conjunction with the other elements of the Salini test.[80] However, notwithstanding the breadth of the standard it purports to endorse, Angola's analysis in fact reduces the inquiry to a single narrow question: whether the Claimant risked losing his contribution.[81]

(ii) The Claimant's investment meets the applicable standard

76. Angola alleges that the Claimant did not assume any investment risk because Aenergy acted as a mere intermediary and made no payments to acquire the Four Turbines from GE, and consequently bore no risk of losing its allegedly non-existent contribution.[82] Angola further claims that, since Aenergy did not assume such risk, neither did Mr Machado.[83] Angola also alleges that "*the price of the Turbines was paid with resort to external financing from GE Capital through the Facility Agreement*".[84]

77. Angola misrepresents the facts. For the reasons explained above, it is plainly wrong to say that Aenergy acted as a mere intermediary and did not use its own funds to acquire the Four Turbines.[85]

3. The Claimant's investment was legitimate

78. Angola contends that the Claimant's investment was procured through fraud and therefore not made in accordance with Angolan and international law as required by the BIT.[86] Specifically, Angola alleges that (i) Aenergy committed *vis-à-vis* GE to supplying Angola with all turbines Aenergy acquired under the FWA,[87] and (ii) through forgery, Aenergy improperly used funds from the Credit Facility to fund the turbines.[88] Both contentions are incorrect.

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[77] Statement of Defence, ¶220.
[78] Statement of Defence, ¶221.
[79] *See* **CLA-128**, *Standard Chartered Bank v. Tanzania*, ICSID Case No. ARB/15/41, Award, 11 October 2019, ¶¶218-219.
[80] *See* ¶¶18, 23 above.
[81] Statement of Defence, ¶222.
[82] Statement of Defence, ¶¶222, 224-225.
[83] Statement of Defence, ¶222.
[84] Statement of Defence, ¶223.
[85] *See* ¶¶32-41 above.
[86] Statement of Defence, ¶¶228, 240, 258, 261.
[87] Statement of Defence, section 2.1.1, ¶¶33-57.
[88] Statement of Defence, section 2.1.2, ¶¶58-101.

a. The FWA did not oblige Aenergy to sell to Angola all turbines it purchased from GE

79. Contrary to Angola's assertion, Aenergy never committed *vis-à-vis* GE to supplying Angola with all the turbines it purchased from GE.[89] Angola conflates two entirely separate contractual relationships – Aenergy's relationship with GE under the FWA, and Aenergy's relationship with MINEA under the 13 Contracts – and misreads the obligations arising from each.

80. Angola invokes article III.A(1) of the FWA, which contemplates Aenergy's purchase of 15 TM2500 units from GE, and articles III.F and III.G, which allegedly restricted the destination of the equipment to the projects listed in Exhibit 1, to argue that Aenergy was contractually bound to sell all turbines to Angola. This argument misreads the FWA.

81. *First*, article III.A(1) contemplates Aenergy's purchase of 15 TM2500 units from GE. This provision pertains exclusively to the commercial relationship between Aenergy and its supplier and represented the *quid pro quo* for GE's grant of exclusive distribution rights and advantageous pricing to Aenergy.

82. Aenergy purchased six turbines beyond the number Angola had agreed to acquire as an autonomous commercial decision taken in the ordinary course of its distribution activities under the FWA – not pursuant to any obligation to sell them to Angola.

83. There is a fundamental difference between anticipating that Angola might require additional turbines to develop its energy infrastructure and accordingly acquiring further turbines in anticipation of potential future demand – which is precisely what Aenergy did – and having committed in advance to selling them to Angola, which it had not.

84. Angola contends that Aenergy acquired additional turbines without Angola's authorisation;[90] however, as a private commercial entity, Aenergy was free to determine the number of turbines it wished to purchase from its own supplier without requiring any authorisation from MINEA or any other Angolan authority. Therefore, the suggestion that Aenergy's independent procurement decisions were somehow irregular or "unauthorised" is unfounded.

85. *Second*, the destination restrictions in articles III.F and III.G do not establish any obligation to sell to Angola. Article III.F provides that Aenergy "*shall not lease, rent, sell or otherwise transfer any Equipment to a third party otherwise than for Projects in Angola listed in EXHIBIT 1 or in accordance with any Channel Partner*

[89] Statement of Defence, ¶¶37-40.
[90] Statement of Defence, ¶40.

Agreement which may be executed between the Parties".[91] Article III.G provides that all equipment purchased under the FWA "*shall be supplied for the Projects identified in EXHIBIT 1*" but expressly adds that it may "*deviate from the use stipulated in EXHIBIT 1*" with GE's approval, which "*shall not be unreasonably withheld*".[92]

86. GE was thus contractually required to consider requests for deviation and could not unreasonably withhold its approval. This is consistent with the fact that Angola had not yet committed to purchasing all of the turbines and that neither party knew whether it ultimately would; some turbines might eventually have been sold elsewhere.

87. Angola's assertion that Aenergy was obliged to sell all turbines to Angola in any circumstances is therefore a material overstatement of what the FWA actually provides.

b. Aenergy did not use Angola's funds to pay for the turbines and did not participate in Mr da Costa's fraudulent scheme

88. Regarding Angola's contention that Aenergy used Angola's funds to pay for the Four Turbines, the Claimant refers to paragraphs 45-51 above, where the Claimant explained how Aenergy paid for the Four Turbines with its own funds.

89. Angola's allegation that the Claimant participated in the forgery of the forged letters and its contention that such participation renders the Four Turbines an unprotected investment are manifestly false. The Claimant will address this in the following subsections.

(i) The chronology of events forecloses Angola's fraud objection

90. As the Respondent itself acknowledges, for an investment to be denied treaty protection on grounds of illegality, "*the illegality must have occurred at the time the investment was established*".[93]

91. It is undisputed that the forged letters were created by Mr da Costa in October 2017,[94] that is, approximately six months after Aenergy acquired ownership of the Four Turbines on 31 March 2017.

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[91] **C-38**, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016, article III.F, p. 5.
[92] **C-38**, Framework Agreement between Aenergy, S.A. and GE Packaged Power, Inc., 30 June 2016, article III.G, p. 5.
[93] Statement of Defence, ¶230.
[94] **R-0009**, ENDE's Fake Letter, 12 October 2017; **R-0010**, PRODEL's Fake Letter, 12 October 2017. *See also* Statement of Defence, ¶62.

92. The Four Turbines were purchased by Aenergy, and ownership thereof was transferred to Aenergy on 31 March 2017.[95] This is unambiguously established by a communication of even date from GE to Aenergy, which reads as follows:[96]

> *"Please be informed that **this letter serves as the official Title Transfer** and Risk of Loss Notification referring to Article 4 of our Contract #1049882 for the following 7 x TM2500+ gas turbine generator Gen 8 Packages (GTG Packages).*
>
> *The above mentioned equipment has been delivered according to the contract CIP terms at the respective ports of export and hence the requirements of Contract Article 4 (Attachment 5) have been met on **31st March 2017**".*

93. Angola now seeks to undermine this unambiguous and contemporaneous certification of an objective fact by GE by pointing to two categories of documents: (i) the title transfer clause in the Supply Contracts between GE and Aenergy, which provides that "[t]*itle to equipment items shall transfer from Seller to Buyer when it has been cleared for export at the port of export*",[97] and (ii) the bills of lading for the Four Turbines, which record shipment dates of 27 and 28 December 2017.[98]

94. Angola contends that, since the bills of lading record shipment dates of 27 and 28 December 2017, and since the Supply Contracts provide that title passes upon export clearance at the port of export, it is not plausible that the turbines were cleared for export – and title therefore transferred – on 31 March 2017, some nine months before they were physically shipped.[99] This argument is misconceived and must be rejected for the following reasons.

95. *First*, the contractual title transfer clauses in the Supply Contracts are fully consistent with the title transfer date of 31 March 2017. The clauses provide that title passes "*when* [the equipment] *has been cleared for export at the port of export*".[100] Clearance for export is a customs and regulatory formality that is distinct from, and logically prior to, the physical loading of goods onto a vessel. It is entirely possible – and indeed common in large-scale equipment transactions – for goods to be cleared for export at the port of export well in advance of their physical shipment by sea. Indeed, following export clearance, the Four Turbines remained stored for a period in a customs warehouse at the port of export pending shipment, during

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[95] **C-8**, GE notice of transfer of ownership to Aenergy, 31 March 2017; Request for Arbitration, ¶29; Claimant's Rule 41 Response, ¶80; Statement of Claim, ¶¶66, 80; Introduction to the Claimant's Objections, ¶49; Claimant's letter dated 3 February 2026, ¶¶8-16.

[96] **C-8**, GE notice of transfer of ownership to Aenergy, 31 March 2017 (emphasis added).

[97] **AP-10**, Contract for Sale of Equipment and Services (No. 1027850), 29 June 2016, clause 4(b), p. 6; **AP-11**, Contract for Sale of Equipment and Services (No. 1049882), 30 March 2017, clause 4(b), p. 7; **AP-12**, Contract for Sale of Equipment and Services (No. 1018058), 2 June 2017, clause 4(b), p. 5; and **AP-13**, Contract for Sale of Equipment and Services (No. 1206406), 30 June 2017, clause 4(b), p. 6.

[98] **AP-15**, Bill of Lading for MFG#7266027, 27 December 2017; **AP-16**, Bill of Lading for MFG# 7267575, 7267577, 7267025, 28 December 2017.

[99] Statement of Defence, ¶561.

[100] **AP-10**, Contract for Sale of Equipment and Services (No. 1027850), 29 June 2016, clause 4(b), p. 6; **AP-11**, Contract for Sale of Equipment and Services (No. 1049882), 30 March 2017, clause 4(b), p. 7; **AP-12**, Contract for Sale of Equipment and Services (No. 1018058), 2 June 2017, clause 4(b), p. 5; **AP-13**, Contract for Sale of Equipment and Services (No. 1206406), 30 June 2017, clause 4(b), p. 6.

which Aenergy incurred and paid the associated warehousing costs as well as the preservation and maintenance activities required to safeguard the turbines and related equipment from deterioration.[101] These expenses are fully consistent with Aenergy having already acquired title to, and assumed the responsibility for, the Four Turbines as of 31 March 2017.

96. This is consistent with the delivery terms agreed in the Supply Contracts, which provide that equipment shall be delivered "*CIP INCOTERMS 2010, named place of destination being any Port or Ports in Angola*".[102] Under CIP (Carriage and Insurance Paid to) Incoterms 2010, the seller fulfils its delivery obligation when it hands the goods over to the first carrier at the agreed place of shipment – not when the goods arrive at the port of destination.[103] The fact that the turbines were physically transported to Angola in December 2017 and January 2018 is in no way at odds with title having passed to Aenergy at the port of export on 31 March 2017, as GE certified.

97. GE's own contemporaneous certificate of 31 March 2017 expressly confirms that the equipment "*has been delivered according to the contract CIP terms at the respective ports of export and hence* ***the requirements of Contract Article 4 (Attachment 5) have been met on 31st March 2017***",[104] article 4(b)(i) being the very provision that governs title transfer.[105] GE, as the seller and the party best placed to ascertain when the contractual conditions for title transfer had been satisfied, unequivocally certified that those conditions were met on 31 March 2017.

98. *Second*, the bills of lading are irrelevant to the question of when title transferred. They evidence the physical movement of goods from a port of loading to a port of discharge, but do not determine when title passed between seller and buyer. The date on which goods are loaded onto a vessel is a logistical fact relating to carriage; the date on which title passes is a distinct legal question governed exclusively by the terms of the supply contract and not by the Incoterms rules, which do not address the transfer of property rights.[106] Under the Supply Contracts between GE and

[101] **C-56**, Invoice No. F4826994 (including warehousing costs, preservation and maintenance activities), 25 November 2017; **C-57**, Invoice No. F4827025 (including warehousing costs, preservation and maintenance activities), 3 December 2017.
[102] **AP-10**, Contract for Sale of Equipment and Services (No. 1027850), 29 June 2016, clause 4(a), p. 6; **AP-11**, Contract for Sale of Equipment and Services (No. 1049882), 30 March 2017, clause 4(a), p. 7; **AP-12**, Contract for Sale of Equipment and Services (No. 1018058), 2 June 2017, clause 4(a), p. 5; **AP-13**, Contract for Sale of Equipment and Services (No. 1206406), 30 June 2017, clause 4(a), p. 6.
[103] **C-58**, ICC Guide to Incoterms 2010, Understanding and practical use, Jan Ramberg, 2011, p. 123 ("*When* […] *CIP* […] *are used, the seller fulfils its obligation to deliver when it hands the goods over to the carrier and not when the goods reach the place of destination*").
[104] **C-8**, GE notice of transfer of ownership to Aenergy, 31 March 2017 (emphasis added).
[105] **AP-10**, Contract for Sale of Equipment and Services (No. 1027850), 29 June 2016, clause 4(b), p. 6; **AP-11**, Contract for Sale of Equipment and Services (No. 1049882), 30 March 2017, clause 4(b), p. 7; **AP-12**, Contract for Sale of Equipment and Services (No. 1018058), 2 June 2017, clause 4(b), p. 5; **AP-13**, Contract for Sale of Equipment and Services (No. 1206406), 30 June 2017, clause 4(b), p. 6.
[106] **C-58**, ICC Guide to Incoterms 2010, Understanding and practical use, Jan Ramberg, 2011, p. 89 ("*All the Incoterms rules, in conformity with the general principle of the 1980 CISG (Convention on Contracts for the International Sale of Goods), connect the transfer of the risk with the delivery of the goods and not*

Aenergy, title passed upon export clearance at the port of export – not upon loading or shipment – and the bills of lading therefore have no bearing on that issue.[107]

99. *Third*, the contemporaneous internal records of GE corroborate this chronology. A GE internal memorandum prepared in connection with the structuring of the Credit Facility records that, as of 28 June 2017, "*10 out of 12 TM2500 turbines (contracted) have been manufactured and shipped to Angola*".[108] This reference to turbines having been "shipped", though imprecise, is consistent with the export clearance and title transfer having occurred prior to the physical sea transportation, and with GE's internal understanding that the turbines had been committed to Angola well before the bills of lading were issued.

100. *Fourth*, the advance payment of USD 60 million made by Aenergy to GE in March 2017[109] – prior to any disbursement under the Credit Facility – is consistent with the parties' understanding that the Four Turbines were being acquired, and that the conditions for transfer of title were satisfied at that time. Such a substantial upfront payment is commercially coherent if it corresponds to the acquisition of property rights in the equipment, rather than to goods that would remain under the seller's ownership for a further nine months.

101. Moreover, the Supply Contracts do not contain any retention of title clause conditioning the transfer of ownership upon full payment of the purchase price. Accordingly, the fact that the remaining balance was paid at a later stage is entirely irrelevant to the question of when title transferred and does not call into question the validity of the transfer that had already occurred on 31 March 2017.

102. In sum, the bills of lading evidence only the physical movement of the turbines from the ports of loading to Angola; they do not govern, and are irrelevant to, the question of when title transferred. Title transferred on 31 March 2017, as expressly certified by GE in its contemporaneous notice and as confirmed by the contractual framework of the Supply Contracts.

103. It follows that the fraudulent conduct in which the Claimant allegedly participated – which undisputedly occurred in October 2017 – took place well after the

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with other circumstances, such as the passing of ownership or the time of the conclusion of the contract. Neither the Incoterms rules nor CISG deal with transfer of title to the goods or other property rights with respect to the goods").

[107] **AP-10**, Contract for Sale of Equipment and Services (No. 1027850), 29 June 2016, clause 4(b), p. 6; **AP-11**, Contract for Sale of Equipment and Services (No. 1049882), 30 March 2017, clause 4(b), p. 7; **AP-12**, Contract for Sale of Equipment and Services (No. 1018058), 2 June 2017, clause 4(b), p. 5; **AP-13**, Contract for Sale of Equipment and Services (No. 1206406), 30 June 2017, clause 4(b), p. 6.

[108] **C-43**, GE Debt Credit Request, 28 June 2026, p. 3. It follows from this document that, by 28 June 2017, Aenergy had already acquired ownership of 10 turbines in total, comprising: (i) three turbines under Contract No. 1027850 and (ii) seven turbines under Contract No. 1049882. The seven turbines under Contract No. 1049882 expressly included the Four Turbines, as confirmed by **C-8**, GE notice of transfer of ownership to Aenergy, 31 March 2017, p.1. Accordingly, the reference to the 10 turbines in the Exhibit C-43 necessarily includes the Four Turbines.

[109] *See* ¶45 above.

investment had been established. Angola's contention that the investment was tainted by fraud is accordingly foreclosed by the chronology of events alone.

104. The foregoing is dispositive. The Claimant's investment was established on 31 March 2017 – more than six months before the fraudulent conduct took place. Angola's fraud-based objection to jurisdiction *ratione materiae* is therefore necessarily and irremediably foreclosed by the chronology of events. No argument regarding the Claimant's supposed involvement in the forgery can alter this conclusion: even if every factual allegation advanced by Angola in this regard were accepted in full (*quod non*), it would remain the case that the investment had already been made, and title to the Four Turbines had already been transferred to Aenergy, before any alleged illegality occurred.

105. The entire discussion that follows is therefore unnecessary. Nonetheless, for the sake of completeness, the Claimant provides the following reasons that further refute the Respondent's fraud-based argument.

(ii) Mr da Costa perpetrated the fraudulent scheme

106. Angola, Aenergy and Mr da Costa (GE's country manager in Angola) were all aware that, by October 2017, Angola had only agreed to acquire eight turbines, and they all had an interest in expanding that acquisition to include additional turbines:

(i) Aenergy had a legitimate commercial interest because it had turbines in stock and the sale of further turbines to Angola was in line with its commercial objectives.

(ii) Angola, for its part, had an obvious interest in acquiring additional turbines: it was actively developing its energy infrastructure and needed them – as is amply demonstrated by the fact that it expropriated them and has been operating them since. Even after the seizure of the Four Turbines and the related Additional Equipment, Aenergy and the Angolan authorities continued to negotiate the purchase by Angola of the Additional Equipment, with a view to removing it from the scope of the judicial seizure so that it could be lawfully delivered to and used by PRODEL.[110] Angola also mentioned the social function of the Four Turbines in producing electricity for a population in need of such a basic resource in its answer to the Notice of Dispute.[111]

[110] *See* ¶¶476-477 below.
[111] **R-0117**, Angola's Answer to Mr. Machado's Notice of Dispute, 8 December 2022, ¶¶25, 28.

(iii) Mr da Costa, for his part, had a particular interest because he had misrepresented to his employer, GE, that the project covered 12 turbines before Angola had in fact committed to purchasing that number of turbines.

107. The contemporaneous evidence is consistent with this picture. On the one hand, Aenergy and Angola were actively exploring ways to include additional turbines within the existing contractual framework. On 12 October 2017, PRODEL issued a letter of intent concerning the potential acquisition of two additional turbines under Contract 7.[112] In an email dated 8 August 2018, Mr Pizarro (then Aenergy's COO) responded to PRODEL, expressly referring to that letter of intent, and informed PRODEL that the contractual balance under Contract 7 was insufficient to accommodate additional turbines and that it was therefore not feasible to supply further turbines under that contract:[113]

> *"On 12 October 2017 we received a* ***letter from PRODEL*** […] *which referred to the possibility for PRODEL* ***to negotiate with Aenergy the inclusion of four TM2500 + GEN8*** *turbines and their BoP, after an assessment of the economic viability of this solution under the Parts Bank Formation Agreement;*
> *As the contractual balance is already insufficient, in view of the supplies and orders made, but in particular the supplies relating to the extension of Xitoto's CT, with two turbines, its BoP, suitability works and O & M,* ***it is not feasible to supply two more turbines in this contract****".*

108. Subsequently, in November 2018, Aenergy submitted a formal proposal to Angola for the supply of four additional turbines for the Arimba, Dundo and Xitoto Power Plants[114] (the latter being one of the plants in which Angola ultimately installed the engine of one of the Four Turbines).[115] These efforts, seeking Angola's formal agreement to include additional turbines within the scope of the 13 Contracts, would have been entirely unnecessary – and indeed counterproductive – if the Respondent's theory were true that, in October 2017, Aenergy had participated in the fraudulent scheme to surreptitiously include those turbines within the scope of the 13 Contracts through the forged letters.

109. Those negotiations are irreconcilable with the Respondent's theory of Aenergy's complicity, since they risked drawing Angola's attention to the very discrepancy that the forgery was supposedly designed to conceal.

110. On the other hand, when Mr da Costa's misrepresentation to GE was about to be exposed in December 2018, he resorted to lying to Angola in order to cover up his own deception. As explained by the Respondent itself, in two meetings held in December 2018, Mr da Costa stated that Angola had already paid for the Four Turbines by the allocation of their cost to the 13 Contracts. Angola relies on this

[112] **R-0008**, PRODEL's letter of intent, 12 October 2017.
[113] **C-59**, E-mail from Aenergy to PRODEL re additional turbines under Contract 7, 8 August 2018.
[114] **C-60**, E-mail from Aenergy to PRODEL re proposal to include 4 turbines in the Contracts, 23 November 2026.
[115] Statement of Defence, ¶307.

assertion to suggest that Aenergy was aware of, and complicit in, the inclusion of the Four Turbines in the Credit Facility.[116]

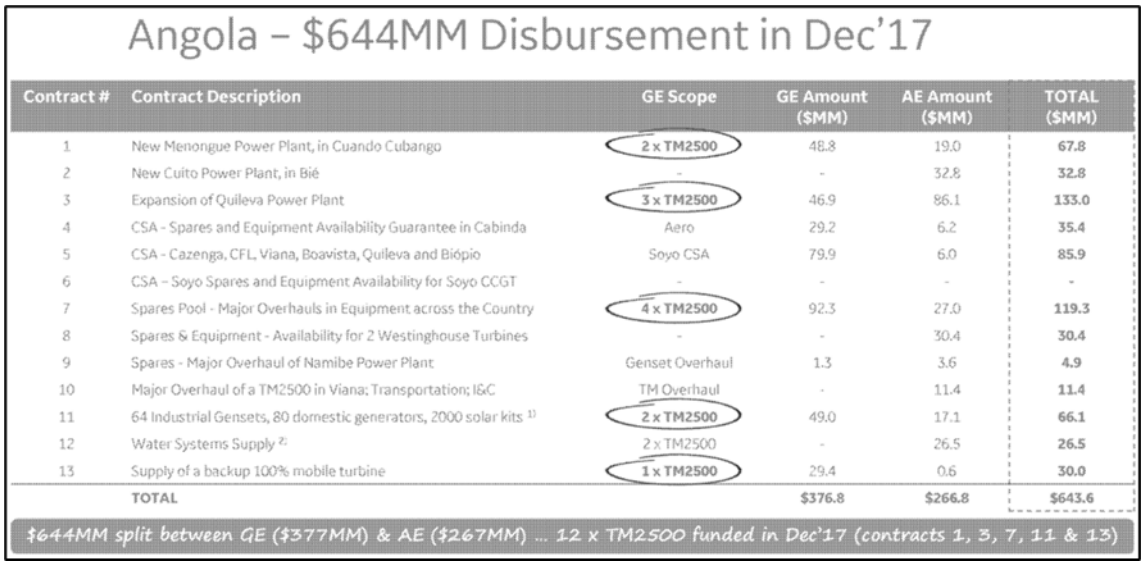
111. However, the very document from which the Respondent extracted this conclusion was created by Mr da Costa himself and presented by him to MINEA at the December 2018 meetings in order to falsely convince MINEA that Angola had paid for a total of 12 turbines, including the Four Turbines. It was Aenergy that introduced this document into the U.S. proceedings precisely as evidence that Mr da Costa fabricated a false account of the December 2017 disbursements in order to mislead Angola and conceal his own forgery.[117]

112. To understand why Mr da Costa needed to represent to Angola that it had already paid for 12 turbines, it is necessary to recall the predicament in which he found himself by December 2018. In October 2017, Mr da Costa had forged the letters of intent so that they falsely stated that Angola had unconditionally committed to purchasing four additional turbines beyond the eight covered by the 13 Contracts. He had passed those forged letters off as genuine to his superiors at GE, and GE had used them to justify its internal accounting treatment and to support the disbursement of funds under the Credit Facility.

113. Mr da Costa's solution to avoid the exposure of this gap was to present Angola with a false narrative: that Angola had, in fact, already paid for 12 turbines through the December 2017 disbursement under the Credit Facility. If Angola could be persuaded to accept this version of events, the forged letters would appear to have been merely confirmatory of a transaction that had already taken place, rather than the fabrications they were. In other words, Mr da Costa sought to use a second lie to cover up the first.

114. To advance this narrative, Mr da Costa prepared and presented to MINEA at the December 2018 meetings a specific document falsely depicting how the USD 644 million disbursed in December 2017 had supposedly been allocated across the 13 Contracts. That document falsely represented that the disbursement had funded a total of twelve turbines, including four turbines under Contract 7 (rather than the two turbines actually provided for in that contract) and two turbines under Contract 11 (although that contract provided for no turbines at all):[118]

[116] Statement of Defence, ¶¶83, 99, 103; **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., Case no. 20 cv 3569, 7 May 2020, p. 46.
[117] **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., Case no. 20 cv 3569, 7 May 2020, p. 43.
[118] **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., Case no. 20 cv 3569, 7 May 2020, p. 46.



Angola – $644MM Disbursement in Dec'17

Contract #	Contract Description	GE Scope	GE Amount ($MM)	AE Amount ($MM)	TOTAL ($MM)
1	New Menongue Power Plant, in Cuando Cubango	2 x TM2500	48.8	19.0	67.8
2	New Cuito Power Plant, in Bié	-	-	32.8	32.8
3	Expansion of Quileva Power Plant	3 x TM2500	46.9	86.1	133.0
4	CSA - Spares and Equipment Availability Guarantee in Cabinda	Aero	29.2	6.2	35.4
5	CSA - Cazenga, CFL, Viana, Boavista, Quileva and Biópio	Soyo CSA	79.9	6.0	85.9
6	CSA – Soyo Spares and Equipment Availability for Soyo CCGT	-	-	-	-
7	Spares Pool - Major Overhauls in Equipment across the Country	4 x TM2500	92.3	27.0	119.3
8	Spares & Equipment - Availability for 2 Westinghouse Turbines	-	-	30.4	30.4
9	Spares - Major Overhaul of Namibe Power Plant	Genset Overhaul	1.3	3.6	4.9
10	Major Overhaul of a TM2500 in Viana; Transportation; I&C	TM Overhaul	-	11.4	11.4
11	64 Industrial Gensets, 80 domestic generators, 2000 solar kits [1]	2 x TM2500	49.0	17.1	66.1
12	Water Systems Supply [2]	2 x TM2500	-	26.5	26.5
13	Supply of a backup 100% mobile turbine	1 x TM2500	29.4	0.6	30.0
	TOTAL		$376.8	$266.8	$643.6

$644MM split between GE ($377MM) & AE ($267MM) … 12 x TM2500 funded in Dec'17 (contracts 1, 3, 7, 11 & 13)

115. That table is incoherent on its face: it does not correspond to any contractual document, was never reflected in any invoice issued by Aenergy, and was never incorporated into any amendment to the 13 Contracts or the Credit Facility. It is a fabrication, and its allocations are demonstrably wrong. The 13 Contracts, as signed and approved by presidential decree, provided for Aenergy to supply a total of eight TM2500 turbines: two under Contract 1,[119] three under Contract 3,[120] two under Contract 7,[121] and one under Contract 13.[122] No turbines were included in the scope of Contract 11.[123] These are the only turbines that Aenergy ever invoiced to MINEA,[124] and the only turbines for which MINEA ever approved payment. Angola's own utilisation request of December 2017 referenced exclusively the Aenergy invoices that MINEA had approved.[125]

116. GE itself acknowledged this in January 2019, when one of GE Capital's employees confirmed, after reviewing the invoices, that "*the AE invoices on a stand-alone basis support payment for 8XTMs*",[126] noting specifically that the invoices for

[119] **C-48**, Contract 1 (Central Térmica de Menongue), 23 July 2017, clause 1, p. 33 ("***Two Aeroderivative turbines GE-TM2500***").
[120] **C-61**, Contract 3 (Quileva), 9 December 2026, included originally a different technology to build the power plant and was subsequently amended to include three TM2500 units. *See* **C-62**, E-mail from GE Capital to Aenergy re amendment of Contract 3, 3 September 2017, p. 2 ("*AE has already amended on-sale contract 3 to* ***change 2x6B's to 3xTM's****, and received a presidential notice that acknowledges the change*"). *See also* **C-63**, E-mail from Aenergy to GE regarding the approval of the transfer of three turbines from Malembo to Quileva, 8 September 2017.
[121] **C-51**, Contract 7 (Banco de Peças), 23 July 2017, clause 1, p. 21 ("*Supply of* ***2 (two) GE TM2500****+ GEN8 mobile Turbines*").
[122] **C-64**, Contract 13 (Turbina Móvel), 23 July 2017, clause 1, p. 22 ("***a GE TM 2500****+ GEN8 Mobile Aero-Derivative Turbine*").
[123] **C-65**, Contract 11 (ENDE), 17 July 2017. *See* pp. 19-20 for the scope of the contract, with no turbines refrenced therein.
[124] **R-0002**, Invoices approved by MINEA, 30 August 2017. *See* Claimant's Rule 41 Response, ¶220.
[125] **R-0003**, Utilization Request, 24 December 2017. *See* Claimant's Rule 41 Response, ¶220.
[126] **C-33**, E-mail from Willy Ireri to Sharad Jain (GE Capital), 14 January 2019, p.1.

Contract 7 "*only reflect 2xTM2500 rather than 4 TM2500*"[127] and that the invoices for Contract 11 "*do not reflect 2xTM2500*".[128]

117. Mr da Costa's document, by contrast, depicted four turbines as allocated to Contract 7 and two turbines as allocated to Contract 11 – precisely the allocations that the forged letters had falsely claimed to authorise. The document was, in short, a restatement of the forgery in accounting form: an attempt to make it appear, through a manipulation of the disbursement figures, that the transaction the forged letters had falsely represented as having been agreed upon had in fact taken place, and to mislead Angola into believing that Aenergy had somehow double-billed it – a narrative that, if accepted, would conceal Mr da Costa's forgery.

118. This was confirmed by the DOJ, which found that "*to cover up his deception and cast blame on AE,* ***Da Costa fabricated a lie that AE was cheating the Angolan government by somehow double billing Angola for TM 2500s***".[129]

119. Angola relies heavily on the findings of the LCIA tribunal to support its allegation that Mr Machado participated in the forgery. However, the LCIA findings cannot assist Angola's case for the following reasons.

120. *First*, the findings rendered in an arbitration between Aenergy and GE are not *res judicata* as between Mr Machado and Angola. *Res judicata* requires the concurrence of three conditions: identity of parties, identity of subject matter, and identity of cause of action. The LCIA arbitration involved different parties, had a different subject matter, and was decided by a different tribunal applying a different law.

121. As regards identity of parties, the LCIA arbitration was conducted between Aenergy and GE entities. Mr Machado was not a party to those proceedings, nor was Angola. As regards identity of subject matter and cause of action, the LCIA arbitration concerned contractual claims arising from the commercial relationship between Aenergy and GE under the Supply Contracts and the FWA. The present arbitration concerns Mr Machado's treaty claims against Angola for breaches of the BIT arising from the expropriation of the Four Turbines and the violation of the FET and FPS standards. Consequently, the legal basis, the applicable law, and the relief sought are entirely different.

122. Accordingly, in the hypothetical scenario that this Tribunal were required to make findings on Mr Machado's supposed involvement in the forgery (*quod non*, because it is irrelevant to the case and immaterial to its outcome due to the chronology issues

[127] **C-33**, E-mail from Willy Ireri to Sharad Jain (GE Capital), 14 January 2019, p.1.
[128] **C-33**, E-mail from Willy Ireri to Sharad Jain (GE Capital), 14 January 2019, p.1.
[129] **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, 19 March 2025, p. 6 (emphasis added).

explained above),[130] it would need to make its own independent findings based exclusively on the evidence adduced in the present arbitration.

123. *Second*, a key element upon which the LCIA tribunal relied to conclude that Mr Machado participated in the forgeries was subsequently proven to be incorrect. The Respondent invokes the following passage of the LCIA award: "*we conclude that the evidence demonstrates* […] *that AE knew of, and was complicit in, the creation and deployment of the relevant letters. In particular we conclude that Mr Bento signed the Suite Version 2 Letters at the direction of Mr Machado*".[131]

124. However, the DOJ, after an extensive investigation, found that Mr Bento had not signed the letters but that it was Mr da Costa who *affixed* Mr Bento's signature to the documents, creating the version of the forged letters disseminated within GE. As the DOJ found:[132]

> "*Da Costa and others created the Charged Forgeries using Adobe Photoshop by hiding the text of the original letters, preserving the original letters' signatures from the heads of ENDE and PRODEL, and adding the new, binding text to the letters.* […] *At some point, a signature from an AE executive was affixed to the documents created in Adobe Photoshop, creating the version of the Charged Forgeries disseminated within GE*".

125. Indeed, after a thorough investigation with access to all federal investigative mechanisms, resources, and expertise, the DOJ unequivocally established in the criminal proceedings against Mr da Costa that he was the perpetrator of the forgery. Mr Machado and Aenergy were not convicted, nor even prosecuted. To the contrary, the DOJ found that Aenergy and its employees were the victims of Mr da Costa's crime:[133]

> *"Da Costa intentionally and knowingly misled decisionmakers at GE Capital, GE Power,* ***AE*** *and the Republic of Angola about the contents of the letter agreements that he had forged and doctored".*
>
> *"Da Costa was well aware that the Charged Forgeries could easily be discovered, so* ***to cover up his deception and cast blame on AE, Da Costa fabricated a lie that AE was cheating the Angolan government*** *by somehow double billing Angola for TM 2500s* […] *Da Costa then used his position within GE to marginalize and discredit AE because Da Costa knew he had to prevent AE executives like Pizarro and Morgado from exposing the truth about Da Costa's forgeries.* […] *During Da Costa's extended campaign of lies and deceit, AE lost the On Sale Contracts and, ultimately, its business was destroyed".*

126. For both of these reasons – the absence of any *res judicata* effect as between Mr Machado and Angola, and the subsequent dismantling by the DOJ of the key

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[130] *See* ¶¶90-104 above.
[131] Statement of Defence, ¶79.
[132] **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, 19 March 2025, p. 4.
[133] **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, 14 February 2025, 7; **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, 19 March 2025, p. 6 (emphasis added).

factual premise on which the LCIA tribunal's finding rested – Angola's reliance on the LCIA award to attribute Mr da Costa's crime to Mr Machado or Aenergy cannot be sustained.

127. In sum, neither strand of evidence on which Angola relies in this subsection assists its case: the document presented by Mr da Costa to convince MINEA at the December 2018 meetings was his own fabrication, introduced into the U.S. proceedings by Aenergy precisely to expose that deception, and the LCIA tribunal's findings of complicity rested on a factual premise that was subsequently established to be false. Angola's reliance on either is therefore misplaced.

(iii) Mr Machado had no motive to participate in the forgery

128. Angola contends that the Claimant's awareness of GE Capital's reluctance to disburse funds under the Credit Facility until Angola committed to purchasing 12 turbines provided the Claimant with a motive to participate in the forgery.[134]

129. It is undisputed that the transaction was structured such that Aenergy (and GE) would receive payment from Angola through disbursements made by GE Capital under the Credit Facility.[135] Mr Machado was aware of GE Capital's stated position that it would not disburse funds under the Credit Facility until Angola committed to purchasing 12 turbines. And, although Angola now claims that it "*was not aware of these conditions*",[136] in reality all parties involved in the project were aware of this requirement, including Angola itself and its legal advisors who participated in the negotiation of the Credit Facility.[137]

130. In fact, as originally structured, the Credit Facility included a condition precedent requiring that the 13 Contracts be amended such that Angola would be obligated to pay all amounts payable to Aenergy upfront.[138] This arrangement was designed to benefit Aenergy, as it would ensure that Aenergy received all amounts necessary to satisfy its own payment obligations towards GE in advance.

131. However, this condition precedent was subsequently waived by GE Capital, a change which operated to Aenergy's detriment.[139] Specifically, GE Capital agreed to waive this condition precedent provided that it would not be required to disburse funds related to Contracts Nos. 3, 7, 11, or 12 unless four additional TM2500 turbines were included within the scope of those four contracts.[140] As a corollary to this change, GE forbore from collecting the remaining amounts owed by Aenergy

[134] *See*, *e.g.*, Statement of Defence, ¶¶45, 50-51, 66.
[135] *See* ¶¶47-48 above.
[136] Statement of Defence, ¶¶43, 60.
[137] **C-44**, E-mails exchanged between Norton Rose Fullbright and MINFIN, 19 September 2017, pp. 4-6.
[138] **R-0052**, Facility Agreement, 21 August 2017, Schedule 2, Clause 3(b)(i), p. 83.
[139] **C-44**, E-mails exchanged between Norton Rose Fullbright and MINFIN, 19 September 2017, pp. 4-6.
[140] **C-44**, E-mails exchanged between Norton Rose Fullbright and MINFIN, 19 September 2017, pp. 4-5.

under the Supply Contracts – a forbearance that GE could withdraw at any time and that did not constitute a binding commitment.

132. In any event, the mere existence of a commercial interest in the disbursement under the Credit Facility cannot, without more, establish participation in a fraudulent scheme, all the less so considering the above-mentioned circumstances that are inconsistent with Aenergy's participation.[141] Motive, even if established (*quod non*), does not prove participation; and in the present case, Aenergy's conduct is wholly inconsistent with its alleged participation in Mr da Costa's fraud.

133. Indeed, it is reasonable to assume that, had Mr da Costa not perpetrated his fraudulent scheme, Aenergy and Angola would in all likelihood have reached a commercial agreement for the sale of additional turbines, given the ongoing business relationship between the parties, the contracts then still under negotiation, and Angola's evident need for those turbines – as demonstrated by the fact that it has since expropriated and operated them. MINEA even requested the President of the Republic of Angola, in October 2018, to authorise the negotiation of an amendment to the existing contracts to include four additional TM2500 turbines in Contract 6 (one of the 13 Contracts).[142]

134. However, Mr da Costa's deception caused irreparable mistrust between Angola and Aenergy, and the contract negotiations between them collapsed, as confirmed by the DOJ:[143]

> *"**AE's business was destroyed after Da Costa's lies and false allegations of double billing eroded the trust between AE and Angola**. Honest executives like Ivo Pizarro were mocked and discredited before GE and the Angolan government, with predictable consequences for AE's ability to conduct its business. The destruction of AE's business cost hundreds of people their jobs and slowed the development of Angola's infrastructure by shuttering a significant civil engineering firm, and AE's destruction is therefore another serious consequence of Da Costa's crimes".*

135. Aenergy had no need to resort to fraud: it was actively and transparently negotiating with Angola for the inclusion of additional turbines within the existing contractual framework – negotiations that would have been unnecessary and counterproductive had Aenergy already achieved its objective through the forged letters.

(iv) The forgery by Mr da Costa had no effect on the scope of the 13 Contracts or the Credit Facility

136. Angola asserts that, somehow, the forged letters served as a means by which the Four Turbines were paid for with funds from the Credit Facility under Contracts 7

[141] *See* ¶¶107-109 above.
[142] **C-66**, MINEA's request to the President of Angola for authorization to negotiate the inclusion of four additional turbines under Contract 6, 31 October 2018.
[143] **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, 19 March 2025, pp. 19-20 (emphasis added).

and 11.[144] However, the forgery by Mr da Costa had no effect whatsoever on the scope of the 13 Contracts.

137. As explained above,[145] no turbines were added to the scope of the 13 Contracts, no invoice was ever issued by Aenergy in respect of any turbine beyond the eight covered by the 13 Contracts, Angola paid exclusively for the goods and services invoiced by Aenergy in performance of the 13 Contracts (which covered only eight turbines), the request by Angola to borrow under the Credit Facility referenced only the specific Aenergy invoices that MINEA had approved (which, again, included only eight turbines), and GE itself confirmed this in internal correspondence. It follows that the forgery had no effect.

138. In sum, the forgery by Mr da Costa had no effect on the scope of the 13 Contracts or on what Angola paid for through the disbursements under the Credit Facility. The "double billing" theory on which Angola relies to argue that the Four Turbines were paid for through the Credit Facility is nothing more than an unintelligible fabrication by Mr da Costa designed to conceal his own fraud.

(v) The payments to Mr da Costa were unrelated to the forgery

139. The Respondent further alleges that "*it was established in the US Proceedings that Mr da Costa was the individual who directly falsified the documents,* [and] *it was also proven therein that both Mr Wilson da Costa and another GE employee each received approximately 5 million USD from the Claimant as compensation for their collaboration in the fraud scheme, namely forging the letters*".[146]

140. This is yet another blatant misrepresentation of the findings in the U.S. proceedings. The DOJ found evidence of payments by Mr Machado, but in no way did it conclude that they were made as compensation for the forgery. The payments were made in the context of a broader commercial relationship between Mr Machado and Mr da Costa, in which Mr da Costa leveraged his network of contacts to assist Aenergy in developing business opportunities across several African markets – not only Angola, but also Cameroon and Ghana. The payments were compensation for Mr da Costa's role in opening doors and facilitating Aenergy's market entry into those jurisdictions, not for the forgery of the letters.

141. To the extent that such payments might be characterised as untoward – which the Claimant does not accept – they would at most constitute a matter of internal corporate governance within GE, insofar as they may have created a conflict of interest for Mr da Costa *vis-à-vis* his employer. Such payments were not directed

[144] Statement of Defence, ¶99.
[145] *See* ¶115 above.
[146] Statement of Defence, ¶249.

against Angola, did not affect Angola, and did not cause Angola any harm. Critically, they bore no relation whatsoever to the acquisition of the Four Turbines.

142. Accordingly, even if the payments were to be regarded as an irregularity within GE (*quod non*), this would have no bearing on the legality of the Claimant's investment in the Four Turbines and cannot serve as a basis for denying protection under the BIT.

c. Angola was not the victim of Mr da Costa's fraud

143. As admitted by Angola, "[f]*raud means the deliberate deception (misrepresentation, concealment or corrupt payment) by which an investor obtains an advantage or right* ***from the host state***".[147]

144. Mr da Costa forged the letters with the purpose of deceiving GE Capital – not Angola. The primary and intended target of the deception was GE Capital, the entity whose disbursement decision was conditioned on Angola's commitment to purchase 12 turbines. Angola was not induced to grant any concession, right, or advantage to Aenergy or Mr Machado; to the contrary, Angola received financing for the 13 Contracts and GE received payment from Aenergy for the turbines supplied. Angola was, if anything, a beneficiary of the forgery.

145. The fact remains that the advantage – the disbursement of funds – was obtained from GE Capital, a private financial institution, and not "from the host State". Accordingly, the Respondent's fraud-based objection must be rejected.

146. In sum, the Claimant's investment was entirely legitimate. The Four Turbines were purchased by Aenergy with its own funds before any alleged fraud took place. The forgery was perpetrated by Mr da Costa alone, as conclusively established by the DOJ following a full criminal trial. Angola was not the victim of any fraud; it was a beneficiary of the transaction. Mr Machado and Aenergy had no motive to participate in the forgery and did not do so. The payments made to Mr da Costa bore no relation to the acquisition of the Four Turbines or to the forgery, and did not affect Angola. The Four Turbines were never included in the scope of the 13 Contracts or the Credit Facility, and there was no "double billing" for them. Angola's fraud-based objection to jurisdiction *ratione materiae* must therefore be dismissed in its entirety.

[147] Statement of Defence, ¶232 (emphasis added).

B. Jurisdiction *ratione temporis*

1. The Tribunal has jurisdiction *ratione temporis*

147. The Claimant has demonstrated that the BIT's temporal requirements are satisfied. His claims are grounded in facts that occurred from 2022 onwards, namely the installation and connection of the Four Turbines to State-owned power plants and the contemporaneous abandonment of custodial responsibilities by the Provincial Court of Luanda and IGAPE.[148]

148. The Tribunal has already determined that it was not "*clear nor obvious*" that the claims fall outside the BIT's temporal protection.[149]

149. Angola itself has now – finally – admitted that the Four Turbines commenced operating in 2022 or thereafter at the Ondjiva Power Plant, the Lubango Power Plant, the Malembo Power Plant, and a thermal power plant located in Saurimo (the "**Tchicumina Power Plant**"), as shown in the following chart submitted by Angola:[150]

[148] Statement of Claim, section III.B, ¶¶65-70.
[149] Decision on the Respondent's Rule 41 Objection, ¶86.
[150] Statement of Defence, ¶¶307.

TURBINE SERIAL NO.	COMPONENTS	DATE OF SHIPMENT	SHIPPING LOCATION	DATE OF COMMENCEMENT OF OPERATIONS
7267575	Engine	21/10/2020[338]	Xitoto Thermal Power Plant[339]	04/11/2020[340]
	Control Room Auxiliary equipment Power House-Without compressor	14/06/2021[341]	Naipola Thermal Power Plant – Ondjiva Cunene[342]	07/12/2022[343]
7267577	Turbocharger Generator Command and Control Room Exhaust Chimney Filter House Peripherals...	14/06/2021[344]	Tchicumina Thermal Power Plant - Saurimo - Lunda Sul[345]	20/02/2024[346]
7267025	Turbocharger Generator Command and Control Room	14/06/2021[347]		09/01/2022[349]
	Exhaust Chimney Filter House Peripherals...		Lubango II Thermal Power Plant Huila[348]	
7266027	Compressor Alternator Control Room & Auxiliary Equipment	13/04/2022[350]	Malembo Cabinda Thermal Power Plant[351]	12/10/2022[352]

150. As regards turbine No. 7267575, Angola's cannibalisation of the turbine makes it difficult to determine the precise moment at which it commenced operating. According to the Respondent, the engine of turbine No. 7267575 began operating on 4 November 2020 in a thermal power plant in Namibe (the "**Xitoto Power Plant**").[151] In any event, Angola admits that the majority of the components of that turbine were put into operation in December 2022, as shown in the chart submitted with the Statement of Defence and shown above.[152]

151. Accordingly, the facts invoked by the Claimant as constituting an expropriation occurred after the BIT entered into force on 22 December 2021. The Tribunal therefore has jurisdiction *ratione temporis* over the Claimant's claims in respect of the Four Turbines.

[151] Statement of Defence, ¶307; **R-0078**, Report of Completed Work at Xitoto Thermal Power Plant, 18 December 2020.
[152] Statement of Defence, ¶307. *See also*, ¶149 above.

2. The Respondent's objections must fail

152. In the following subsections, the Claimant will address the Respondent's objections to the Tribunal's jurisdiction *ratione temporis*, namely that (i) the facts relevant to the dispute took place before the BIT entered into force, and (ii) Mr Machado's claim constitutes an abuse of process.

a. The facts relevant to the dispute took place after the BIT entered into force

153. Angola claims that the facts giving rise to the present dispute took place prior to the entry into force of the BIT.[153]

154. In support of its position, Angola argues that (i) article 2(1) of the BIT includes a double-exclusion clause that bars post-BIT claims rooted in pre-BIT facts,[154] (ii) the installation and connection of the Four Turbines to the Angolan power grid constitutes a mere implementation of pre-existing conduct,[155] (iii) any treaty violation predicated on IGAPE's actions falls outside the Tribunal's jurisdiction since IGAPE allegedly delivered the Four Turbines to Prodel on 5 May 2020,[156] and (iv) any damages related to the Claimant's loss in the value of Aenergy's shares also predate the entry into force of the BIT.[157]

155. The Claimant rejects each of the Respondent's arguments, as will be explained in detail in the following subsections.

(i) Article 2(1) of the BIT does not include a double-exclusion clause

156. Angola argues that article 2(1) of the BIT contains a "*'double-exclusion' clause*", which bars claims "*rooted*" in pre-treaty facts or based on "*entangled events*".[158] According to Angola, such clause excludes the present dispute from the Tribunal's jurisdiction. These arguments essentially restate the position the Respondent put forward in its Rule 41 Reply.[159] Accordingly, the Claimant refers to his Rule 41 Rejoinder on the interpretation of article 2(1) of the BIT.[160]

157. As Mr Machado has explained,[161] Angola's attempt to read into article 2(1) a heightened standard that goes beyond the ordinary meaning of the provision is

[153] Statement of Defence, section 3.4, ¶¶286-337.
[154] Statement of Defence, section 3.4.1, ¶¶291-303.
[155] Statement of Defence, section 3.4.2, ¶¶304-329.
[156] Statement of Defence, section 3.4.3, ¶¶330-333.
[157] Statement of Defence, section 3.4.4, ¶¶334-337.
[158] Statement of Defence, ¶¶292-299.
[159] Respondent's Rule 41 Reply, ¶¶26-35.
[160] Claimant's Rule 41 Rejoinder, ¶¶12-32.
[161] Claimant's Rule 41 Rejoinder, ¶¶17-20.

inconsistent with the interpretive rules set out in article 31(1) of the VCLT[162] and must be rejected. Article 2(1) of the BIT excludes from its scope "*disputes and/or claims arising from facts that occurred before its entry into force*".[163] Nothing less, nothing more. It is a reflection of the general principle of non-retroactivity of international treaties.[164] Contrary to Angola's assertions, there is no requirement that the bulk of the facts relating to the Parties' dispute occur after the BIT's entry into force.[165]

158. These alleged requirements are also not found in the authorities cited by Angola. The Respondent relies on the decisions in *Mabco v. Kosovo* and *Spence v. Costa Rica* to argue that "*claims arising out of pre-entry-into-force facts are excluded even if the dispute surfaced later*" and the "*continuation, implementation, or consequential effect of pre-entry conduct*" are excluded from the Tribunal's jurisdiction.[166]

159. While the *Mabco* and *Spence* decisions involved factual inquiries into whether post-treaty conduct was independently actionable, they do not endorse the Respondent's broader proposition that claims with any connection to pre-treaty circumstances are excluded from the treaty's scope. Indeed, the *Mabco* tribunal accepted jurisdiction over the investor's denial of justice claim, because the acts that the claimant had cited as constituting the breach occurred after the treaty's entry into force.[167] In *Spence,* the tribunal found that post-treaty facts may even have "*deep roots in pre-entry into force or pre-critical limitation date conduct*" – as long as such pre-BIT facts do not "*form the foundation of a finding of liability*", they do not preclude a tribunal's *ratione temporis* jurisdiction.[168] Therefore, Angola's interpretation of article 2(1) of the BIT must be rejected.

(ii) The installation and connection of the Four Turbines to the grid constitute independently actionable post-BIT conduct

160. According to Angola, the Tribunal does not have jurisdiction *ratione temporis* because the installation and connection of the Four Turbines are not sufficiently

[162] **RL-0011**, Vienna Convention on the Law of Treaties, 23 May 1969, article 31(1) ("*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*").
[163] **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 2(1).
[164] The principle is enshrined in article 28 of the VCLT (**RL-0011**, Vienna Convention on the Law of Treaties, 23 May 1969, article 28). Notably, in its Rule 41 Submission, Angola acknowledged that "*Article 2(1) reflects the principle of the non-retroactivity of international treaties, a customary international rule*" (Respondent's Rule 41 Submission, ¶124). The Claimant concurs.
[165] Statement of Defence, ¶299.
[166] Statement of Defence, ¶¶292, 296.
[167] **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, 30 October 2020, ¶¶476-477, 479.
[168] Claimant's Rule 41 Rejoinder, ¶¶38-41; **RL-0073**, *Spence International Investments, LLC, Berkowitz, et. al v., Republic of Costa Rica*, ICSID Case No. UNCT/13/2), Interim Award (Corrected), 30 May 2017, ¶¶210, 222.

detached from Angola's pre-BIT conduct.[169] In support of its position, Angola claims that (i) IGAPE's communication to MINEA of 5 May 2020 is the relevant "but for" event and occurred before the entry into force of the BIT,[170] and (ii) the shipment of some of the turbines and the installation of a part of one of them predate the BIT.[171]

161. The Claimant rejects the Respondent's arguments, for the reasons set out below.

(a) The relevant criteria to ascertain the consummation of the expropriation in the present case

162. As explained in the Claimant's Rule 41 Response, the timing of expropriation is a fact-sensitive question that is to be determined on a case-by-case basis. It is the effect of the State's interference on the investor, rather than the form or the time of the decision, that is key.[172]

163. In typical cases of direct expropriation, the ascertainment of the moment of consummation of the expropriation is straightforward. As explained in the Statement of Claim[173], typical cases of direct expropriation include the outright taking or seizure of an investor's property.

164. The concepts of taking and seizure evoke the central element of the criminal offences of theft and robbery: in Angolan and Portuguese law, the *furto* or *roubo* is consummated with the *subtração (de coisa móvel alheia)*; in German law, the *Diebstahl* or *Raub* is consummated with the *Wegnahme (einer fremden beweglichen Sache)*; in Spanish law, the *hurto* or *robo* is consummated with the *sustracción* or *apoderamiento (de la cosa mueble ajena)*. All these are tantamount to the taking or seizure (of another's movable property) as routinely referenced by investment arbitration tribunals examining direct expropriations.

165. In such cases, the expropriation is consummated at the moment the property is taken or seized. And such taking or seizure consists in withdrawing the thing from one person's custody and integrating it into another's custody. Portuguese legal sources require that "*the object be transferred from the sphere of dominion of one person to the sphere of dominion of another person*";[174] German legal sources use the term "*breaking of another's custody and the establishment of one's own custody*";[175]

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[169] Statement of Defence, section 3.4.2, ¶¶304-329.
[170] Statement of Defence, section 3.4.2.2, ¶¶310-329.
[171] Statement of Defence, section 3.4.2.1, ¶¶307-309.
[172] Claimant's Rule 41 Response, ¶150.
[173] Statement of Claim, ¶106.
[174] **CLA-129**, Judgement of the Lisbon Court of Appeal No. 571/14.4, 12 May 2015, p. 20.
[175] **CLA-130**, Judgement of the German Federal Court of Justice, Case No. 3 StR 209 87, 16 December 1987, ¶18, p. 5.

Spanish legal sources use the expression: "*removal from the custodial sphere of the owner and establishment of a new custodial sphere by the perpetrator*".[176]

166. However, the present case is different from the typical case in that the Claimant's property was already in the Respondent's custody when the expropriation occurred. Thus, the concepts of taking and seizure are not directly helpful here. Instead, it is appropriate to draw on the criteria developed for ascertaining the moment of consummation of a different criminal offence against property, namely, the offence of embezzlement: *abuso de confiança*, in Angolan[177] and Portuguese[178] law, *Unterschlagung*, in German law,[179] *apropiación indebida*, in Spanish law.[180]

167. Under all of these legal systems, the decisive criterion to distinguish a consummated crime from mere preparatory acts is *interversio possessionis*, where a person who initially held property on behalf of another (as a detentor or holder) begins to possess it for themselves as the owner (with *animus domini* or *animus rem sibi habendi*):

(i) In common law systems, this element is referred to as "conversion", as explained by the U.S. Supreme Court:[181]

> *"The notion of 'fraudulent conversion,' at the heart of embezzlement* […] *is a fraudulent appropriation of a thing to one's own use and beneficial enjoyment, or an unauthorized assumption and exercise of dominion or right of ownership over it in defiance of, or exclusion of, the owner's rights".*

(ii) Portuguese and Angolan law are similar in this regard. As explained by the Tribunal da Relação de Coimbra, citing the Portuguese Supreme Court:[182]

> *"The offence of breach of trust* [abuso de confiança] *is consummated when the person who received the movable property under a title not transferring ownership appropriates it and begins to act animo domini".*

This moment is also referred to as "*inversão do título de posse*". In this regard, the Supremo Tribunal de Justiça explained:[183]

> *"The appropriation consists of the conduct that externally and materially reveals the inversion of the title of possession* [*i.e.*, conversion]*, which is the essential moment for*

[176] **CLA-131**, Judgement of the Spanish Supreme Court No. 125/2011, 28 February 2011, p. 5.
[177] **CLA-132**, Angolan Criminal Code and Criminal Procedure Code, art. 404, 11 November 2020, article 404, p. 2.
[178] **CLA-133**, Portuguese Criminal Code, 1995, art. 205 , article 205, p. 2.
[179] **CLA-134**, German Criminal Code, § 246, 15 May 1871, p. 2.
[180] **CLA-135**, Spanish Criminal Code, 1995, art. 253, p. 2.
[181] **CLA-136**, Judgement of the U.S. Court of Appeals for the First Circuit, 955 F. 2nd 99, 28 January 1992, p. 4.
[182] **CLA-137**, Judgment of the Coimbra Court of Appeal No. 2722/05, 23 November 2005, p. 7.
[183] **CLA-138**, Judgment of the Portuguese Supreme Court No. 03P2142, 24 March 2004, p. 16 (emphasis added)

fulfilling the elements and consummation of the offence; ***the intent existing prior to the reversal of the title of possession is irrelevant for purposes of the elements of the offence****".*

(iii) German law requires the element of "*Zueignung*" (appropriation). The German Federal Court of Justice (BGH) explained in this regard:[184]

> *"According to the Senate's* […] *view, appropriation within the meaning of § 246(1) of the German Criminal Code (StGB) requires that the perpetrator incorporate the item or the economic value embodied therein into his or her assets, at least temporarily, and permanently deprive the owner of the right to use it.* […] ***A mere manifestation of the intent to appropriate does not suffice****.*
>
> […]
>
> *Even according to previous case law, embezzlement of objects subject to a transfer of ownership for security purposes requires that the perpetrator—beyond merely 'retaining' them—exhibit conduct from which it can be concluded that he is 'behaving' as the owner, whereby concealment* […]*, but also use of the equipment, may be sufficient if it results in a significant loss of value".*

As with Angolan and Portuguese law, a prior manifestation of intent is irrelevant, but the criminal offence is consummated only once the perpetrator outwardly exhibits the behaviour of an owner, for example, by using equipment and thereby causing significant loss of value.

(iv) According to the Spanish Supreme Court, consummation of the offence of *apropiación indebida* occurs when "*the perpetrator disposes of that which he held on an interim basis as if he were the owner*".[185] In this regard, the Spanish Supreme Court assesses whether the "*point of no return*" has been crossed, which it identifies as the moment at which either (i) a definitive intention not to deliver or return the asset becomes apparent, or (ii) the delivery or return of the asset becomes impossible.[186]

168. Even though, of course, none of the foregoing is directly applicable to the provision on expropriation contained in the BIT, we submit that the convergent criteria developed in different legal systems to ascertain the moment of consummation of the offence of embezzlement provide useful orientation and may be applied by analogy to the question of when the expropriation was consummated in the present case under the BIT.

169. All examined legal systems require an actual exercise of dominion or act of disposition. And they all have in common that the mere – prior – manifestation of an intent to appropriate is not sufficient to consummate the embezzlement.

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[184] **CLA-139**, Judgement of the German Federal Court of Justice, Case No. 6 StR 191 23, 29 November 2023, p. 4.
[185] **CLA-140**, Judgement of the Spanish Supreme Court No. 236/2025, 13 March 2025, p. 8.
[186] **CLA-141**, Judgement of the Spanish Supreme Court No. 212/2026, 11 March 2026, p. 17.

170. Some legal systems require an element of finality, such as the above described "point of no return" under Spanish law. This notion has also been posited in the context of expropriation under investment treaties. We already quoted George Christie as follows in a previous brief:[187]

> *"When a seizure which is not originally deemed to be an expropriation ripens into one, the date of 'taking' should not be held to go back to the time when the property was initially seized, but the 'taking' should, rather, date from the* ***time at which it is determined that there was no reasonable prospect that the property would ever be returned****".*

171. Such finality or "point of no return" is crossed if the object held in custody is used and such use causes it significant loss of value. This criterion is expressly articulated in German law,[188] but the same result follows implicitly from the other legal systems examined: where the custodian exercises dominion over the object as if he were the owner – by putting it to productive use for his own benefit – such use necessarily entails wear, depreciation and loss of value, rendering the return of the original object impossible. What can be returned is an *aliud*; it is no longer the original object. And this is so – under all legal systems – regardless of whether the perpetrator purports to harbour an intention to later return the object.

(b) The expropriation of the Four Turbines was consummated with installation and connection to the power grid, *i.e.*, with entry into operation

172. IGAPE was appointed by the Provincial Court of Luanda as judicial custodian. In that capacity, it was entrusted with the custody of the Four Turbines and bound to preserve and safeguard them pending a final determination by the Court.

173. However, when PRODEL installed the Four Turbines in its power plants and began operating them, Angola unlawfully appropriated them for its own benefit – namely, the production of electricity within its territory. In doing so, it consummated the conversion of the Four Turbines, *i.e.*, it exercised dominion over them with *animus domini.*

174. There is no other plausible characterisation of such conduct. At that point, Angola's authorities ceased to act as custodians and began acting as owners of the Four Turbines. That is the moment at which the appropriation was consummated, as the State's conduct became definitively and irreconcilably incompatible with its obligation to preserve and return the assets.

175. Even during the installation process, the Four Turbines could, in principle, have been returned to Aenergy, provided they were properly maintained and

[187] **CLA-52**, What Constitutes a Taking of Property Under International Law?, George C. Christie, 38 Brit. Y.B. Int'l L. 307-338, 1962, , p. 337 (emphasis added).
[188] *See* ¶39 above.

safeguarded. However, once the Four Turbines began operating, they ceased to be the same assets that had been entrusted to IGAPE's custody. A turbine that has been installed in a power plant and put into operation is an *aliud* – a fundamentally different thing – from the new, unused turbine that existed prior to that point. In short, they are no longer the same turbines.[189]

176. In any event, the theoretical possibility of reversing the appropriation does not undo the consummation of the expropriation. The fact that the Four Turbines are mobile and could, in theory, be disconnected and physically returned does not alter this conclusion. Once Angola has disposed of the assets as its own, the expropriation is complete, regardless of whether restitution remains technically feasible (*quod non*, as further explained below).[190]

(c) IGAPE's communication to MINEA of 5 May 2020 did not consummate the expropriation

177. Angola seeks to rehash an argument it had already put forward in support of its Rule 41 Objection.

178. Angola had argued that an expropriation does not take place at the moment the taking is actually carried out but rather at the moment the decision to carry it out is taken.[191] On that basis, it posits that the events claimed by the Claimant to constitute an expropriation fail to meet the standard of a "stand-alone breach".[192]

179. In support of its Rule 41 Objection, Angola submitted that "*Presidential Order No. 177/21 is the 'but for' event of the Claimant's expropriation claim*".[193] Now, Angola has simply switched out the "*but for*" event and claims – with the same emphatic certainty as before – that "*IGAPE's decision to hand over the seized turbines is the 'but-for' event of the Claimant's expropriation theory*".[194]

180. To refute this reworked argument, we refer *mutatis mutandis* to our previous submissions.[195] In addition, we submit the following:

181. The fact that IGAPE's communication of 5 May 2020 may form part of the causal chain leading to the expropriation is irrelevant. There are multiple circumstances that constitute "but for" events for the installation of the Four Turbines in Angola's

[189] *See* ¶292 below.
[190] *See* ¶¶171,175 above.
[191] Respondent's Rule 41 Submission, ¶¶138, 144, 146. *See* Claimant's Rule 41 Response, ¶¶154-157.
[192] Respondent's Rule 41 Submission, ¶150. *See* Claimant's Rule 41 Response, ¶¶158-161.
[193] Respondent's Rule 41 Reply, ¶67. *See* Claimant's Rule 41 Rejoinder, ¶¶65-71.
[194] Statement of Defence, ¶329; **R-0070**, IGAPE's letter to the Minister of Energy and Water, 5 May 2020. *See also* Statement of Defence, ¶¶321-322, 326.
[195] Claimant's Rule 41 Rejoinder, ¶¶65-71.

power plants and their connection to the grid; this does not render any of them determinative of the expropriation claim.

182. Critically, the very document on which Angola relies expressly confirms that IGAPE was acting in its capacity as custodian – not as owner – and that the Four Turbines remained under judicial custody throughout. The text of IGAPE's letter is unambiguous in this regard. IGAPE begins by identifying itself as "*Trustee of the assets seized*"[196] – that is, the court-appointed trustee of the seized assets – and grounds its statements exclusively in article 843 of the CPC, which governs the duties of a judicial depositary. It then expressly reaffirms its ongoing accountability to the Provincial Court of Luanda: "[A]*s Trustee, IGAPE, under the terms of the aforementioned legal provision, must report on its administration to the Court*".[197] Far from manifesting an intention to appropriate the Four Turbines, IGAPE's letter is the act of a custodian seeking – however misguidedly – to discharge its preservation duties within the framework of the judicial proceedings.

183. Angola's own submission confirms as much:[198]

> *"On 5 May 2020, IGAPE—acting in its capacity as Trustee and bound to administer the assets with the diligence and care of a prudent person—determined to deliver the Four Unsolicited Turbines to MINEA so that they could be put to use and thereby protected from deterioration. This course of action comported with IGAPE's duties under Article 843 of the Angolan CPC".*

184. This is fatal to Angola's argument. As explained above, the mere manifestation of an intent to appropriate an object held in custody is not sufficient to consummate the expropriation.[199] Here, IGAPE's communication of 5 May 2020 does not even manifest such intent: IGAPE expressly stated that it was still acting as custodian. The letter did not transfer title; it did not purport to extinguish Aenergy's ownership; it did not declare the Four Turbines to be State property; it did not even purport to authorise their permanent use. On the contrary, it preserved the *status quo*.

185. To be clear, the Claimant does not accept that putting the Four Turbines into operation constituted an appropriate measure for their preservation; on the contrary, operating the turbines was quite evidently inconsistent with a custodian's duty to safeguard and maintain the assets in their original condition. However, even if IGAPE erred in its understanding of what its custodial mandate permitted, that error remains precisely that – a misjudgement as to the scope of permissible custodial conduct, expressed in an internal communication between Angolan administrative bodies – and not an act of appropriation. The plain language of the letter confirms

[196] **R-0070**, IGAPE's letter to the Minister of Energy and Water, 5 May 2020, p. 3.
[197] **R-0070**, IGAPE's letter to the Minister of Energy and Water, 5 May 2020, p. 3.
[198] **R-0070**, IGAPE's letter to the Minister of Energy and Water, 5 May 2020, p. 3.
[199] *See* ¶169 above.

as much: IGAPE continued to hold the Four Turbines as trustee on behalf of the Court and was acting as such, not as owner.

186. Moreover, it is far from clear what the purported "delivery" of the Four Turbines to MINEA even entailed, given that PRODEL already had physical custody of the Four Turbines at the time of IGAPE's communication, as further addressed below.[200]

187. Even accepting Angola's broader reading of the letter, the *act of authorising* the delivery of the turbines to MINEA is not, in and of itself, an act of appropriation. For instance, an administrative authorisation that is never carried into effect cannot deprive the owner of title, possession, or access to the benefit and economic use of his property. It is the execution, not any previous communication, that constitutes the taking. The mere communication is, at most, a preparatory step; it produces no deprivation and gives rise to no independently actionable breach.

188. Angola once again relies on *Mabco Constructions SA v. Kosovo*, *Carrizosa v. Colombia*, and *Spence International Investments v. Costa Rica*,[201] which have been discussed in detail in the Rule 41 phase. Thus, the Claimant refers to the relevant sections of his Rule 41 Rejoinder[202] as well as above.[203] Below, the Claimant addresses these cases specifically in relation to Angola's argument concerning IGAPE's communication of 5 May 2020.

189. *First*, Angola's reliance on *Mabco v. Kosovo* is misplaced.[204] In *Mabco*, the pre-BIT act that the tribunal found to be "*sufficiently definitive*" was an official State decision ordering the execution of a withdrawal of identified shares[205] – an unambiguous, formal act of dispossession. By contrast, IGAPE's communication of 5 May 2020 cannot be deemed "sufficiently definitive". It was a communication from a court-appointed trustee acting in its custodial capacity to a ministry, which was framed in the language of custodial administration, not of appropriation. Critically, IGAPE's communication was issued without the knowledge or involvement of the Provincial Court of Luanda, the sole authority competent to authorise the disposition of seized assets.[206]

190. *Second*, Angola invokes *Carrizosa v. Colombia* for the proposition that the installation and commissioning of the Four Turbines are not independently actionable, because adjudicating them would require a finding on the lawfulness of

[200] *See* ¶¶201-203 below.
[201] Statement of Defence, ¶¶316-327.
[202] Claimant's Rule 41 Rejoinder, ¶¶20(ii), 26-28, 39-41, 69.
[203] *See* ¶¶158-159 above.
[204] Statement of Defence, ¶¶324-326.
[205] **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, 30 October 2020, ¶467.
[206] *See* **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶129, 132-133, 140.

IGAPE's pre-treaty communication.[207] This argument misapplies the reasoning of *Carrizosa*. In that case, the post-treaty act on which the claimant relied was a 2014 judicial decision that did no more than confirm a prior pre-treaty judicial decision. The tribunal found that it was not independently actionable because the claimant had not identified a violation distinct from the pre-treaty measures.[208] The present case is fundamentally different.

191. *Third*, Angola relies on *Spence v. Costa Rica* for the proposition that the installation and commissioning of the Four Turbines is, at most, the continuation or implementation of a pre-existing legal regime, which does not constitute an independently actionable breach.[209] However, this analogy is inapt. At the outset, the *Spence* tribunal did not find that all of the measures challenged by the claimant fell outside of the tribunal's jurisdiction – judicial decisions that determined the compensation due for the alleged expropriation were found to be independently actionable.[210]

192. Moreover, the *Spence* tribunal's rejection of jurisdiction over the remaining claims rested on the finding that the post-treaty conduct challenged by the claimants was dependent on pre-treaty conduct, including formal declarations of public interest published in the official gazette, formal decrees of expropriation, and final acts of dispossession.[211] IGAPE's communication of 5 May 2020 is evidently not equivalent to such acts. In the present case, the installation and connection of the Four Turbines is not the implementation of a pre-existing expropriatory regime; it is the constitutive act of expropriation, and as such, independently actionable.

193. In sum, IGAPE's communication of 5 May 2020 is irrelevant to the timing of the expropriation. The expropriation was consummated when the Four Turbines were installed in Angola's state-owned power plants and connected to the national grid – that is, when they were put into operation and began being used by Angola as if they were State property. Angola itself has confirmed that this occurred after the BIT entered into force on 22 December 2021.[212] The Tribunal therefore has jurisdiction *ratione temporis* over the Claimant's expropriation claim.

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[207] Statement of Defence, ¶¶316-318.
[208] **RL-0013**, *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No ARB/18/5, Award, 19 April 2021,¶¶157-167. In this case, the claimant's own statement at the hearing was that the 2014 order "*had the effect of finally removing, without compensation, Claimant's entitlement to the value of her investment in Granahorrar that had been embodied in the 2007 Judgment*".
[209] Statement of Defence, ¶327.
[210] **RL-0073**, *Spence International Investments, LLC, Berkowitz, et. al v., Republic of Costa Rica*, ICSID Case No. UNCT/13/2), Interim Award (Corrected), 30 May 2017, ¶286.
[211] **RL-0073**, *Spence International Investments, LLC, Berkowitz, et. al v., Republic of Costa Rica*, ICSID Case No. UNCT/13/2), Interim Award (Corrected), 30 May 2017, ¶¶55, 70, 96(c).
[212] Statement of Defence, ¶307. *See* ¶¶147-176 above.

(d) Neither the transportation of the Four Turbines nor the use of consumables and isolated elements consummated the expropriation

194. Angola argues that the Tribunal lacks jurisdiction *ratione temporis* on the basis that, even applying the Claimant's own standard, his claim would fail because some of the turbines were shipped, and a part of one of the turbines was cannibalised and installed prior to the entry into force of the BIT.[213]

195. This argument deliberately mischaracterises the Claimant's position in these proceedings. The Claimant has consistently maintained that the treaty breaches – and, in particular, the expropriation – materialised upon the installation and connection of the Four Turbines to Angola's power grid.[214]

196. Indeed, the Claimant has already explained that the fact that PRODEL moved the Four Turbines between its premises did not entail an appropriation, as they expressly remained in judicial custody and could have been returned to the Claimant without significant loss of value.[215] The physical transportation of the turbines from one location to another is a logistical act that, in and of itself, does not amount to an appropriation; it was merely a preparatory step.

197. Angola asserts that, as early as May 2020, PRODEL removed consumables (such as filters and oil) that had been seized as part of the preventive seizure of the Four Turbines, and used them in its power plants.[216] Angola further asserts that it removed the engine of turbine No. 7267575 for use in the Xitoto Power Plant, and that this component was in operation as early as November 2020.[217]

198. Neither the use of consumables nor the use of isolated components is equivalent to the appropriation of a turbine as a whole, let alone of the Four Turbines. A turbine is an integrated unit comprising multiple components; the use of consumables or of individual components does not, without more, constitute the commencement of operations of the turbine itself. The Four Turbines are defined by reference to their complete configuration, and it is each turbine as a whole that constitutes the protected investment. On Angola's own account, the Four Turbines were not operational in their complete configuration until 2022.

[213] Statement of Defence, ¶¶307-309.
[214] *See* ¶¶147-176 above. *See also* Statement of Claim, ¶¶70, 146, 161(iv), 164, 167, 176, 188, 211, 215, 226.
[215] Claimant's Rule 41 Response, ¶152.
[216] *See* **R-0071**, PRODEL's letter to IGAPE, 13 May 2020.
[217] Statement of Defence, ¶307.

(iii) IGAPE's actions fall within the jurisdiction of the Tribunal

199. The Respondent contends that, since IGAPE supposedly delivered the Four Turbines to PRODEL in May 2020 – *i.e.*, before the BIT entered into force – any treaty violation attributed to IGAPE must necessarily fall outside the temporal scope of the BIT.[218] The Respondent further maintains that the latest point in time at which an obligation to safeguard and preserve the Four Turbines could have been breached is the date of the expropriation itself. Accordingly, in Angola's view, if the Tribunal were to find that the expropriation occurred prior to the BIT's entry into force, the failures of IGAPE and the Provincial Court of Luanda to safeguard and preserve the Four Turbines would likewise fall outside the temporal scope of the BIT, which would in turn mean that the Claimant's FET and FPS claims fall outside the Tribunal's jurisdiction *ratione temporis*.[219]

200. The Respondent's objections fail for the following reasons.

201. *First*, the Respondent's contention that the Four Turbines were "*delivered*" to PRODEL is both factually unclear and legally immaterial to the present dispute.[220]

202. It is unclear what exactly transpired as a result of IGAPE's 5 May 2020 communication, given that PRODEL already had physical custody of the Four Turbines at that time.[221] In any event, the practical significance of this purported delivery is limited, since it was the connection of the Four Turbines to the national power grid – not their delivery to PRODEL – that consummated the expropriation.[222]

203. IGAPE's letter changes nothing in substance: PRODEL already had physical custody of the Four Turbines, and the letter merely confirms that IGAPE avails itself of MINEA/PRODEL as an auxiliary in the discharge of its obligations as court-appointed trustee, while expressly reaffirming those custodial responsibilities *vis-à-vis* the Provincial Court of Luanda.

204. *Second*, the Respondent's contention that the Claimant's FET and FPS claims fall outside the Tribunal's *ratione temporis* jurisdiction is incorrect. The conduct on which the Claimant relies to establish breaches of the FET and FPS standards – namely, the failures by IGAPE and the Provincial Court of Luanda to safeguard and preserve the Four Turbines – is the very conduct that allowed and facilitated their installation and use by Angola.[223] Therefore, the damage resulting from those breaches materialised when the Four Turbines were installed, connected to the grid,

[218] Statement of Defence, ¶331.
[219] Statement of Defence, ¶332.
[220] Statement of Defence, ¶331.
[221] Statement of Claim, ¶30.
[222] *See* ¶¶172-176 above.
[223] *See* section IV.B, ¶¶322-394 below; Statement of Claim, sections V.B and V.C, ¶¶130-188.

and put into operation – which, on Angola's own evidence, occurred after the BIT entered into force.[224] Accordingly, the facts constituting the breaches of the FET and FPS standards fall squarely within the temporal scope of the BIT.

205. Consequently, Angola's *ratione temporis* objection regarding the Claimant's FET and FPS claims must also fail.

(iv) The loss in value of Aenergy's shares occurred after the BIT's entry into force

206. In the Statement of Claim, Mr Machado explained that, should the Tribunal find that he lacks standing to bring direct claims for breaches of FET and/or FPS (*quod non*), he alternatively claims compensation for the loss in value of his shares in Aenergy.[225]

207. Angola's last objection to the Tribunal's jurisdiction *ratione temporis* is that any damages related to the loss in value of the Claimant's shares in Aenergy predate the BIT's entry into force. In particular, Angola argues that any alleged diminution in the value of Mr Machado's shares must necessarily have been caused by (i) MINEA's termination of the 13 Contracts on 2 September 2019, or, at the latest, (ii) the Provincial Court of Luanda's seizure of the Four Turbines on 6 December 2019.[226]

208. In support of this contention, Angola relies on a statement made by Mr Machado during his testimony in one of the U.S. proceedings.[227] However, Mr Machado's statement referred to the destruction of Aenergy's business reputation at the time (specifically, that Angola's actions had "*destroyed AE's reputation, making it impossible at this time to operate in the energy sector*").[228] Mr Machado did not state, as the Respondent alleges, that the value of Aenergy's shares had been reduced to zero.

209. Moreover, the Claimant does not deny that certain acts predating the BIT's entry into force substantially eroded the value of Aenergy and, consequently, of Mr Machado's shareholding. However, the Claimant's claim is not predicated on those prior reductions in value; rather, it is based on the loss of the residual value that Aenergy retained by virtue of its ownership of the Four Turbines. [229]

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[224] Statement of Defence, ¶307. *See also* ¶149 above.
[225] Statement of Claim, section VI.B.3, ¶¶223-227.
[226] Statement of Defence, ¶335.
[227] Statement of Defence, ¶336.
[228] **R-0112**, Declaration of Ricardo Machado in Support of Plaintiff`s Opposition to Defendant`s Motions to Dismiss before the SDNY, 2 November 2020, p. 6.
[229] *See* ¶¶481-482 below.

210. That residual value was destroyed only after the BIT's entry into force. Therefore, Angola's objection must fail.

b. Mr Machado's claim is not abusive

211. The Respondent alleges that the Claimant is manipulating the facts of the present case in order to circumvent the BIT's *ratione temporis* limitation, contending that this amounts to an abuse of process.[230] In particular, the Respondent argues that (i) the Claimant cannot depart from Aenergy's allegations in prior proceedings by invoking their separate legal personality, and (ii) his claims misstate the facts to manufacture jurisdiction under the BIT.[231]

212. *First*, Angola has again failed to present any legal basis that would prevent Mr Machado from bringing a claim under his own name in the present arbitration while pursuing a different claim under Aenergy's name in the U.S. proceedings.[232] Both claims are distinct in several material respects, as explained in the Claimant's Rule 41 pleadings.[233]

213. As the Tribunal explained in its Rule 41 Decision, "*Aenergy's prior statements before the U.S. Courts do not constrain the Claimant's right to present his case as he deems appropriate in this arbitration. This conclusion is especially relevant considering that the Parties to this dispute are not the same parties to the U.S. Proceedings*".[234]

214. *Second*, to the extent that any inconsistencies exist between the claims made by the Claimant in this arbitration and allegations made by Mr Machado and Aenergy in prior proceedings, this is in part because new information has emerged in the interim.[235] Nothing prevents Mr Machado from relying on this new information in the present proceedings. In any event, any such inconsistencies are also attributable to Angola, since much of the information Mr Machado and Aenergy have relied on – both in the U.S. proceedings and in this arbitration – originated directly from Angolan authorities.[236]

215. The Respondent cites several cases to contend that tribunals have applied the abuse of process doctrine to dismiss claims that seek to obtain an illegitimate procedural advantage or where tribunals have found that parties acted in bad faith.[237] However,

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[230] Statement of Defence, ¶268.
[231] Statement of Defence, ¶268.
[232] *See* Claimant's Rule 41 Response, ¶¶6, 163, 165; Claimant's Rule 41 Rejoinder, ¶¶80-84.
[233] *See* Claimant's Rule 41 Rejoinder, ¶¶96-113.
[234] Decision on the Respondent's Rule 41 Objection, ¶88.
[235] *See* Claimant's Rule 41 Response, ¶¶162-185.
[236] *See* Claimant's Rule 41 Response, ¶164.
[237] Statement of Defence, ¶¶263-267.

the cases cited by the Respondent are distinguishable from the present case and, consequently, irrelevant:[238]

(i) *Phoenix Action v. Czech Republic*:[239] As Angola itself acknowledges, the tribunal in that case found that the corporate restructuring of an investor was carried out for the sole purpose of gaining access to ICSID jurisdiction and, consequently, constituted an abuse of process. The Respondent has not even attempted to advance this argument in the present case – *i.e.*, that Aenergy was constituted as a means for Mr Machado to gain access to ICSID jurisdiction. For the avoidance of doubt, Aenergy was founded in 2012. The present case is therefore manifestly distinct from *Phoenix Action*, and the Respondent's comparison is inapposite.[240]

(ii) *Inceysa v. El Salvador*:[241] The conclusion extracted by Angola from this award is a plain fabrication. According to the Respondent, the tribunal held that "*when the constitutive elements of the investment reveals manipulation, the conclusion is also one of abuse of rights*".[242] However, this does not follow from the cited decision. The tribunal in that case did not find that there was an abuse of rights – in fact, the term does not appear once throughout the award.[243] What the tribunal found was that, through deceit, "***Inceysa** violated the principle of good faith from the time it made its investment and, therefore, it did not make it in accordance with Salvadoran law*".[244] In any event, there was neither manipulation nor deceit in the present case on the Claimant's side, and Angola's misrepresentation is thus irrelevant.

(iii) *Waste Management v. Mexico*:[245] The Respondent's reliance on this award is difficult to follow, as the paragraphs it cites bear no relation to the arguments it advances. The paragraphs in question are merely an account of the procedural history and the facts of the dispute. In any event, the award does not support Angola's proposition elsewhere either.

In that case, Mexico raised a preliminary objection on the basis that the claimant was entitled to only one attempt at NAFTA Chapter 11 arbitration.

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[238] Statement of Defence, ¶¶264-267.
[239] Statement of Defence, ¶¶264,266; **RL-0023**, *Phoenix Action Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award, 15 April 2009.
[240] It is also worth noting that the Respondent concludes its analysis by asserting that the tribunal in *Phoenix Action* held that "*the determination of abuse of rights 'must be carried out on a case-by-case basis, in light of all relevant circumstances'*". This quotation does not appear anywhere in that decision.
[241] Statement of Defence, ¶265; **RL-0059**, *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006.
[242] Statement of Defence, ¶265.
[243] **RL-0059**, *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006.
[244] **RL-0059**, *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006, ¶239 (emphasis in original).
[245] Statement of Defence, ¶267; **RL-0072**, *Waste Management, Inc. v. United Mexican States*, ICSID ARB(AF)/00/3, Award, 30 April 2004.

> The tribunal rejected this objection, finding nothing in Chapter 11 that prohibits a second proceeding where the first was dismissed for a jurisdictional defect rather than on the merits.[246] The tribunal likewise dismissed Mexico's *res judicata* and abuse of process arguments, holding that a dismissal for lack of jurisdiction does not constitute a decision on the merits and that the first tribunal had not considered any issue pertaining to the merits.[247] This distinction is directly relevant to the present case, in which the U.S. proceedings initiated by Aenergy have likewise not resulted in a decision on the merits.

216. For the foregoing reasons, Angola's abuse of process objection must be dismissed. Angola has failed to identify any legal basis that would prevent Mr Machado from bringing his own claims under the BIT, has not demonstrated any manipulation of facts or bad faith on the part of the Claimant, and the authorities it invokes are either inapposite or affirmatively support the Claimant's position. As the Tribunal confirmed in its Rule 41 Decision, Aenergy's prior statements do not constrain the Claimant's right to present his case as he deems appropriate in this arbitration. Accordingly, there is no abuse of process, and the Tribunal's jurisdiction *ratione temporis* is unaffected.

C. Jurisdiction *ratione voluntatis*

217. The Respondent alleges that the Tribunal lacks jurisdiction *ratione voluntatis* because, at the time the Notice of Dispute was filed on 9 June 2022, at least two of the Four Turbines had not yet been installed and connected to the national grid.[248] According to the Respondent, the absence of a present dispute at the time of the notice deprived Angola of the opportunity to understand the precise nature of the case.[249]

218. The Respondent does not articulate the requirements for jurisdiction *ratione voluntatis*, let alone apply them correctly to the present case. In the following sections, the Claimant will explain why the Respondent's objection must fail.

1. The relevant standard

219. Angola has not pointed to a single authority requiring that the notice of dispute incorporate all relevant facts of the claim.

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[246] **CLA-142**, *Waste Management v. Mexico (II)*, ICSID Case No. ARB(AF)/00/3, Decision on Mexico's Preliminary Objection concerning the Previous Proceedings, 26 June 2002, ¶¶26-27.
[247] **CLA-142**, *Waste Management v. Mexico (II)*, ICSID Case No. ARB(AF)/00/3, Decision on Mexico's Preliminary Objection concerning the Previous Proceedings, 26 June 2002, ¶¶39, 43, 46.
[248] Statement of Defence, ¶18.
[249] Statement of Defence, ¶¶341-347.

220. Indeed, investment tribunals have repeatedly held that facts occurring after the filing of a notice of dispute may be admitted in the proceedings, provided they are related to the dispute that gave rise to the notice and do not alter the character of the case. To hold otherwise would produce unreasonable and inefficient outcomes, requiring the same dispute to be fragmented into multiple arbitrations or restarted each time a related fact materialised after the original notice.

221. *In RREEF v. Spain*, for instance, the claimant had duly complied with the ECT's notice and waiting period requirement but subsequently expanded its claims to cover three additional measures adopted by Spain during the course of the proceedings. Spain objected on the basis that those additional claims had not been subjected to the ECT's notice and waiting period procedure. The tribunal rejected that objection and affirmed its jurisdiction over the additional claims, holding that the determinative question was whether the additional claims changed the character of the case. The tribunal further observed that it would be unreasonable to require the claimant to initiate a new proceeding for facts that were related to the initial claim:[250]

> *"*[…] *the Tribunal is of the view that* ***the core issue is whether the additional claims change the character of the case****: if yes, then they are not part of the dispute, the new claims must be declared inadmissible and the Tribunal must abstain to exercise jurisdiction. If this is not the case, the objection must be dismissed since (i) it can be admitted that the cooling-off period will have elapsed at the time the Tribunal's decision is taken and (ii)* ***it would be totally artificial and unreasonably heavy to request the Claimant to lodge new applications directed against facts which are but the continuation of those at stake*** *in the initial Application".*

222. The tribunal in *Eiser v. Spain* reached a similar conclusion. In that case, Spain challenged the tribunal's jurisdiction with respect to three measures adopted after the claimant's notice and request for amicable settlement. The tribunal rejected the contention that each subsequent measure necessitated a separate notice, holding that the case involved a single dispute.[251] The tribunal further held that it would be unreasonable and inefficient to separate the dispute into multiple proceedings when the facts revealed an evolving situation:[252]

> *"The particular measures involved in Respondent's objection – Law 24/2013, RD 413/2014, and Order IET/1045/2014 – are not a new dispute or disputes triggering [ECT] Article 26's requirement for another request for negotiations. Articles 26(1) and (2)* ***do not require additional piecemeal requests for amicable settlement of new issues or elements arising in the course an ongoing dispute following a request for negotiations. It would be unreasonable and inefficient*** *in case like this, involving an evolving situation, to interpret Article 26 to require the dispute to be carved into multiple slices, with each new development requiring an additional request for negotiations and a subsequent request for a separate additional arbitration".*

[250] **CLA-143**, *RREEF v. Spain*, ICSID Case No. ARB/13/30, Decision on Jurisdiction, 22 November 2013, ¶226 (emphasis added).
[251] **CLA-144**, *Eiser v. Spain*, ICSID Case No. ARB/13/36, Award, 4 May 2026, ¶317.
[252] **CLA-144**, *Eiser v. Spain*, ICSID Case No. ARB/13/36, Award, 4 May 2026, ¶318 (emphasis added).

223. In the same vein, in *Kappes v. Guatemala*, the claimant had set out a national treatment claim in its notice of intent. Following measures taken by the respondent after the notice of intent was submitted, the claimant introduced a most favoured nation claim in its notice of arbitration. The respondent contended that the most favoured nation claim could not be advanced absent a corresponding notice of intent. The tribunal disagreed, holding that:[253]

> *"*[To] *require a claimant to recommence the notice of intent and waiting period process with respect to any new State conduct after its original notice of intent, before it could present any claim in the proceedings regarding that subsequent conduct - would provide potential for disruption and duplication, as well as potential for mischief".*

224. In the present case, the Claimant has not introduced any new claims: his case rests on the very same treaty breach claims that were expressly set out in the Notice of Dispute. The sole difference is that certain facts relevant to those claims – namely, the installation and connection to the grid of certain turbines – materialised after the Notice of Dispute was filed. If the *Kappes* tribunal held that even an entirely new claim could be brought without recommencing the notice and waiting period process, it follows *a fortiori* that new facts adduced in support of an existing and duly notified claim must equally be admitted.

225. Therefore, there is no rule that precludes the Claimant from including in his claim facts that materialised after the filing of the Notice of Dispute, provided those facts are related to the dispute originally notified. In an evolving situation, the core question is whether new claims change the character of the case.

2. The Tribunal has jurisdiction *ratione voluntatis*

226. Mr Machado's claim and his Notice of Dispute concern the same dispute: Angola's unlawful appropriation of the Four Turbines by deploying them in state-owned power plants. The Notice of Dispute referred to all Four Turbines as a group – not to any individual turbine or to any specific installation date. The dispute was therefore constituted, and the Parties' consent was engaged, with respect to all Four Turbines at the time the Notice of Dispute was filed.

227. The Notice of Dispute states the following:[254]

> *"The Republic of Angola's actions, through PRODEL, EP and MINEA, in deploying the seized Turbines in clear violation of the seizure procedure represents, in practical terms, an expropriation, without the adequate and effective compensation set forth by section 7 (Expropriation) of the APPRI having been paid".*

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[253] **CLA-145**, *Kappes v. Guatemala*, ICSID Case No. ARB/18/43, Decision on Respondent's Preliminary Objections, 13 March 2026, ¶199.

[254] **C-26**, Notification from Mr Machado to Angola for the amicable settlement of the dispute (with informal translation into English), 9 June 2022, p. 44.

228. Moreover, the Notice of Dispute sought the same relief as that claimed in the present arbitration – namely, compensation for the expropriation of the Four Turbines and other breaches:[255]

> *"The four Turbines and its other associated equipment, which are of Aenergy's property and have been expropriated by Angolan, have been evaluated in USD 112.800.000,00 (one hundred and twelve million, eight hundred thousand US dollars).*
> *The Investor expects to reach a negotiated settlement with the Republic of Angola. In any case, should that settlement not come to be, the Investor shall be forced to request that the Arbitral Tribunal declare that the Republic of Angola is in breach of sections 7* (Expropriation) *and 4* (Promotion and protection of investments) *of the APPRI, and that an economic compensation for the damages incurred as a result of the Republic of Angola's breach of the law be paid, in an amount not inferior to USD 112.800.000,00 (one hundred and twelve million, eight hundred thousand US dollars) plus commercial interest accrued since the date of expropriation".*

229. Angola points out that, in the Notice of Dispute, the Claimant did not specifically mention the installation of two of the Four Turbines.[256] However, Angola ignores that the Notice of Dispute referred to all Four Turbines as a group, and that Angola has deprived the Claimant of information about the Four Turbines. The Claimant has consistently maintained that he did not know – and could not have known – the exact dates of installation and commencement of operations, because Angola deliberately withheld that information.[257]

230. Moreover, Angola itself expressly refers to the Four Turbines in its answer to the Notice of Dispute: "*The investment in question* […] *constitutes four 25MW GE TM2500 turbines, with the manufacturer's serial codes MNG #7266027, #7267025, #7267575 and #7267577* […]. *Said turbines were supposedly expropriated*".[258] Angola cannot credibly contend that Mr Machado's Notice of Dispute failed to apprise it of the nature of the dispute when Angola itself confirmed, in its very response to that notice, that the measures complained of had already been carried out.

231. In this context, Angola's contention that Mr Machado "*deprived Angola of an opportunity to understand the precise nature of the dispute*" is far from credible.[259]

232. The fact that certain turbines commenced operations after the Notice of Dispute was filed does not change the character of the case. Therefore, the Respondent's objection must fail.

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[255] **C-26**, Notification from Mr Machado to Angola for the amicable settlement of the dispute (with informal translation into English), 9 June 2022, p. 47.
[256] Statement of Defence, ¶344.
[257] Claimant's Rule 41 Response, ¶4; Claimant's Rule 41 Rejoinder, ¶75.
[258] **C-16**, Angola's response to Mr Machado's notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶2.
[259] Statement of Defence, ¶347.

D. Jurisdiction *ratione personae*

233. The Claimant has submitted that Mr Machado is a protected investor under Article 25(1) of the ICSID Convention and articles 2(1) and 3(1) of the BIT.[260] The Respondent has not disputed this. Accordingly, the Tribunal has jurisdiction *ratione personae*.

III. Standing

A. The Claimant has standing to bring his claims

234. As explained in the Statement of Claim, Mr Machado has standing to bring direct claims for breaches of the expropriation, FET and FPS standards in relation to the Four Turbines, notwithstanding that he owns the Four Turbines indirectly, through Aenergy.[261]

235. Article 7(4) of the BIT expressly states that protection against unlawful expropriation covers "*the assets of a company incorporated or constituted in accordance with* [the] *law in force and in which the investors* [...] *hold assets, bonds or other forms of participation*".[262] The Four Turbines are assets of Aenergy, a company constituted in accordance with the laws of Angola and wholly owned by Mr Machado. Accordingly, the Four Turbines fall squarely within the scope of protection of article 7(4) of the BIT.

236. With respect to FET and FPS, although article 4(2) of the BIT does not expressly specify which assets fall within the scope of protection of these standards, this silence cannot be construed as excluding the assets of a company from the protection afforded by the FET and FPS standards.

237. Pursuant to article 31(1) of the VCLT, the BIT must be interpreted in good faith and in light of its object and purpose, which is the "*mutual promotion and protection of investments made by investors of each Party in the territory of the other Party*".[263] If the contracting parties explicitly chose, through article 7(4) of the BIT, to extend treaty protection to the assets of a company in which an investor holds a participation, it stands to reason – absent any indication to the contrary – that they intended those same assets to benefit from the other substantive protections afforded by the BIT, including FET and FPS. As the tribunals in *Mera v. Serbia* and *SGS v. Philippines* have recognised, it is legitimate to resolve

[260] Statement of Claim, ¶¶71-76; **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, articles 2(1) and 3(1).
[261] *See* Statement of Claim, section IV, ¶¶82-97.
[262] **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(4).
[263] **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 1.

interpretative uncertainties in a manner that favours the protection of covered investments.[264]

238. To avoid unnecessary repetition, the Claimant refers to the authorities cited in the Statement of Claim, which confirm that, where shareholders are entitled to bring direct claims for expropriation in respect of the assets of the companies they control, they are equally entitled to bring claims for breaches of FET and FPS in respect of those same assets.[265]

239. Accordingly, Mr Machado has standing to bring direct claims for breaches of the expropriation, FET and FPS standards in respect of the Four Turbines.

B. The Respondent's objections must fail

240. The Respondent does not dispute the Claimant's standing to bring an expropriation claim.[266] However, the Respondent argues that the Claimant lacks standing to bring FET and FPS claims in respect of the Four Turbines.

241. *First*, Angola argues that the treaty must be interpreted in accordance with the ordinary meaning given to its terms[267] and that the treaty reflects a deliberate and narrower allocation of rights.[268] However, the Claimant is not advancing an interpretation contrary to the ordinary meaning of the treaty's provisions. Rather, the Claimant advances a coherent and systematic interpretation of the treaty as a whole, in accordance with article 31 of the VCLT. As the ILC's Commentary makes clear, all means of interpretation set forth in article 31 of the VCLT are to be applied in a "*single combined operation*", such that "*all the different elements* […] *would be thrown into the crucible, and their interaction would give the legally relevant interpretation*".[269]

242. Accordingly, even if the "*elucidation of the meaning of the text*" is the starting point of the interpretative exercise, as Angola contends,[270] there is no hierarchy among the interpretative elements. The ordinary meaning of the terms cannot be divorced from the context, object and purpose of the treaty. As the ILC's Commentary

[264] **CLA-60**, *Mera Investment Fund Limited v. Serbia*, ICSID Case No. ARB/17/2, Decision on Jurisdiction, 20 November 2018, ¶¶121-123; **CLA-67**, *SGS Société Générale de Surveillance S.A. v. the Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, 29 January 2004, ¶116. This has been affirmed by other tribunals. *See* **CLA-146**, *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Decision on Jurisdiction, 29 April 2004, ¶31.
[265] Statement of Claim, ¶¶92-96.
[266] Statement of Defence, ¶349.
[267] Statement of Defence, ¶361.
[268] Statement of Defence, ¶365.
[269] **CLA-147**, Yearbook of the International Law Commission, 1966, Vol. II, Documents of the second part of the seventeenth session and of the eighteenth session including the reports of the Commission to the General Assembly, pp. 219-220.
[270] Statement of Defence, ¶361.

explains, "*the process of interpretation is a unity and* […] *the provisions of the article form a single, closely integrated rule*".[271]

243. Applying this integrated approach, the object and purpose of the BIT – the "*mutual promotion and protection of investments made by investors of each Party in the territory of the other Party*" – cannot be set aside in favour of a purely textual reading of article 4(2). As explained in the Statement of Claim, where a treaty aims to create and maintain favourable conditions for investments, interpretative uncertainty must be resolved in a manner that favours the protection of covered investments.[272] Accordingly, the fact that article 7(4) of the BIT expressly extends expropriation protection to the assets of a company in which an investor holds a participation does not create a negative implication excluding those same assets from FET and FPS protection.

244. The tribunal in *Casinos Austria v. Argentina* addressed a materially analogous provision and reached precisely this conclusion. In that case, Argentina argued that article 4(3) of the applicable BIT limited the protection of shareholders to expropriation claims, to the exclusion of other standards of protection such as FET and national treatment. The tribunal rejected this argument, holding that "*nothing in the text of Article 4(3) of the BIT supports such argument*" and that "*that provision was intended to grant shareholder-investors an additional cause of action when a local company, in which a covered investor holds shares, is expropriated*".[273]

245. The same reasoning applies here. Article 7(4) of the BIT was designed to confer an additional right of action in respect of expropriation – not to restrict the scope of the other substantive protections afforded by the treaty.

246. Tellingly, Angola has not cited a single case in which a tribunal held that an asset protected from expropriation under a BIT was excluded from the scope of FET and FPS protections. The absence of any such authority is not coincidental – it reflects the fact that Angola's interpretation finds no support in investment arbitration.

247. *Second*, Angola claims that shareholders' standing to bring direct claims in respect of a company's assets is a position far from settled under investment law.[274] That observation may hold true where the applicable treaty is silent on the matter. However, the Angola-Portugal BIT is not silent: article 7(4) expressly extends treaty protection to the assets of a company in which the investor holds a

[271] **CLA-147**, Yearbook of the International Law Commission, 1966, Vol. II, Documents of the second part of the seventeenth session and of the eighteenth session including the reports of the Commission to the General Assembly, p. 220.
[272] Statement of Claim, ¶88.
[273] **CLA-148**, *Casinos Austria v. Argentina*, ICSID Case No. ARB/14/32, Decision on Jurisdiction, 29 June 2018, ¶240.
[274] Statement of Defence, ¶369.

participation. The cases cited by Angola are therefore inapposite, as none of them involves a treaty provision equivalent to article 7(4) of the BIT.[275]

248. Angola relies on a commentary by Zachary Douglas to argue that the rationale for conferring direct standing on shareholders in respect of expropriation claims in relation to a company's assets cannot be extended to other standards of protection such as FET and FPS.[276] However, Douglas's commentary addresses the distinct question of whether shareholders may claim reflective loss arising from the expropriation of a company's assets or from measures that fall short of expropriation. As explained in the previous paragraph, that is not the issue in the present case. Article 7(4) of the BIT confers on Mr Machado a direct right of action in respect of the assets of Aenergy. His main claim is therefore not one for reflective loss.

249. Moreover, Angola has not engaged with, let alone distinguished, any of the authorities cited by the Claimant to establish his standing to bring these claims.[277]

250. *Third*, as regards the damages calculation for reflective loss, the Claimant refers to the damages section below.[278]

251. For the foregoing reasons, Angola's objections to the Claimant's standing are without merit. When the BIT is interpreted as a single, integrated whole – as required by article 31 of the VCLT – article 7(4) cannot be read as restricting the scope of the FET and FPS standards; rather, it confirms the contracting parties' intent to protect the assets of companies in which investors hold a participation. Angola has cited no authority to the contrary, and the cases and scholarly opinions on which it relies miss the mark. Accordingly, Mr Machado has standing to bring direct claims for breaches of the expropriation, FET and FPS standards in respect of the Four Turbines.

IV. Merits

A. Angola has unlawfully expropriated the Four Turbines

252. As set out in the Statement of Claim, the installation of the Four Turbines in Angolan state-owned power plants and their connection to the national power grid,

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[275] **RL-0020**, *CMS Gas Transmission Co. v. Argentina*, Case No. ARB/ 01/ 8, Decision of the Tribunal on Objections to Jurisdiction, 17 July 2003; **RL-0083**, *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, 31 October 2011; **RL-0084**, *Montauk Metals Inc. (formerly known as Galway Gold Inc.) v. the Republic of Colombia*, ICSID Case No. ARB/18/13, Award, 7 June 2024; **RL-0028**, *Poštová banka, a.s., Istrokapital SE v. Hellenic Republic*, ICSID Case No. ARB/13/8, Award, 9 April 2015; **RL-0026**, *ST-AD GmbH v. Republic of Bulgaria*, UNCITRAL, PCA Case No. 2011-06, Award on Jurisdiction, 18 July 2013.
[276] Statement of Defence, ¶385.
[277] Statement of Claim, ¶¶92-96.
[278] *See* ¶¶480-483 below.

coupled with the complicity of IGAPE and the Provincial Court of Luanda, constitute a breach of article 7(1) of the BIT. The same conclusion applies irrespective of whether the expropriation is characterised as direct or indirect.[279]

253. The following sections (i) address Angola's mischaracterisations of the Claimant's expropriation claim, (ii) confirm, in light of the Statement of Defence and the additional evidence now before the Tribunal, that Angola's expropriation was unlawful, and (iii) explain why the specific defences raised by Angola cannot stand.

1. The Claimant's expropriation case

254. Angola's response to Mr Machado's expropriation claim rests on two fundamental mischaracterisations of the Claimant's case, which should be addressed at the outset.

255. *First*, Angola argues that the Claimant's case rests on two limbs: (i) the installation and connection of the Four Turbines, and (ii) the abdication of custodial responsibilities by IGAPE and the Provincial Court.[280] This is incorrect. The conduct of IGAPE and the Provincial Court of Luanda is not a separate legal requirement for the claim to succeed; it is a description of the manner in which the expropriation was carried out. The Four Turbines were under judicial custody precisely because a court had ordered their preventive seizure and had appointed IGAPE as trustee. The installation and connection of the Four Turbines could only have occurred because the authorities charged with safeguarding them either actively facilitated or passively acquiesced in their appropriation.

256. *Second*, Angola misconstrues the Claimant's case by treating the "*finalizing the contracting procedure*" as one of the acts on which Mr Machado relies to establish expropriation.[281] However, the Claimant has not advanced the contracting procedure as an independent act of expropriation, nor has he ever suggested that the mere award of installation contracts constituted an appropriation of his property. The contracting procedure is relevant only as part of the factual context that explains how Angola arranged for the installation to be carried out – it is not itself a challenged measure.

257. To be clear, the Claimant's expropriation claim rests on a single, coherent set of facts: Angola has installed the Four Turbines in state-owned power plants and connected them to the national power grid, thereby removing them from judicial custody and defeating the purpose of the preventive seizure of the assets.[282] All the while, IGAPE has failed to fulfil its court-mandated custodial duties and the

[279] Statement of Claim, section V.A, ¶¶98-129.
[280] Statement of Defence, ¶399
[281] Statement of Defence, ¶¶398, 404.
[282] *See* **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶52, 121.

Provincial Court of Luanda has abdicated its judicial responsibilities,[283] eliminating any prospect of restoring the Four Turbines to judicial custody.

258. These actions amount to an expropriation of the Four Turbines, that is, either an outright taking or appropriation of the Claimant's investments (direct expropriation) or a measure having equivalent effect (indirect expropriation).[284]

2. Angola's expropriation of the Four Turbines was unlawful

259. As Mr Machado has explained,[285] Angola's expropriation of the Four Turbines was unlawful because it did not serve purposes of public interest, was not made against prompt, adequate and effective compensation, and was not carried out in accordance with legal procedures, as required by article 7(1) of the BIT.

260. Such requirements are cumulative,[286] meaning that Angola's failure to comply with any of them renders the expropriation unlawful. The following sections demonstrate that Angola has failed to satisfy any of them.

a. Angola has not acted for the purposes of public interest

261. Angola alleges, in various sections of the Statement of Defence, that it had a public-interest rationale for requesting that the Four Turbines be put into operation. In particular, Angola claims that it is in the public interest to use the Four Turbines to generate electricity and provide energy to more remote areas of the country.[287] However, Angola has failed to demonstrate that it has acted "*for purposes of public interest*" within the meaning of article 7(1) of the BIT.[288]

262. As explained in the Statement of Claim,[289] there is no evidence that Angola had a clear public interest motivation at the time of the expropriation. In its response to the Notice of Dispute, Angola put forward several contradictory justifications: that the turbines "*must not remain inactive*" due to their supposed social function, that they had "*already been wholly paid for by the Government*", and that their deployment would "*avoid the decay that would result should said turbines remain*

[283] *See* **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶52, 93, 140, 159-161, 177.
[284] *See* Statement of Claim, ¶¶102-108, 112-114.
[285] Statement of Claim, section V.A.3, ¶¶119-129.
[286] *See* **CLA-69**, Principles of International Investment Law (Second edition), Rudolf Dolzer and Christoph Schreuer, Oxford University Press, 2012 (excerpts), pp. 6-7; **CLA-21**, *Waguih Elie George Siag and Clorinda Vecchi v. Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, ¶428; **CLA-40**, *OI European Group B.V. v. Venezuela*, ICSID Case No. ARB/11/25, Award (with informal translation into English), 10 March 2015, ¶362; **CLA-47**, *Compañía de Aguas del Aconquija S.A. v. Argentina (I)*, ICSID Case No. ARB/97/3, Award II, 20 August 2007, ¶7.5.21.
[287] Statement of Defence, ¶¶14, 111, 128, 136-140, 421, 460, 483(c), 498, 523.
[288] **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(1).
[289] Statement of Claim, ¶122.

inactive".[290] These assertions are inconsistent and unsubstantiated, and consequently fail to demonstrate that the expropriation was made for purposes of public interest.

263. Angola's Statement of Defence and the supporting materials it has placed on the record do not alter this conclusion.[291] Angola relies on MINEA's letter to the Public Prosecutor's Office ("**PPO**") dated 4 March 2020,[292] the PPO's letter to the Ministry of Finance[293] and accompanying legal opinion dated 5 May 2020,[294] IGAPE's communication of 5 May 2020 to MINEA,[295] and the witness statement of Ms Monteiro to support its public interest case.[296]

264. However, IGAPE's communication of 5 May 2020 to MINEA contains no reference to public interest whatsoever. It is framed exclusively in custodial terms, entrusting the Four Turbines to MINEA "*in order to prevent corrosion and deterioration of the turbines and its parts*" pursuant to article 843 of the CPC.[297] The PPO's legal opinion reaches the same conclusion on the same basis, namely that the turbines may be put to use to prevent their deterioration, acting within the trustee's powers of administration.[298] Equally, Ms Monteiro frames IGAPE's communication in custodial and preservation terms; she has not identified a public interest as the operative legal basis for it.[299]

265. The only references to public interest in the chain of documents cited by Angola appear in MINEA's letter to the PPO and the PPO's letter to the Ministry of Finance.[300] These are not formal public interest determinations by a competent authority. Moreover, both letters refer to other considerations in addition to public interest.[301] In MINEA's letter to the PPO, the reference to public interest appears as an incidental consideration, subordinate to Angola's primary contention that it was already the rightful owner of the turbines. Tellingly, Angola asserts that: "*This*

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[290] **C-16**, Angola's response to Mr Machado's notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶25.
[291] *See* Statement of Defence, ¶¶136-143, 460,483(c).
[292] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020.
[293] **R-0068**, Letter from the PPO to the Ministry of Finance, 5 May 2020.
[294] **R-0069**, PPO's legal opinion sent to the Ministry of Finance, 5 May 2020.
[295] **R-0070**, IGAPE's letter to the Minister of Energy and Water, 5 May 2020.
[296] **RWS-02**, Witness Statement of Marinela Monteiro.
[297] **R-0070**, IGAPE's letter to the Minister of Energy and Water, 5 May 2020, p. 3.
[298] **R-0069**, PPO's legal opinion sent to the Ministry of Finance, 5 May 2020.
[299] **RWS-02**, Witness Statement of Marinela Monteiro, ¶13.
[300] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020; **R-0068**, Letter from the PPO to the Ministry of Finance, 5 May 2020.
[301] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020 ("*Considering that the price of the four turbines and accessories and other goods seized, estimated at 110 Million US dollars, was paid by the State*, […], *also taking into account the pursuit of the public interest*"); **R-0068**, Letter from the PPO to the Ministry of Finance, 5 May 2020 ("*Considering that the aforementioned equipment is in the possession of IGAPE,* […] *and that there is a need to use it for public purposes and for the maintenance of the aforementioned turbines and their accessories*").

State's right to the Four Turbines shall, with all probability, be declared in the main action, which has already been properly filed".[302]

266. The documents provided by Angola are plainly insufficient to meet the standard required by the BIT. Investment arbitration tribunals have found that the alleged public interest grounds must exist at the time of the taking, and the fact that an investment was eventually put to public use does not mean that the expropriation was necessarily "for" a public purpose.[303] As the *ADC v. Hungary* tribunal observed, "*if mere reference to* 'public interest' *can magically put such interest into existence,* […] *then this requirement would be rendered meaningless since the Tribunal can imagine no situation where this requirement would not have been met*".[304]

267. A public interest rationale that appears only as incidental context, or is referred to inconsistently and without any substantiation, cannot satisfy the requirement under article 7(1) of the BIT that the expropriation be carried out "*for purposes of public interest*".[305]

b. Angola has not provided prompt, adequate and effective compensation

268. It is undisputed that Angola has not provided "*prompt, adequate and effective compensation*" to Mr Machado or Aenergy for the expropriation of the Four Turbines.[306] Angola has never suggested otherwise. The complete absence of compensation is, by itself, sufficient to render the expropriation unlawful.[307]

c. Angola has not acted in accordance with legal procedures

269. In the Statement of Defence, Angola does not address the Claimant's contention that the expropriation was not carried out "*in accordance with legal procedures*",

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[302] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020.
[303] **CLA-21**, *Waguih Elie George Siag and Clorinda Vecchi v. Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, ¶432 ("*The Tribunal does not accept that because an investment was eventually put to public use, the expropriation of that investment must necessarily be said to have been 'for' a public purpose*").
[304] **CLA-37**, *ADC Affiliate Limited and ADC & ADMC Management Limited v. Hungary*, ICSID Case No. ARB/03/16, Award, 2 October 2006, ¶432.
[305] **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(1).
[306] **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(1).
[307] *See* **CLA-84**, *UP and C.D Holding Internationale v. Hungary*, ICSID Case No. ARB/13/35, Award, 9 October 2018, ¶411. *See also* **CLA-69**, Principles of International Investment Law (Second edition), Rudolf Dolzer and Christoph Schreuer, Oxford University Press, 2012 (excerpts), pp. 6-7; **CLA-21**, *Waguih Elie George Siag and Clorinda Vecchi v. Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, ¶428; **CLA-40**, *OI European Group B.V. v. Venezuela*, ICSID Case No. ARB/11/25, Award (with informal translation into English), 10 March 2015, ¶362; **CLA-47**, *Compañía de Aguas del Aconquija S.A. v. Argentina (I)*, ICSID Case No. ARB/97/3, Award II, 20 August 2007, ¶7.5.21.

in violation of article 7(1) of the BIT.[308] As set out in the Statement of Claim, Angola's expropriation of the Four Turbines was not carried out in accordance with international law or Angolan law.[309]

270. The latter is confirmed by Prof. Costa e Silva, who has explained that the use of seized movable assets requires prior judicial authorisation under article 852(1) of the CPC and that the trustee must consult the parties before proceeding with any exploitation of the seized assets under article 843(2)-(3) of the CPC.[310] Neither requirement was met. Angola has admitted that no judicial authorisation was ever sought or obtained,[311] and it is undisputed that Angola never consulted Aenergy about its intention to use the Four Turbines in its power plants.

271. Remarkably, the need for judicial authorisation was recognised by MINEA itself: MINEA's letter to the PPO dated 4 March 2020 attached a draft judicial authorisation request for IGAPE to file with the Provincial Court of Luanda.[312] However, IGAPE sought authorisation through the PPO and the Ministry of Finance instead – a route that, as Prof. Costa e Silva explains, is legally irrelevant in the procedural sphere, since the administration cannot substitute for the judge, and any such substitution would violate the separation of powers guaranteed by articles 105 and 175 of the Angolan Constitution.[313] In any event, Angola has confirmed that "*there are no documents evidencing either authorization or advice provided by the Ministry of Finance*",[314] which shows that Angola did not even complete the administrative authorisation process it purported to follow, rendering the entire exercise devoid of any procedural substance.

272. In any event, as will be further explained below, the authorisation of use of seized movable assets under article 843(1) of the CPC is only available where such use does not cause a loss in value and serves to enhance the patrimonial guarantee.[315] Neither condition is satisfied in the present case with respect to the Four Turbines.

3. The Respondent's other defences must fail

273. Angola advances three specific defences to Mr Machado's expropriation claim: (i) that the Claimant's characterisation of the alleged expropriation is legally insufficient, (ii) that the installation and deployment of the Four Turbines do not constitute a substantial and definitive taking or deprivation, and (iii) that IGAPE

[308] **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(1).
[309] Statement of Claim, ¶¶125-127.
[310] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶136-137, 140.
[311] Claimant's Document Production Requests, Request No. 6, at R1 ("*Respondent confirms that the documents requested by Claimant do not exist*"); Respondents cover letter to document production, dated 19 March 2026 ("*The Respondent maintains its position that these documents do not exist*").
[312] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, p. 18.
[313] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶129-132.
[314] Claimant's Document Production Requests, Request No. 7, at R1.
[315] *See* ¶¶358-361 below; **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶121.

and the Provincial Court of Luanda never abdicated their custodial duties.[316] Each contention will be addressed in turn.

a. Regardless of how the expropriation is characterised, the relevant elements are met

274. Angola claims that investors must prove either direct or indirect expropriation and that the Claimant's failure to choose between the two is a pleading deficiency.[317]

275. This argument is without merit. Neither the BIT nor international investment law requires an investor to elect between a direct and an indirect expropriation as a precondition for advancing an expropriation claim. Article 7(1) of the BIT prohibits expropriation in broad terms, covering both outright takings and "*measure*[s] *having equivalent effect to nationalisation or expropriation*".[318] The provision draws no procedural distinction between the two modalities.

276. Angola's reliance on the *Electrabel v. Hungary* tribunal's statement that it is "*for the investor to establish the substantial, radical, severe, devastating or fundamental deprivation of its rights*" does not assist its position.[319] That passage addresses the standard of proof for the existence of a deprivation, not a procedural requirement to select a label.[320] The Claimant has done precisely what *Electrabel* requires: he has identified the State conduct, described its effects, and demonstrated that those effects amount to a deprivation of his investment. The insistence on a formal election between "direct" and "indirect" is a formalistic exercise that serves no substantive purpose and finds no support in the BIT or in arbitral practice.

277. Angola further argues that the Claimant has failed to particularise attribution, identify the impugned measures, and demonstrate the causal link to a substantial, lasting, and irreversible deprivation.[321]

278. Each of the elements Angola demands has in fact been provided by the Claimant:

(i) As to the challenged measures, Mr Machado has identified them with specificity. They are: the installation of the Four Turbines at state-owned power plants and their connection to the national power grid in Ondjiva, Lubango, Malembo, and Saurimo, and the contemporaneous failure of

[316] Statement of Defence, sections 5.1.1, 5.1.2, 5.1.3, ¶¶401-436.
[317] Statement of Defence, ¶¶401, 403.
[318] **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 7(1).
[319] Statement of Defence, ¶401.
[320] **RL-0086**, *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012, ¶6.62.
[321] Statement of Defence, ¶¶402-403.

IGAPE and the Provincial Court of Luanda to take any action to prevent or reverse the appropriation.

(ii) As to attribution, the conduct is attributable to Angola through the actions of PRODEL, which installed the Four Turbines in its power plants and connected them to the power grid; of IGAPE, which acquiesced in such conduct and failed to take any steps to restore them to judicial custody; and of the Provincial Court of Luanda, which abdicated its supervisory responsibilities over the preventive seizure it had itself ordered, ignored Aenergy's requests for information,[322] and allowed the Four Turbines to be removed from judicial custody without any judicial authorisation. All of these entities are organs or instrumentalities of the Angolan State whose conduct is attributable to Angola under customary international law.[323]

(iii) As to the causal link, prior to the installation and connection to the national power grid, the Four Turbines were held in judicial custody and it was possible to return them in the condition in which they were taken. Following their installation and connection to the national power grid for the exclusive benefit of the Angolan State, that prospect was eliminated. The Four Turbines were permanently integrated into Angola's public energy infrastructure, subjected to continuous operational use, and treated in every practical respect as State property. Mr Machado has received no information regarding their location or condition and has lost any reasonable expectation of recovering the Four Turbines in a condition equivalent to that in which they were taken. The causal link between Angola's conduct and the resulting deprivation is self-evident.

279. Therefore, all elements required to establish an expropriation claim, whether characterised as direct or indirect, are satisfied on the facts of this case.

b. Angola's conduct amounts to a substantial and definitive taking or deprivation of the Claimant's investments

280. Angola argues that the measures taken in relation to the Four Turbines cannot constitute a substantial and definitive taking or deprivation because they were temporary, good-faith, and proportionate measures, taken while ownership is disputed and judicial proceedings are underway.[324]

[322] **C-23**, Aenergy's request to the Provincial Court of Luanda (with informal translation into English), 22 April 2022; **C-25**, Aenergy's request to the Provincial Court of Luanda (with informal translation into English), 24 May 2022.
[323] **RL-0012**, International Law Commission's 2001 Articles on the Responsibility of States for Internationally Wrongful Acts, 12 December 2001, articles 4-5.
[324] Statement of Defence, ¶405.

281. As the following sections will show, Angola's description of its conduct is incorrect on all three counts. The measures taken by the Respondent are neither temporary, nor in good faith, nor proportionate for the preservation of the assets. Moreover, Angola's arguments are unsupported by the case law it cites.

(i) The Respondent's appropriation was final

282. Angola claims that the installation and deployment of the Four Turbines are temporary measures and that, if the Provincial Court of Luanda finds that the Four Turbines belong to Aenergy, Angola can and will return them to the Claimant.[325]

283. As explained in the Statement of Claim,[326] and further confirmed by the documents now on the record, Angola's intent to appropriate the Four Turbines permanently is evidenced by the following:

(i) The installation and deployment of the Four Turbines have required substantial expenditure. The installation contracts alone involved costs of AOA 6,714,397,724.88 (approx. USD 11,280,000) for two turbines in Lubango,[327] AOA 10,984,814,028.30 (approx. USD 18,454,000) for two turbines in Ondjiva,[328] AOA 4,068,967,066.56 (approx. USD 6,836,000) for one turbine in Malembo,[329] and AOA 4,853,698,874.12 (approx. USD 5,815,000) for one turbine in Tchicumina.[330]

(ii) The installation and deployment of the Four Turbines have also required significant civil works. Notably, the installation and commissioning reports produced by Angola confirm that in Lubango and Ondjiva, the turbines formed the basis of entirely new thermal power plants (*novas centrais térmicas*).[331] This involved, among other things, the construction of concrete platforms to accommodate the turbines in their "*permanent*" position[332] and the construction of "*permanent*" fuel storage infrastructure.[333]

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[325] Statement of Defence, ¶¶177, 181, 403, 417-423, 497.
[326] Statement of Claim, ¶116.
[327] **RS-29**, Services Agreement – Turbine Installation and Commissioning for Lubango II, dated 26 November 2021, p. 11. The USD equivalents were calculated by converting the AOA amounts at the historical AOA/USD exchange rates published by XE for the dates of the respective agreements (available at xe.com/currencytables).
[328] **RS-121**, Services Agreement – Turbine Installation and Commissioning for Ondjiva, dated 26 November 2021, p. 12.
[329] **RS-76**, Services Agreement – Turbine Installation and Commissioning for Malembo, dated 26 November 2021, p. 11.
[330] **RS-154**, Services Agreement – Turbine Installation and Commissioning for Tchicumina, dated 21 September 2023, p. 10.
[331] **RS-279**, Lubango Installation and Commissioning Report, dated 31 January 2022, p. 66; **RS-281**, Ondjiva Installation and Commissioning Report, dated 31 January 2022, p. 55.
[332] **RS-279**, Lubango Installation and Commissioning Report, dated 31 January 2022, p. 66; **RS-281**, Ondjiva Installation and Commissioning Report, dated 31 January 2022, p. 55.
[333] **RS-279**, Lubango Installation and Commissioning Report, dated 31 January 2022, p. 66.

(iii) Further evidence demonstrates that the Four Turbines were intended to form a permanent part of the State's electricity supply system. For instance, the contractor engaged by Angola and responsible for the installation of turbines at the Ondjiva Power Plant published on its website that "[t]*he aforementioned Thermal Power Plant is equipped with (2) two aeroderivative turbines, model TM2500 GEN8 functional* ***in permanent regime*** *to meet the demand of the region*".[334] Similarly, the installation and commissioning report for the turbine at the Tchicumina Power Plant states that, following its commissioning, the unit "*is fully operational and* ***permanently integrated*** *into the system*".[335]

(iv) As will be further addressed below, IGAPE and the Provincial Court of Luanda effectively ignored Aenergy's requests for information regarding the whereabouts of the Four Turbines,[336] signalling their complicity in the appropriation. Additionally, Angola has not treated the ownership of the Four Turbines as an open question to be determined by the Provincial Court of Luanda. Rather, Angola has repeatedly asserted that the State has paid for the Four Turbines and that their ownership has been effectively transferred to the State.[337] As a result, Mr Machado has been stripped of any prospect of having the Four Turbines restored to judicial custody.

284. It bears noting that Angola need not expressly frame its measures as permanent for them to be sufficiently permanent to constitute expropriation. As recognised by the Harvard Draft Convention, "*there obviously comes a stage at which an objective observer would conclude that there is no immediate prospect that the owner will be able to resume the enjoyment of his property*".[338] That stage has been reached. The Four Turbines have been installed and connected to the national power grid, they have been in continuous operation for years, and there is no defined end point, mechanism for return, or indication that Angola intends to cease using them.

285. In *Wena Hotels*, the tribunal found that allowing an entity to "*seize and illegally possess the hotels for nearly a year*" was "*more than an ephemeral interference*"

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[334] **C-31**, Extract from GRD website indicating installation of two turbines in the Ondjiva Power Plant, 1 May 2022 (emphasis added).
[335] **RS-282**, Tchicumina Installation and Commissioning Report of February 2024, p. 146 (emphasis added).
[336] *See* ¶¶312-315 below.
[337] *See* ¶¶344, 373 below; **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), 2 March 2020, ¶52; **R-0116**, Application for interim measure for the seizure of the Four Unsolicited Turbines, 4 October 2019, ¶49; **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, pp. 17-18.
[338] **CLA-79**, Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens and explanatory notes, 1961, p. 12. It was on these grounds that, in a number of cases, the Iran-United States Claims Tribunals found that the appointment of ostensibly "temporary" managers amounted to a deprivation or taking of property. *See, e.g.*, **CLA-80**, *Tippetts, Abbett, McCarthy, and Stratton v. TAMS-AFFA Consulting Engineers of Iran and others*, Iran-United States Claims Tribunal, Award, 22 June 1984, ¶¶22-23; **CLA-81**, *Sedco, Inc. v. National Iranian Oil Company and Iran*, Iran-United States Claims Tribunal, Interlocutory Award, 17 September 1985, ¶¶98-99; **CLA-82**, *Thomas Earl Payne v. Iran*, Iran-United States Claims Tribunal, Award, 8 August 1986, ¶¶22-25.

with the investor's fundamental rights of ownership.[339] In the present case, the deprivation has lasted years, not months.

286. Angola argues that *Wena Hotels* is distinguishable because the seizure in that case was illegal and carried out without a court order, whereas the preventive seizure of the Four Turbines by the Provincial Court of Luanda was lawful.[340] That distinction does not assist Angola, because Mr Machado does not question the legality of the preventive seizure in the present proceedings. Mr Machado challenges the subsequent unlawful installation and use of the Four Turbines by the Angolan State – conduct that is the functional equivalent of the unlawful seizure in *Wena Hotels*.

287. Further, even if Angola were to reverse its position and return the Four Turbines to judicial custody – a prospect that, on the evidence, is entirely remote – it is no longer possible for the Claimant to recover the Four Turbines in a condition equivalent to that in which they were taken.

288. *First*, the Four Turbines have suffered significant physical damage and depreciation as a result of their installation and continuous operation in Angola's power plants. Mr Sharma identifies, *inter alia*, the following concerning issues:

    (i) Recommendations for immediate shutdown to prevent "*catastrophic*" failure at the Lubango and Tchicumina Power Plants.[341] Despite these recommendations, the records confirm that the turbine at the Tchicumina Power Plant continued to operate without any capital maintenance intervention.[342]

    (ii) An engine at the Tchicumina Power Plant was found to have sustained loss of metal, cracking and structural deformation. A borescope inspection report concluded that the gas turbine "*cannot be repaired*".[343]

    (iii) Operation of turbines at the Lubango and Tchicumina Power Plants beyond maintenance thresholds. Aeroderivative gas turbines must undergo a major hot-section inspection and refurbishment known as an HGPI after a

[339] **CLA-83**, *Wena Hotels v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, ¶99.
[340] Statement of Defence, ¶415.
[341] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶¶112, 136; **RS-245**, Technical report on power turbine anomaly for Tchicumina GT1, dated 30 December 2025, p. 10; **RS-219**, 4000-hour maintenance report for Lubango II GT2, dated 24 November 2025, p. 30.
[342] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶113; **RS-149**, January monthly activity report for Tchicumina, dated 31 January 2026, p. 35.
[343] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶109; **RS-243**, Borescope inspection report for Tchicumina GT1, dated 27 February 2025, p. 50.

prescribed number of operating hours. Such thresholds were materially exceeded without the corresponding HGPI.[344]

(iv) Recurring weather-induced blackouts at the Ondjiva Power Plant[345] and adverse environmental conditions at the Malembo Power Plant accelerating lifecycle consumption.[346]

(v) Operation without filters or without adequate filter replacement for years at the Malembo Power Plant.[347]

(vi) Severely deficient fuel quality across multiple facilities. At the Ondjiva Power Plant, reports expressly warned that liquid fuel was being mixed with water and that the quality was "*terrible*", with a risk of destruction of the hot section if such conditions persisted.[348] Similarly, reports from the Lubango Power Plant document "*terrible fuel quality*"[349] and reports from the Malembo Power Plant document "*depraved* [sic] *fuel quality*".[350]

289. Mr Sharma concludes that "*the operational history reflected within the records reviewed demonstrates that the turbine packages could no longer reasonably be considered equivalent, from either a technical or commercial perspective, to preserved zero-hour or standby-preserved units*".[351]

290. That conclusion is borne out by PRODEL's own technical assessment of turbines operating at the Xitoto Power Plant, under operating conditions materially equivalent to those of the Four Turbines (same equipment type, comparable load profile, and the same Angolan operating environment), which revealed catastrophic levels of degradation. PRODEL reported "*the presence of excessive soot, loss of thermal coating, and deterioration of blades, confirming the marked wear of the*

[344] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶¶111, 135; **RS-240**, 4000-hour maintenance report for Tchicumina GT1, dated 27 February 2025, p. 21; **RS-221**, 4000-hour maintenance report for Lubango II GT2, dated 31 May 2025, p. 26.
[345] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶104; **RS-128**, November monthly activity report for Ondjiva, dated 30 November 2022, p. 22; **RS-102**, December monthly activity report for Ondjiva, dated 31 December 2022, p. 22; **RS-110**, January monthly activity report for Ondjiva, dated 31 January 2023, p. 21; **RS-106**, February monthly activity report for Ondjiva, dated 28 February 2023, p. 22; **RS-134**, October monthly activity report for Ondjiva, dated 31 October 2024, p. 19.
[346] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶120; **RS-233**, Borescope inspection report for Malembo GT4, dated 22 October 2024, p. 5.
[347] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶123; **RS-69**, July monthly activity report for Malembo, dated 5 August 2022, p. 48; **RS-68**, January monthly activity report for Malembo, dated 5 February 2026, p. 42.
[348] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶101; **RS-238**, Borescope inspection report for Ondjiva GT1, dated 18 March 2023, p. 38.
[349] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶131; **RS-215**, 4000-hour maintenance and borescope inspection report for Lubango II GT2, dated 19 November 2022, p. 4.
[350] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶119; **RS-233**, Borescope inspection report for Malembo GT4, dated 22 October 2024, p. 5.
[351] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶211.

hot parts of both GTG1 and GTG2 turbines".[352] Such degradation was considered premature at only 12,000 hours of operation and to fall outside the acceptable operating standard and the manufacturer's recommendations, giving rise to extensive damage and the risk of "*total loss*" of the equipment.[353]

291. MINEA itself has acknowledged that the operational use of the equipment carries an inherent risk of wear and loss through consumption – an admission that is irreconcilable with any suggestion that the Four Turbines could have undergone years of continuous operation without diminution in value.[354] This acknowledgment is compounded by the conclusions of MINEA's own technical report, which does not recommend putting the Four Turbines into operational use. On the contrary, the technical recommendations set out in that report are directed exclusively at preservation and storage: static measures such as tyre calibration, anti-rust application, protective covering, moisture protection, and periodic lubrication. [355]

292. *Second*, the use of the Four Turbines by Angola has fundamentally diminished their usefulness to Mr Machado. The market for used turbines is not the same as that for new turbines, which is the market in which Mr Machado intended to operate when Aenergy purchased them. The market for used turbines is smaller, with reduced demand and lower prices.[356] Thus, even if the Four Turbines are returned, Mr Machado would have limited commercial use for these depreciated assets.

293. Moreover, Angola's reliance on the mobile and modular design of the TM2500 to argue reversibility[357] conflates a technical characteristic of the equipment with the legal character of the deprivation. The question is not whether the turbines could physically be removed from their current locations, but whether the Claimant has any realistic prospect of recovering them in a condition equivalent to that in which they were taken. As shown above, the answer is plainly no.

294. The Respondent's reasoning, taken to its logical conclusion, would mean that no property is ever truly expropriated, since any asset that is not a consumable – whether land, a vehicle, or a company – is, from a practical standpoint, susceptible of being returned. Such a proposition is untenable. The theoretical possibility of return does not negate the fact that an expropriation has taken place.

295. In view of the evidence of Angola's intent to appropriate the Four Turbines permanently, as well as the impossibility of returning the Four Turbines in a

[352] **R-0078**, Report of Completed Work at Xitoto Thermal Power Plant, 18 December 2020, p. 23.
[353] **R-0078**, Report of Completed Work at Xitoto Thermal Power Plant, 18 December 2020, p. 23.
[354] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, p. 18 ("[c]*onsidering* […] *the risk of wear inherent to the use of the equipment or loss through consumption*").
[355] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, pp. 21-23.
[356] *See* **CER-01**, First Quantum Expert Report by AlixPartners, ¶85.
[357] Statement of Defence, ¶¶416, 418-420.

condition equivalent to that in which they were taken, Angola's appropriation of the Four Turbines must be considered final.

(ii) The Respondent acted in bad faith

296. Angola's conduct in relation to the use of the Four Turbines has been characterised by opacity and a deliberate concealment of information. The absence of prior consultation with Aenergy and the lack of judicial authorisation for the use of the Four Turbines are not procedural technicalities[358] – they are a reflection of the manner in which Angola chose to appropriate the Claimant's investment: covertly, without notice, and without affording Mr Machado any opportunity to be heard.

297. That said, it is not necessary for the Claimant to establish that Angola acted in bad faith in order to succeed on his expropriation claim. The decisive question is not the intent behind the measures but their effect on the investor.[359]

(iii) The measures taken by the Respondent were not proportionate

298. Angola's measures are also disproportionate to any legitimate preservation objective. The Four Turbines were brand new and unused at the time of the preventive seizure in December 2019. Angola has adduced no credible evidence in support of its outlandish proposition that their preservation required continuous operational use. That proposition defies all practical experience and common sense and is directly contradicted by the Claimant's technical expert and by the Respondent's own evidence.[360]

299. The fact that the expropriation of the Four Turbines took place while judicial proceedings were underway is irrelevant. The Provincial Court of Luanda has been complicit in the unlawful taking of the Four Turbines, as it has facilitated or acquiesced in their appropriation. Indeed, the expropriation defeats the very purpose of the preventive seizure that the Provincial Court of Luanda had itself ordered. As Prof. Costa e Silva explains, the preventive seizure was not ordered to protect Angola's alleged ownership of the Four Turbines, but as a precautionary measure to secure the enforceability of a credit claim.[361] Angola's appropriation and continued use of the Four Turbines are at odds with that aim, as they diminish the value of the very assets that the seizure was meant to preserve.[362]

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[358] *See* ¶¶269-272 above; **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶140.
[359] **CLA-49**, Indirect Expropriation and its Valuation in the BIT Generation, W. Michael Reisman and Robert D. Sloane, 74 BRIT. Y.B. INT'L L., 115-150, 2004, pp. 20-21.
[360] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶¶7, 83-84, 156; **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, pp. 18, 21-24; **R-0078**, Report of Completed Work at Xitoto Thermal Power Plant, 18 December 2020, p. 23.
[361] *See* **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶35-36.
[362] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶¶172-173.

(iv) The Respondent misreads the authorities on which it relies

300. Angola argues that the measures taken in relation to the Four Turbines cannot constitute a substantial and definitive taking or deprivation of Mr Machado's rights because there has not been "*a change in the owner's* status quo *in relation to the property*".[363] According to Angola, such a requirement can be found in the decisions in *Smurfit v. Venezuela* and *Santa Elena v. Costa Rica*, and it has not been met because the Four Turbines were already under preventive seizure before the BIT entered into force.[364]

301. Angola has taken creative liberties in its interpretation of the case law. The tribunals in *Smurfit* and *Santa Elena* do not mention the need for a change in "*the owner's status quo*" for a finding of expropriation. What they require is a taking or a substantial deprivation, which has occurred in the present case.

302. In *Smurfit*, the tribunal held that expropriation occurs when the investor is stripped of "*access, use and enjoyment of the property*",[365] and, critically, that this standard can be met even while domestic judicial proceedings remain pending.[366] That case exemplifies the principle that a State cannot shield an expropriation from scrutiny by pointing to ongoing local proceedings: the tribunal found that Venezuela had expropriated certain landholdings by seizing them while recovery proceedings were still underway, without a final decision and without compensation.[367] This is precisely what has happened here – the Four Turbines were installed and connected to the national power grid while domestic proceedings were still ongoing.

303. Angola's attempt to distinguish *Smurfit* on the grounds that it involved 17 years of measures and a political declaration by former President Chávez misreads the award. The *Smurfit* tribunal did not hold that expropriation required 17 years of State conduct. Rather, it found that the outright seizure of the landholdings on the day of former President Chávez's announcement constituted an expropriation in its own right, regardless of the duration of the preceding recovery proceedings. The tribunal was explicit: "*this outright seizure constituted an expropriation in terms of Article 6 of the BIT*".[368]

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[363] Statement of Defence, ¶411.
[364] Statement of Defence, ¶¶411-412.
[365] **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶419.
[366] The tribunal held that the mere fact that a seizure occurred "*within the context of a recovery proceeding*" did not "*per se justify*" the taking, and that the conditions for a lawful expropriation under the BIT remained applicable. **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶402, 412.
[367] **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶¶401-409, 412-415.
[368] **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, 28 August 2024, ¶¶401, 412.

304. In *Santa Elena*, the tribunal confirmed that the relevant question is whether the owner has been deprived of "*title, possession or access to the benefit and economic use of his property*".[369] The tribunal also recognised that a decree which "*effectively freezes or blights the possibility for the owner reasonably to exploit the economic potential of the property*" can constitute a taking.[370] That is, once again, the effect of Angola's conduct: Angola has deprived the Claimant of the possibility of recovering the Four Turbines.

305. By pointing to the fact that the Four Turbines were under preventive seizure before the BIT entered into force, Angola conflates two fundamentally different situations. Under the preventive seizure, the Four Turbines were held in judicial custody by a court-appointed trustee, their ownership remained unchanged, and it was legally and physically possible to return them in a condition equivalent to that in which they were taken. Following their installation and connection to the national power grid, the Four Turbines have been subjected to continuous operational wear and tear, integrated into Angola's national energy infrastructure, and treated in every practical respect as State property. As concluded above, the point of no return has been crossed, and the expropriation has been consummated.[371]

c. IGAPE and the Provincial Court of Luanda abdicated their responsibilities

306. Angola's third defence to Mr Machado's expropriation claim is that IGAPE and the Provincial Court of Luanda never abdicated their custodial duties. In particular, Angola contends that (i) IGAPE responded to Aenergy's information request, (ii) the Court did not breach its duties, as it had no obligation to respond to Aenergy, and (iii) Aenergy could have initiated a special proceeding under Angolan law.[372] Each argument will be addressed in turn.

(i) Angola failed to meaningfully respond to Aenergy's requests for information

307. Angola claims that IGAPE responded on 3 May 2022 to Aenergy's request for information dated 22 April 2022.[373] However, IGAPE's response was effectively a non-answer. IGAPE's letter stated the following:[374]

> *"In response, we hereby inform you that, pursuant to Article 1023 of the Code of Civil Procedure, the Institute for the Management of State Assets and Holdings (IGAPE), as the trustee appointed in the court records, is accountable to the Court, which is why any requests*

[369] **CLA-48**, *Compañia del Desarrollo de Santa Elena S.A. v. Costa Rica*, ICSID Case No. ARB/96/1, Final Award, 17 February 2000, ¶77.
[370] **CLA-48**, *Compañia del Desarrollo de Santa Elena S.A. v. Costa Rica*, ICSID Case No. ARB/96/1, Final Award, 17 February 2000, ¶76.
[371] *See* ¶¶173-176 above.
[372] Statement of Defence, ¶¶426, 429.
[373] Statement of Defence, ¶426.
[374] **R-0113**, Letter sent from IGAPE to Aenergy, dated 2 May 2022.

for information regarding the seized assets initiated by the parties to the dispute must be addressed to the judge hearing the case within the scope of the proceedings, in accordance with the legally established deadlines and formalities."

308. That is the entire substantive content of IGAPE's letter of 3 May 2022, which provided Mr Machado with zero visibility regarding the possible use of the Four Turbines. It did not disclose the location of the Four Turbines, their condition, whether they had been moved, or whether they were being used. Instead, IGAPE merely stated that, as court-appointed trustee, it was accountable to the Provincial Court of Luanda and not to the parties, and that any requests for information should be addressed to the allocated judge.[375] Yet even the duty to the court that IGAPE invoked as a basis for refusing to engage with Aenergy went unfulfilled: IGAPE failed to discharge its duty as custodian to notify the court that the assets held in custody were exposed to danger.[376]

309. IGAPE's response to Aenergy is remarkable for what it omits. IGAPE was the entity entrusted by the Provincial Court of Luanda with the physical custody and administration of the Four Turbines. It had been receiving periodic reports from PRODEL on their use and condition since May 2020.[377] IGAPE therefore possessed, at the time of Aenergy's request, precise and detailed information regarding the location, condition, and operational status of the Four Turbines, yet it decided to conceal such information.

310. Moreover, as Prof. Costa e Silva confirms, IGAPE's claim that it was accountable only to the Provincial Court of Luanda and not to the parties is irreconcilable with its own obligations under the CPC. Article 843(2)-(3) of the CPC requires the trustee to consult the parties before authorising any exploitation of the seized assets and affords the parties the right to propose a more advantageous lessee or to request that the lease be conducted by public auction.[378] These provisions presuppose that the parties are informed of the trustee's administration and have the opportunity to participate in decisions concerning the use of the seized assets. IGAPE's refusal to provide any information to Aenergy was therefore not merely unhelpful – it was inconsistent with the participatory rights that the CPC confers on the parties to the proceedings.[379]

311. IGAPE's refusal to share information with Aenergy is even more striking because, throughout the same period, IGAPE maintained fluid and continuous communication with the Government of Angola – the very counterparty in the proceedings before the Provincial Court of Luanda. While IGAPE told Aenergy

[375] **R-0113**, Letter sent from IGAPE to Aenergy, dated 2 May 2022, .
[376] Claimant's Document Production Requests, Request No. 6, R1, p. 18; Cover Letter to the Respondent's Document Production, ¶¶18-19; **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶93 ("[I]*t is also the duty of the custodian to notify the court whenever the assets held in custody are exposed to danger, such danger including the possibility of degradation, destruction, or obsolescence.*").
[377] **RWS-02**, Witness Statement of Marinela Monteiro, ¶17.
[378] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶136-137, 140.
[379] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶137, 140.

that it was accountable only to the court and that any requests for information had to be channelled through the judge, it simultaneously exchanged correspondence with the Ministry of Finance, the PPO, and MINEA regarding the administration, deployment and operational status of the Four Turbines. This double standard is irreconcilable with any claim of impartiality or faithful discharge of custodial duties: IGAPE selectively withheld information from the party whose assets it was entrusted to safeguard, while keeping the opposing party fully informed and actively coordinating with it the very use of those assets.

(ii) The Provincial Court of Luanda should have responded to Aenergy's requests for information

312. Angola contends that the Provincial Court of Luanda had no obligation to respond to Aenergy's requests for information.[380] However, this argument is undermined by Angola's own conduct. IGAPE's letter of 3 May 2022 expressly directed Aenergy to address its requests to the allocated judge, stating that "*any requests for information regarding the seized assets initiated by the parties to the dispute must be addressed to the judge hearing the case within the scope of the proceedings*".[381] If, as Angola now alleges, the Provincial Court of Luanda had no obligation to respond to such requests, then IGAPE's direction was meaningless – it pointed Aenergy towards a forum that, on Angola's own case, was under no duty to provide any answer. The inevitable consequence was that Mr Machado was left with no avenue through which to obtain any information about the fate of his investment.

313. Angola cannot simultaneously argue that IGAPE was not obliged to respond because the Provincial Court of Luanda was the appropriate forum, and that the court was not obliged to respond because the requests were merely informational. That position, taken to its logical conclusion, means that no Angolan authority was under any obligation to provide Mr Machado with any information about the Four Turbines at any point, a result that is irreconcilable with the most basic requirements of transparency and due process under the BIT.

314. Angola further contends that the five-day period under article 159(2) of the CPC is advisory and not mandatory.[382] That is incorrect: as Prof. Costa e Silva explains, pursuant to article 159(2) of the CPC, the Provincial Court of Luanda was required to issue its order within five days of Aenergy's application, and that deadline is mandatory, not advisory.[383] A delay of more than four years and extending to the date of this submission is plainly impermissible under Angolan law.[384] But even setting aside the mandatory nature of the deadline, Angola's argument goes astray on a more fundamental level. The question is not whether the Provincial Court of Luanda was required to respond within precisely five days, but whether it was

[380] Statement of Defence, ¶431.
[381] **R-0113**, Letter sent from IGAPE to Aenergy, dated 2 May 2022.
[382] Statement of Defence, ¶430.
[383] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶152, 161.
[384] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶154, 161.

required to respond at all. The court's complete and prolonged silence cannot be characterised as a lawful exercise of judicial discretion.

315. As Prof. Costa e Silva confirms, the Provincial Court of Luanda is the sole authority competent to supervise the trustee's administration of seized assets, and no administrative body can substitute for the court in that role, by virtue of the separation of powers guaranteed by articles 105 and 175 of the Angolan Constitution.[385] The court's prolonged and total silence therefore did not merely leave the trustee's administration unsupervised – it effectively deprived Mr Machado of any institutional safeguard against the expropriation of his assets.[386] Such silence constitutes a clear abdication by the Provincial Court of Luanda of the responsibilities it was uniquely empowered and obliged to discharge.[387]

(iii) Aenergy was under no obligation to initiate local proceedings

316. Angola contends that Aenergy could have initiated a special proceeding under articles 1014-1023 of the CPC to compel IGAPE to render accounts or petitioned for IGAPE's removal as trustee under article 845 of the CPC.[388]

317. Angola's argument is self-defeating. As explained above, IGAPE refused to disclose any information regarding the location, condition, or operational status of the Four Turbines, and the Provincial Court of Luanda failed to respond to Aenergy's requests to issue an order directing IGAPE to provide information and render accounts, these being, precisely, the mechanisms contemplated under article 1023 of the CPC. It was the Provincial Court of Luanda that failed to act upon those requests and failed to compel IGAPE to comply with its obligations as judicial custodian. Angola cannot simultaneously deny Mr Machado access to information about the management of his assets and then fault him for failing to challenge that management. Without any visibility into how IGAPE was administering the Four Turbines, Aenergy had no factual basis on which to petition for IGAPE's removal under article 845 of the CPC.

318. Moreover, the BIT does not contain a local remedies exhaustion requirement. Mr Machado's claims are founded on Angola's breaches of its treaty obligations, which are self-standing and independent of any domestic law remedy.

319. In any event, as Prof. Costa e Silva explains, the remedies available to Aenergy under Angolan law are all contingent upon the court first ruling on Aenergy's request for information. The court's order directing the judicial custodian to disclose the location and condition of the seized assets and to render accounts is not

[385] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva,¶¶129-132, 140.
[386] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶162-177.
[387] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶121, 140.
[388] Statement of Defence, ¶¶432-435.

merely a preliminary step: it is the indispensable precondition for the exercise of any of those remedies.[389] Unless and until the court issues such an order – whether granting or refusing the request – neither party to the proceedings has any knowledge of the manner in which the custodian has been discharging its functions, and neither is in a position to identify, let alone substantiate, any breach of the custodian's duties.[390]

320. Where, as here, the court has failed to rule upon the application for information for a period exceeding four years, the substantiated presentation of a request for removal becomes effectively impossible. Aenergy could not have been expected to seek the custodian's removal without any knowledge of the manner in which it had discharged its duties, and without being able to ascertain whether any breach had in fact occurred. The domestic remedies identified by Angola were therefore not merely difficult to pursue – they were structurally unavailable as a direct consequence of the Provincial Court of Luanda's own prolonged inaction.

321. Therefore, Angola's contention that IGAPE and the Provincial Court of Luanda never abdicated their responsibilities is baseless, as are its other defences to the Claimant's expropriation claim.

B. Angola has breached its duties to accord FET and FPS to the Claimant's investment

1. Angola has breached its obligation to accord FET to the Claimant's investment

322. Angola breached the FET standard by frustrating Mr Machado's legitimate expectations, denying him due process, failing to act transparently, and arbitrarily impairing his investment.

a. Applicable standard

323. Pursuant to article 4 of the BIT, Angola must accord investments "*fair and equitable treatment*" and refrain from impairing their "*management, maintenance, use, enjoyment, or disposal*" by "*arbitrary or discriminatory measures*".[391] The Parties agree that this standard, which allows for flexible interpretation, entails an obligation to act favourably towards investments, but they disagree as to the precise practical implications of this obligation.[392]

[389] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶163, 167, 173-174.
[390] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶173-174.
[391] **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 4.
[392] Statement of Claim, ¶134; Statement of Defence, ¶441.

324. Angola argues that the FET standard is a high one.[393] In that regard, Angola invokes the interpretation adopted in *Waste Management v. Mexico* and *Azurix v. Argentina* to contend that the standard of FET may be infringed only if the State's conduct is "*arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety – as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candor in an administrative process*".[394]

325. While these may be examples of particularly grave conduct contrary to the FET standard, breaches of that standard are not limited to such behaviours. As submitted by the Claimant, FET may also be infringed where a state fails to act in accordance with its own law and domestic procedures, or fails to apply its own law in a predictable, consistent and non-discriminatory manner,[395] including by acting in a "*non-transparent, unreasonable*" way or by failing to afford due process to the investor.[396] In that regard, investment arbitration tribunals have found that a State's unjustified delay and unjustified lack of response constitute due process breaches of the FET standard.[397]

326. FET is, in any event, a non-exhaustive and evolving standard.[398] Highly authoritative commentary has confirmed its flexible nature, observing that, even if FET imposes as high a threshold as Angola contends, it must still permit "*independent and objective third-party determination of this type of behaviour on the basis of a flexible standard*".[399]

327. Nevertheless, even if the Tribunal were to accept Angola's characterisation of the FET standard, the Respondent's conduct would constitute a breach of that standard, as the following sections demonstrate.

b. Angola has breached FET

(i) Legitimate expectations

328. When Mr Machado invested in Angola in 2017, he was entitled to expect that Angola's executive and judiciary would abide by their own substantive and procedural laws in a consistent, reasonable and transparent manner, and that,

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[393] Statement of Defence, ¶441.
[394] Statement of Defence, ¶446.
[395] Statement of Claim, ¶¶139-141.
[396] Statement of Claim, ¶¶138, 152; **CLA-35**, *Saluka Investments BV v. Czech Republic*, UNCITRAL, Partial Award, 17 March 2006, ¶309.
[397] Statement of Claim, ¶153.
[398] Statement of Claim, ¶136; **CLA-93**, *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentina*, ICSID Case No. ARB/02/1, Decision on Liability, 3 October 2006, ¶123.
[399] **CLA-30**, Fair and Equitable Treatment in Arbitral Practice, Christoph Schreuer, The Journal of World Investment & Trade, 2005, p. 11.

consequently, his rights would not be affected without due process.[400] However, as explained in the Statement of Claim and confirmed by Prof. Costa e Silva, Angola disregarded all legal safeguards governing the seizure and handling of the Four Turbines.[401] These actions and omissions by Angola frustrated Mr Machado's legitimate expectations and constitute a breach of the FET standard.

329. In its Statement of Defence, Angola argues that the concept of legitimate expectations is connected to specific representations or commitments made to the investor by the state on which the investor relied.[402] On that basis, Angola contends that the Claimant has not demonstrated that he formed legitimate expectations protected under the BIT, because he did not invest, structure or expand his business in reliance on any specific assurance or on the stability of the legal framework.[403]

330. In support of this contention, the Respondent draws exclusively on authorities that concern regulatory changes. Specifically, the Respondent relies on (i) *El Paso v. Argentina*, which involved significant changes to the regulatory framework of the electricity and oil sectors implemented by the Argentine government;[404] and (ii) *Parkerings v. Lithuania,* which involved significant changes to the Lithuanian legal framework of paid street parking, clamping enforcement and public-private joint agreements.[405]

331. However, these authorities bear little to no relevance to the dispute. The present case does not concern regulatory *changes*, and Mr Machado's claim does not relate to modifications of the legal framework applicable to his investments.

332. Rather, Mr Machado's claim is that Angola *failed to apply* its substantive and procedural laws in a consistent, reasonable and transparent manner, thereby depriving him of his legally recognised rights without due process.[406]

333. As submitted by the Claimant, the tribunal in *UAB Garsu Pasaulis v. Kyrgyzstan* recognised that an investor's legitimate expectations could be breached through a failure by the state to act consistently with its own laws.[407] That tribunal emphasised that a key aspect in determining whether the claimant's legitimate expectations had been frustrated was assessing the state's actions or omissions in light of its own law, and on that basis it decided in favour of the investor.[408]

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[400] Statement of Claim, ¶144.
[401] Statement of Claim, ¶¶144-151; **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶121, 140, 154, 156, 174-177.
[402] Statement of Defence, ¶452.
[403] Statement of Defence, ¶457.
[404] Statement of Defence, ¶455.
[405] Statement of Defence, ¶456.
[406] Statement of Claim, ¶¶144-151.
[407] Statement of Claim, ¶¶139-141.
[408] Statement of Claim, ¶140; **CLA-95**, *UAB Garsu Pasaulis v. Kyrgyzstan*, UNCITRAL, Award, 8 April 2024, ¶250.

334. In response to the foregoing, Angola argues that, in any event, IGAPE and the Provincial Court of Luanda acted in accordance with the applicable law because (i) IGAPE was authorised to put the seized assets to use,[409] and (ii) the Provincial Court of Luanda was under no obligation to respond to the Claimant's information requests.[410] Both contentions are without merit:

(i) Angola's assertion that IGAPE was authorised to put the Four Turbines to use is without merit. As explained above, the use of seized movable assets required prior judicial authorisation, and IGAPE was obliged to consult Aenergy beforehand to afford it the opportunity to object to the proposed measure.[411] Neither requirement was met.[412]

(ii) As explained above, the Provincial Court of Luanda's silence cannot be characterised as a lawful exercise of judicial discretion: it was total and unbroken for over four years, it left the trustee's administration entirely unsupervised, and it deprived Mr Machado of any avenue to obtain information about his investment or to obtain legal redress.[413] This is all the more significant given that IGAPE had itself directed Aenergy to the court as the sole competent forum for requests concerning the seized assets, and that the court was the sole authority competent to supervise the trustee's administration.[414] The court's prolonged inaction rendered the domestic remedies identified by Angola structurally unavailable, since each was contingent upon the court first ruling on Aenergy's application for information.[415] As Prof. Costa e Silva explains, "*there is neither legal nor statistical justification for the failure of the judge to* [address Aenergy's request]".[416]

335. In sum, Angola disregarded all legal safeguards governing the seizure and handling of the Four Turbines, failed to apply its own substantive and procedural laws consistently, reasonably and transparently, and deprived Mr Machado of his rights without due process. These actions and omissions frustrated Mr Machado's legitimate expectations in breach of the FET standard under article 4 of the BIT.

(ii) Due process and transparency

336. As set out in the Statement of Claim, Angola's conduct in relation to the appropriation of the Four Turbines lacked both transparency and due process,

[409] Statement of Defence, ¶458.
[410] Statement of Defence, ¶473.
[411] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶140. *See* ¶¶269-310 above.
[412] *See* ¶¶269-310 above.
[413] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶154, 156, 161, 174, 177.*See* ¶¶308-315 above.
[414] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶130, 164.
[415] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶174, 177. *See* ¶¶308-315 above.
[416] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶161.

thereby breaching the FET standard.[417] To avoid unnecessary repetition, the Claimant refers to his Statement of Claim for a full account of the relevant facts and confines the present discussion to Angola's arguments in its Statement of Defence.[418]

337. In its Statement of Defence, Angola argues that Mr Machado served his notice of dispute without resorting to available local remedies or showing futility, and that, therefore, his due process allegation fails.[419] Angola relies on *Orazul v. Argentina*, where the tribunal held that, because the investor could have challenged the lack of response of the Energy Secretariat before the courts, the state's failure to respond to the investor's petitions did not amount to a due process breach.[420]

338. However, the Respondent's reliance on *Orazul v. Argentina* is misplaced. That award does not support the proposition that a due process claim fails unless the investor first "escalates" the issue through local remedies. In *Orazul*, the tribunal (i) defined due process under FET as a system-level obligation to allow the effective exercise of substantive rights granted to investors and adopted a high threshold ("*offend a sense of judicial propriety*"),[421] (ii) dismissed the due process allegation because the claimant had not shown that Argentina's judicial system had failed to afford the claimant fair and equitable treatment,[422] and (iii) treated the Energy Secretariat's alleged non-responses as insufficient precisely because that administrative inaction could have been challenged before Argentine courts, and because the challenged measures were largely general or regulatory in nature, for which individualised participation was not required.[423]

339. By contrast, the Claimant's due process allegations are not directed at administrative inaction that could have been challenged before the courts; they are directed at defects within the judicial process itself (*e.g.*, failure to summon Aenergy to any hearing, failure to respond to information requests, absence of any judicial decision authorising the use of the turbines, lack of judicial independence, and overall lack of judicial supervision). On *Orazul*'s own framing, that is the category of conduct capable of "*offend*[ing] *a sense of judicial propriety*", and the *Orazul* rationale – that the investor could have challenged the administrative failure before the courts – is inapposite where the court is the very organ responsible for the procedural failures complained of.

[417] Statement of Claim, section V.B.3, ¶¶152-162.
[418] Statement of Claim, ¶161.
[419] Statement of Defence, ¶478.
[420] Statement of Defence, ¶477.
[421] **RL-0105**, *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25, Award, 14 December 2023, ¶¶732-733.
[422] **RL-0105**, *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25, Award, 14 December 2023, ¶733.
[423] **RL-0105**, *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25, Award, 14 December 2023, ¶¶734-735.

340. In any event, as Prof. Costa e Silva explains, Aenergy could not have resorted to any local remedy before the Provincial Court of Luanda addressed its information request.[424]

341. In support of its position that it did not breach FET by denying Aenergy due process and failing to act transparently, Angola seeks to distinguish three cases cited by the Claimant in his Statement of Claim.[425] None of those attempts withstands scrutiny.

342. *First*, Angola seeks to distinguish *Deutsche Bank v. Sri Lanka* on the basis that Angola's measures were not politically driven but rather routine, court-supervised, well-documented, and not taken in haste.[426]

(i) In any event, the proposition that operating the turbines prevents their deterioration is untenable. As explained above, and as MINEA itself has acknowledged, continuous operation necessarily entails wear and depreciation, thereby accelerating rather than preventing decay.[427]

(ii) The legal opinion of the PPO cannot substitute for the judicial authorisation that Angolan law requires. As explained above, the use of the Four Turbines had to be authorised by the Provincial Court of Luanda, a requirement that MINEA itself recognised.[428] As Angola has confirmed, no such authorisation was ever sought or obtained.[429]

343. Angola also contends that the issuance of Presidential Order 177/21, which mandated the opening of an emergency contracting procedure for the installation of turbines with the same specifications as the Four Turbines,[430] demonstrates that it acted transparently, and that this further distinguishes its conduct from that of Sri Lanka in *Deutsche Bank*.[431] That argument wrongly equates the existence of a formal instrument with the transparency that the FET standard demands. Transparency requires that the investor be informed of measures affecting its investment and be afforded a meaningful opportunity to respond.[432] None of those conditions were met here. Aenergy was never notified of the decision to install and

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[424] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶174, 177. *See* ¶¶319-321 above.
[425] Statement of Claim, ¶¶155-156, 160.
[426] Statement of Defence, ¶483.
[427] *See* ¶¶288-291 above.
[428] *See* ¶¶269-271 above; **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶140.
[429] Statement of Defence, ¶126. *See also* Claimant's Document Production Requests, Request No. 6, at R1, p.18; Cover Letter to the Respondent's Document Production, ¶¶18-19.
[430] **C-21**, Presidential Order No. 177/21 authorising the opening of a public procurement procedure for various works at thermoelectric power plants (with informal translation into English), 26 October 2021.
[431] Statement of Defence, ¶483(d).
[432] *See* **CLA-30**, Fair and Equitable Treatment in Arbitral Practice, Christoph Schreuer, The Journal of World Investment & Trade, 2005, p. 20 ("*If laws, administrative decisions and other binding decisions are to be imposed upon a foreign investor by a host State, then fairness requires that the investor is informed about such decisions before they are imposed*"); **CLA-54**, *Técnicas Medioambientales Tecmed, S.A. v. Mexico*, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003, ¶162.

operate the Four Turbines.[433] The Provincial Court of Luanda failed to respond to Aenergy's requests for information regarding the whereabouts and condition of the seized assets.[434] IGAPE's refusal to provide any information to Aenergy was inconsistent with the participatory rights that the CPC confers.[435] IGAPE failed to discharge its duty as custodian to notify the court that the assets held in custody were exposed to danger.[436] And the Presidential Order 177/21 itself does not identify the Four Turbines: it refers generically to the installation of turbines at specific power plants, without any reference to the seized assets or to the pending judicial proceedings in which their ownership remains disputed.[437]

344. Angola also seeks to distinguish *Deutsche Bank* on the basis that it has "*consistently acknowledged Aenergy's ownership* [of the Four Turbines] *pending adjudication of the main proceeding*".[438] However, Angola's stance on this point has been anything but consistent. To the contrary, Angola's position has shifted repeatedly throughout these events: on multiple occasions, Angola has asserted that the State had already paid for the Four Turbines and that ownership of the turbines has already been effectively transferred to the State.[439] These assertions are irreconcilable with any claim of consistent acknowledgement of Aenergy's ownership, and the relevance of this argument to the *Deutsche Bank* distinction is, in any event, unclear.

345. It bears noting that Angola's assertion that the measures were "routine" and "court-supervised" is unfounded. Angola has adduced no evidence that the use of seized assets in state-owned power plants constitutes "routine" conduct and has itself admitted that no documents were exchanged between IGAPE and the Provincial Court of Luanda in connection with the administration of the Four Turbines, confirming the complete absence of any judicial supervision of those measures.[440]

346. *Second*, Angola seeks to distinguish *Rumeli v. Kazakhstan* from the present case.[441] But it merely recites a series of facts from that award – the unilateral termination without prior suspension, the ministerial admissions of breach, the hastily convened Working Group, and the two-day verbal notice – without identifying any distinguishing principle that would render the decision inapplicable to the present

[433] *See* ¶¶269-296 above.
[434] *See* ¶¶312-315 above.
[435] *See* ¶310 above.
[436] *See* ¶¶308-310 above. *See also* **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶93; Claimant's Document Production Requests, Request No. 6, R1, p. 18; Cover Letter to the Respondent's Document Production, ¶¶18-19.
[437] **C-21**, Presidential Order No. 177/21 authorising the opening of a public procurement procedure for various works at thermoelectric power plants (with informal translation into English), 26 October 2021.
[438] Statement of Defence, ¶483(e).
[439] **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), 2 March 2020, ¶52; **R-0116**, Application for interim measure for the seizure of the Four Unsolicited Turbines, 4 October 2019, ¶49; **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, p. 18.
[440] Claimant's Document Production Requests, Request No. 6, R1, p. 18; Cover Letter to the Respondent's Document Production, ¶¶18-19.
[441] Statement of Defence, ¶484.

case. Moreover, Angola's observation that the *Rumeli* tribunal declined to find a denial of justice in respect of the courts' decisions is irrelevant: the Claimant's due process claim is not a denial of justice claim.[442]

347. *Third*, Angola argues that the facts in *Smurfit v. Venezuela* are materially different from those of the present case and, therefore, do not assist the Claimant's position.[443] However, rather than addressing the tribunal's reasoning on transparency and due process, Angola confines its response to the expropriation analysis.[444] Angola's failure to engage with the FET dimension of the *Smurfit* award confirms its inability to dismantle the Claimant's argument on this point.

348. Additionally, in the Statement of Claim, Mr Machado submitted that the Angolan courts lack independence from governmental influence, as evidenced by the Provincial Court of Luanda's complicity in the removal of the Four Turbines from judicial custody and by the suspicious timing of its sudden resumption of procedural activity in May 2025 – more than five years after the last activity in the case and shortly after the initiation of this arbitration.[445] In response, Angola contends that the Provincial Court of Luanda's prolonged inaction is consistent with the normal course of Angolan civil litigation.[446] That argument fails for three reasons.

349. *First*, Prof. Cachimbombo, Angola's legal expert, opines that ordinary declaratory proceedings in Angola are expected to last "*at least five to six years*" in cases "*of great factual and legal complexity*". The present case does not fall within that category.[447] The underlying dispute concerns the ownership of four turbines and the circumstances of their acquisition – a factually circumscribed question that does not approach the level of complexity that Prof. Cachimbombo's estimate presupposes, and Angola has made no attempt to explain why it should.

350. *Second*, Angola has not identified which, if any, of the systemic factors Prof. Cachimbombo enumerates as factors which can increase the duration of proceedings – staff strikes, frequent judge rotations, judicial reorganisation, shortage of magistrates – actually affected the proceedings before the Provincial Court of Luanda.[448] Nor has Angola explained how any such factor accounts for the court's total and unbroken silence between November 2020 and the scheduling of a preliminary hearing in 2025.

351. *Third*, and most tellingly, the statistical data on which Angola itself relies confirms that prolonged delay is the exception rather than the rule: the study cited in the Statement of Defence found that only approximately 15% of civil proceedings

[442] Statement of Defence, ¶484.
[443] Statement of Defence, ¶485.
[444] Statement of Defence, ¶485.
[445] Statement of Claim, ¶161(vi).
[446] Statement of Defence, ¶183.
[447] **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, ¶13.
[448] **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, ¶¶14-18.

exceeded five years.[449] Far from demonstrating that the Court's conduct was unremarkable, Angola's own evidence establishes that it was anomalous.

352. Angola has failed to demonstrate that the Provincial Court of Luanda's prolonged inaction falls within the normal course of Angolan civil litigation. Its own evidence confirms the contrary.

353. Separately, the Respondent's contention that the relevant timeframe for any alleged violation of due process runs from 22 December 2021 to 9 June 2022 is incorrect for the reasons explained in the jurisdiction *ratione voluntatis* section above.[450]

354. Angola has failed to rebut the Claimant's case on due process and transparency. Accordingly, its breach of the FET standard under article 4(2) of the BIT is established.

(iii) Arbitrary acts

355. Angola argues that its actions are not arbitrary and have not impaired the Claimant's investment.[451] The Claimant does not dispute the definition of arbitrary measures advanced by the Respondent,[452] but disagrees with the way in which the Respondent applies that standard to the facts of the present case.

356. Angola claims that IGAPE's decision "*pursued the legitimate aim of placing the seized turbines into operation to preserve them and prevent deterioration*" and was "*grounded in law, taken in accordance with proper procedure, and consistent with its custodial duty of prudent, diligent administration*".[453]

357. *First*, to justify this contention, Angola relies on its legal expert, who asserts that the custodian of assets must put them into productive use instead of leaving them idle.[454]

358. However, by putting the Four Turbines to use, Angola is thwarting the very purpose of a preventive seizure. As explained by Prof. Costa e Silva, a preventive seizure is a strictly conservatory measure designed to preserve the debtor's patrimonial guarantee so that, if the alleged credit is ultimately recognised and not voluntarily discharged by the debtor, it may be satisfied through the proceeds of the sale or adjudication of the seized assets.[455]

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[449] Statement of Defence, ¶187.
[450] *See* section II.C, ¶¶217-323 above; Statement of Defence, ¶475.
[451] Statement of Defence, ¶493.
[452] Statement of Defence, ¶489.
[453] Statement of Defence, ¶491.
[454] Statement of Defence, ¶491; **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, ¶¶38-39.
[455] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶20, 28, 47.

359. The trustee's duty, as an auxiliary of the court, is to administer the seized assets with the diligence and care of a *bonus pater familias*, maximising their value so as to protect both the debtor's property rights and the creditor's interest in the guarantee.[456] For movable assets that are at risk of deterioration or depreciation, Angolan law provides a specific remedy: anticipated sale under article 851 of the CPC – not the granting of their use to third parties.[457]

360. Under article 843(1) of the CPC, the use of seized movable assets may only be authorised where such use does not cause a loss in value and allows for the enhancement of the patrimonial guarantee.[458] In the present case, the continuous operation of the Four Turbines necessarily entails wear and depreciation, thereby diminishing the value of the very assets that the seizure was meant to preserve.[459]

361. Moreover, the use was granted without any compensation to the debtor, meaning that the turbines suffered physical degradation without any offsetting benefit to the patrimonial guarantee. Accordingly, the use of the Four Turbines is contrary to the conservatory purpose of the preventive seizure and incompatible with the standard of diligent administration required of a judicial trustee under Angolan law.[460]

362. *Second*, Angola argues that the decision to put the Four Turbines to use is legitimate on the ground that their continuous operation is necessary to prevent deterioration, and bases this contention on the technical report annexed to MINEA's letter of 4 March 2020.[461] As explained above, the document on which Angola relies does not state, at any point, that the Four Turbines must be put into operation, and the contention that their use is necessary to prevent deterioration defies logic.[462]

363. The absence of any genuine conservation effort on IGAPE's part is further evidenced by its handling of the consumables seized alongside the Four Turbines. Beginning in May 2020, PRODEL removed the consumables that had been seized along with the turbines – including hundreds of high-efficiency filters, Gaumer filters, and sixty-seven drums of Mobil Jet Oil II – and distributed them to separate thermal power plants, with IGAPE's acquiescence.[463]

364. Throughout 2021 and 2022, PRODEL reported the use of lubricating oils, degreasers, recirculation pumps, electronic control cards, and nitrogen accumulators from the seized assets.[464] As recently as June 2023, PRODEL confirmed that it had used equipment and consumables from the seized assets to

[456] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶107, 121.
[457] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶120-121.
[458] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶121.
[459] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶¶7, 83-84, 156. *See* ¶¶288-291 above.
[460] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶121.
[461] Statement of Defence, section 2.2.2, ¶¶125-144; **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020.
[462] *See* ¶¶288-291 above.
[463] **R-0071**, PRODEL's letter to IGAPE, 13 May 2020.
[464] **R-0074**, PRODEL's letter to IGAPE, 27 January 2022.

ensure the normal operation of power generation centres and to guarantee uninterrupted electricity supply.[465]

365. The consumables were thus systematically stripped from the seized assets and consumed across Angola's power generation network to serve objectives entirely unrelated to the preservation of the Four Turbines. While the Claimant's claims are not founded on these specific acts, they are illustrative of a broader pattern of conduct by IGAPE that is wholly incompatible with its custodial duty of conservation.

366. As regards impairment, Angola brazenly claims that the Claimant has yet to demonstrate any damages traceable to Angola's decision to put the turbines into operation.[466] It is self-evident that the continuous operation of gas turbines necessarily entails mechanical wear and depreciation.[467] Angola's own contemporaneous documents confirm as much.[468]

367. Moreover, in his Statement of Claim, Mr Machado argued that Angola's contradictions show that it has not been forthright regarding its real motivations for the expropriation of the Four Turbines.[469] Angola contends that the Claimant has manufactured these inconsistencies:[470]

368. *First*, Angola argues that there was no shift in its position regarding the appropriate manner of conserving the turbines in good condition and claims that the apparent change of position is attributable to mistranslations.[471] However, whether "*conservação*" is translated as "preservation",[472] "maintenance",[473] or "storage" is immaterial: the substance of the Claimant's argument remains the same regardless of the term used.

369. MINEA recognised that the Provincial Court of Luanda appointed IGAPE as trustee "*for the safekeeping and maintenance of the seized equipment*",[474] and, as explained

[465] **R-0084**, PRODEL's letter to IGAPE, 29 June 2023.
[466] Statement of Defence, ¶492.
[467] **CER-04**, Technical Expert Report by Rajesh Sharma, ¶¶7, 83-84, 156.
[468] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, p. 18 ("*Considering that the price of the four turbines and accessories and other seized goods has been paid by the State, the* ***risk of wear inherent to the use of the equipment or loss through consumption*** *is fully covered, so that no damage will result to the Defendant from these goods being operated and used*") (emphasis added).
[469] Statement of Claim, ¶167(v).
[470] Statement of Defence, ¶496.
[471] Statement of Defence, ¶495.
[472] Statement of Defence, ¶495(b)-(c); **R-0116**, Application for interim measure for the seizure of the Four Unsolicited Turbines, 4 October 2019; **R-0117**, Angola's Answer to Mr. Machado's Notice of Dispute, 8 December 2022.
[473] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, pp. 2 and 14.
[474] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, p. 14.

above,[475] its technical team proposed preventive maintenance measures for the "*storage and preservation*"[476] of the turbines by module.

370. Therefore, Angola's narrative did shift from "storage", "preservation" and "maintenance" to "use" of the Four Turbines. Having itself recognised the incompatibility between use and preservation,[477] Angola cannot now credibly maintain that the decision to operate the Four Turbines was consistent with its duties as custodian.

371. *Second*, as set out in the Statement of Claim, Angola's assertion that it has already paid for the Four Turbines is inconsistent with its simultaneous position that the deployment is merely temporary and that ownership remains to be determined by the Angolan courts.[478] Angola denies this contradiction on the basis that (i) the installation of the Four Turbines is reversible and (ii) their ownership will be determined by the Angolan courts.[479]

372. However, neither of these arguments resolves the inconsistency identified in the Statement of Claim. The reversibility of the installation is a technical characteristic of the equipment that has no bearing on the question of whether Angola's claim to have already paid for the Four Turbines can be reconciled with its assertion that ownership remains to be adjudicated.[480]

373. In any event, prior to these proceedings, Angola did not treat ownership of the Four Turbines as an open question. To the contrary, it asserted that "*certainly*" and "*with all probability*" the State would be recognised as their rightful owner because ownership of the Four Turbines had already been effectively transferred to the State.[481] On that basis, Angola drew a direct conclusion: because the State had already paid for the Four Turbines, no damage would result to Mr Machado from their deployment.[482] That submission necessarily presupposes that ownership in the State's favour is a *fait accompli*.

374. *Third*, Angola contends that there is no inconsistency between MINEA's public-interest rationale for requesting the operation of the Four Turbines and IGAPE's

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[475] *See* ¶291 above.
[476] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, pp. 21-24.
[477] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, p. 18 ("*Considering that the price of the four turbines and accessories and other seized goods has been paid by the State,* ***the risk of wear inherent to the use of the equipment or loss through consumption*** *is fully covered, so that no damage will result to the Defendant from these goods being operated and used*") (emphasis added). *See* ¶291 above.
[478] Statement of Claim, ¶167(v)(b).
[479] Statement of Defence, ¶497.
[480] *See* ¶293 above.
[481] **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), 2 March 2020, ¶¶52, 54; **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, p. 17; **R-0116**, Application for interim measure for the seizure of the Four Unsolicited Turbines, 4 October 2019, ¶49.
[482] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, p. 18.

rationale for using them to prevent deterioration, on the basis that both considerations are referenced in the Answer to the Notice of Dispute.[483] However, the fact that Angola invoked both rationales in a single document filed in the context of this arbitration does not resolve the tension between them. As explained in the Statement of Claim, the inconsistency lies in the fact that Angola has advanced multiple and materially distinct justifications for the appropriation of the Four Turbines.[484]

375. In sum, the Respondent's multiple *ad hoc* justifications demonstrate that Angola has not been forthright about the real reasons for the installation of the Four Turbines. Angola already considers the Four Turbines to be its property. Its *ex post facto* rationalisations serve only to obscure this fact.

376. A measure founded on shifting and contradictory pretexts, carried out in wilful disregard of due process and in contravention of Angola's own laws, constitutes an arbitrary impairment of the management, maintenance, use, enjoyment, and disposal of the Claimant's investment, in breach of article 4(3) of the BIT.

2. Angola has breached its obligation to accord FPS to the Claimant's investment

a. Applicable standard

377. Angola breached its obligation to provide FPS to the Claimant's investment under article 4(2) of the BIT.[485] As explained in the Statement of Claim, this standard is twofold: it encompasses both a physical dimension and a legal dimension.[486] Accordingly, the Respondent is required (i) to abstain from causing harm to the Claimant's investment, and (ii) to provide a legal framework that offers legal protection to investors.[487] By (i) installing and operating the Four Turbines, and (ii) failing to afford Mr Machado adequate legal procedures to vindicate his rights, Angola has failed to provide FPS to the Claimant's investment.[488]

378. Angola contests this description of the scope of the FPS standard and maintains that the standard does not extend beyond the physical security of an investment.[489]

379. In support of its position, Angola first addresses *Frontier Petroleum v. Czech Republic*. Angola argues that, even if the tribunal in that case extended the scope of

[483] Statement of Defence, ¶498.
[484] Statement of Claim, ¶167(v)(c).
[485] **CLA-25**, Consolidated text of the BIT (with informal translation into English), 22 December 2021, article 4(2).
[486] Statement of Claim, ¶¶171-174.
[487] Statement of Claim, ¶¶172-173.
[488] *See* Statement of Claim, ¶¶175-188; **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶121, 140, 154, 156, 161, 174, 177; ¶¶288-291 above.
[489] Statement of Defence, ¶509.

FPS to include legal protection, it did so only in relation to acts of the host state's judiciary, not acts of other state organs.[490]

380. However, the conclusion that the legal dimension of FPS is confined to acts of the host state's judiciary finds no support in the *Frontier Petroleum* decision, in which the tribunal clearly stated that "*it is* ***apparent that the duty of protection and security extends to providing a legal framework that offers legal protection to investors*** *– including both substantive provisions to protect investments and appropriate procedures that enable investors to vindicate their rights*".[491]

381. The tribunal further observed that "*where the acts of the host state's judiciary are at stake, 'full protection and security' means that the state is under an obligation to make a functioning system of courts and legal remedies available to the investor*".[492] That observation does not mean that *only* acts of the judiciary fall within the legal dimension of the FPS standard.

382. Moreover, even if the Tribunal were to agree with Angola's interpretation of the *Frontier Petroleum* decision and to conclude that the FPS standard only included protection against acts by the judiciary of the host State, the Claimant's case would still succeed. The acts and omissions on which the Claimant's FPS claim is founded expressly include those of the Angolan judiciary: IGAPE is a court-appointed trustee exercising functions delegated by the Provincial Court of Luanda and subject to its supervision, and the Provincial Court of Luanda is itself a judicial organ. The conduct of both IGAPE and the Provincial Court of Luanda that constitutes a breach of FPS falls, by definition, within the judicial sphere.[493]

383. Angola also attempts to rebut the *A.M.F. v. Czech Republic* decision cited by the Claimant, contending that the tribunal acknowledged the absence of broad consensus on extending FPS beyond physical protection.[494] However, Angola strips this passage of its broader context and original meaning. The tribunal in *A.M.F.* did observe that the interpretation of FPS as inclusive of legal stability and security was not yet of broad consensus. But it also recognised several cases in which other tribunals had considered FPS to include legal security as the duty to maintain a functioning judicial system and make it available to investors seeking redress,[495] and in fact applied that standard.[496]

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[490] Statement of Defence, ¶508.
[491] **CLA-41**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶263 (emphasis added).
[492] **CLA-41**, *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, 12 November 2010, ¶273.
[493] Statement of Claim, ¶¶183-186; **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶59.
[494] Statement of Defence, ¶509.
[495] **CLA-107**, *A.M.F. Aircraftleasing Meier & Fischer GmbH & Co. KG v. Czech Republic*, PCA Case No. 2017-15, Final Award, 11 May 2020, ¶¶647-652.
[496] **CLA-107**, *A.M.F. Aircraftleasing Meier & Fischer GmbH & Co. KG v. Czech Republic*, PCA Case No. 2017-15, Final Award, 11 May 2020, ¶¶648, 655-660.

384. Moreover, the Claimant submitted multiple authoritative cases on this issue with which Angola did not engage.[497] The authorities submitted by the Claimant are but a few examples of the many tribunals that have concurred with this reasoning and interpreted the FPS standard as extending beyond physical security.[498]

385. Additionally, the Respondent contends that FPS cannot encompass legal security because such protection already falls within the scope of the FET standard and relies on the decisions in *El Paso v. Argentina* and in *Saluka v. Czech Republic* in support of that contention.[499]

386. However, Angola mischaracterises the contents of both decisions: neither *El Paso* nor *Saluka* makes any determination as to the relationship or potential overlap between the FET and FPS standards.

387. Angola further submits that the FPS obligation requires the state only to exercise due diligence to safeguard the physical safety of the investment and does not impose absolute liability on states.[500] However, the due diligence standard applies to a specific category of cases: those in which harm to the investment is caused by third parties and the question is whether the host state exercised reasonable due diligence to prevent that harm.[501]

388. That standard has no application here. The harm to the Claimant's investment was not caused by a third party while the State stood by; it was caused by the State itself, which installed the Four Turbines in its power plants, connected them to the national grid, and has been operating them continuously ever since. Where the host state is the direct author of the harm "*no such issues of attribution or due diligence will arise because the state will then be held directly responsible*".[502] Therefore, Angola's invocation of the due diligence standard is inapposite, as it is directly responsible for its FPS breaches.

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[497] Statement of Claim, ¶173; **CLA-42**, *Biwater Gauff (Tanzania) Limited v. Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008**,** ¶¶729-730; **CLA-104**, *Glencore Finance (Bermuda) Limited v. Bolivia*, PCA Case No. 2016-39, Award, 8 September 2023**,** ¶240; **CLA-105**, *Anglo American PLC v. Venezuela*, ICSID Case No. ARB(AF)/14/1, Award, 18 January 2019**,** ¶482; **CLA-77**, *CME Czech Republic B.V. (The Netherlands) v. Czech Republic*, UNCITRAL, Partial Award, 13 September 2001**,** ¶613; **CLA-106**, *Global Telecom Holding S.A.E. v. Canada*, ICSID Case No. ARB/16/16, Award, 27 March 2020**,** ¶664; **CLA-46**, *Azurix Corp. v. Argentina (I)*, ICSID Case No. ARB/01/12, Award, 14 July 2006, ¶408.

[498] **CLA-90**, *Siemens v. Argentina*, ICSID Case No. ARB/02/8, Award, 17 January 2007, ¶303. **CLA-97**, *Krederi Ltd. v. Ukraine*, ICSID Case No. ARB/14/17, Award, 2 July 2018, ¶656; **CLA-34**, *Electrabel S.A. v. Hungary*, ICSID Case No. ARB/07/19, Award, 5 November 2015, ¶¶7.145-7.146; **CLA-99**, *Mohammad Ammar Al-Bahloul v. Tajikistan*, SCC Case No. V (064/2008), Partial Award on Jurisdiction and Liability, 2 September 2009, ¶246.

[499] Statement of Defence, ¶507.

[500] Statement of Defence, ¶510.

[501] Statement of Defence, ¶511.

[502] Statement of Claim, ¶172; **CLA-69**, Principles of International Investment Law (Second edition), Rudolf Dolzer and Christoph Schreuer, Oxford University Press, 2012 (excerpts), p. 10.

b. Angola failed to accord FPS to Mr Machado's investment

389. Angola has breached its obligation to provide FPS to Mr Machado's investment by (i) installing and continuously operating the Four Turbines and thereby damaging them, and (ii) acting unresponsively, opaquely, unilaterally and covertly, and failing to provide Mr Machado with an effective legal system to obtain redress.[503]

390. Angola denies that its conduct breached the FPS standard.[504]

391. *First*, Angola claims that the installation and use of the Four Turbines was necessary to safeguard their integrity and prevent future deterioration.[505] As explained above, this claim is rebutted in full: while MINEA requested the installation and use of the Four Turbines in its letter to the PPO, installation and use were not among the recommendations contained in the "technical opinion" attached to the letter.[506] Angola's claim that installation and use were part of the conclusions reached by PRODEL in its technical assessment is unsupported. The request to install and operate the Four Turbines came from MINEA on its own initiative.

392. Additionally, the assertion that the installation and use of the Four Turbines was necessary to safeguard their integrity and prevent future deterioration is, as previously explained, illogical.[507] MINEA has recognised that there is an inherent risk of loss through consumption, and PRODEL has revealed catastrophic levels of degradation in turbines operating under the same conditions as the Four Turbines.[508]

393. *Second,* Angola claims that the use of the Four Turbines cannot amount to a breach of FPS because (i) it was accompanied by adequate protection and maintenance measures, (ii) was duly authorised by the competent authorities in accordance with Angolan law, and (iii) pursued a legitimate public-interest objective.[509] Angola's arguments do not withstand scrutiny:

    (i) No maintenance programme, however diligent, can offset the inherent wear and depreciation caused by continuous operation – particularly under the conditions that PRODEL itself has documented – as MINEA itself

[503] Statement of Claim, ¶¶181-186; **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶¶121, 140, 154, 156, 161, 174, 177; ¶¶288-291 above.
[504] Statement of Defence, ¶516.
[505] Statement of Defence, ¶517.
[506] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, p. 20. *See* ¶291 above.
[507] *See* ¶¶288-291 above; **CER-04**, Technical Expert Report by Rajesh Sharma, ¶¶7, 83-84, 156.
[508] **R-0065**, Letter from MINEA to the PPO and attached technical report, 4 March 2020, p. 18; **R-0078**, Report of Completed Work at Xitoto Thermal Power Plant, 18 December 2020, p. 23. *See* ¶¶288-291 above.
[509] Statement of Defence, ¶523.

acknowledged when it recognised the inherent risk of loss through consumption.[510]

(ii) As explained above, the use of the Four Turbines had to be authorised by the Provincial Court of Luanda, not IGAPE.[511] No such authorisation was ever sought or obtained, and the legal opinion of the PPO cannot substitute for it.[512]

(iii) The invocation of a legitimate public-interest objective has no bearing on the FPS standard. The obligation to accord full protection and security under article 4(2) of the BIT is not subject to a public-interest exception, and Angola has not identified any authority to the contrary.

394. For the foregoing reasons, Angola has breached its obligation to accord full protection and security to Mr Machado's investment under article 4(2) of the BIT. The FPS standard, encompasses not only physical security but also legal security. Angola has failed to meet this standard on both counts. First, Angola has physically damaged the Claimant's investment by installing the Four Turbines in state-owned power plants and operating them continuously. Second, Angola has failed to provide legal protection and security to the Claimant's investment by failing to afford Mr Machado access to an effective legal system through which to vindicate his rights.

V. Damages

395. The Respondent objects to the Claimant's damages calculations on the basis that the Claimant (i) has not incurred any loss, (ii) was contributorily responsible for his damages, and (iii) the amounts claimed are neither substantiated nor accurately quantified.[513]

396. The Claimant rejects each of the Respondent's objections, as explained next.

A. The Claimant suffered a loss

397. The Respondent alleges that "*the Claimant has failed to establish any plausible counterfactual scenario in which, absent Angola's alleged breaches of the BIT, the Four Unsolicited Turbines would have reverted to his possession and ownership*".[514]

[510] *See* ¶¶288-291 above.
[511] *See* ¶¶269-271 above.
[512] *See* ¶¶269-271 above.
[513] Statement of Defence, ¶526.
[514] Statement of Defence, ¶539.

398. This argument is misconceived in two respects: as regards the alleged reversion of ownership and as regards the alleged reversion of possession.

1. Ownership

399. Angola's argument presupposes that Aenergy would have needed to demonstrate that, but-for Angola's appropriation of the Four Turbines, ownership would have "reverted" to it. However, there was nothing to "revert". It is undisputed in the present proceedings that, at the time Angola appropriated the Four Turbines, they were Aenergy's property. Ownership had never left Aenergy; accordingly, no "reversion" was required.

400. Angola has questioned the exact timing of the acquisition of ownership by Aenergy from GE, but it has not disputed the fact that Aenergy acquired ownership at some point in 2017.[515]

401. In its response to Mr Machado's Notice of Dispute, Angola proclaimed that "[t]*he Republic of Angola has always acknowledged that the turbines in question are of Aenergy S.A.'s property.*"[516]

402. In its Statement of Defence, Angola has confirmed its "*repeated acknowledgement that, pending adjudication, 'the turbines in question are of Aenergy S.A.'s property'*."[517]

403. Indeed, at no point did the Respondent raise the substantive defence that the Four Turbines were not expropriated because they were not Aenergy's property at the time of the alleged expropriation. Thus, it is undisputed that the Four Turbines were Aenergy's property when they were appropriated by Angola. Accordingly, the Claimant's damages case requires no showing that, in a but-for scenario, the Four Turbines would have "reverted" to his ownership.

404. The foregoing is without prejudice to the statements made by Angola *outside the present arbitration* to the effect that it acquired ownership of the Four Turbines by virtue of having ratified the purchase that Aenergy had supposedly made on the Angolan Government's behalf.[518]

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[515] Statement of Defence, ¶¶499, 561.
[516] **C-16**, Angola's response to Mr Machado's notification for the amicable settlement of the dispute (with informal translation into English), 8 December 2022, ¶23.
[517] Statement of Defence, ¶499.
[518] **C-15**, Request for preventive seizure of Aenergy's Four Turbines (with informal translation into English), 4 October 2019, ¶¶44-45; **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), 2 March 2020, ¶¶49-50; see in this regard ¶¶419-428 below.

2. Possession pending the Provincial Court of Luanda's judgment

405. As for Angola's possession argument, it is a straw man. It is premised upon the notion that "[t]*he Claimant's counterfactual scenario* […] *assumes that the Claimant would have benefited and profited from the use of the Four Unsolicited Turbines* 'but for*' Angola's breaches of the BIT*".[519]

406. However, the Claimant does not contend that he would have "*profited from the use*" of the Four Turbines. The Claimant's case is straightforward: before Angola installed and connected the Four Turbines to the national power grid and commenced operating them, Aenergy was the owner of four new turbines that were held in storage and were susceptible of being sold once the preventive seizure was lifted – a sale being the only "use" Aenergy, as a distributor, could derive from them.

407. The placement of the Four Turbines into preventive custody had not altered their ownership status. Hence, despite the judicial restrictions imposed by the preventive seizure, Aenergy remained the owner of the assets – assets which had an ascertainable fair market value.

408. By installing and connecting the Four Turbines to the national power grid and commencing to operate them, Angola removed them from judicial custody and appropriated – *converted* – them. This marked the point of no return, upon which it became impossible for Aenergy to recover the unused turbines of which it had been the owner until that moment. Angola had permanently appropriated them and they were no longer unused turbines.

409. In other words, the Claimant's case does not ignore that the judicial decision ordering preventive custody temporarily impaired Aenergy's rights, as owner, to dispose of the assets at will. But such impairment did not cancel out or negate Aenergy's ownership.[520] What did cancel out and negate Aenergy's ownership was Angola's breach of preventive custody and its appropriation of the assets.

410. Consistent with the foregoing, the protracted duration of Angolan court proceedings, to which the Respondent refers,[521] is also irrelevant. Mr Machado's case acknowledges that Aenergy would not have been able to sell the Four Turbines pending the court proceedings, however long these might have extended. But despite this temporary judicial restriction on Aenergy's power to dispose of the

[519] Statement of Defence, ¶529.
[520] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶28 ("*The effects that the law attributes to preventive seizure in Article 622 CC immediately answer one of the questions put to us by the Claimant: preventive seizure does not constitute a title for the transfer of ownership of the seized assets. Preventive seizure is an interim measure intended solely to preserve the debtor's assets so that a claim, allegedly in default, may ultimately be satisfied through the proceeds of the sale or adjudication of the seized assets*").
[521] Statement of Defence, ¶¶531-533.

Four Turbines, Aenergy remained the owner of assets which retained a certain fair market value.

3. The situation after the Provincial Court of Luanda's judgment

411. Angola does not merely argue that the Four Turbines would have remained in preventive custody for many years pending the Provincial Court of Luanda's judgment. It goes a step further and argues that, upon issuance of the final judgment, the Court would have ruled either in favour of Aenergy, in which case the Four Turbines would simply be returned to Aenergy,[522] or in favour of Angola, in which case "*ownership of the Four Unsolicited Turbines would vest in Angola*".[523] In either case – Angola argues – any claim for damages would be foreclosed.[524]

a. Returning the Four Turbines became impossible

412. As already explained, since Angola has appropriated the Four Turbines, returning them is no longer possible: the moment the Four Turbines were put into operation, they ceased to be new, unused turbines and became used equipment – a fundamentally different asset, belonging to a fundamentally different market,[525] from that of which Aenergy was the owner prior to their appropriation.[526] From that moment, a return of the turbines in their original condition became impossible.

413. The fact that the Four Turbines have since been in continuous operation for years, with the attendant mechanical wear and depreciation, only compounds the irreversibility of that transformation.[527] Consequently, should the Provincial Court of Luanda rule in favour of Aenergy, returning the Four Turbines to Aenergy is no longer an option. Of course, Angola intended from the outset for the appropriation to be final, permanent and irreversible, as explained above.[528]

b. The Respondent's hypothesising about the outcome of the Provincial Court of Luanda's case is ill-conceived

414. As a matter of principle, Angola is barred from arguing that it would have won the court case. A party that wilfully disregards the provisional nature of a preventive seizure order and appropriates the seized goods in breach of that order to create a *fait accompli* is barred from then speculating that, had it not done so, the result would have been no different in the end.

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[522] Statement of Defence, ¶¶534-537.
[523] Statement of Defence, ¶538.
[524] Statement of Defence, ¶¶534, 538.
[525] *See* ¶292 above.
[526] *See* ¶175 above.
[527] *See* ¶¶287-291 above.
[528] *See* ¶283 above.

415. In any case, the Respondent's assessment of the hypothetical result of its winning the case before the Provincial Court of Luanda is wrong.

416. Before the Provincial Court of Luanda, Angola sought two alternative forms of relief:

(i) a declaration[529] of "*the property rights of the Angolan Government over the 4 (four) turbines*";[530] and, in the alternative,

(ii) an order "*that the Defendant AENERGY be sentenced to return to the Angolan Government the amount of the funds disbursed from the GE Capital Loan that it unlawfully enriched itself with, which were used for the payment of the aforementioned turbines, which shall not be under 100.000.000,00 (one hundred million dollars)*".[531]

417. As explained by Prof. Costa e Silva,[532] the preventive seizure was not ordered to preserve the Four Turbines on the basis that they were disputed property. The seizure was ordered to preserve the value of the Four Turbines as a guarantee of enforcement of a credit right. That credit right cannot correspond to the declaratory relief sought – a mere declaration does not need to be, and cannot itself be, enforced – but can only correspond to the relief of payment of an amount of money, which Angola sought in the alternative.

418. Even if the Provincial Court of Luanda were to accept Angola's incomprehensible theory that the disbursements from the Credit Facility somehow unjustly enriched Aenergy and, consequently, were to order Aenergy to pay an amount of money to Angola, this would not have prevented Aenergy from recovering the Four Turbines. Aenergy could have averted any forced sale by voluntarily complying with the payment order.

419. As for the theory relied on by Angola before the Provincial Court of Luanda in support of its claim that it is the owner of the Four Turbines, the Claimant submits that Angola is estopped from invoking the hypothetical outcome of advancing a

[529] The English translation used "must be recognized" which is an imperfect translation of "*declarando-se*".
[530] **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), 2 March 2020, ¶89.
[531] **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), 2 March 2020, ¶89.
[532] **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶28 ("*The effects that the law attributes to preventive seizure in Article 622 CC immediately answer one of the questions put to us by the Claimant: preventive seizure does not constitute a title for the transfer of ownership of the seized assets. Preventive seizure is an interim measure intended solely to preserve the debtor's assets so that a claim, allegedly in default, may ultimately be satisfied through the proceeds of the sale or adjudication of the seized assets*").

position before the Court that is irreconcilable with the position it defends in the present arbitration (*venire contra factum proprium non valet*).

420. As explained above,[533] Angola does not dispute in the present arbitration that the Four Turbines were Aenergy's property when PRODEL put them into operation in its power plants. Accordingly, Angola cannot be permitted to invoke the prospect that the Provincial Court of Luanda will award it ownership over the Four Turbines on the basis of a contrary stance adopted in the local proceedings.

421. In fact, even before the Provincial Court of Luanda, Angola made irreconcilable allegations regarding the ownership status of the Four Turbines. On the one hand, it requested that the Court declare that the Angolan Government is the owner of the Four Turbines by virtue of having ratified the purchase that Aenergy had supposedly made on its behalf. On the other hand, it requested from the same Court the preventive seizure of the Four Turbines pursuant to article 402 of the Angolan Civil Procedure Code, which is only available against assets that are owned by the debtor.[534]

422. In any event, the theory Angola invoked before the Provincial Court of Luanda to argue that it has become the owner of the Four Turbines is so utterly and manifestly absurd that the Tribunal should disregard the possibility that the Court might be persuaded by such a theory. Were it otherwise, any respondent State in an expropriation case could successfully fend off an investor's expropriation claim simply by initiating legal proceedings invoking manifestly non-existent property rights over the expropriated assets.

423. Before the Provincial Court of Luanda, Angola posits:[535]

> *"Being that the four turbines were not included in the scope of any of the* [13 Contracts]*, and that AENERGY necessarily participated in the process as a result of which the turbines were paid for using funds disbursed from GE Capital Loan, with the manifest intention of selling the four turbines to the Government, one must conclude that ENERGY acted, in its purchase of the turbines, on behalf of the Government, so much so that it arranged for the Government to pay for the turbines".*

424. It further reasons:[536]

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[533] *See* section V.A.1, ¶¶399-404 above.
[534] *See* **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, ¶21 ("*According to Article 402 of the Civil Procedure Code (CPC), a preventive seizure consists of 'a judicial seizure [apreensão] of assets' and it is ordered where there is a well-founded fear of loss of the security for a debt and where facts are proven that make the existence of the debt probable and justify the fear claimed*").
[535] **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), 2 March 2020, ¶46.
[536] **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), 2 March 2020, ¶47.

> *"One must also conclude that AENERGY shipped the four turbines into Angola also on behalf of the Government, and also on behalf of the Government kept them stored and available until they could be delivered to the Government".*

425. Angola itself identifies the decisive reason why its theory must fail, namely that Aenergy concluded the purchase of the Four Turbines in its own name ("*pela AE em nome próprio*"),[537] as conclusively evidenced by the Supply Contracts.[538]

426. In the present case, the law applicable to the ratification of the Supply Contract is Swiss law, pursuant to clause 12 of the contract.[539] Under Swiss law, ratification by a third party is only available if the signatory outwardly acted on behalf of that party:[540]

> *"1. Ratification*
> *Art. 38*
> *1 Where a person without authority enters into a contract* ***on behalf of a third party****, rights and obligations do not accrue to the latter unless he ratifies the contract.*
> *2 The other party has the right to request that the represented party ratify the contract within a reasonable time, failing which he is no longer bound by it."*

427. Indeed, under no conceivable applicable law would a person be entitled to ratify and thereby arrogate to itself a contract that was not concluded on its behalf but by the signatory in its own name.[541]

428. This conclusion is a truism. The fact that Angola has not dared to invoke the ratification theory as a substantive defence to the expropriation claim before this Tribunal underscores the absurdity of the theory it relies on before the Provincial Court of Luanda.

429. Thus, even if the Provincial Court of Luanda were to issue an order ruling that the Four Turbines are Angola's property by virtue of ratification, this would add insult to injury, but such travesty of justice would not reverse the consummated expropriation, nor undo the damage definitively inflicted upon Aenergy and Mr Machado.

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[537] **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), 2 March 2020, ¶52.
[538] **AP-11**, Contract for Sale of Equipment and Services (No. 1049882), 30 March 2017.
[539] **AP-11**, Contract for Sale of Equipment and Services (No. 1049882), 30 March 2017, clause 12.
[540] **CLA-149**, Federal Act on the Amendment of the Swiss Civil Code, p. 4 (emphasis added).
[541] Also under Angolan law, only transactions entered into "*in the name of another*" ("*em nome de outrem*") are susceptible of ratification; **CLA-14**, Civil Code of Angola (with informal translation into English), art. 268(1).

B. Angola's contributory fault defence is without merit

430. Angola argues that, since Mr Machado was allegedly involved in the fabrication of the fraud letters, he is contributorily liable under international law for the loss of the Four Turbines and, consequently, cannot recover any damages.[542]

431. This defence fails on two independent grounds: first, Angola cannot establish the requisite causal link between the Claimant's alleged conduct and the loss; and second, the 100% reduction in damages that Angola seeks is unprecedented and unsupported by the very authorities on which it relies.

432. As to the first ground, the Respondent relies on the *Yukos v. Russia* and *LSF-KEB (Lone Star) v. Republic of Korea* decisions in support of its contributory fault defence.[543] However, both decisions confirm that a finding of contributory fault requires a sufficient causal link between the claimant's conduct and the loss suffered. In *Yukos*, the tribunal stated:[544]

> *"The Tribunal must therefore decide, on the basis of the totality of the evidence before it, whether there is a sufficient causal link between any willful or negligent act or omission of the Claimants (or of Yukos, which they controlled) and the loss Claimants ultimately suffered at the hands of the Russian Federation through the destruction of Yukos".*

433. The tribunal in *LSF-KEB (Lone Star) v. Republic of Korea* applied the same test.[545] The Respondent's defence founders on this very requirement.

434. The loss of the Four Turbines was caused by Angola's sovereign act of appropriating them in breach of its own domestic laws.[546] Angola installed the Four Turbines in State-owned power plants, connected them to the national grid, and has been operating them continuously ever since. That chain of causation runs from the Respondent's conduct to the Claimant's loss. No act or omission attributable to the Claimant forms any part of it.

435. Even assuming, arguendo, that the Claimant engaged in the conduct alleged by Angola, such conduct could not have caused or contributed to the loss of the Four Turbines. The Respondent's decision to appropriate the seized assets was a deliberate sovereign act, taken unilaterally and in contravention of its own laws. No prior conduct by the Claimant compelled, necessitated, or otherwise causally

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[542] Statement of Defence, section 6.2, ¶¶540-545.
[543] Statement of Defence, ¶¶542-543.
[544] **RL-0120**, *Yukos v. Russian*, UNCITRAL PCA Cases No. AA 226, 227, 228, Award, 18 July 2014, ¶1599.
[545] **RL-0121**, *LSF-KEB (Lone Star) v. Republic of Korea*, ICSID case No. ARB/12/37, Award, 30 August 2022, ¶810 ("*What must now be analysed is the causal link between the criminal misconduct of the Claimants and the loss ['the prejudice'] the Claimants ultimately suffered by reason of the partial loss of control premium brought about by the FSC's imposition of a price reduction*").
[546] Statement of Claim, ¶¶127-128.

contributed to that decision. Accordingly, the requisite causal link is absent and the contributory fault defence must be dismissed on this ground alone.

436. As to the second ground, the Respondent's contention that any damages awarded must be reduced by 100% on account of contributory fault is untenable.[547] A 100% reduction would not constitute an apportionment of fault; it would amount to a complete bar on recovery – a result that no tribunal has ever reached on the basis of contributory fault. Not one of the cases cited by the Respondent supports such an outcome.[548] In every case in which a tribunal has reduced damages for contributory fault, it has done so on the basis of a fact-specific assessment of the totality of the evidence, apportioning responsibility at its discretion and invariably leaving a substantial portion of the award intact.[549]

437. For these reasons, Angola's contributory fault defence is devoid of merit and must be rejected in its entirety.

C. The Claimant's damages are properly quantified and substantiated

438. The Respondent objects to the Claimant's damages calculations on the grounds that (i) the Claimant's valuation and underlying basis are flawed,[550] (ii) the Claimant has failed to demonstrate that Angola's breaches of the BIT caused any loss of value

[547] Statement of Defence, ¶545.

[548] **RL-0120**, *Yukos v. Russian*, UNCITRAL PCA Cases No. AA 226, 227, 228, Award, 18 July 2014, ¶1827 ("*As determined earlier, 2429 the Tribunal has concluded that the Claimants contributed to the extent of 25 percent to the prejudice they suffered at the hands of the Russian Federation. As a consequence, the amount of damages to be paid by Respondent to Claimants will be reduced by 25 percent to USD 50,020,867,798 and the Tribunal so finds*"); **RL-0121**, *LSF-KEB (Lone Star) v. Republic of Korea*, ICSID case No. ARB/12/37, Award, 30 August 2022, ¶23 ("*The majority of the Tribunal considers that the criminal misconduct of Lone Star made such a direct and material contribution to the Treaty violations of the Respondent that the responsibility for the loss should be shared equally and the loss attributable to the Respondent therefore reduced by 50%*"); **RL-0122**, *Occidental Petroleum v. Ecuador*, ICSID Case No. ARB/06/11, Award, 5 October 2012, ¶825 ("*Having determined earlier that the Claimants' damages should be reduced by a factor of 25% because of their own wrongful act which contributed in a material way to the damages which they subsequently suffered when the Caducidad Decree was issued on 15 May 2006* […]"); **RL-0123**, *Bogdanov v. Moldova*, SCC Case No. 093/2004, Award, 22 September 2005, ¶91 ("*The Arbitral Tribunal does not find that the Respondent is liable for payment of damages corresponding to the entire loss, and that the Local Investment Company must be deemed partially responsible for the loss because it did not ensure that the Privatization Contract contained an appropriately precise regulation of the compensation*"); **RL-0124**, *MTD v. Chile*, ICSID Case No. ARB/01/7, Award, 25 May 2004, ¶243 ("*The Tribunal considers therefore that the Claimants should bear part of the damages suffered and the Tribunal estimates that share to be 50% after deduction of the residual value of their investment calculated on the basis of the following considerations*").

[549] **RL-0120**, *Yukos v. Russian*, UNCITRAL PCA Cases No. AA 226, 227, 228, Award, 18 July 2014, ¶¶1599-1600; **RL-0121**, *LSF-KEB (Lone Star) v. Republic of Korea*, ICSID case No. ARB/12/37, Award, 30 August 2022, ¶814; **RL-0122**, *Occidental Petroleum v. Ecuador*, ICSID Case No. ARB/06/11, Award, 5 October 2012, ¶¶669-670.

[550] Statement of Defence, section 6.3.1, ¶¶551-574.

to his shares,[551] and (iii) the interest rate selected is inappropriate in the circumstances of this case.[552]

439. The Claimant rejects each of the Respondent's objections, as explained below.

1. The Claimant's valuation and underlying basis are appropriate

440. The Respondent challenges the Claimant's valuation of his damages on the following grounds: (i) the valuation date chosen by the Claimant is allegedly inappropriate, (ii) the valuation method is purportedly flawed, (iii) the AlixPartners Report allegedly relies on insufficient and inconsistent information, (iv) the AlixPartners Report is said to be based on estimates rather than actual, underlying financial data, and (v) when the AlixPartners Report does rely on specific data, such data is allegedly unsupported by reliable evidence and is instead drawn from internal documents or drafts.[553]

441. The Claimant will respond to each of the Respondent's contentions in the following subsections.

a. The Claimant's initial valuation date was as precise as possible given the Respondent's opacity and has now been updated

442. The Respondent takes issue with the Claimant's valuation date on the ground that the Claimant has not characterised whether his claim is for a direct or indirect expropriation, and that the applicable valuation date differs depending on how the expropriation is characterised.[554] In addition, the Respondent states that, since the Claimant had been deprived of the Four Turbines' economic value since December 2019, any damages suffered by the Claimant actually occurred before the Claimant's estimated expropriation dates, *i.e.*, May and August 2022.[555]

443. The Respondent's objections do not withstand scrutiny. Whether the expropriation is characterised as direct or indirect makes no difference here, because the constitutive facts were unambiguously identified by the Claimant, *i.e.*, the installation and connection to the grid of the Four Turbines.[556]

444. In the Statement of Claim, the Claimant estimated the dates on which the Four Turbines were installed and connected to the power grid as accurately as the

[551] Statement of Defence, section 6.3.2, ¶¶575-577.
[552] Statement of Defence, section 6.3.3, ¶¶578-583.
[553] Statement of Defence, ¶551.
[554] Statement of Defence, ¶552.
[555] Statement of Defence, ¶555.
[556] *See* ¶¶173-176, 257 above.

available information permitted.[557] As already explained, any inaccuracy in those estimates is attributable to the Respondent's own opacity.[558]

445. Now that the Respondent has disclosed the precise dates on which the Four Turbines commenced operations,[559] the Claimant is able to identify his valuation date with certainty. AlixPartners has revised its calculations accordingly, adopting the date of commencement of operations of the Four Turbines as the valuation date for the Claimant's damages claims.[560]

446. Moreover, the Respondent's contention that, because the Four Turbines were in preventive custody from 2019, any damages suffered by the Claimant necessarily arose years before the 2022 valuation dates, is without foundation.[561] As already explained, even if the Claimant was deprived of the ability to dispose of the Four Turbines from December 2019, this does not alter the undisputed fact that he remained their owner at the time of their expropriation in 2022.[562] The Claimant retained the option of selling the Four Turbines once the preventive seizure came to an end, and they would have remained new and unused had Angola not unlawfully put them into operation. Accordingly, the Respondent's argument fails.

b. AlixPartners's valuation method is appropriate

447. The Respondent contends that AlixPartners misconstrues the purpose of the cost approach and inappropriately uses the "*trending method*" to calculate the Claimant's damages. The Respondent further submits that AlixPartners incorrectly calculates freight costs based on 2022 rates rather than the actual amounts paid by the Claimant, and improperly claims lost profits based on the gross profit margin of comparable companies.[563]

448. The Claimant rejects each of the Respondent's arguments.

449. *First*, regarding the appropriateness of the trending method, the Claimant refers to AlixPartners's explanation in its Second Report.[564] AlixPartners relied on the trending methodology to estimate the fair market value of the Four Turbines and Additional Equipment as of their respective valuation dates, rather than at the time of purchase.[565] Under this approach, AlixPartners begins with the historical cost actually paid and adjusts it to reflect the value as of the valuation dates. As described in an authoritative appraisal text, this means that a "*trend factor is applied to the*

[557] Statement of Claim, ¶222.
[558] *See* ¶229 above.
[559] Statement of Defence, ¶¶307, 346.
[560] **CER-02**, Second Quantum Expert Report by AlixPartners, section IV, ¶¶122-126.
[561] Statement of Defence, ¶555.
[562] *See* ¶¶168-171, 250 above.
[563] Statement of Defence, ¶556.
[564] **CER-02**, Second Quantum Expert Report by AlixPartners, section III.C, ¶¶42-56.
[565] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶42.

property's historical cost to convert the known cost into an indicator of current cost" – in other words, the trending method reflects the movement of price over time.[566]

450. According to the Respondent, this method is inappropriate because, in HKA's view, it is too speculative,[567] and the Claimant should instead have used the sunk cost method to calculate the fair market value of the investment based on the historical cost of the Four Turbines and their equipment at the time of purchase. The Respondent relies on HKA's analysis in support of this position.[568]

451. However, HKA's analysis regarding the allegedly speculative nature of the trending method is inapplicable to this case.[569] The source on which HKA relies in characterising the trending method as speculative is an article published in *Urban Land* – a magazine focused on real estate, land use, and development – and concerns the real estate market specifically, where land value is identified as the greatest source of uncertainty in replacement cost estimates. That concern has no bearing on the appraisal of standardised industrial machinery such as gas turbines, which are manufactured, traded, and transported globally.[570] Moreover, when explaining why the sunk cost approach should apply, HKA omits a crucial sentence from the very author it quotes, according to which the sunk cost method "*has no relation at all to market value — the sales amount between a willing seller and a willing buyer*".[571]

452. The Claimant is requesting precisely the fair market value of the Four Turbines at the time of their appropriation. The purchase price or historical cost is an inappropriate basis for estimating that fair market value as of the 2022 and 2025 valuation dates because, unlike the trending method, reliance on historical cost does not convert the known cost into a current cost.[572] As AlixPartners explains, simply taking the historical cost incurred between 2017 and 2018 would not reflect the fair market value as of the valuation dates;[573] the trending method, by contrast, captures the movement of price over time.[574] The Respondent's objection on this point must therefore fail.

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[566] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶46, citing **AP-56**, American Society of Appraisers, Valuing Machinery and Equipment the Fundamentals of Appraising Machinery and Technical Assets, 4th ed., p. 43.
[567] Statement of Defence, ¶556.
[568] Statement of Defence, ¶¶556-559.
[569] Statement of Defence, ¶556.
[570] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶¶50-51.
[571] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶¶52-53.
[572] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶46.
[573] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶54.
[574] **AP-56**, American Society of Appraisers, Valuing Machinery and Equipment the Fundamentals of Appraising Machinery and Technical Assets, 4th ed., p. 43.

453. *Second,* regarding freight costs, the Respondent contends that the correct measure is the actual amount paid by Aenergy.[575] AlixPartners correctly rejects this argument: the actual costs incurred by Aenergy from 2017 through 2018 do not reflect the fair market value as of the 2022 and 2025 valuation dates, since those historical costs must be adjusted to reflect market movements between the time of shipment and the valuation dates.[576] The Claimant refers to AlixPartners's Second Report for a detailed rebuttal of HKA's remaining arguments regarding freight costs and a further explanation of why AlixPartners's calculations on this point are correct.[577]

454. *Third*, the Respondent mischaracterises AlixPartners's analysis as a claim for "*lost profits*".[578] It is not. The distributor margin is an integral component of the fair market value calculation, and it is entirely different from a lost profits claim.

455. As AlixPartners explains in its Second Report, in calculating the fair market value of the Four Turbines, it considered that they were purchased from GE through an agent and that a hypothetical buyer would likewise procure them through an agent.[579] The purchase price reflects the amount at which GE sold to an agent following negotiations between the agent and GE; it is therefore reasonable to assume that such an agent would recover its efforts and profit through a margin when selling to the buyer. The profit margin earned by such an agent accordingly constitutes a cost to the hypothetical buyer and must be reflected in the fair market value of the Four Turbines.[580] This is consistent with the fair market value standard.[581]

456. The Respondent's contention that AlixPartners should have used Aenergy's actual profit margin data is misconceived.[582] As AlixPartners explains, the purpose of the distributor margin analysis is to capture the margin that a hypothetical distributor of power generation equipment would earn – not Aenergy's actual or projected margin.[583] Since the fair market value standard is premised on a hypothetical transaction between a willing buyer and a willing seller, Aenergy's actual financial performance is irrelevant to the analysis.

457. The Respondent's objection to AlixPartners's selection of comparable companies is equally without merit.[584] AlixPartners selected 13 publicly traded companies globally whose primary industry classification, as determined by reference to S&P Capital IQ's industry classification system, is "*power generation equipment*

[575] Statement of Defence, ¶556.
[576] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶¶66-67.
[577] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶¶66-76.
[578] Statement of Defence, ¶556.
[579] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶82.
[580] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶82.
[581] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶83.
[582] Statement of Defence, ¶559.
[583] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶¶82-83.
[584] Statement of Defence, ¶556.

distribution" and whose business description is consistent with that classification.[585] HKA does not propose any alternative industry classification or alternative set of companies that it considers appropriate for evaluating the markup that a hypothetical distributor would charge on the Four Turbines.[586] Moreover, AlixPartners relies on the median gross profit margin of the selected companies, which diminishes the distorting effect of any outliers and differences among the companies in the sample. [587]Accordingly, the Respondent's objection on this point must fail.

c. AlixPartners relies on accurate information in its assessment

458. The Respondent contends that AlixPartners's report relies on limited and conflicting information, and points to a number of alleged inconsistencies in support of this claim.[588] The Respondent's objections on this point are irrelevant and have no impact on AlixPartners's findings.

459. For example, the Respondent points out an inconsistency in AlixPartners's report between the bill of lading for turbine #7266027 and the contract it is associated with.[589] As stated by AlixPartners in its Second Report, this is a typographical error, not a substantive issue. Specifically, three independent records confirm that MFG #7266027 was in fact purchased under Contract #1049882.[590]

460. The Respondent also argues that the timing of the transfer of ownership is unsubstantiated.[591] However, the Respondent fails to identify any error in AlixPartners's report in this regard. As the Respondent itself concedes, its objection is grounded on a legal point – *i.e.*, the date on which title to the Four Turbines transferred to Aenergy – rather than on any inconsistency in AlixPartners's report relating to those documents. This issue has already been addressed above.[592] Accordingly, the Respondent's objection is moot.

461. Finally, the Respondent states that neither the Claimant nor AlixPartners provides any financial evidence to substantiate the purchase of 14 turbines, and that some were purchased even before the existence of the Credit Facility.[593] Again, the Respondent fails to point to any conflicting information. Both the Claimant and AlixPartners have already adequately substantiated the purchase of the Four Turbines, including the timing thereof.[594] The documentation pertaining to the

[585] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶¶81, 84.
[586] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶84.
[587] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶85.
[588] Statement of Defence, ¶¶560-562.
[589] Statement of Defence, ¶560.
[590] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶23.
[591] Statement of Defence, ¶561.
[592] *See* ¶¶94-104 above.
[593] Statement of Defence, ¶562.
[594] *See* ¶¶45-51 above; **CER-01**, First Quantum Expert Report by AlixPartners, 11 September 2025, section III.A, ¶¶21-31; **CER-02**, Second Quantum Expert Report by AlixPartners, ¶¶20, 29-32.

purchase of the other 10 turbines is irrelevant to the present dispute. Once more, the Respondent's objection is without merit.

d. AlixPartners's report is adequately substantiated

462. The Respondent alleges that AlixPartners's report is insufficiently substantiated because it is grounded in estimates rather than real financial data.[595] Specifically, the Respondent contends that the Claimant has failed to provide evidence of any payment by Aenergy for the Four Turbines,[596] and that the Claimant has not shown that Aenergy could generate sufficient profit to pay for them.[597] The Respondent further argues that, in order to bridge the gap between the acquisition price paid by the distributor and the ultimate selling price to the equipment buyer, AlixPartners used speculative rates.[598] Finally, the Respondent submits that AlixPartners's alternative valuation is also flawed.[599]

463. The Respondent's objections are once again groundless.

464. *First*, regarding the payment of the Four Turbines, the Claimant refers to paragraphs 45-48 above and to AlixPartners's Second Report, which demonstrate that the Claimant has properly substantiated the acquisition of the Four Turbines.[600]

465. *Second*, since AlixPartners's fair market value analysis is premised on a hypothetical transaction between a willing buyer and a willing seller, Aenergy's actual financial performance is irrelevant.[601] AlixPartners correctly relied on the median gross profit margins of comparable companies.[602] Accordingly, it is unnecessary to demonstrate whether Aenergy could actually generate sufficient profits to pay for the Four Turbines.

466. *Third*, AlixPartners used reasonable rates in its analysis of the fair market value of the Four Turbines, based on the median gross profit margins among the analysed companies.[603] HKA has failed to propose any alternative that it considers appropriate for evaluating the markup that a hypothetical distributor would charge on the Four Turbines.[604]

467. *Fourth*, the Respondent's objections to the Claimant's alternative valuation are now moot, since the Respondent has finally acknowledged the precise dates on which

[595] Statement of Defence, ¶¶563-570.
[596] Statement of Defence, ¶563.
[597] Statement of Defence, ¶563.
[598] Statement of Defence, ¶565.
[599] Statement of Defence, ¶567.
[600] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶¶20, 29-32.
[601] *See* ¶¶455-457 above.
[602] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶¶81-88.
[603] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶¶85-88.
[604] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶84.

the Four Turbines commenced operations. AlixPartners has revised its calculations in light of these dates and accordingly no longer presents an alternative valuation.[605]

e. AlixPartners's report rests on reliable evidence

468. The Respondent states that AlixPartners's report rests on unreliable evidence. Specifically, the Respondent alleges that the report provides no reliable evidence to support that the Four Turbines were properly maintained before the preventive seizure, and that the documentation provided to support the alleged transportation and logistics costs, as well as the costs for the Additional Equipment, is insufficient.[606]

469. The Respondent's arguments are groundless.

470. *First*, AlixPartners provides further documentation in its Second Report regarding the condition of the Four Turbines before they were placed into preventive custody.[607] According to its analysis, Angola's allegations regarding missing parts are greatly exaggerated.[608] Contemporary documents show that when the turbines were shipped in December 2017, they were in good order and condition.[609] Furthermore, the "*Term of Delivery*" document cited by HKA itself undermines the allegation that parts were definitively missing: multiple items that HKA characterises as absent are noted in that very document as "*Possible in Box* [X]", meaning their absence at the time of inspection was not confirmed.[610] AlixPartners has nonetheless conservatively deducted the value of those parts that were confirmed as missing from its valuation.[611]

471. Angola alleges that the turbines were in such condition that they required repairs and refurbishment to be brought up to "*working standards*".[612] If that were true, there would necessarily be documents evidencing such expenditure.

472. During the document production phase, the Claimant requested documents "*pertaining to expenses or efforts incurred by Angola to repair, complete, replace or refurbish the Four Turbines*".[613] The Respondent replied that the requested information had already been provided in exhibits R-14 and R-66.[614]

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[605] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶58.
[606] Statement of Defence, ¶¶571-574.
[607] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶¶36-41.
[608] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶36.
[609] **AP-16**, Bill of Lading for MFG# 7267575, 7267577, 7267025, 28 December 2017.
[610] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶36.
[611] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶40.
[612] **RER-01**, Expert Report by HKA, ¶¶95-96.
[613] Claimant's Document Production Requests, no. 9.
[614] Claimant's Document Production Requests, no. 9.

473. However, the documents referred to by the Respondent prove no such thing. These documents contain an inventory of the Four Turbines and a description of their condition at the time of seizure. They contain no information regarding the expenses actually incurred to replace or refurbish them. Consequently, there are no documents showing any actual expenses to substantiate the Respondent's claims regarding the condition of the turbines prior to their seizure.

474. AlixPartners has revised its valuation of the Four Turbines downward based on documentation showing that certain parts of two of the Four Turbines were used as sources of spare parts for other turbines.[615] Specifically, AlixPartners has deducted a total of USD 1,250,979 from both its purchase price and fair market value analyses to account for the value of those missing parts. Nonetheless, this conservative adjustment is a far cry from Angola's allegations that the turbines were in such a condition that they required repairs and refurbishment to be brought up to working standards.

475. *Second*, the Respondent contends that the documentation submitted by AlixPartners in support of the transportation and logistics costs is merely an internal draft Excel file rather than a proper invoice.[616] As AlixPartners explains, the true-up spreadsheet was prepared by GE Power and shared with Aenergy in February 2019.[617] The mere fact that the spreadsheet contains hidden worksheets does not render the information in the visible worksheets unreliable, nor does it mean that the document is in draft form.[618] The Respondent's objection on this point therefore fails.

476. *Third*, regarding the Additional Equipment costs, the Respondent contends that PRODEL has no record of the purchase order for the Additional Equipment and that the purchase order is in any event unsigned.[619] The draft purchase order issued by PRODEL on 9 December 2019 constitutes contemporaneous evidence of the value attributed to the Additional Equipment during the negotiations that continued between Aenergy and the Angolan authorities after the seizure.[620]

477. Aenergy and the Angolan authorities continued their negotiations even after the preventive seizure of the Four Turbines and the related Additional Equipment, including discussions concerning the acquisition by Angola solely of the Additional Equipment. The purpose of those discussions was to allow such equipment to be removed from the scope of the judicial seizure and judicial deposit so that it could be immediately delivered to and used by PRODEL, since equipment subject to judicial seizure and deposit could not lawfully be used while remaining under such regime. In that context, a purchase order was prepared and submitted to PRODEL

[615] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶40.
[616] Statement of Defence, ¶573.
[617] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶78.
[618] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶80.
[619] Statement of Defence, ¶574.
[620] **AP-6**, PRODEL - EP., Purchase Order #012 2019, 9 December 2019.

in the amount of approximately USD 4.2 million, corresponding to the fair market value attributed to the Additional Equipment.[621]

478. However, Angola subsequently changed its position and instead proceeded to use the Additional Equipment and consume it, without making any payment or compensation, whilst simultaneously maintaining the position that the assets remained under Aenergy ownership and subject to judicial seizure and deposit.

479. The absence of PRODEL's internal records of the purchase order does not negate the evidentiary value of the document as a contemporaneous record of the parties' negotiations. The fact that the purchase order was not ultimately executed is explained by the breakdown of those negotiations. Accordingly, the Respondent's objection on this point must also fail.

2. Angola's breaches of the BIT are directly linked to the loss in value of Aenergy's shares

480. The Respondent alleges that the Claimant's alternative claim – *i.e.*, that the Claimant must be compensated for the loss in value of his shares in Aenergy –[622] is unfounded since the Claimant has not provided any documentation in support, such as audited financial statements.[623]

481. The Respondent's objection is irrelevant. It is not necessary to produce audited financial statements to demonstrate that the loss in value of Aenergy's principal asset resulted in a corresponding depreciation of its shares.

482. As already explained, even though the termination of the 13 Contracts and the preventive seizure had destroyed Aenergy's business opportunities, this does not mean that it had destroyed all of Aenergy's value.[624] Indeed, Aenergy was still the owner of the Four Turbines, and it could have realized their fair market value once the preventive seizure ended, provided they were properly maintained.

483. Consequently, the loss of Aenergy's principal asset translates into a proportional decrease in Aenergy's value and, correspondingly, in the value of its shares. Angola's objection therefore fails.

3. The interest rate selected is appropriate

484. The Respondent raises essentially two objections to the interest rates proposed by the Claimant: (i) that Angola's borrowing rate is not the rate the Claimant actually

[621] **AP-6**, PRODEL - EP., Purchase Order #012 2019, 9 December 2019.
[622] Statement of Claim, section VI.B.3, ¶¶223-227.
[623] Statement of Defence, ¶¶575-577.
[624] *See* ¶¶406-410 above.

paid or earned in Angola,[625] and (ii) that the SOFR plus 4% premium cannot be justified solely by reference to prior tribunal decisions, and that no historical financial data from the Claimant demonstrates actual financing costs.[626]

485. The Respondent's objections must fail for the following reasons.

486. *First*, regarding Angola's borrowing rate, the Respondent's objection conflates two distinct concepts. The applicable interest rate is not intended to reflect the rate that the Claimant himself paid or earned on any particular financing arrangement. Rather, as AlixPartners explains, the purpose of applying Angola's borrowing rate is to reflect the commercial rate at which Angola itself can borrow in U.S. dollars on the international market – a rate that is directly observable and commercially grounded.[627]

487. This is consistent with article 7(3) of the BIT, which requires that compensation bear interest at a "commercial rate".[628] Angola's U.S. dollar-denominated government bond yield is precisely such a rate: it is a U.S. dollar-based commercial rate that reflects Angola's sovereign cost of borrowing in the international market and incorporates the effect of compounding.[629]

488. The Respondent's suggestion that this rate is somehow inappropriate because it does not correspond to the Claimant's own financing costs misunderstands the purpose of pre-award interest in investment arbitration, which is to compensate the investor for the time value of money lost as a result of the Respondent's wrongful conduct,[630] not to reimburse the investor for a specific financing cost it incurred.

489. The Respondent's further contention that the Bloomberg yield data used by AlixPartners is an extrapolation of spreads rather than a reflection of actual bonds is equally unfounded.[631] Angola does not have a liquid government bond market with continuously traded instruments across all maturities. The one-year yield point used in AlixPartners's analysis therefore cannot be directly observed from a traded instrument and is therefore derived through Bloomberg's valuation methodology.[632]

490. *Second*, regarding the SOFR plus 4% rate, the Respondent's objection mischaracterises the basis on which the SOFR plus 4% rate is proposed. The one-year term SOFR is the recognised successor to one-year LIBOR and serves as a benchmark rate used by financial institutions to price U.S. dollar-denominated

[625] Statement of Defence, ¶579.
[626] Statement of Defence, ¶¶580-582.
[627] **CER-01**, First Quantum Expert Report by AlixPartners, ¶¶90-91.
[628] Statement of Claim, ¶¶230-231.
[629] Statement of Claim, ¶¶232-233; **CER-01**, First Quantum Expert Report by AlixPartners, ¶¶90-91.
[630] Statement of Claim, ¶229.
[631] Statement of Defence, ¶579.
[632] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶126 footnote 180.

variable rate loans. The 4% premium reflects the commercial risk associated with lending to a counterparty in the circumstances of this case.[633]

491. The Respondent's suggestion that the premium must be calibrated to the Claimant's own historical financing costs is without legal or financial foundation: pre-award interest in investment arbitration is not a reimbursement of the claimant's actual borrowing costs but a measure of the time value of money and the commercial cost of being deprived of the compensation to which the claimant is entitled.

492. The SOFR plus 4% rate has been applied in multiple investor-state cases as a reasonable commercial rate,[634] and AlixPartners has provided this rate as an alternative to Angola's borrowing rate precisely to give the Tribunal a range of commercially grounded options.

493. The Respondent's reliance on the study cited by AlixPartners to argue that tribunals most commonly award a premium of 2% rather than 4% is misleading.[635] The Claimant does not contend that a 4% premium is the only commercially reasonable option; rather, AlixPartners has presented both Angola's borrowing rate and SOFR plus 4% as alternative commercial rates, leaving it to the Tribunal to determine the most appropriate rate in the circumstances of this case. Accordingly, the Respondent's objections to the interest rates proposed by the Claimant must be rejected in their entirety.

494. Consequently, using the same approach as in the First Report, AlixPartners has recalculated the principal amount and updated its interest calculations to take into account the dates of commencement of operations of the Four Turbines and the date of its Second Report.[636] As set out in the Second Report, the updated fair market value of the Four Turbines and Additional Equipment as of the respective dates of commencement of operations totals USD 132,908,559. Pre-award interest on that amount, calculated through 21 May 2026 at Angola's U.S. dollar-denominated one-year government bond yield, amounts to USD 48,618,503. Calculated instead at the one-year term SOFR plus 4%, pre-award interest amounts to USD 41,063,796:[637]

[633] Statement of Claim, ¶235; **CER-01**, First Quantum Expert Report by AlixPartners, ¶92.
[634] **AP-71**, Credibility, Study of Damages Awards in Investor-State Cases, 2nd ed., January 2021, pp. 60-63.
[635] Statement of Defence, ¶582.
[636] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶122.
[637] **CER-02**, Second Quantum Expert Report by AlixPartners, ¶126.

Table 10 – Interest Calculation (US$) at Angola U.S. Dollar Denominated One-Year Government Bond Yield[182]

MFG.	Interest Beginning Date	FMV of Four Turbines and Additional Equipment	Interest Amount
7266027	12-Oct-22	35,278,685	15,254,532
7267575	7-Dec-22	30,472,580	11,264,991
7267577	20-Feb-24	35,811,192	8,204,749
7267025	9-Jan-22	31,346,103	13,894,231
Total		**132,908,559**	**48,618,503**

Table 11 – Interest Calculation (US$) at One-Year Term SOFR Plus 4.0%[183]

MFG	Interest Beginning Date	FMV of Four Turbines and Additional Equipment	Interest Amount
7266027	12-Oct-22	35,278,685	12,056,205
7267575	7-Dec-22	30,472,580	9,993,311
7267577	20-Feb-24	35,811,192	7,236,657
7267025	9-Jan-22	31,346,103	11,777,623
Total		**132,908,559**	**41,063,796**

VI. The Claimant's request for relief

495. The Claimant respectfully requests the Arbitral Tribunal to:

(i) declare that Angola expropriated Mr Machado's investment in breach of article 7 of the BIT;

(ii) declare that Angola failed to accord fair and equitable treatment to Mr Machado's investment in breach of article 4(2) and (3) of the BIT;

(iii) declare that Angola failed to accord full protection and security to Mr Machado's investment in breach of article 4(2) of the BIT;

(iv) order Angola to pay compensation to Mr Machado for the losses resulting from Angola's breaches of the BIT, in the amount of either (a) USD 132,908,559 plus pre-award interest from the expropriation dates[638] at the rate of the one-year yield on Angola's U.S. dollar denominated government bond, compounded annually (as of today: USD 48,618,503, resulting in a total of USD 181,527,062), or at another rate the Tribunal considers appropriate, or (b) the fair market value of the Four Turbines at the date of the final award (currently quantified at USD 157,657,552),[639] whichever is higher;

(v) order Angola to pay all costs of the arbitration, including the legal fees and expenses of the Claimant's legal representation, the fees and expenses of the Tribunal, Tribunal assistants and Tribunal-appointed experts, and the administrative charges and direct costs of the Centre;[640]

[638] *See* ¶494 above.
[639] Statement of Claim, ¶¶221-222; **CER-01**, First Quantum Expert Report by AlixPartners, ¶¶78-79. The Claimant reserves the right to update this amount at the hearing.
[640] Statement of Claim, ¶¶237-239.

(vi) order Angola to pay post-award interest on all sums due, at the rate of the one-year yield on Angola's U.S. dollar denominated government bond, compounded annually, or at another rate the Tribunal considers appropriate; and

(vii) grant any further relief to Mr Machado that the Tribunal deems just and proper under the circumstances.

Respectfully submitted,

Luis Capiel

[signed]

On behalf of Mr Ricardo Filomeno Duarte Ventura Leitão Machado