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decision

AMSTERDAM DISTRICT COURT

Private Law Division

moratorium number: C/l 3/16/43 S

Date of decision: 2 February 2017

On 1 December 2016 and 4 January 2017, respectively, applications were received at the registry of this district court with numbers C/l3/619708 FT RK 16.2462 and C/l3/621702 FT RK 17.48, respectively, of J.L.M. Groenewegen, administrator, and of W.M. Smelt and W.H.J. van den Wildenberg, counsel on behalf of Citicorp Trustee Company Limited (hereinafter: Citicorp), in the provisional suspension of payments pronounced on 9 August 2016 by this district court on 3 October 2016 of:

the private company with limited liability PORTUGAL TELECOM INTERNATIONAL FINANCE B.V.,
is listed in the Commercial Register of the Chamber of Commerce under file number 34108060.
with its official seat in Amsterdam,
business address: 1043 BW Amsterdam, Naritaweg 165,
counsel: R.D. Vriesendorp, R. van den Sigtenhorst and K.M. Sixma,
hereinafter: PTIF,

serving to revoke the granted suspension of payments and to pronounce the bankruptcy of PTIF.

1. The proceedings

1.1. The district court proceeded on the basis of the following case filings and/or procedural acts:

- the application from the administrator pursuant to Section 242 of the Dutch Bankruptcy Act (DBA) of 1 December 2016;
- an addition to the administrator's application of 20 December 2016;
- the application pursuant to Section 242 DBA of Citicorp of 4 January 2017;
- a statement of defence of PTIF of 10 January 2017;
- the oral hearing of applications that were heard at the same time as the hearing of 12 January 2017;

1.2. Finally, judgment was scheduled for today.

2. The oral hearing - in chambers

2.1. PTIF has taken the position (prior to and at the start of the hearing) that the hearing should be held in chambers (behind closed doors) and have objected against anyone besides the applicants and debtor from being permitted to be present and to speak, even (other) creditors.

In support of its position, PTIF has provided the following arguments:
- Section 242 (3) DBA stipulates that - only - the applicant, debtor and administrator are called up and heard;
- the DBA clearly provides in other cases that other - known - creditors are to be notified (for example in Section 247 DBA);
- the administrator also requests that PTIF be declared bankrupt (and a bankruptcy order is always discussed in chambers, because public hearing is generally not in the best interests of the debtor);
- the presence of creditors at the hearing could be prejudicial to PTIF, the suspension of payments it finds itself in and the restructuring procedure, and thus to its creditors, because everything that is raised during the hearing will then be public knowledge soon thereafter;
- the notes issued by PTIF and the shares (or at least the derivative ADRs) in parent company Oi S.A. are traded on the exchange and all information regarding PTIF is accordingly share price sensitive that can be used directly for trades;
- not all creditors have been called up, which constitutes unequal treatment of creditors.

2.2. The district court has decided that a request based on Section 242 DBA purporting to terminate the suspension of payments must in principle be handled at a public hearing. Contrary to Section 218 DBA (handling of request to grant final suspension of payments), Section 242 DBA does not, after all, stipulate that the request be handled in chambers. In cases when it is not explicitly specified that the discussion is to take place in chambers, the general rule is that hearings are public. Because the district court can understand the desire of PTIF for parties to be able to speak freely at the hearing, and given the arguments raised by PTIF in this respect, the district court has decided that the hearing is to take place behind closed doors and that in addition to the debtor and the administrator, only the applicants (also creditors), Citadel et al., and the other creditors to the extent they can make a convincing argument that they can be present at the hearing, and that what is discussed is to be treated confidentially. This is not an instance of unequal treatment of creditors as the administrator called up the known creditors and the administrator notified the creditors on his website of the hearing and the position that the district court has taken on the matter (see https://cms.law/en/content/download/275975/6671220/version/l/file/PTIF_Notice_to_Creditors_nr3_22_December_2016_English.pdf).

3. The facts

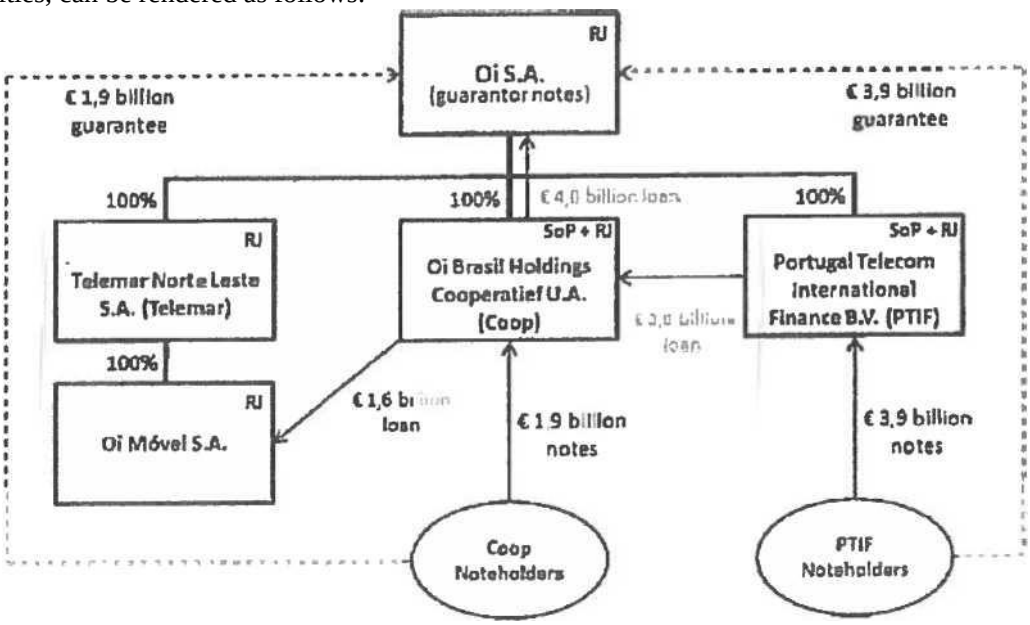
3.1. On 13 September 2016, PTIF requested this district court to designate a so-called undisclosed administrator. The district court granted this application and announced that it - in the case an insolvency procedure was initiated - was planning to appoint J.L.M. Groenewegen, lawyer practising in Amsterdam, as administrator or bankruptcy trustee and to appoint M.J.E. Geradts as supervisory judge. This procedure initially expired on 27 September 2016 and at PTIF's request the term was renewed up to and including 4 October 2016.

3.2. On 22 August 2016, Citicorp submitted to the district court an application for bankruptcy of PTIF.

3.3. On 30 September 2016, PTIF submitted to this district court the application to grant its (provisional) suspension of payments. Attached to the application is a draft composition, which has been filed at the court registry. In a decision of 3 October 2016, Oi Coop was granted a provisional suspension of payments with the appointment of J.LM. Groenewegen as administrator and M.J.E. Geradts as supervisory judge. The district court ordered that the action stipulated in Section 218 DBA (meeting of creditors) will not occur and that at 10.20 am on 18 May 2017 the consultation and vote on the offered composition will take place in the presence of the supervisory judge.

3.4. PTIF was incorporated on 26 November 1998 as a group company of Portugal Telecom, a Portuguese telecom provider. Mid 2014 Portugal Telecom, including PTIF, was taken over by Oi Group, one of the largest telecom providers of Brazil.

At the end of 2014 the Oi Group sold Portugal Telecom to Altice Portugal S.A. However, PTIF remained part of the Oi Group. The shares in PTIF are currently held by Oi S.A., the parent company of the Oi Group.
The shares in Oi S.A. are traded on the exchange of Sao Paulo Mercantile and in ADR format *(American Depositary Receipts)* on the New York Stock Exchange. The Oi Group is largely financed with loan capital raised on the international capital markets and comprises two Dutch financing vehicles, PTIF and Oi Brasil Holdings Coöperatief U.A. (Oi Coop). Oi Coop was granted a provisional suspension of payments on 9 August 2016, in which J.R. Berkenbosch was appointed administrator and W.F. Korthals Altes was appointed supervisory judge. The relevant part of the Oi Group, including the large mutual debt relationships that exist between these entities, can be rendered as follows:

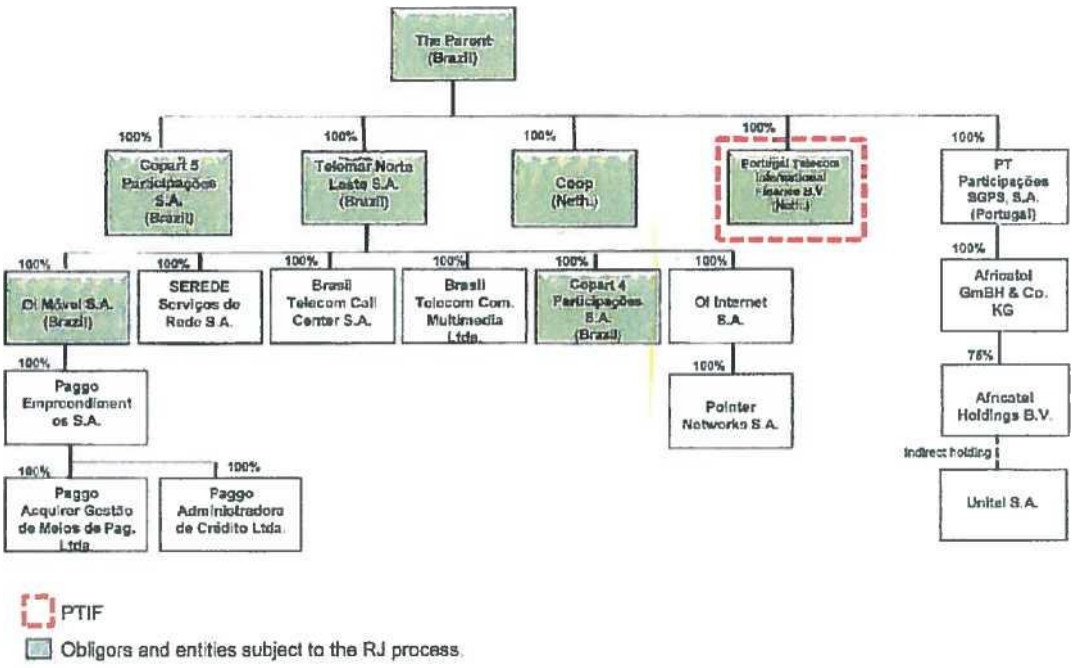


3.5. The operational activities of the Oi Group take place in Brazil primarily, but the Oi Group is - or has been - active in Portugal and various African countries as well. The Brazilian Agência Nacional de Telecomunicações (ANATEL) is the regulatory agency for the telecom activities in Brazil.

3.6. PITF is a Dutch financing vehicle within the Oi Group. PTIF's activities consist of (i) the issue and repayment of debt in the international capital markets, primarily in the form of listed bonds and (ii) the relending of funds received via the bonds to the Oi Group, in particular via a credit agreement concluded between PTIF and Oi Coop. No security interests are related to the notes. The notes are guaranteed by Oi S.A. PTIF itself does not have any operational activities and the noteholders can be paid exclusively out of the income and proceeds generated by the operational companies of the Oi Group. PTIF Coop had issued notes on 20 June 2016 for a total of approximately EUR 3.9 billion. Mid-2015 PTIF relent an amount of approximately EUR 3.8 billion to Oi Coop. Oi Coop had issued notes on 20 June 2016 for a total of approximately EUR 1.9 billion. Oi Coop, in turn, had relent an amount of approximately EUR 4 billion to Oi S.A. and had relent an amount of approximately EUR 1.6 billion to group company Oi Móvel S.A.

3.7. On 20 June 2016, Oi Coop submitted an application to open consolidated judicial restructuring procedure in Brazil (*recitpercigaõ judicial*, hereinafter referred to as: the RJ proceedings) together with Oi S.A. and five other group companies, to wit PTIF, Oi Móvel, Telemar Norte Leste S.A., Copart 4 Participates S.A. and Copart 5 Participates S.A. (hereinafter the 'RJ proceedings'). The Brazilian court granted this request on 29 June 2016. The aim of the RJ proceedings is to restructure the Oi Group as a going concern by means of a composition negotiated with the creditors and approved by the creditors and court (RJ Plan) and to thereby avoid liquidation. On 5 September 2016, a consolidated draft RJ Plan was filed with the district court in Rio de Janeiro, Brazil.

The structure of the Oi Group becomes clear from the organizational chart shown below:



3.8. Citicorp is part of the Citibank Group and acts as trustee in a variety of international financing structures, including in respect of the EUR 4.4 billion Note Program of PTIF.

4. The administrator's application

4.1. In an application of 1 December 2016 and supplemental application of 20 December 2016, the administrator requested the revocation of the provisionally granted suspension of payments and the simultaneous pronouncement of bankruptcy of PTIF. Based on the current facts and circumstances, the administrator no longer considers the continuation of the suspension of payments to be responsible or in the interest of the joint creditors of PTIF. The administrator is of the opinion that revoking the provisionally granted suspension of payments on the basis of the following grounds from Section 242 (1) DBA is justified: (i) PTIF acts in bad faith in administering the estate; (ii) PTIF attempts to prejudice its creditors; (iii) PTIF makes it impossible for the administrator to carry out his task pursuant to Section 228 DBA, so that PTIF therefore acts in violation of that Section; (iv) PTIF fails to do what in the opinion of the administrator must be done in the interest of the estate and (v) due to the breach of trust caused by PTIF and the Oi Group, it is no longer desirable to maintain the suspension of payments.

4.2. The administrator stated the following grounds, in short:

4.3. The financial position of PTIF is such that it has stopped paying its due and payable debts. Therefore, it can be declared bankrupt if the suspension of payments is withdrawn. PTIF has several creditors with claims amounting to a total of EUR 3.9 billion. The liabilities consist virtually entirely of debts to holders of notes issued by PTIF. It concerns a very diverse group, varying from large institutional investors to private investors.
PTIF's assets consist of approximately EUR 9.5 in cash, a claim from a loan of approximately EUR 19.4 million against Timor Telecom S.A. and an intercompany claim of approximately EUR 3.8 billion against Oi Coop, which is also in suspension of payments and is unable to meet its obligations. The latter receivable is therefore PTIF's principal asset. PTIF furthermore has no revenues from operational activities.

4.4. A choice was made to have all entities that were admitted to the RJ Proceedings one consolidated RJ Plan to all creditors of the different entities. Therefore, there are not seven separate debt restructuring plans. It is the administrator's understanding that the consolidated draft RJ Plan submitted on 5 September 2016 is in fact a placeholder plan, intended to make the deadline within which an RJ Plan had to be filed (hereinafter: the draft RJ Plan). Therefore, the consolidated draft RJ Plan could still undergo far-reaching changes; groups of creditors are still being negotiated with before the plan can be put to a vote.

4.5. The intercompany claims of Oi Coop against Oi S.A. amounting to approximately EUR 4 billion and against Oi Móvel S.A. amounting to approximately EUR 1.6 billion are Oi Coop's principal assets. The way in which these claims are handled in the enactment of the Brazilian RJ Plan and the provisionally granted suspension of payments of Oi Coop is therefore of vital importance to the creditors of Oi Coop, including PTIF, and therefore the creditors of PTIF.

4.6. PTIF does not, or insufficiently, allow the administrator to properly carry out his task, which he carries out in the interest of the joint creditors of PTIF. Furthermore, PTIF fails to do all that is reasonably necessary and/or possible to satisfy its creditors as much as possible and not prejudice them. The administrator is not convinced that PTIF is capable of (i) independently and objectively entering into consultations and to negotiate, among other things, on the further substantiation of the draft RJ Plan that was offered, both in Brazil and in the Netherlands, and (ii) properly representing the interests of the creditors of PTIF. PTIF has a duty of care vis-à-vis its creditors to provide full disclosure, allowing these creditors to assess whether the sacrifices they are asked to made (which includes a 70% haircut under the consolidated draft RJ Plan) are reasonable and necessary. In spite of repeated requests of the administrator and a number of creditors, PTIF is not willing to provide full disclosure to the administrator and/or the creditors and wrongly withholds relevant information. The Oi Group only provides a consolidated list of creditors which wrongly makes no distinction between the creditors of the various entities of the Oi Group, so that it is not clear which entities of the Oi Group owe which amounts to which creditors. Therefore, this constitutes a substantial and unacceptable information asymmetry. Without the information PTIF has withheld, the creditors of PTIF are not able to form an opinion about the realism of the restructuring, proposed by PTIF, of its debts, and the debts of its group companies. Creditors and the administrator of PTIF at this time have no or insufficient insight into the question whether the consolidated composition represents the best solution for the creditors of PTIF. It is important to note here that the Oi Group had failed to include any of the intercompany claims, and therefore failed to include the claim of PTIF against Oi Coop amounting to approximately EUR 3.8 billion and the intercompany claims of Oi Coop against Oi S.A. and Oi Móvel S.A., on the consolidated list of creditors, and therefore wanted to leave those intercompany claims outside of the RJ Proceedings and outside of the Dutch provisional suspension of payments of PTIF. In respect of the noteholders it is unclear whether both their claim against PTIF and their claim against Oi S.A. by virtue of the guarantees issued by Oi S.A. in respect of the notes are included on the list of creditors, as they should be.

4.7. PTIF violates its obligation under Dutch law to provide the administrator, and thus the joint creditors of PTIF, with all the information the administrator deems relevant, both requested and unrequested and in a timely manner, that concern PTIF. This particularly concerns (i) the court proceedings PTIF is involved in, in Brazil, and the necessity and desirability of the procedural acts to be carried out by PTIF in Brazil, (ii) the draft RJ Plan and the draft composition of PTIF, and the consequences thereof, (iii) the degree to which the joint creditors of PTIF are prejudiced or not.

4.8. PTIF conducts acts of management in Brazil without the required authorisation or assistance of the administrator. This primarily concerns filings in the context of the Brazilian RJ Proceedings which are carried out without informing the administrator and/or without allowing him to determine his position in a timely manner and/or without being sufficiently allowed to seek independent advice.

4.9. A significant number of creditors of PTIF, Citicorp and the Ad Hoc Noteholders Committee, has urged upon the administrator for some time to submit the present application. They believe that the current situation insufficiently allows the interests of creditors to be safeguarded. They furthermore believe that it is no longer desirable to maintain the suspension of payments and that there is no prospect of PTIF being able to pay its creditors in due course of time.

5. Citicorp's request

5.1. Citicorp ascribes to the grounds stated in the administrator's application. It states that its request is admissible since it is appointed as trustee to enforce PTIF's obligations under the notes on behalf of the joint noteholders, or groups of noteholders. Under article 9(A) of the applicable Trust Deeds, Citicorp is obliged to comply with instructions of Noteholders, provided that these Noteholders hold at least 25% of a specific series. The execution of the instruction is then binding on all Noteholders. Citicorp makes the present request at the instruction of the holders of all "*5.242% Notes*" that would originally become due and payable on 6 November 2017. This means the 25% threshold is met (since the instruction is given by the holders of all 2017 Notes). In addition, Citicorp has a claim of its own against PTIF in the amount of approximately EUR 100,000 for unpaid fees and expenses. Citicorp is therefore authorised to act in court both in its own name - as an independent creditor - and for the noteholders.

6. The defence

6.1. PTIF puts forward a defence against the request for withdrawal of the provisional suspension of payments granted to PTIF and against a declaration of bankruptcy. PTIF stated the following grounds, in short:

6.2. PTIF disputes that it insufficiently cooperates with the administrator. It takes the position that the administrator expects too much from it, and too fast. It logical and appropriate for Oi Group to first focus on stabilising its business operations before involving its principal creditors in the negotiations regarding the RJ Plan. The current expectation is that the creditors of the Oi Group, including the creditors of PTIF, will vote on the RJ Plan by May 2017 at the latest. At that moment an adjusted RJ Plan will have been negotiated with the principal creditors. Although the ultimate payments to be received by the PTIF noteholders depends on how the negotiations progress, PTIF currently has no reason to assume that the ultimate RJ Plan and, with it, the Dutch composition will not be adopted.

6.3. In the event that the restructuring via the RJ Proceedings and/or the suspension of payments of PTIF should fail and a liquidation scenario emerges for the Oi Group, the expected distribution percentage to the noteholders is negligible. PTIF therefore considers it in the best interest of its creditors to do its utmost for the success of the RJ Proceedings by means of reaching a creditors' composition in the RJ Proceedings, which can then be offered - as far as it concerns PTIF - in the provisional suspension of payments it has been granted. It is also relevant that PTIF is merely a financing vehicle, without its own independent right of existence apart from the Oi Group. The principal debtor of PTIF is Oi Coop, which is also part of the RJ Proceedings. The debtors of Oi Coop, i.e. Oi S.A. and Oi Móvel S.A., are also involved in the RJ Proceedings. Given the above, PTIF's ability to pay its creditors depends strongly on the success of the restructuring of Oi Group.

6.4. Since November 2016 the negotiations about the RJ Plan have been started and since then there have been various important positive developments that increase the chances of success for the RJ Plan and the Dutch composition. The withdrawal request of the administrator does not do justice to these developments. Moreover, since the date of the application for a provisional suspension of payments - when the administrator still fully supported the parallel restructuring in the Netherlands and in Brazil - there have not been any circumstances that could be of essential influence on the decision of the administrator to no longer support the current process.

The creditors of PTIF are not exposed to any risk if the provisional suspension of payments is continued. Indeed, nothing happens with PTIF's assets, or the estate in a broader sense, nor are any irreversible steps anticipated in the short term. In addition, PTIF cannot freely dispose of assets - such as using revenues or liquidating capital - under Brazilian law either. This is because it is one of the entities that is subjected to the supervision of the Brazilian court in the RJ Proceedings.

6.5. In the negotiations with the creditors about the Dutch composition the administrator in principle did not, and does not, play any role. It is therefore inappropriate for him to demand a result in the negotiations to be conducted by others, including the demand that PTIF and the other Oi Group entities recognise that the intercompany claims of PTIF against Oi Coop and of Oi Coop against Oi S.A. and Oi Móvel S.A. be independently included in the RJ Plan, as the administrator requested in his letter of 31 October 2016.

6.6. The compulsory grounds for withdrawing the provisional suspension of payments (Section 242(1) sub 1 and sub 5 DBA) do not apply here. Nor is there reason for the district court to use its discretionary power to withdraw the suspension of payments. PTIF has not conducted any acts of management and disposition without the administrator's permission.
The aforementioned filings of PTIF and/or the Oi Group are not legal actions involving the rights and obligations of the estate. Conversion of the suspension of payments into a bankruptcy forms a threat to the consolidated restructuring, leads to further delays, has possible far-reaching tax consequences and may cause the regulator ANATEL to intervene.

6.7. Alternatively it is requested to stay the decision on the requests.

7. Other interested parties

7.1. At the hearing the lawyers F. Verhoeven and G.H. Gispen have spoken on behalf Capicorn Capital Ltd., Trinity Investments Designated Activity Company and York Global Finance Fund L.P., in favour of allowing the request. The lawyer R.J. van Agteren stated on behalf of GoldenTree Asset Management LLP that they did not want to take a position on the matter but confirmed that the negotiations regarding the RJ Plan are in progress and that they are taking part in them. There were also several other creditors who appeared but did not speak.

8. The assessment

8.1. In addressing the question of whether the (provisional) suspension of payments must be revoked, the district court must evaluate whether the status of the estate is such that maintaining the suspension of payments is no longer desirable and whether the outlook exists that the debtor will not be able to satisfy its creditors after time has passed. It must be seen whether - given the interests of those creditors and taking into consideration that the bankruptcy is 'the normal form of liquidation of insolvent estates' - it is responsible to allow the 'abnormal condition' of suspension of payments to persist (cf. Court of Appeal of Arnhem-Leeuwarden 29 January 2015, ECLI:NL:GHARL:2015:574).

8.2. In that assessment, the district court should consider the question of whether the other situations listed in Section 242 (1) DBA present themselves here, and if so, whether this weighs heavily enough to justify revoking the provisionally granted suspension of payments of PTIF and to pronounce its bankruptcy.

8.3. In this assessment, the following circumstances are important:
(i) PTIF is a financing company of the Oi Group, an international group, and its right of existence is owed exclusively to that position. The creditors of PTIF have opted to invest in the Oi Group and not so much in PTIF as such. The return on their investment (interest and principal to be paid on the notes) is entirely contingent on the performance of the Oi Group. PTIF must direct its actions based on the interests of Oi S.A. and (legal) persons affiliated with it, as the financing company of the Oi Group.

(ii) As a Dutch legal entity, PTIF is governed by Dutch law. It was granted a (provisional) suspension of payments and it must be governed by the Dutch Bankruptcy Act, in particular Section 228 (1) and 231 (3) DBA.
(iii) Pursuant to Section 252 DBA, the debtor - i.e. PTIF itself - is the one to negotiate with the creditors about the composition to be offered. Only the debtor can offer a composition, cooperation of the administrator is not required and the negotiation on a composition is not part of the duties of the administrator (nor of the trustee in bankruptcy, Section 138 DBA).
(iv) Since the provisional suspension of payments was granted to PTIF and the start of the RJ proceedings, the financial situation of the Oi Group has improved and the value of the notes issued by PTIF and Oi Coop has increased. This becomes clear from the operational figures of the Oi Group, as published on 10 November 2016, and from an overview of the notes issued by PTIF and Oi Coop, which show a percentage increase from the start of the RJ Proceedings until the moment of the applications to withdraw the suspension of payments.

8.4. The district court states from the outset that a (provisional) suspension of payments was granted to PTIF because the Oi Group was busy restructuring the Oi Group as a going concern by means of a composition (the RJ Plan) negotiated and approved by creditors and done to avoid liquidation. With a view to this, when granting the (provisional) suspension of payments, PTIF was given time until May 2017 to offer a composition derived from the RJ Plan, the Dutch composition, to its creditors.

8.5. Now the question must therefore be answered whether the situation at this time is so different than at the time the (provisional) suspension of payments was granted that it is now in the best interest of creditors for the suspension of payments to be revoked (see 8.1 above).

8.6. The district court is of the opinion that this is not the case. The following is the reason why.

8.7. It has been established that there are still negotiations with creditors regarding the RJ Plan. The consolidated draft RJ Plan was only filed on 5 September 2016 to extend the time within which a composition had to be offered in Brazil. This is recognised by the administrator (see 4.4 above) and this was also confirmed during the hearing by the lawyers representing a group of creditors. To that extent, the situation is now no different than when the (provisional) suspension of payments was granted.

8.8. It has neither been argued nor become apparent that the creditors will be better off in the event the suspension of payments is revoked and PTIF is declared bankrupt. It is furthermore not inconceivable that the bankruptcy order of PTIF could have negative implications for the restructuring of the Oi Group.

8.9. However, the suspension of payments cannot be maintained if PTIF or its management has been acting in violation of the Bankruptcy Act since the (provisional) suspension of payments was granted. The administrator has claimed that this is the case. The district court is of the opinion that this is not the case. The following is considered in this respect.

Information provision PTIF

8.10. One of the accusations that the administrator makes against PTIF or its management is that they did not provide him with all the information he asked for, including in particular - the district court gathers - the non-consolidated financial data (itemised per group company separately) of the various companies belonging to the Oi Group, despite his repeated requests.

8.11. The district court agrees with the administrator that PTIF or its management must provide him with sufficient information at any given time to enable him to assess a composition offered by PTIF to its creditors and to issue his recommendation to the creditors as specified in Section 265 (1) DBA.

The information, including, insofar as relevant, non-consolidated information about the debt positions of the various companies of the Oi Group, must be provided in such a timely fashion to the administrator that he can draft the aforementioned recommendation in a well-informed manner. In light of the fact that negotiations are currently in progress on the RJ Plan, the administrator has found there to be insufficient substantiation that he needs that information already at this time and that PTIF or its management is therefore required at this time to provide him with the requested information. This also applies, *mutatis mutandis*, in respect of information regarding the treatment in the final RJ Plan of the intercompany claim of PTIF against Oi Coop, and in respect of information on the basis of which it can be assessed whether the creditors of PTIF are offered enough because they not only have a claim against PTIF itself but also a guarantee claim against Oi S.A. The statement of the administrator that PTIF has waived its intercompany claim against Oi Coop and that OI S.A. ignores its guarantee obligations cannot yet be sufficiently determined. Given that the negotiations about the RJ Plan are still ongoing it cannot be established, as the administrator asserts, that the unsecured creditors - including PTIF - are expected to accept a 70% haircut. At this time, it is still too early to (be able to) assess whether the sacrifices the creditors are requested to make are reasonable and necessary and whether or not this offer will be better than what creditors would receive in the event of a settlement as part of a bankruptcy. It has thus not been convincingly argued that PTIF is currently acting in violation of the provisions of Section 242 (1)(2) DBA.

The filings in the RJ Proceedings

8.12. The administrator reproaches PTIF or its management board that various procedural acts are conducted before the Brazilian court - also - on behalf of PTIF without the administrator's permission and without being informed about it. As the district court understands it this concerns various filings that were made in the context of the RJ Proceedings. The administrator particularly pointed out:
(i) a filing of 7 November 2016 whereby PTIF put forward a defence against an application of the China Development Bank Corporation,
(ii) a filing of 16 November 2016 involving a defence against a claim brought by Aurelius,
(iii) a filing of 28 November 2016, in which proceedings were instituted requesting relief against the administrator himself.
(iv) a filing of 2 December 2016 with regard to seeking leave of the Brazilian bankruptcy court for an intended sale of an - indirect - participating interest of Oi Group in Timor Telecom, which transaction also involves the repayment of a loan of USD 22 million provided by PTIF. The administrator takes the position that the repayment of the loan to Timor must be effected by means of the bank account PTIF holds in the Netherlands with ING Bank N.V.

8.13. PTIF puts forward the following defence.
(i) filing China Development Bank and (ii) Aurelius
These filings are a reaction to the requests made by the Chine Development Bank Corporation and Aurelius to subdivide the creditor lists per entity. The administrator has demanded that PTIF agree with the requests made by these - alleged - creditors. PTIF failed to respond to this demand for various reasons, and put forward a defence in filings of 7 November 2016 and 16 November 2016. First of all, the RJ Debtors, including PTIF, are entitled under the applicable Brazilian law and in conformity with Brazilian case law to submit a consolidated list. That list is therefore legitimate. This was a well-considered choice in order to increase the chances of success of the RJ Proceedings. To agree with the administrator's request is at odds with Oi Group's intentional choice to steer towards a consolidated RJ Plan, which is in the interest of the interested parties of Oi Group, including the creditors of PTIF. What is more, the making of these filings does not constitute a legal action involving the rights and obligations of PTIF's estate within the meaning of Section 231(2) DBA. It merely concerned information requests of creditors of the Oi Group that do not affect the assets or liabilities of PTIF and therefore do not affect PTIF's estate. PTIF was therefore entitled to make these filings without the cooperation of the administrator.

(iii) filings with requests directed against the administrator

8.14. The filing of 28 November 2016 - which was made after the administrator had indicated that he intended to submit an application for withdrawal of PTIF's suspension of payments - is an application of the Oi Group to the Brazilian court to take certain protective measures against possible prejudicial acts of the administrator. The background of this application is that the administrator has imposed demands on PTIF and sometimes on the other RJ debtors that contain unreasonable, unfounded and unauthorised elements with regard to (i) the RJ Plan, (ii) filings in the RJ Proceedings and (iii) information provision to the creditors, which not only cannot be made under Dutch law but are furthermore contrary to Brazilian law and to the object of the RJ Proceedings. Given the nature of this filing it cannot be required that PTIF merely makes it with the administrator's permission.

(iv) filing Timor Telecom

8.15. The filing of 2 December 2016 of the Oi Group concerns the intended sale of Oi S.A.'s participation in Timor Telecom S.A. (Timor) to Investel Communications Limited (Investel). PTIF asserts first and foremost that this is merely an intended transaction and that certain other conditions must first be met before the transaction can proceed. Contrary to what the administrator asserts, the intended transaction has not yet been effected. The background of the intended sale can be found in the fact that it is no longer profitable or interesting for the Oi Group to maintain the investment in Timor. Investel's offer entails, among other things, that Oi S.A. indirectly receives an amount of approximately USD 36 million and that PTIF receives full repayment of the various loans of USD 22 million that it provided to Timor, which is expected to be much more than whatever PTIF would ever be able to expect as creditor of Timor independently, at least in the short term, given especially the limited financial means at Timor's disposal. By cooperating with Investel's offer, the RJ debtors, and therefore PTIF, are acting in the interest of their creditors. By demanding that the repayment of the loan to Timor occurs through the bank account held by PTIF at ING Bank N.V. in the Netherlands, the administrator ignores the dynamics of a cross-border insolvency with consolidated proceedings in Brazil.

8.16. In the opinion of the district court, these reproaches of the administrator do not hold either. PTIF has undisputedly asserted that filings take place continuously in the RJ proceedings, to which the RJ debtors must respond together and of which most are administrative in nature or do not pertain to or affect PTIF's creditors or their positions. The operating mode that the Oi Group has proposed to the administrator in this context, which – in short – entails that the Oi Group instructs and pays a Brazilian lawyer through which the administrator can obtain information about the various filings so that the administrator – insofar as necessary – is able to approve documents to be submitted in the RJ proceedings in due time, does not seem unreasonable to the district court at this time, given also the lack of a concrete explanation of why this would be unworkable.

8.17. As regards the particular filings referred to, PTIF has explained with substantiation that these acts cannot be regarded as any acts of management or disposition relating to the assets (within the meaning of Section 228(1) of the Dutch Bankruptcy Act). Subsequently, the administrator has not opposed this with anything compelling the district court to change its opinion. With regard to the intended transaction concerning the divestment of Timor, which apparently includes the repayment of a loan provided by PTIF, it is needless to say that the administrator must be able to give his approval to this part of the transaction before it can actually be effected. PTIF's management will have to provide the administrator with sufficient information in a timely manner to enable him to form an opinion on this part of the transaction (whether it is in the interest of PTIF's creditors and whether the proceeds of the transaction will sufficiently benefit PTIF's creditors). Indeed, without the administrator's permission, the assets are not bound to the transaction and Timor cannot pay in discharge of an obligation to anyone other than PTIF.

8.18. As regards (iii) the filing of 28 November 2016 in which proceedings are instituted in which relief is requested against the administrator, it must be assumed that this – as PTIF argues – was a response to the administrator's statement that he would submit a request to withdraw the suspension of payments and that PTIF will not follow up this filing if the suspension of payments is maintained. Although this course of events does raise questions, the district court will disregard this matter that it assumes will not be followed up.

Creditors

8.19. The mere fact that certain creditors of PTIF are urging the administrator to request for conversion of the (provisional) suspension of payments into a bankruptcy is insufficient for the district court to do so. Indeed, it has not been asserted that all or even just a majority of the creditors are urging for this and are doing so on proper grounds. It in any case appeared at the hearing that there are also creditors that do not support this request and which feel that they are given sufficient opportunity to negotiate a composition and do so, too.

Conclusion

8.20. All this causes the administrator's requests to be denied.

Finally

8.21. The district court understands that the administrator believes he is not actively and sufficiently involved in the restructuring process and is therefore unable to properly perform his duties in the situation as it has developed (contrary to what he believes he was promised during the pre-pack administration stage), but this by itself is not a reason to allow his request. However, in the light of this, the district court wants to emphasize that cooperation with the administrator is necessary for PTIF or its management to – also – successfully complete the Dutch suspension of payments and – as everyone hopes – to be able to conclude a composition that is favourable or at least acceptable to the creditors of PTIF as well. In order to achieve this, it seems plausible to the district court that it is recommended that the administrator and PTIF or its management enter into consultations to coordinate their mutual expectations for the remaining period and to allow the administrator to properly fulfil his tasks, which indeed – as both parties argue – is not clearly defined in the Dutch Bankruptcy Act. After all, the parties are "condemned to each other" due to the suspension of payments and must – in the interest of the creditors, in this case particularly in the interest of PTIF – jointly arrive at a successful completion.

Citicorp's request

8.22. Given that the request of Citicorp contains no other grounds than the grounds the administrator put forward in his request, this request cannot cause the provisional suspension of payments to be lifted either. The question whether Citicorp can or cannot be considered a creditor of PTIF and whether its request is admissible in that capacity therefore need not be answered here.

9. The decision

The decision

The district court:

- denies the requests of the administrator and Citicorp.

This decision was rendered by G.H. Marcus, R.A. Dudok van Heel and K.M. van Hassel, judges, and was pronounced in open court on 2 February 2017 in the presence of F. de Greef as court clerk.