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(Translated from French)

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**THE REPUBLIC OF FRANCE**  
IN THE NAME OF THE PEOPLE OF FRANCE

**COURT OF APPEALS OF PARIS**  
**International Commercial Chamber**

**SECTION 5 - CHAMBER 16**

**RULING OF 9 NOVEMBER 2021**

(No. /2021, 10 pages)

Case number: **20/05583 - Portalis No. 35L7-V-B7E-CBWCA**

Decision on appeal before the Court: The arbitration award dated (...) (Award No. (...)).

**CLAIMANTS IN THIS ACTION:**

**Unilever Gulf FZE**

An Emirati Company  
Flot O.MO0401 P.O. Box 17055 Jebel Ali 17055, Dubai, United Arab Emirates  
Represented by its legal representatives

**Unilever San Vetic Turkas**

A Turkish Company  
Saray Mahallesi, Dr. Adnan Buyukdeniz Cad. No. 13 Ümraniye 34768, Istanbul, Turkey  
Represented by its legal representatives

**Unilever France**

A Company incorporated with the Nanterre Companies Registry (Identification number 552 119 216)  
23, rue François Jacob, 92000 Nanterre, France  
Represented by its legal representatives

*Represented by (...), Esq., Barrister-at-Law admitted to the Paris Law Society of the (...) (Law Society Membership No. (...))*

*Assisted by (...), Esquire, Barrister-at-Law admitted to the Paris Law Society (Paris Law Society Membership No. (...))*

**RESPONDENT IN THIS ACTION:**

**Usine Pingouin**

A Moroccan Company  
269 boulevard Chefchaouni, Ain Sebaa, Casablanca, Morocco  
Represented by its legal representatives

*Represented by (...), Esquire, Barrister-at-Law admitted to the Paris Law Society (Paris Law Society Membership No. (...));*

*Assisted by (...), Esquire, Barrister-at-Law admitted to the Moroccan Law Society*

**MEMBERS OF THE BENCH:**

The case was heard on 28 September 2021, at a trial hearing open to the public, before the following panel of justices who also took part in the deliberations:

Lord Justice of Appeal François Ancel, Presiding Justice  
Lord Justice of Appeal Fabienne Schaller, Associate Justice  
Lord Justice of Appeal Laure Aldebert, Associate Justice

**Clerk:** at the appellate trial hearing: Najma El Farissi.

## **RULING:**

The ruling was handed down after adversarial proceedings and made available at the Administrative Office of the Court, the Parties having previously been notified as required by virtue of the second paragraph of Article 450 of France's Rules of Civil Procedure. The official copy of the ruling was signed by Lord Justice of Appeal François Ancel, the Presiding Justice and Najma El Farissi, the clerk to whom the official copy of the ruling was given by the justice who signed it.

### **I. STATEMENT OF FACTS AND PROCEEDINGS**

1. Unilever France, Unilever San Vetic Turkas (hereinafter "Unilever Turkey") and Unilever Gulf FZE (hereinafter "Unilever Gulf") are part of the Unilever Group.

2. Usine Pingouin (hereinafter "Usine Pingouin") is a Moroccan company whose main business is the making and distributing of sorbets and ice creams in Morocco.

3. On 7 June 2005, Unilever France and Usine Pingouin entered into a distribution agreement under which the former entrusted to Usine Pingouin the exclusive distribution of ice creams and sorbets in Morocco.

4. The agreement, governed by French law as per the choice of law made by the Parties, included an exclusive supply commitment on the part of Usine Pingouin and an arbitration clause (Section 17) that provided for arbitration according to the ICC Arbitration Rules.

5. Usine Pingouin stopped supplying Unilever France and began supplying Unilever Turkey starting in 2014 and Unilever Gulf starting in 2015.

6. In a letter dated 1<sup>st</sup> September 2017, Unilever Gulf notified Usine Pingouin of its intention to terminate their "*commercial relations*" giving it 6 months' notice effective as of 1<sup>st</sup> September 2017 and ending on 28 February 2018.

7. Considering that the 2005 agreement had been transferred successively from Unilever France to Unilever Turkey at the end of 2013 and then from Unilever Turkey to Unilever Gulf at the beginning of 2015, Usine Pingouin gave the Unilever companies formal written notice, in a letter dated 20 October 2017, to pay it the sum of 23,500,000.00 Moroccan dirhams for the loss of gross margin and the failure to observe the contractual notice period, plus a lump-sum termination indemnity by virtue of subsection 8.3 of this agreement and an indemnification for the cost of the redundancies as a result of the business termination letter and punitive damages.

8. On 7 June 2018, Usine Pingouin filed a request for arbitration against the Unilever companies with the International Chamber of Commerce (hereinafter "ICC"), on the basis of the arbitration clause contained in Section 17 of the 2005 agreement.

9. The seat of the arbitration, initially set to take place in Geneva, finally took place Paris after an agreement of the Parties and the proceedings were governed by the ICC Arbitration Rules (2017 version).

10. On (...), in its award the Arbitral Tribunal decided and awarded as follows:

- The notification of the termination of the agreement by Unilever France given to Pingouin on 20 December 2013 was not valid.
- The agreement was transferred in part, first to Unilever Turkey and then to Unilever Gulf as per subsection 13.3 of the agreement.
- Consequently, it had jurisdiction over Pingouin, Unilever France, Unilever Turkey and Unilever Gulf to settle any dispute arising as a result of the agreement.

- The claims of Pingouin, Unilever France, Unilever Turkey and Unilever Gulf admissible;
- Unilever Gulf was ordered to pay Pingouin (...) Moroccan dirhams for failing to observe the 6 months' notice period.
- All the other claims of Pingouin and there is no need for the joint and several liability of Unilever Gulf on the one hand and Unilever France and Unilever Turkey on the other hand.
- Each Party will bear its own share of the arbitration case, which the ICC Court, at its session on 6 February 2020, set at a total of USD (...).
- Each Party will bear its own defence costs.
- All other claims and arguments of the Parties are dismissed.

11. In a notice dated 18 March 2020, the Unilever companies made an application for the annulment of the arbitration award dated (...).

12. The Parties notified the International Commercial Section of the Court of Appeal of Paris of their agreement to the protocol.

13. The pretrial phase ended on 14 September 2021.

## **II. CLAIMS OF THE PARTIES:**

**14. In their latest briefs served electronically on 1<sup>st</sup> March 2021, the Unilever companies** sought, based on Article 1520(1) and 1520(3) of France's Rules of Civil Procedure, the following remedies from the Court:

First ground of annulment

- FIND that the Arbitral Tribunal, in Award No. (...) dated (...), wrongly found that it had jurisdiction to rule on the principal claim made by Usine Pingouin;
- ORDER the annulment of the award.

Second ground of annulment

- FIND that the Arbitral Tribunal, in Award No. (...) dated (...), ruled beyond the relief sought (ultra petita) thereby failing to comply with the mission entrusted to it;
- ORDER the annulment of the award.

In any case:

- ORDER Usine Pingouin to pay Unilever France, Unilever Turkey and Unilever Gulf the sum of €30,000.00 by virtue of Article 700 of France's Rules of Civil Procedure;
- ORDER it to pay all costs, including all expenses and the process server's fees in case of the need to compel the enforcement of the impending decision, also including any proportional duties, pursuant to the provisions of Articles A. 444-31 and A. 444-32 of France's Business Code and Article L. 111-8 of France's Civil Enforcement Procedures Rules, with the benefit of Article 699 of France's Rules of Civil Procedure.

**15. In its latest briefs served electronically on 25 May 2021, Usine Pingouin** sought, based on Article 1520 of France's Rules of Civil Procedure, the following remedies from the Court:

- FIND AND RULE that the Arbitral Tribunal did have jurisdiction to rule in relation to the Claimants.

- DISMISS the application for annulment based on the lack of jurisdiction of the Arbitral Tribunal;
- FIND AND RULE that the Arbitral Tribunal failed to comply with its mission;
- DISMISS the application for annulment based on the violation by the Arbitral Tribunal of its mission.

In any case:

- DISMISS all of the claims of the Claimants;
- ORDER the Claimants to pay the Respondent the sum of €30,000.00 by virtue of Article 700 of France's Rules of Civil Procedure;
- ORDER the Claimants to pay all costs, including all expenses and the process server's fees in case of the need to compel the enforcement of the impending decision, also including any proportional duties, pursuant to the provisions of Articles A. 444-31 and A. 444-32 of France's Business Code and Article L. 111-8 of France's Civil Enforcement Procedures Rules, with the benefit of Article 699 of France's Rules of Civil Procedure.

### **III. GROUNDS FOR THE DECISION:**

#### ***The ground of appeal based on the lack of jurisdiction of the Arbitral Tribunal (Article 1520(1) of France's Rules of Civil Procedure)***

16. **The Unilever companies maintain** that the Arbitral Tribunal wrongly found that it had jurisdiction on the basis of the arbitration clause contained in the 7 June 2005 agreement that Unilever France entered into with Usine Pingouin when the agreement had been terminated before the dispute arose by letter dated 20 December 2013, the receipt of which by Usine Pingouin is inferred from a body of evidence and that, contrary to which the Arbitral Tribunal found, this agreement was not transferred to Unilever Turkey and to Unilever Gulf, as the significant differences in the successive relations and whereas, moreover, they never expressly consented thereto, pursuant to the case law of France's Supreme Court, confirmed by the new Article 1216 of France's Civil Code. They highlight in particular that there is no evidence that Unilever Gulf had any knowledge of this agreement. Lastly, they contend that the arbitration clause being, by nature, outside the scope of ordinary law, the express agreement of the Parties is necessary for it to be transferred and that Unilever Turkey and Unilever Gulf never expressed their willingness to be bound by it.

17. In reply to the inadmissibility raised by Usine Pingouin, they consider that the judge adjudicating on the application for annulment as part of the review of the jurisdiction of the Arbitral Tribunal has legitimate grounds for determining whether the agreement was terminated on 20 December 2013 and whether Unilever Turkey and Unilever Gulf were bound by it, in order to rule on the enforceability of the arbitration clause that it contains.

18. In response, Usine Pingouin concludes in the first place that the claims of the Unilever companies relating to the termination of the agreement and its assignment are inadmissible on grounds that these questions are tantamount to asking the Court of Appeal to revise the award, which the judge adjudicating on the application for annulment is prohibited from doing.

19. Usine Pingouin separately asserts that the Unilever companies have failed to provide proof of the termination of the 2005 agreement, that the agreement was indeed transferred to Unilever Turkey and to Unilever Gulf and that the arbitration clause was transferred with the principal agreement notwithstanding the nullity, the unenforceability or the inexistence of the assignment. Usine Pingouin recalls, moreover, that the new version of Article 1216 of France's Civil Code is inapplicable *ratione temporis* to this case. It concludes that the arbitration clause was indeed transferred, an express agreement not being necessary in connection of the assignment of an agreement by virtue of Article 22061 of France's Civil Code.

## **WHEREFORE:**

20. Under Article 1520(1) of France's Rules of Civil Procedure, action for annulment is available if the tribunal wrongly found that it had or lacked jurisdiction.

21. In connection with an action for annulment based on Article 1520(1) of France's Rules of Civil Procedure, it is up to the court adjudicating the action for annulment to review the decision of the arbitral tribunal regarding its jurisdiction, whether it is found to have or to lack jurisdiction, by seeking all legal or factual information making it possible to assess the scope of the arbitration clause.

22. The assessment of the scope of the arbitration clause can thus lead the Court of Appeals to have to analyse its applicability, its validity and its enforceability on the Parties to the dispute and therefore to have to assess, as part of the application for annulment, the circumstances of the in fact and in law although such examination cannot, outside of the causes provided for in legislation, constitute inadmissibility.

### **The jurisdiction of the Arbitral Tribunal in relation to Unilever France**

23. Based on the award, the Arbitral Tribunal rejected the ground based on lack of jurisdiction based on the termination of the agreement in December 2013, noting that "*even when it involves an agreement which is alleged to be terminated, the arbitration clause remains applicable to any dispute that arises as a result of such termination. There is no doubt that the Arbitral Tribunal has razione personae and razione materiae jurisdiction to adjudicate the claims with respect to [Unilever France], given the 'principle of the autonomy... of the arbitration clause in relation to the principal agreement.'*" (§ 5.27)

24. In this regard, it should be noted that pursuant to a material rule of international arbitration law, applicable to any arbitration the seat of which is in France, the arbitration clause is legally independent from the principal agreement that contains it directly or by reference. It is not affected by the invalidity of such agreement.

25. In the case in point, based on Section 177 of the 7 June 2005 distribution agreement between Unilever France and Pingouin, "*the Parties will use their best endeavours to resolve any disputes arising as a result of the performance or the termination of their agreements out-of-court and, should they be unable to do so within a period of one month from the notification of a difficulty by one of the parties to the other party, that shall will go to mediation and, should it be necessary, to arbitration, in accordance with the ICC Mediation and Arbitration Rules in Geneva. The arbitral tribunal consisting of a panel of 3 arbitrators will sit in General and the language of the arbitration proceedings will be French. The documents necessary for the conduct of the arbitration proceedings shall be drafted in French.*"

26. In the current state of this clause inserted in the agreement between Unilever France and Usine Pingouin, the Arbitral Tribunal thus does, as it rightly considered, have jurisdiction to adjudicate the dispute arising as a result of the performance of the agreement between the two companies and in which is it inserted and this, independently of the assessment of the validity and/or the alleged termination of said agreement.

27. The ground for annulment based on the lack of jurisdiction of the Arbitral Tribunal in relation to Unilever France will consequently be dismissed.

### **The jurisdiction of the Arbitral Tribunal in relation to Unilever Turkey and Unilever Gulf**

28. It is well-established that Unilever Turkey and Unilever Gulf did not physically sign the 7 December 2005 agreement on which only the signature of Unilever France appears.

29. It is not contest as well that the three Claimants are part of the Unilever Group and that:

- Unilever NV owns a 64.54% stake and Unilever Plc has a 35.44% interest in Unilever France;
- Unilever NV owns a 64.54% stake and Unilever Plc has a 35.44% interest in Unilever Turkey;
- Unilever Gulf is wholly owned by Unilever Plc.

30. The question is therefore to determine whether the 7 December 2005 agreement was transferred to Unilever Turkey and to Unilever Gulf such that the arbitration clause that it contains is enforceable upon them.

31. In this regard, it should be noted, as the Arbitral Tribunal found, that Unilever France has failed to provide proof of the unilateral termination of the agreement that it alleges it notified Usine Pingouin about on 20 December 2013. Whilst such a letter was produced in the proceedings, Unilever France was unable to show evidence that had actually been sent to Usine Pingouin (which the latter does not dispute), since it failed to produce a registered letter with recorded delivery, a formality required under the agreement (subsection 8.4).

32. Thus, the Arbitral Tribunal, when questioning the actuality of the termination of this agreement as alleged by Unilever France, on whom the onus falls according to the Tribunal to *“provide proof that it validly terminated the Agreement, observing the requirements agreed in Section 8 of the Agreement”* (Award §5.33), considering that such proof had not been provided and inferring therefrom that *“the consequence of the lack of proof of the receipt by Pingouin of the 20 December 2012 termination notice letter is to deprive the termination of any effect.”*

33. Since proof of the termination was not provided, it should be determined, as the Arbitral Tribunal endeavoured to do, whether the 7 June 2005 agreement containing the arbitration clause had been transferred to Unilever Turkey and then to Unilever Gulf.

34. It should in effect be recalled that in light of its contractual dimension, the arbitration clause is transferred automatically as an accessory to the right of action, which is itself an accessory to the substantial right being transferred.

35. In the case in point, it should be noted that subsection 13.3 of the disputed agreement provides that *“each of the parties reserves the right to use any of the companies of its group to perform all or part of the obligations hereunder provided that a joint and several guarantee is given that they will be performed in full.”*

36. Nor is it not contested that Usine Pingouin continued after 2013, even though it broke off relations with Unilever France, to supply Unilever Turkey starting in 2014 and then Unilever Gulf starting in 2015 to distribute the Unilever Group’s products throughout Morocco, even though the content of this relationship, in particular with respect to the products in question and even pricing conditions, did evolve.

37. Thus, based on supporting documents produced:

- In February 2013, Unilever Turkey asked Unilever France to supply it with various pieces of information (export schedule, logistics and shipping costs) pertaining to Morocco.
- Unilever Turkey and Pingouin exchanged emails on 22 April 2013, which tend to show that starting on this date, the former was preparing to step in to replace Unilever France.

- On 5 August 2013, Unilever France indicated to Usine Pingouin that “*With regard to 2014, I again suggest that you secure your beginning of the season by preparing for the transition and the transfer of business to Turkey*” (emphasis added by the Court), which supposes the transfer of the commercial relations envisaged by the Parties and that Unilever Turkey would replace Unilever France.

- In an email addressed on 2 June 2014, Unilever France indicated to Usine Pingouin that “*the business has been transferred to Unilever Turkey*” (emphasis added by the Court) and that it therefore “*does not have the authority to place orders without internal authorization*” all the whilst admitting the possibility of obtaining such authorization to help Usine Pingouin, thereby further accrediting the theory of the consensual replacement of Unilever France by a company from the same group, Unilever Turkey, as per subsection 13.3 of the agreement.

38. In this regard, the fact that on 25 March 2014, Unilever France writes to Usine Pingouin, which “*was complaining about invoicing issues with Unilever Turkey*”, that it would not purport to intervene in a relationship that did not involve it (“*we should no longer get involved*”) does not support the conclusion that the 2005 agreement was terminated but merely confirms the transfer of the contractual position to Unilever Turkey.

39. Likewise, Unilever France, Unilever Turkey and Unilever Gulf cannot claim that Usine Pingouin had subsequently admitted that these emails reflected the “*complete and final nature of the disengagement of Unilever France*” by quoting Usine Pingouin’s Statement of Claim (§ 44 thereof) when they omit to quote the full sentence taken from the statement (“*the assertions regarding the complete and final nature of the disengagement of Unilever France from the Distribution Agreement and its transfer to Unilever Turkey, continue*”), which tends to disprove the theory of an admission of the termination of the initial agreement but that it was indeed transferred to other Unilever Group companies.

40. In light of the foregoing, and of the findings of the Arbitral Tribunal that were not to the contrary, it concluded that “*Unilever agreed, with regard to Pingouin, to be replaced by Unilever Turkey for the supply of all or part of the products delivered to Pingouin and the replacement thus performed is binding and enforceable upon it.*” (§ 5.50)

41. Lastly, on 30 December 2014, Unilever Turkey informed Pingouin of its reorganisation in these terms: “*I would like to inform you about an organizational change in our ice cream operation. We, as Unilever Turkey, will hand over our ice cream responsibility to Unilever Gulf FZE effective as of 1<sup>st</sup> January 2015. Unilever Gulf FZE management will soon get in touch with you. In the meantime, I will stay in touch and providing support to you during this transition...*”

42. This transfer of business from Unilever Turkey to Unilever Gulf was moreover recalled in an email dated 4 June 2015 in which Unilever Gulf referred to “*the impact of the transition of business responsibilities from Unilever Turkey to Unilever NAME in the beginning of the year*”.

43. Thus, in paragraph § 5.29 of its award, the Arbitral Tribunal stated that “*...the Agreement was validly transferred, in part, to Unilever Turkey and then to Unilever Gulf and this transfer in any event automatically involved the transfer of the arbitration clause that it contains as an accessory to the substantial right thus transferred. The Tribunal consequently does have jurisdiction to adjudicate the dispute between Pingouin and Respondents 2 and 3 relating to this Agreement*”.

44. In light of the foregoing, which shows that Unilever Turkey and Unilever Gulf took over the business initially operated by Unilever France and thus all or part of its obligation under the agreement entered into in 2005, the arbitration clause is enforceable upon them and the ground of appeal based on the lack of jurisdiction of the Arbitral Tribunal over Unilever Turkey and Unilever Gulf will be dismissed.

**The ground of appeal based on the failure by the Arbitral Tribunal to comply with its mission (Article 1520(3) of France’s Rules of Civil Procedure)**

**45. The Unilever companies** claim that a specific question was put to the Arbitral Tribunal related to the application of subsection 8.3 of the agreement and it was only supposed to adjudicate the issue of determining whether the termination was governed by subsection 8.3 and if it is not the case, dismiss the claim, without being able to sanction the termination on another basis. It considers that the Arbitral Tribunal ruled beyond the relief sought (*ultra petita*), finding Unilever Gulf had tortious liability in the sudden breakoff of the commercial relations established at the time when, in terms of reference dated 28 December 2018, Usine Pingouin sought to have Unilever Gulf found jointly and severally liable with the other companies for the termination of the agreement on the sole contractual basis of the penalty clause contained in subsection 8.3 of the agreement.

**46. In response, Usine Pingouin** argues that the Arbitral Tribunal did not base its decision on the provisions applicable to the sudden termination of established commercial relations but on the violation of the contractual commitment made by Unilever Gulf, finding it guilty of “*failing to perform the 6 months’ notice period that Unilever Gulf had offered*”. Usine Pingouin maintains that, in any case, the action based on the sudden termination of established commercial relations is, according to the ECJ, a contractual matter, so the Unilever companies cannot claim on change in the legal basis.

**WHEREFORE:**

47. According to Article 1520(3) of France’s Rules of Civil Procedure, action for annulment is available if the tribunal ruled without complying with the mission entrusted to it.

48. The mission of the arbitrators, defined in the arbitration agreement, is limited primarily by the subject matter of the dispute, as it is determined by the claims of the parties and not just the issues borne out in the terms of reference.

49. In the case in point, the terms of reference provided in section “*V. Summary Statement of the Claims of the Parties:*

*5.2 The Claimant is seeking the following remedies from the Arbitral Tribunal:*

*Principally: On the basis of the Distribution Agreement, order the Respondents jointly and severally to pay the sum of [...] (MAD ...).*

*In the alternative, should the Arbitral Tribunal consider that the Distribution Agreement was not transferred from Unilever France to the other Respondents: on the basis of the Distribution Agreement, order Unilever France to pay the sum of (MAD) [...], by virtue of subsection 8.3 of the Distribution Agreement.*

*In any case:*

...

*order the Respondents or any of them, to pay any other amount that the Arbitral Tribunal shall deem fair”.*

50. The Arbitral Tribunal addressed these claims in its award in paragraphs 4.2 and those following it.

51. Lastly, according to point 7 of the terms of reference, intitled “*Determination of Disputed Points to the Resolved*”, paragraph 7.1 specifies that “*The Arbitral Tribunal will rule on all the disputed points for which it has jurisdiction based on the claims made by the Parties in their written submission, including any written submissions produced later, as well as any question of law or of fact that the Arbitral Tribunal shall deem necessary or appropriate to settle or examine in order to resolve the disputed points, all the while observing subsection 23(4) of the ICC Rules*”.

52. Based on the foregoing, it was within the mission of the Arbitral Tribunal to rule on the consequences of the termination principally “on the basis of the distribution agreement” and not only pursuant to subsection 8.3 as the Claimants maintain (this reference targets only the alternative claim in the event of the non-transfer of the agreement).

53. In its award, and in order to examine the merits, the Arbitral Tribunal examined “first of all, the principal claim that relates to the totality of the contractual relationship between Pingouin and the three Claimants since 2005, and which is based on the application of the terms and conditions provided for in the subsection 8.3 of the Agreement” (§ 5.70) but that “*absent any evidence that shows with certainty that Unilever Turkey and then Unilever Gulf wanted to apply subsection 8.3 of the agreement, an indemnification clause outside the scope of ordinary law, with the rest of the agreement, subsection 8.3 cannot be enforceable upon them*” and concluded therefrom that “*Pingouin cannot, as a consequence, demand its application in the case in point*”. (§5.71)

54. Having considered that with respect to the principal claim, Unilever France and Unilever Turkey were not jointly and severally liable with Unilever Gulf, the Arbitral Tribunal dismissed Pingouin’s claims as they relate only to Unilever Gulf (§ 5.85 and 5.86)

55. In this regard, the Arbitral Tribunal recalled that Usine Pingouin’s claims against Unilever Gulf were as follows:

“(i) a first series of claims for the payment of a 23,550,000.00-Moroccan dirham termination indemnity, on grounds that the termination of the Agreement occurred in 2017, ‘without cause and for personal convenience’ and must give rise the payment of the total termination indemnity provided for in subsection 8.3 of the Agreement, which is 30% of net turnover and 12-months’ notice; and

(ii) a second series of several claims for damages and interests made by Pingouin after signing the terms of reference, seeking to “order the Respondents to pay (...) MAD [...] (summary of the claims above) related to various breaches by Unilever Gulf of the agreement” (§ 5.87)

56. Having considered that clause 8.3 of the agreement could not be enforceable on Unilever Gulf, the Arbitral Tribunal dismissed the principal claim to order the payment of a termination indemnity as per this clause and decided to examine “*Pingouin’s payment claim...based on the only ordinary law applicable*”. (§5.89)

57. The Arbitral Tribunal thus noted that its termination notice letter, Unilever Gulf proposed a 6 months’ notice period and considered that this amount of time was not “unreasonable” (§ 5.90) and that based on evidence in the casefile, this notice period was not observed, which led it to consider that “*Pingouin is entitled to an indemnification corresponding to the 6 months’ notice proposed, but not observed, by Unilever Gulf in its termination notice letter*”. (§ 5.92)

58. The Arbitral Tribunal this indemnity was estimated “*by virtue of French law*” and after assessing the loss of turnover sustained during the period considered (§ 5.93 and following)



and the Arbitral Tribunal indicated “*In conclusion, after examining the relevant evidence produced in this matter by the Parties and their arguments, the Arbitral Tribunal assessed, within its discretion, the indemnification due to Pingouin for the failure to observe the 6 months’ notice period that Unilever Gulf had offered to it at [...] Moroccan dirhams...*” (§ 5.100) and dismissed all of Pingouin’s other claims.

59. In light of the foregoing, the Arbitral Tribunal did indeed rule within the framework of its mission, the subject matter of the dispute, limited by the claims of the parties, corroborated here by the terms of reference, having consisted of ruling on the consequences of the termination of the distribution agreement between the Parties and the damage suffered by Usine Pingouin as a result of the failure to comply with the notice period, that Unilever Gulf itself had proposed to set at 6 months in its termination notice letter produced in the proceedings.

60. In light of the foregoing, on the basis of which the Arbitral Tribunal did not rule on a claim that was not made by Usine Pingouin, notwithstanding the ground alleged in support of said claim, the ground of appeal will be dismissed.

#### **Expenses and Court Costs:**

121. Unilever France, Unilever San Vetic Turkas and Unilever Gulf FZE, the losing Parties, should be ordered to pay costs that shall be recovered pursuant to the provisions of Article 699 of France’s Rules of Civil Procedure, but cannot include the costs to compel enforcement, which are not court costs, and which are dealt with under Article L. 111-8 of France’s Civil Enforcement Procedures Rules, with the benefit of Article 699 of France’s Rules of Civil Procedure.

122. In addition, they must be ordered to pay to the Usine Pingouin, which had to undertake unrecoverable expenses to assert their rights, compensation by virtue of Article 700 of France’s Rules of Civil Procedure that it is only fair to set at EUR 30,000.00.

#### **IV. DECISION**

##### **On these grounds the Court,**

1. Rejects the action for the annulment of the Arbitration Award handed down on (...) under the aegis of International Chamber of Commerce (ICC Case No ...);
2. Orders Unilever France, Unilever San Vetic Turkas and Unilever Gulf FZE to pay to Usine Pingouin the total amount of EUR 30,000.00 by virtue of the provisions of Article 700 of France’s Rules of Civil Procedure.
3. Orders Unilever France, Unilever San Vetic Turkas and Unilever Gulf FZE to pay court costs, including the fees of Christophe Machalis, Esquire, Barrister-at-Law admitted to the Paris Law Society of the law firm Recamier Avocats by virtue of the provisions of Article 699 of France’s Rules of Civil Procedure.

**The Clerk**

**The Presiding Justice**

**Najma El Farissi**

**François Ancel**

I, Granville Wesley Fields,  
sworn translator,  
French/English, certify that  
the preceding is an exact  
translation of the original  
and of the attached copy  
in French

This document is assigned  
the number 2022-621

Signed and stamped *ne varietur* in  
Paris, France  
on 28 February 2022