

Latham & Watkins Secures Win in 'Busted Deal' Litigation Over Failed Telecom Merger

Manhattan Supreme Court Justice Andrew Borrok of the commercial division also found that Telefónica had been deprived of the full \$623 million final purchase price on the date of the breach, and that plaintiffs were owed around \$140 million in damages.

By Emily Saul

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Latham & Watkins on Tuesday secured a win on behalf of telecommunications client Telefónica, after a judge ruled that defendants improperly failed to close a merger worth more than \$500 million.

Manhattan Supreme Court Justice Andrew Borrok of the commercial division also found that Telefónica had been deprived of the full \$623 million final purchase price on the date of the breach and that plaintiffs were owed around \$140 million in damages.

Telefónica was represented by **Blair Connelly, Zach Rowen, Corey Calabrese, Ryan Jones** and **Molly Babad** of **Latham & Watkins**.

Plaintiff sued Millicom International Cellular S.A. and Millicom Spain S.L. in August 2020, alleging breach of contract, alleging defendants developed “buyers remorse” after the COVID-19 pandemic and then wrongfully refused to close an agreed-upon share purchase agreement.

Millicom won the rights pursuant to a share purchase agreement to buy Telefónica’s Costa Rican subsidiary, Telefónica de Costa Rica TC, S.A. in February 2019, the complaint stated.

The companies entered into an agreement that set out a narrow set of conditions, including that certain authorizations needed to be obtained from government entities, including the Comptroller of Costa Rica. The parties were later informed they did not need the authorization under Costa Rican law, and just needed an “endorsement,” per court papers.

Millicom later alleged they were not required to close the deal because the “authorization” had not been obtained.



Photo: Diego M. Radzinski/ALM

But in his decision, Borrok determined that the authorization was not a condition to close the deal.

“Having agreed to this course of conduct with Telefónica, Millicom could not then subvert the parties’ agreed conduct by unilaterally declining to sign an addendum to the SPA and declaring a failure of condition to avoid their obligation to close,” the judge wrote.

Borrok granted Telefónica’s motion for partial summary judgment and found the plaintiffs were entitled to pre-judgment interest from the closing date.

Millicom was represented by Kimo Peluso, Mark Cucaro, Vikram Shah, and Kathryn Ghotbi of Sher Tremonte.

“We respectfully disagree with the trial court’s decision, and we look forward to the opportunity to pursue our appeal,” Peluso said in a statement.

Zach Rowen of **Latham & Watkins**, counsel for Telefónica, said in a statement, “We appreciate the time and consideration that was given to this matter and are pleased with the court’s decision.”