

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**TURKCELL İLETİŞİM HİZMETLERİ A.Ş. and  
EAST ASIAN CONSORTIUM B.V.**

Plaintiffs,

vs.

**MTN GROUP, LTD. and  
MTN INTERNATIONAL (MAURITIUS) LTD.**

Defendants.

Civil Action No.: 12-cv-00479 (RBW)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR  
LEAVE TO CONDUCT JURISDICTIONAL DISCOVERY**

Plaintiffs Turkcell İletişim Hizmetleri A.Ş. and East Asian Consortium B.V. (collectively, “Turkcell”), by and through their undersigned counsel, pursuant to Fed. R. Civ. P. 7 and 26(d)(1), respectfully submit this Memorandum of Points and Authorities in Support of their Motion for Leave to Conduct Jurisdictional Discovery, and in support thereof aver as follows:

The jurisdictional allegations in the Complaint are fully adequate to permit the Court to exercise personal jurisdiction over MTN Group, Ltd. and MTN International (Mauritius) Ltd. (collectively, “MTN”). However, should the Court determine that further factual development is necessary, jurisdictional discovery is appropriate. Federal Rule of Civil Procedure 26(b)(1) provides that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense...” It is axiomatic that the scope of discovery encompasses more than just the merits of claims and defenses. “For example, where issues arise as to jurisdiction or

venue, discovery is available to ascertain the facts bearing on such issues.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.13 (1978).

**I. Jurisdictional Discovery is Appropriate Here**

Jurisdictional discovery is particularly appropriate here if the Court concludes that additional factual evidence is needed. “A plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction of a federal court by withholding information on its contacts with the forum.” *Ventura v. Bebo Foods, Inc.*, 595 F. Supp. 2d 77, 84 (D.D.C. 2009) (*quoting El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 676 (D.C. Cir. 1996)) (collecting cases).

Given the importance of determining jurisdictional facts prior to ruling on a motion to dismiss for lack of personal jurisdiction, this Court liberally grants jurisdictional discovery. *Caribbean Broad. Sys., Ltd. v. Cable & Wireless PLC*, 148 F.3d 1080, 1090 (D.C.Cir. 1998); *Diamond Chem. Co. v. Atofina Chems., Inc.*, 268 F. Supp. 2d 1, 15 (D.D.C. 2003) (“This Circuit’s standard for permitting jurisdictional discovery is quite liberal, and the Court finds that even though Plaintiff has not made out a prima facie case of jurisdiction as required by other jurisdictions,... Plaintiff is entitled to jurisdictional discovery”) (internal quotation omitted). As the D.C. Circuit described in *GTE New Media Services, Inc. v. BellSouth Corp.*:

[A]s the record now stands, there is absolutely no merit to GTE’s bold claim that the parent companies and subsidiaries involved in this lawsuit should be treated identically. Jurisdictional discovery will help to sort out these matters. GTE also claims that it may be able to present new facts to bolster the District Court’s theory of “substantial effects” within the District. We cannot tell whether jurisdictional discovery will assist GTE on this score, but it is entitled to pursue precisely focused discovery aimed at addressing matters relating to personal jurisdiction.

*GTE New Media Services Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1352 (D.C. Cir. 2000); *see*

also *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 513 (D.C. Cir. 2002) (finding the District Court erred in not allowing jurisdictional discovery). In response to the District of Columbia Circuit's holding in *GTE New Media*, this Court has stated that

it is hard to imagine a situation where a plaintiff could not demonstrate that it can supplement its jurisdictional allegations through discovery. Furthermore, since there is no indication that Plaintiff's request is not made with the good faith belief that such discovery will enable it to show that the court has personal jurisdiction over defendant, the Court finds, despite Plaintiff's paltry showing under all three theories of personal jurisdiction, it has no choice but to allow Plaintiff to pursue precisely focused discovery aimed at addressing matters related to personal jurisdiction.

*Diamond Chem.*, 268 F. Supp. 2d at 15-16 (internal citations and quotations omitted).

## **II. Turkcell, If Required, Would Only Pursue Specific and Targeted Discovery.**

Turkcell believes in good faith that, if so required by this honorable Court, it will be able to supplement its jurisdictional allegations through specific, targeted discovery. For example, Turkcell would pursue discovery into:

- which MTN entities (presumably MTN Group) are parties to roaming agreements with U.S. carriers;
- the volume of roaming minutes consumed on various U.S. carriers by MTN customers in the District of Columbia and the United States, and their value relative to other MTN operations. *Compare* Compl. ¶ 35 with *Americatel El Sal., S.A. de C.V. v. Compania De Telecomunicaciones De El Sal., S.A. de C.V.*, 2008 U.S. Dist. LEXIS 32267 at \*4 (S.D. Fla. Apr. 19, 2008) (general jurisdiction based on telephone interconnection agreements);
- the contractual structure of MTN's Top-Up service, operated at every 7-Eleven store in the United States among other storefront locations, and their value relative to MTN's other operations. Compl. ¶¶41-44;
- the frequency and volume of business MTN does through the interactive Top-Up website and at storefront locations here. *See Gorman*, 293 F.3d at 513 (jurisdictional discovery appropriate to determine frequency and volume of website transactions with District of Columbia residents);
- the identity of the officers and directors of MTN International. *See I Mark Mktg. Servs., LLC v. Geoplast S.p.A.*, 753 F. Supp. 2d 141, 152 (D.D.C. 2010) ("common directors between a parent and subsidiary are indicative of a unity of interest and ownership");
- MTN International's operations, centralized control with MTN Group, and financial control. *See id.*

- the scale and scope of MTN's business operations with United States banks, securities brokers, and financial institutions, and whether any related to the Iranian transactions at issue here; and
- MTN's other business relationships in the United States, as outline in the Complaint and otherwise.

As set forth above, if needed Turkcell will engage in specific and targeted jurisdictional discovery to supplement the *prima facie* case for general personal jurisdiction alleged in the Complaint, which would likely enable Turkcell to further supplement its jurisdictional allegations. The law of this Circuit strongly counsels that the Court should grant jurisdictional discovery in the event it finds that additional factual development is required to rule on the Motion to Dismiss.

WHEREFORE, for all the foregoing reasons, Turkcell respectfully requests that the Court grant its Motion for Leave to Conduct Jurisdictional Discovery.

Respectfully submitted,

/s/ Read K. McCaffrey

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Date: August 1, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on August 1, 2012, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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