EXHIBIT D

PREMIERE EXPEDITION

COPIE

SIGNIFICATION D'UN ACTE A DESTINATION DE L'ETRANGER

Références du dossier : ***n° 113 572***
Affaire : SAS ATARI EUROPE, SA ATARI, Société de droit américain ATARI INC, Société de droit américain ATARI INTERACTIVE, Société de droit américain CALIFORNIA US HOLDINGS, Société de droit américain HUMONGOUS / ALDEN GLOBAL VALUE RECOVERY MASTER FOUND

N° 15-5740/A

MARA SCAGLIONE Expert Traducteur Interprète Cour d'Appel Paris Italien-Anglais-Français Tel. 01 42 89 40 70 8, ch. du Molinet - 91140 Villebon

L'AN DEUX MILLE QUINZE ET LE ***SEIZE JUILLET***

Je, soussigné, Matthieu ASPERTI, Huissier de Justice associé au sein de la Société Civile Professionnelle Fabienne CHEVRIER de ZITTER et Matthieu ASPERTI titulaire d'un Office d'Huissier de Justice, Audienciers près le Tribunal de Commerce de PARIS, y demeurant, 1 Quai de la Corse 75004 PARIS,

A LA DEMANDE DE :

1/ **La société ATARI EUROPE SAS**, société par actions simplifiée au capital de 190.000,00 euros, immatriculée au RCS Paris 328 033 410 et dont le siège social est situé 78, rue Taitbout 75009 Paris, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

2/ **La société ATARI SA**, société anonyme au capital de 1.600.540,91 euros, immatriculée au RCS Paris 341 699 106 et dont le siège social est situé 78, rue Taitbout 75009 Paris, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

3/ **La société ATARI, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

4/ **La société ATARI INTERACTIVE, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

5/ **La société CALIFORNIA US HOLDINGS, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

PREMIERE EXPEDITION
PLACÉE LE :
17/07/2015
SCP CHEVRIER de ZITTER & ASPERTI
Huissiers de justice associés

PREMIERE
EXPEDITION

6/ **La société HUMONGOUS, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

Ayant pour Avocat
Maître David MALAMED,
Avocat au Barreau de Paris
Cabinet Brown Rudnick LLP
1, rue François 1er – 75008 PARIS
Tél : 01 85 56 82 20 – Fax : 01 85 56 82 21
E-mail : dmalamed@brownrudnick.com
Toque n°L0260

Au cabinet duquel domicile est élu

J'ai envoyé, **ce jour**, par **DHL, à :**

PROCESS FORWARDING INTERNATIONAL (PFI) **633 Yesler Way** **SEATTLE, WA 98104 USA**

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 89 40 70
8, ch. du Clolinet - 91140 Villejust

PREMIERE EXPEDITION

En double exemplaire :

- Un formulaire F2 dûment complété en français.

- Un virement de 95 dollars selon justificatif ci-joint.

- Un projet d'assignation pour une audience qui aura lieu le Tribunal de Commerce de PARIS, pour une audience qui se tiendra le 15 Octobre 2015 à 11 heures en langue française.

- Un projet d'assignation pour une audience qui aura lieu le Tribunal de Commerce de PARIS, pour une audience qui se tiendra le 15 Octobre 2015 à 11 heures en langue anglaise.

MARA SCAGLIONE Expert Traducteur-Interprète Cour d'Appel de Paris Italien-Anglais-Français Tél. 01 42 89 40 70 8, ch. du Clotinet - 91140 Villejust

Le projet d'acte étant destiné à être signifié ou notifié à :

Société de droit des Îles Caïmans
ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P
Chez (c/o) ALDEN GLOBAL VALUE CAPITAL LLC
885 Third Avenue Suite 34th Floor
10019 NEW YORK (USA)

Cette notification satisfait aux exigences de la Convention de la Haye du 15 novembre 1965 relative à la signification et la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale.

L'ensemble des pièces communiquées est joint à l'Original et à la Première Expédition.

Crédit du Nord

Imprimé le : 16/07/2015 14:25:40

Ordre de Virement International
Demande de virement transmise par Internet le 16 juillet 2015 à 14:25
Référence : **31489-27101 Centre Comex: .UAA.COMEX**

Donneur d'ordre:	CHEVRIER DE ZITTER ASPER
Compte à débiter:	02023 29801400200 COMPTE COURANT EUR
Bénéficiaire	
Nom:	PROCESS FORWARDING INTERNATIONAL
Adresse:	PFI 633 YESLER WAY SETTLE WA 98104
Pays:	ETATS UNIS
Coordonnées bancaires	
Compte:	2007107119
Banque du bénéficiaire	
Code BIC:	WFBIUS6S
Nom:	WELLS FARGO BANK, N.A.
Adresse:	1763 4TH AVE SOUTH SEATTLE WASHINGTON 98134
Pays:	ETATS UNIS
Montant:	95,00 USD
Motif du virement	
Motif complémentaire:	DOSSIER: 113572
Code économique:	
Frais :	Partagés (SHA)
Compte de frais:	02023 29801400200 COMPTE COURANT EUR
Date d'exécution * :	17/07/2015

* Sous réserve, à cette date, d'un solde suffisant sur le compte débité et du respect des plafonds journaliers.

MARA SCAGLIONE
Expert
Traducteur-Interprète
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8, ch. du Clotinet - 91140 Villejust

F2 (PAGE 1)

DEMANDE
REQUEST
AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ETRANGER D'UN ACTE JUDICIAIRE OU EXTRAJUDICIAIRE
FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at the Hague, November 15, 1965.

Identité et adresse du requérant Identity and address of the applicant	**Adresse de l'autorité destinataire** Address of receiving authority
SCP CHEVRIER de ZITTER & ASPERTI Huissiers de Justice Associés 1, Quai de la Corse - 75004 PARIS (FRANCE)	PROCESS FORWARDING INTERNATIONAL (PFI) 633 Yesler Way SEATTLE, WA 98104 USA

Le requérant soussigné a l'honneur de faire parvenir -en double exemplaire- à l'autorité destinataire les documents ci-dessous énumérés, en la priant conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, à savoir :
The undersigned applicant has the honour to transmit -in duplicate- the documents listed below and, in conformity with article 5 of the above-mentionned Convention, requests prompt service of one copy thereof on the addresse,i.e.

(Identité et adresse)
.(Identity and address)

Société de droit des Iles Caïmans ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P
Chez (c/o) ALDEN GLOBAL VALUE CAPITAL LLC
885 Third Avenue Suite 34th Floor - 10019 NEW YORK (USA)

a) selon les formes légales (article 5, alinéa premier,lettre a)*
a) in accordance with the provision of sub-paragraph (a) of the first paragraph of article 5 of the Convention*

~~**b) selon la forme particulière suivante (article 5, alinéa premier,lettre b)* :**~~
~~b) in accordance with the following particular method (sub-paragraph(b) of the first paragraph of article 5)* :~~

c) le cas échéant, par remise simple (article 5, alinéa 2)*
c) by delivery to the addresse, if he accepts it voluntary (second paragraph of article 5)*

Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte -~~et de ses annexes~~ *- avec l'attestation figurant au verso.
The authority is requested to return or to have returned to the applicant a copy of the documents -and of the annexes*- with a certificate as provided on the reverse side.

Enumérations des pièces
List of documents
....
....
....
....

Fait à PARIS, **le** 16/07/2015
Done at, the

Signature et/ou cachet
Signature and/or stamp

MATTHIEU ASPERTI

MARA SCAGLIONE Expert Traducteur-Interprète Cour d'Appel de Paris Italien-Anglais-Français Tél. 01 42 69 40 70 ch. du Clotinet - 91140 Villejust

SCP F. CHEVRIER de ZITTER, M. ASPERTI Huissiers de Justice

*** Rayer les mentions inutiles***
Delete if inappropriate

F2 (PAGE 2)

ATTESTATION PARTIE A REMPLIR PAR L'AUTORITE ETRANGERE
CERTIFICATE DEVANT EFFECTUER LA NOTIFICATION

L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,
The undersigned authority has he honour to certify, in conformity with article 6 of the Convention,

1. que la demande a été exécutée*
1. that the document has been served*

- **le (date)** ....
- the (date) ....
- **à (localité, rue , numéro)** ....
- at (place, street, number) ....
- **dans une des formes suivantes prévues à l'article 5 :**
- in one of the following methods authorised by article 5 :

a) selon les formes légales (article 5, alinéa premier, lettre a)*
a) in accordance with the provision of sub-paragraph (a) of the first paragraph of article 5 of the Convention*
b) selon la forme particulière suivante* :
b) in accordance with the following particular method* :
c) par simple remise*
c) by delivrery to the address, who accepted it voluntarily*

Les documents mentionnés dans la demande ont été remis à :
The documents referred to in the request have been delivered to :

- **(identité et qualité de la personne)** ....
- (identity and description of person) ....
- **liens de parenté, de subordination ou autres, avec le destinataire de l'acte :** .....
- relationship to the address (family, business or other) : ....

2. que la demande n'a pas été exécutée, en raison des faits suivants* :
2. that the document has not been served, by reason of th following facts* :

....
....
....

Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint*.
in conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expens detailed in the attached statement*.

Annexes
Annexes

Pièces renvoyées :
Documents returned :

....
....

Le cas échéant, les documents justificatifs de l'exécution :
in appropriate cases, documents establishing the service :

....
....

Fait à , le
Done at , the
Signature et/ou cachet
Signature and/or stamp

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 89 40 70
ch. du Clotinet - 91140 Villejust

*** rayer les mentions inutiles**
* delete if inappropriate

F2 (PAGE 3)

ELEMENTS ESSENTIELS DE L'ACTE
SUMMARY OF THE DOCUMENT TO BE SERVED

Convention relative à la signification et à la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.
Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

(article 5, alinéa 4)
(article 5, fourth paragraph)

Nom et adresse de l'autorité requérante :
Name and address of the requesting authority :

SCP CHEVRIER de ZITTER & ASPERTI
Huissiers de Justice Associés
1, Quai de la Corse - 75004 PARIS (FRANCE)

Identité des parties* :
Particulars of the parties* :

Demandeurs : ATARI EUROPE, ATARI, ATARI INC, ATARI INTERACTIVE INC, CALIFORNIA US HOLDINGS INC, HUMONGOUS INC,
Défendeur : ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P

ACTE JUDICIAIRE**
JUDICIAL DOCUMENTS**

Nature et objet de l'acte :
Nature and purpose of the document :

Assignation

Nature et objet de l'instance, le cas échéant, le montant du litige :
Nature and purpose of the proceding and, where appropriate, the amount in dispute :

Date et lieu de la comparution ** :
Date and place for entering appearance** :

le 15 Octobre 2015 à 11 heures devant le Tribunal de Commerce de PARIS, siégeant 1 Quai de la Corse à PARIS (75004) - FRANCE

Juridiction qui a rendu la décision :**
Court which has given judgement** :

Date de la décision :**
Date of judgment** :

Indication des délais figurant dans l'acte :**
Time limits stated in the document** :

ACTE EXTRAJUDICIAIRE**
EXTRAJUDICIAL DOCUMENT**

Nature et objet de l'acte :
Nature and purpose of the document :

Indication des délais figurant dans l'acte :**
Time and purpose in the document** :

*** s'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte.**
* if appropriate, identity and adress of the person interested in the transmission of the document.
**** rayer les mentions inutiles**
** delete if inappropriate

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 89 40 70
57, rue Clotinat - 91140 Villejust

Identité et adresse du destinataire
identity and address of the addressee

Société de droit des îles Caïmans ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P
Chez (c/o) ALDEN GLOBAL VALUE CAPITAL LLC
885 Third Avenue Suite 34th Floor - 10019 NEW YORK (USA)

TRÈS IMPORTANT

LE DOCUMENT CI-JOINT EST DE NATURE JURIDIQUE ET PEUT AFFECTER VOS DROITS ET OBLIGATIONS. LES «ELÉMENTS ESSENTIELS DE L'ACTE» VOUS DONNENT QUELQUES INFORMATIONS SUR SA NATURE ET SON OBJET. IL EST TOUTEFOIS INDISPENSABLE DE LIRE ATTENTIVEMENT LE TEXTE MÊME DU DOCUMENT. IL PEUT ÊTRE NÉCESSAIRE DE DEMANDER UN AVIS JURIDIQUE.

SI VOS RESSOURCES SONT INSUFFISANTES, RENSEIGNEZ-VOUS SUR LA POSSIBILITÉ D'OBTENIR L'ASSISTANCE JUDICIAIRE ET LA CONSULTATION JURIDIQUE SOIT DANS VOTRE PAYS SOIT DANS LE PAYS D'ORIGINE DU DOCUMENT.

LES DEMANDES DE RENSEIGNEMENTS SUR LES POSSIBILITÉS D'OBTENIR L'ASSISTANCE JUDICIAIRE OU LA CONSULTATION JURIDIQUE DANS LE PAYS D'ORIGINE DU DOCUMENT PEUVENT ÊTRE ADRESSÉES: .....

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE 'SUMMARY OF THE DOCUMENT TO BE SERVED' WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO: .....

Il est recommandé que les mentions imprimées dans cette note soient rédigées en langue française et en langue anglaise et le cas échéant, en outre, dans la langue ou une des langues officielles de l'Etat d'origine de l'acte. Les blancs pourraient être remplis soit dans la langue de l'Etat où le document doit être adressé, soit en langue française, soit en langue anglaise.

It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in one of the official languages of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.

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Tél. 01 42 69 40 70
8, ch. du Clotinet - 91140 Villebon

ASSIGNATION
DEVANT LE TRIBUNAL DE COMMERCE DE PARIS

L'AN DEUX MILLE QUINZE

Et le

A LA DEMANDE DE :

1/ La société **ATARI EUROPE SAS**, société par actions simplifiée au capital de 190.000,00 euros, immatriculée au RCS Paris 328 033 410 et dont le siège social est situé 78, rue Taitbout 75009 Paris, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

2/ La société **ATARI SA**, société anonyme au capital de 1.600.540,91 euros, immatriculée au RCS Paris 341 699 106 et dont le siège social est situé 78, rue Taitbout 75009 Paris, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

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4/ La société **ATARI INTERACTIVE, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

5/ La société **CALIFORNIA US HOLDINGS, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

6/ La société **HUMONGOUS, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

Ayant pour Avocat
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E-mail : dmalamed@brownrudnick.com
Toque n°L0260

Au cabinet duquel domicile est élu

Maître

Huissier de Justice

A L'HONNEUR D'INFORMER

La société **ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P**, société *exempted*, constituée en vertu des lois des îles Caïmans,

Dont le siège social se situe c/o Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman KY1 9007, îles Caïman, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège,

Et chez (c/o) ALDEN GLOBAL CAPITAL LLC, société de droit américain, dont le siège social se situe au 885 Third Avenue, Suite 34th Floor, New York 10019, Etats-Unis d'Amérique.

D'AVOIR A COMPARAITRE

A l'audience du **15 octobre 2015 à 11h00**

À l'audience et par devant Mesdames et Messieurs les Présidents et Juges du **Tribunal de Commerce de PARIS, 1 QUAI DE CORSE - PALAIS DU TRIBUNAL DE COMMERCE – 75181 PARIS CEDEX 04**

Il vous est rappelé, conformément aux articles 56 et 853 du Code de Procédure Civile :

QUE les parties se défendent elles-mêmes ou qu'elles ont la faculté de se faire assister ou représenter par toutes personnes de leur choix ; que leur représentant, s'il n'est pas Avocat, doit justifier d'un pouvoir spécial.

QUE faute de comparaître ou de se faire représenter, elles s'exposent à ce qu'un jugement soit rendu contre elles sur les seuls éléments fournis par leurs adversaires

Il vous est rappelé, conformément à l'article 861-2 du Code de procédure civile :

QUE sans préjudice des dispositions de l'article 68, la demande incidente tendant à l'octroi d'un délai de paiement en application de l'article 1244-1 du code civil peut être formée par déclaration faite, remise ou adressée au greffe, où elle est enregistrée. L'auteur de cette demande doit justifier

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avant l'audience que l'adversaire en a eu connaissance par lettre recommandée avec demande d'avis de réception. Les pièces que la partie invoque à l'appui de sa demande de délai de paiement sont jointes à la déclaration.

L'auteur de cette demande incidente peut ne pas se présenter à l'audience, conformément au second alinéa de l'article 446-1. Dans ce cas, le juge ne fait droit aux demandes présentées contre cette partie que s'il les estime régulières, recevables et bien fondées.

Il vous est rappelé que la liste des pièces sur laquelle la demande est fondée est indiquée en fin d'acte.

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PLAISE AU TRIBUNAL

La société ATARI EUROPE SAS en qualité d'emprunteur d'une part, et les sociétés ATARI SA, ATARI INC., ATARI INTERACTIVE INC., CALIFORNIA US HOLDING INC. et HUMONGOUS INC en qualité de garant d'autre part, sollicitent par la présente l'annulation du taux d'intérêt conventionnel du contrat de crédit conclu avec la société ALDEN GLOBAL VALUE RECOVERY MASTER FUND et la substitution du taux d'intérêt légal au taux d'intérêt conventionnel ainsi annulé. En conséquence, la société ATARI EUROPE SAS sollicite la condamnation de la société ALDEN GLOBAL VALUE RECOVERY MASTER FUND à lui payer (i) pour la période courant du 1er avril 2009 au 31 mars 2015 un montant de 14.667.122 euros et (ii) pour la période du 21 avril 2006 au 31 mars 2009 et pour la période postérieure au 31 mars 2015 un montant complémentaire (correspondant à la différence entre les intérêts et frais versés par ATARI EUROPE SAS et les intérêts légaux sur lesdites périodes) à arrêter ultérieurement par la société ATARI EUROPE, ou au besoin par expertise.

1. LES FAITS ET LA PROCEDURE

1.1 Les faits

1.1.1 Présentation des parties

a) ATARI EUROPE SAS et le groupe ATARI

La société ATARI EUROPE SAS (« **ATARI EUROPE** »), est détenue à 100% par la société ATARI SA (« **ATARI SA** ») (extrait kbis des deux sociétés, **Pièce n°1**), qui est elle-même cotée à EURONEXT, et dont la capitalisation boursière représente 31 millions d'euros, pour 54,50% du capital détenu par le public.

Les principaux actionnaires sont les suivants:

- Ker Ventures, LLC (Frédéric Chesnais): 22,91%
- Alden Global Capital : 6,79%
- Alexandre Zyngier : 1,17%

Le groupe ATARI édite des logiciels applicatifs sur une multitude de plateformes, jeux vidéo téléchargeables sur ordinateurs, téléphones, tablettes et autres supports.

Dans les années 80, ATARI, groupe américain à l'origine, a connu un développement très important sur le marché naissant des consoles de jeux-vidéo, pour en devenir le leader avec SEGA et NINTENDO jusqu'à la fin des années 1990.

SONY au milieu des années 1990 s'est lancé dans le marché des consoles de jeux-vidéo, suivi par MICROSOFT.

C'est ainsi qu'au début des années 2000, le marché des consoles de jeux-vidéo s'est structuré entre SONY, MICROSOFT, et NINTENDO.

ATARI, confronté à cette mutation comme d'autres fabricants de jeux-vidéo, a concentré son activité dans la création et dans l'édition de logiciels de jeux vidéo grand public.

Le groupe possède et gère actuellement un portefeuille de plus de 300 franchises, dont des marques mondialement connues comme Asteroids®, Pong®, RollerCoaster Tycoon®.

b) <u>ALDEN GLOBAL VALUE RECOVERY MASTER FUND</u>

La société ALDEN GLOBAL VALUE RECOVERY MASTER FUND (« **ALDEN RECOVERY FUND** »), défenderesse, est un fonds d'investissement.

1.1.2 Les faits à l'origine du litige

a) <u>Le Credit Facility Agreement</u>

ATARI EUROPE avait contracté en 2006 auprès de la BANC OF AMERICA un crédit (« **Credit Facility Agreement** ») de 60 millions d'euros pour financer son redéploiement et notamment la sortie de nouveaux jeux vidéo (**Pièce n°2**).

Le Credit Facility Agreement met en place une ligne de crédit ("*CreditFacility*"), ouverte par le prêteur au profit de l'emprunteur (article 2) pour le financement de son activité commerciale (article 3), sur laquelle l'emprunteur dispose d'une faculté de tirage d'un montant minimum de 500.000 euros en émettant une "*Utilisation Request*" ou, le cas échéant, une "*Rollover Request*", dans l'hypothèse où il réalise un tirage afin de remplacer un précédent crédit non remboursé étant arrivé à maturité (article 5), devant préciser la période d'intérêts souhaitée (autrement dénommée la "*durée de période*" ou "*Interest Period*").

Les montants empruntés portent intérêt à un taux variable incluant une marge cash ("*Cash Margin*") de 550 point de base, une marge capitalisée ("*Capitalized Margin*") de 350 points de base, un taux EURIBOR ou LIBOR et des frais obligatoires ("*Mandatory Cost*") calculés sur la base d'une formule intégrant, entre autres, des frais variables (dits de référence) variant selon le montant effectivement emprunté à la date du calcul (article 10.1 et Schedule 4). L'emprunteur doit par ailleurs verser une commission d'engagement ("*Commission Fee*") à l'agent du prêteur ("*Facility Agent*") de 3% par an calculée sur l'engagement du prêteur demeurant disponible ("*Available Commitment*") sur une période donnée.

Dans ce contexte, le Taux Effectif Global (**"TEG"**) effectivement appliqué par le prêteur ne peut être connu à la date de signature du Credit Facility Agreement et doit être calculé de manière indicative à cette date.

Ainsi, l'article 10.5 du Credit Facility Agreement intitulé "*Effective Global Rate (Taux Effectif Global)*", se référant aux articles L313-4 du Code monétaire et financier et L313-1 *et seq.* du Code de la consommation, confirme expressément que "*les Parties reconnaissent qu'en raison de certaines caractéristiques de ce Crédit (et en particulier au taux d'intérêts variable applicable aux Prêts et au droit de l'Emprunteur de choisir la durée de période d'intérêts de chaque Prêt), le* taux effectif global *ne peut pas être*

MARA SCAGLIONE Expert Traducteur-Interprète Cour d'Appel de Paris Italien-Anglais-Français Tél. 01 42 89 40 70 8, ch. du Clotinel - 91140 Villejust *calculé à la date de cet Accord. Toutefois, chaque Emprunteur reconnaît qu'il a reçu de l'Agent du Prêteur une lettre contenant un calcul indicatif du* taux effectif global" (**Pièce n°2**).

Conformément à la législation applicable, l'obligation d'information à la charge du prêteur quant aux taux effectivement pratiqués n'en est pas moins continue, puisque que l'emprunteur doit se voir notifier sans délai par l'Agent du prêteur ("*Facility Agent*") les taux d'intérêt appliqués par le prêteur dans le cadre du Crédit Facility Agreement (article 10.4 intitulé "*Notification of rates of interest*").

ATARI SA est garante des engagements de sa fille au titre du Credit Facility Agreement.

La BANC OF AMERICA a transféré le Credit Facility Agreement à BLUEBAY le 10 décembre 2009.

BLUEBAY a ensuite transféré le Credit Facility Agreement au fonds d'investissement américain ALDEN RECOVERY FUND le 5 février 2013 (BANC OF AMERICA, BLUEBAY et ALDEN RECOVERY FUND sont ci-après dénommés ensemble le **"Préteur"**).

Le 24 Décembre 2013, les modalités de remboursement du solde du Credit Facility Agreement ont été négociées dans le cadre d'un Avenant n°16 convenu avec ALDEN RECOVERY FUND (**Pièce n°3**). Les modalités de remboursement ont par la suite été modifiées par un Avenant n°17 en date du 9 décembre 2014 (**Pièce n°4**).

Le solde du Credit Facility Agreement s'élève, au 31 mars 2015, à 10,6 millions d'euros en principal et à 1,5 million d'euros en intérêts, étant observé que le terme de remboursement est fixé au 30 septembre 2015.

Ces deux avenants aménageaient le Credit Facility Agreement comme suit :

- la possibilité de rembourser de manière anticipée 5 millions d'euros plus les intérêts avant le 31 mars 2015 ;
- le solde, soit 6 millions d'euros, serait alors reporté au 1er avril 2017, sous la condition de paiement le 1er octobre 2015 d'une commission d'extension de 7% des sommes reportées ;
- étant précisé que si cette option n'est pas exercée, l'échéance reste fixée au 30 septembre 2015 ;
- ATARI EUROPE peut, à tout moment, rembourser l'intégralité du Credit Facility Agreement.

b) <u>Les manquements du Prêteur à ses obligations d'information relatives au Taux Effectif Global</u>

C'est dans ce contexte que les parties ont signé 22 Avenants ou Lettre-avenant au Credit Facility Agreement, dont 15 ont eu notamment pour objet d'étendre le terme du crédit ("*Final Maturity Date*") et donc de modifier certains des éléments du calcul <u>indicatif</u> du Taux Effectif Global communiqué à l'emprunteur lors de la signature du Credit Facility Agreement.

Or, à l'exception de l'Avenant n°8 du 31 mars 2009 prorogeant le terme au 31 décembre 2009 et de l'Avenant n°16 du 24 décembre 2013 prorogeant le terme au 30 septembre 2015, aucun de ces avenants n'a été accompagné d'une information de l'emprunteur quant au nouveau calcul indicatif du Taux Effectif Global.

Au demeurant, les deux nouveaux calculs indicatifs du Taux Effectif Global communiqués à ATARI EUROPE après les signatures des Avenants n°8 et n°16, se sont avérés erronés, qu'il s'agisse de celui notifié, en mars 2009, par la BANC OF AMERICA (**Pièce n°6**) ou de celui notifié, par courrier en date du 20 décembre 2013 par ALDEN RECOVERY FUND (**Pièce n°5**).

Ainsi, le 30 mars 2015, ATARI EUROPE a notifié par courrier recommandé avec accusé de réception à la société ALDEN RECOVERY FUND avoir découvert le caractère erroné des calculs indicatifs du Taux Effectif Global qui lui avaient été communiqués. ATARI EUROPE appelait en conséquence la substitution du taux d'intérêt légal au taux conventionnel et précisait être en cours de finalisation de calcul du montant des intérêts indûment perçus par le prêteur (**Pièce n°7**).

Plus fondamentalement, le prêteur n'a nullement satisfait à son obligation légale d'information continue sur le Taux Effectif Global effectivement appliqué à ATARI EUROPE, puisque l'emprunteur ne recevait pas de relevés périodiques mentionnant le TEG effectivement appliqué.

Pour autant, ALDEN RECOVERY FUND a opposé, par courrier en date du 7 avril 2015, une fin de non-recevoir à la demande légitime d'ATARI EUROPE de voir s'appliquer le taux d'intérêt légal en lieu et place du taux conventionnel prévu par le Credit Facility Agreement (**Pièce n°8**).

ATARI EUROPE a procédé au calcul de l'ensemble des intérêts indûment perçus par le prêteur sur la période courant du 1er avril 2009 au 31 mars 2015, étant noté que le calcul est encore en cours pour la période antérieure (2006 au 31 mars 2009). Ce calcul a fait l'objet d'une vérification par le cabinet indépendant d'expertise financière FINEXSI dans un rapport du 23 avril 2015 qui a été remis à ALDEN RECOVERY FUND (**Pièce n°9**).

Par courrier du 29 mai 2015, ATARI EUROPE rappelait que la substitution du taux d'intérêt légal (1.666.779 euros) au taux conventionnel (16.333.901 euros) induisait un trop-payé par ATARI EUROPE de 14.667.122 euros, soit, si l'on prend en compte le montant en principal restant dû au 31 mars 2015 (10.584.082 euros), un solde en faveur d'ATARI EUROPE d'un montant de 4.080.441 euros évalués au 31 mars 2015 (**Pièce n°10**). Ce montant n'intègre pas les intérêts indûment versés au cours de la période courant du 21 avril 2006 au 31 mars 2009 et postérieurement au 31 mars 2015.

1.2 La procédure

En dépit des efforts d'ATARI EUROPE, les parties ne sont pas parvenues à trouver une solution transactionnelle à leur litige, notamment sous l'égide d'un mandataire ad hoc, dont la mission a été transformée en conciliation.

C'est dans ce contexte qu'ATARI EUROPE se voit contrainte de faire valoir ses droits devant le Tribunal de céans.

2. DISCUSSION

2.1 La nullité du taux conventionnel en raison des manquements graves du prêteur à ses obligations d'information préalables relatives au TEG

L'article 1907 du Code civil prévoit que :

« L'intérêt est légal ou conventionnel. L'intérêt légal est fixé par la loi. L'intérêt conventionnel peut excéder celui de la loi, toutes les fois que la loi ne le prohibe pas.

Le taux d'intérêt conventionnel doit être fixé par écrit. » (nous soulignons)

L'article L. 313-4 du Code monétaire et financier prévoit que :

« Les règles relatives au taux effectif global des crédits sont fixées par les articles L. 313-1 et L. 313-2 du code de la consommation ci-après reproduits :

"Art. L. 313-1-Dans tous les cas, pour la détermination du taux effectif global du prêt, comme pour celle du taux effectif pris comme référence, sont ajoutés aux intérêts les frais, commissions ou rémunérations de toute nature, directs ou indirects, y compris ceux qui sont payés ou dus à des intermédiaires intervenus de quelque manière que ce soit dans l'octroi du prêt, même si ces frais, commissions ou rémunérations correspondent à des débours réels.

Toutefois, pour l'application des articles L. 312-4 à L. 312-8, les charges liées aux garanties dont les crédits sont éventuellement assortis ainsi que les honoraires d'officiers ministériels ne sont pas compris dans le taux effectif global défini ci-dessus, lorsque leur montant ne peut être indiqué avec précision antérieurement à la conclusion définitive du contrat.

Pour les contrats de crédit entrant dans le champ d'application du chapitre Ier du présent titre, le taux effectif global, qui est dénommé " Taux annuel effectif global ", ne comprend pas les frais d'acte notarié.

En outre, pour les prêts qui font l'objet d'un amortissement échelonné, le taux effectif global doit être calculé en tenant compte des modalités de l'amortissement de la créance.

Un décret en Conseil d'Etat déterminera les conditions d'application du présent article."

"Art. L. 313-2-Le taux effectif global déterminé comme il est dit à l'article L. 313-1 doit être mentionné dans tout écrit constatant un contrat de prêt régi par la présente section.

Toute infraction aux dispositions du présent article sera punie d'une amende de 150 000 euros.

Les personnes physiques déclarées coupables encourent également à titre de peines complémentaires l'interdiction, suivant les modalités prévues à l'article 131-27 du code pénal, soit d'exercer une fonction publique ou d'exercer l'activité professionnelle ou sociale dans l'exercice ou à l'occasion de l'exercice de laquelle l'infraction a été commise, soit d'exercer une profession commerciale ou industrielle, de diriger, d'administrer, de gérer ou de contrôler à un titre quelconque, directement ou indirectement, pour leur propre compte ou pour le compte d'autrui, une entreprise commerciale ou industrielle ou une société commerciale. Ces interdictions d'exercice ne peuvent excéder une durée de cinq ans. Elles peuvent être prononcées cumulativement. » (nous soulignons)

Il résulte de l'application combinée de l'article 1907 alinéa 2 du Code civil et de l'article L313-4 du Code monétaire et financier que le contrat de prêt ou de crédit doit mentionner expressément le taux conventionnel et le TEG. Ce dernier est le taux réellement pratiqué pour une opération de crédit déterminée. Il doit inclure tous les frais nécessaires à l'obtention et à la réalisation du prêt à savoir tous "*les frais, commissions ou rémunérations de toute nature, directs ou indirects*" (article L313-4 du Code monétaire et financier) afin de permettre à l'emprunteur d'être dûment informé sur le coût global réel de son crédit.

Cette exigence d'ordre public, requise à peine de nullité, s'applique à tous les types de crédits (prêts, découverts, etc.) qu'ils soient accordés aux particuliers ou aux professionnels. Elle s'impose non seulement au moment de la conclusion du contrat de crédit initial mais également de tous les avenants à ce contrat dès lors que le taux effectif global s'en trouve modifié. Ainsi, comme le rappelle la doctrine "*dès lors que le taux d'intérêt est modifié par voie d'avenant au contrat de prêt, cet avenant doit mentionner le nouveau TEG au résultat de la modification du coût total du crédit en résultant*" (RD banc. fin mars 2015, n°2, comm.31 note F-J. Crédot et T. Samin). Dans l'hypothèse où le taux effectif global mentionné dans l'avenant est erroné, la jurisprudence considère que "*la sanction de cette erreur appelait la substitution du taux légal au taux conventionnel, à compter de la souscription dudit avenant*"(Cass. Civ 1ère, 27 février 2007, n°04-20.779).

Au-delà des prêts au sens strict, dans lesquels "*tous les éléments composant le TEG sont connus* ab initio", la jurisprudence a rappelé que l'exigence de la mention écrite du taux effectif global s'appliquait à toutes les autres opérations de crédit, dans lesquelles "*tous les éléments composant le TEG ne sont pas connus* ab initio [et] *dont le coût définitif dépend de l'utilisation qui en est faite par l'emprunteur.*" (A. Gourio et N. Aynes "La prescription de l'action en nullité en cas d'irrégularité du TEG" JCP E 2008, n°41, 2221).

Pour tenir compte de la particularité de ces dernières opérations de crédit, la jurisprudence a été amenée à préciser le régime de l'obligation d'information à la charge du prêteur :

> "(…) *l'obligation de payer dès l'origine des agios conventionnels par application du taux effectif global exige non seulement que le taux effectif global soit porté à titre indicatif sur un document écrit préalable, mais aussi que le taux effectif global appliqué soit porté sur les relevés périodiques, reçus par l'emprunteur sans protestation ni réserve.*"(Cass. Com, 22 mai 2007, n°06-12.180).

Ainsi, "*les mentions du taux effectif global 'indicatif' -sur la convention préalable- et du taux effectif global 'appliqué'- sur chaque relevé concerné- sont indispensables*" (Didier R. Martin, "Taux effectif global et prescription" D2008, p2202). Comme le rappelle la jurisprudence cette dernière obligation d'envoyer des documents de manière périodique contenant le taux effectif global régulièrement calculé pour la période écoulée est déterminante puisqu'elle vaut information de ce taux pour l'avenir.

A défaut d'information - ou en cas d'information erronée - dans le contrat de crédit (et le cas échéant ses avenants) sur le TEG "indicatif" ou dans les documents devant être envoyés périodiquement sur le TEG effectivement "appliqué", l'emprunteur est fondé à obtenir la nullité du taux conventionnel auquel doit être substitué le taux légal. Cette action se prescrit par 5 ans à compter "*s'agissant d'un prêt,* [de] *la date de la convention et, dans les autres cas,* [de] *la réception de chacun des écrits indiquant ou devant indiquer le TEG appliqué*" (Cass. Com, 10 juin 2008, n°06-19.452). Ainsi, en cas d'ouverture de crédit, la réception de chacun des écrits périodiques indiquant ou devant indiquer le TEG appliqué constitue le point de départ du délai de cette prescription (Cass. Com, 10 juin 2008, n°06-18906, Cass. Com, 8 octobre 2013, n°11-26.600), ce qui suppose que le prêteur ait rempli son obligation déterminante, non seulement d'indiquer le TEG, mais également d'envoyer cet écrit de manière périodique à l'emprunteur.

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Or, en l'espèce, le prêteur a violé l'ensemble de ses obligations d'information préalables relatives au taux effectif global puisque :

- les deux calculs indicatifs du TEG communiqués à ATARI EUROPE après les signatures des Avenants n°8 et 16 sont erronés, qu'il s'agisse de celui notifié, en mars 2009, par la BANC OF AMERICA (**Pièce n°6**) ou de celui notifié, par courrier en date du 20 décembre 2013 par ALDEN RECOVERY FUND (**Pièce n°5**), puisqu'en particulier ils ne prennent pas en compte des frais juridiques et/ou des frais financiers de prorogation du terme ;

- 13 Avenants ou Lettre avenant ont eu notamment pour objet de proroger le terme du crédit ("*Final Maturity Date*") et donc de modifier certains des éléments du calcul indicatif du Taux Effectif Global communiqué à l'emprunteur lors de la signature du Credit Facility Agreement, sans pour autant être accompagnés d'une information de l'emprunteur quant au nouveau calcul indicatif du Taux Effectif Global.

Plus fondamentalement, le Prêteur a violé son obligation d'information continue sur le Taux Effectif Global effectivement appliqué à ATARI EUROPE, pourtant déterminante, consistant à envoyer de manière périodique à l'emprunteur un document ou relevé mentionnant ce TEG effectivement appliqué.

Ainsi, le Prêteur n'a pas seulement omis d'indiquer ou indiqué de manière erronée le TEG effectivement appliqué dans les documents devant être envoyés de manière périodique, il n'a purement et simplement jamais envoyé de tels documents périodiques d'information à ATARI EUROPE sur le TEG appliqué, violation ainsi gravement ses obligations essentielles, qu'elles soient contractuelles ou légales.

Ainsi, les violations par le Prêteur de ses obligations essentielles sont telles qu'ATARI EUROPE a été maintenue dans l'ignorance de ses droits au titre du coût effectif global de son crédit au terme du Credit Facility Agreement.

Dans ces conditions, ATARI EUROPE, ATARI SA, ATARI INC., ATARI INTERACTIVE INC., CALIFORNIA US HOLDING INC. et HUMONGOUS INC. sont recevables et bien fondées à obtenir la nullité du taux conventionnel auquel doit être substitué le taux légal, et ce, depuis la signature du Credit Facility Agreement.

2.2 L'incidence des manquements d'ALDEN RECOVERY FUND sur les montants dus par les parties

Sur la durée du prêt, le montant de la ligne de crédit a été tiré à près de 60 millions d'euros par ATARI EUROPE et le taux d'intérêt appliqué a été supérieur à 10% par an, soit un taux très largement supérieur au taux d'intérêt légal.

ATARI EUROPE a procédé au calcul de l'ensemble des intérêts indûment perçus par le prêteur sur la période du 1er avril 2009 au 31 mars 2015, étant noté que le calcul est encore en cours pour la période antérieure (2006 au 31 mars 2009). Ce calcul a fait l'objet d'une vérification par le cabinet indépendant d'expertise financière FINEXSI qui conclut, dans son rapport en date du 23 avril 2015 (**Pièce n°9**) :

Conclusions

Au vu des éléments qui nous ont été fournis, nous constatons que les données qui ont été intégrées au calcul sont cohérentes avec les justificatifs comptables. De même les principes calculatoires retenus et l'arithmétique des calculs nous apparaissent appropriés.

Le résultat des calculs effectués par ATARI en date du 31 mars 2015 sont résumés dans le tableau suivant :

Résultats obtenus par ATARI

	Montants réels	Montants calculés au taux légal
Principal restant dû au 31/03/2015	10 584 095	(4 080 970)
Charges d'intérêts sur la période	(16 333 901)	(1 666 237)

En effectuant notre propre calcul, nous arrivons aux résultats suivants en date du 31 mars 2015:

Résultats obtenus par FINEXSI

	Montants réels	Montants calculés au taux légal
Principal restant dû au 31/03/2015	10 584 082	(4 080 441)
Charges d'intérêts sur la période	(16 333 901)	(1 666 779)

L'écart constaté entre les deux calculs s'élève à 528€ et n'est pas significatif.

Au 31 mars 2015, sur la base de nos calculs et en appliquant les principes calculatoires évoqués ci-dessus, le trop-payé par Atari Europe s'élèverait au global à la somme de 4 080 441€ (intérêts et principal confondus), étant rappelé que ce calcul ne couvre que la période allant du 1er avril 2009 au 31 mars 2015 (et exclut donc la période allant du 21 avril 2006 au 31 mars 2009) et n'intègre pas certains frais de conseils juridiques supportés par l'Emprunteur dans le cadre du Prêt qui sont en cours de recensement par le management d'Atari. (**Pièce n°9**)

Dans ces conditions, ALDEN RECOVERY FUND doit être condamnée à payer à la société ATARI EUROPE (i) pour la période courant du 1er avril 2009 au 31 mars 2015 un montant de 14.667.122 euros et (ii) pour la période du 21 avril 2006 au 31 mars 2009 et pour la période postérieure au 31 mars 2015 un montant complémentaire (correspondant à la différence entre les intérêts et frais versés par ATARI EUROPE et les intérêts légaux sur lesdites périodes) à arrêter ultérieurement par la société ATARI EUROPE, ou au besoin par expertise.

ATARI EUROPE se réserve de demander la compensation de la condamnation prononcée à l'encontre d'ALDEN RECOVERY FUND avec toute somme exigible qu'elle pourrait devoir au titre du Credit Facility Agreement.

2.3 Article 700 du Code de procédure civile

Il serait inéquitable de laisser à la charge des demanderesses les sommes qu'elles sont obligées d'engager pour faire valoir leurs droits. Le Tribunal condamnera donc ALDEN RECOVERY FUND au versement de la somme de 50.000 euros au titre de l'article 700 du Code de procédure civile.

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PAR CES MOTIFS

Vu l'article 1907 du Code civil,

Vu l'article L. 313-4 du Code monétaire et financier,

Vu l'article 1147 du Code civil

Vu l'article 700 du Code de procédure civile,

Il est demandé au Tribunal de :

- **Prononcer** la nullité du taux d'intérêt conventionnel stipulé dans le Credit Facility Agreement;
- **Ordonner** la substitution du taux d'intérêt légal au taux conventionnel ;
- **Dire et juger** que le trop payé par la société ATARI EUROPE SAS au titre des intérêts versés dans le cadre du Credit Facility Agreement s'élève (i) pour la période courant du 1er avril 2009 au 31 mars 2015 à un montant de 14.667.122 euros et (ii) pour la période du 21 avril 2006 au 31 mars 2009 et pour la période postérieure au 31 mars 2015 à un montant complémentaire (correspondant à la différence entre les intérêts et frais versés par ATARI EUROPE SAS et les intérêts légaux) à arrêter ultérieurement par la société ATARI EUROPE SAS, ou au besoin par expertise ;
- En conséquence, **condamner** la société ALDEN GLOBAL VALUE RECOVERY MASTER FUND à payer à la société ATARI EUROPE SAS (i) pour la période courant du 1er avril 2009 au 31 mars 2015 un montant de 14.667.122 euros et (ii) pour la période du 21 avril 2006 au 31 mars 2009 et pour la période postérieure au 31 mars 2015 un montant complémentaire (correspondant à la différence entre les intérêts et frais versés par ATARI EUROPE SAS et les intérêts légaux sur lesdites périodes) à arrêter ultérieurement par la société ATARI EUROPE SAS, ou au besoin par expertise, outre les intérêts légaux à compter du jugement à intervenir ;
- **Donner acte** à la société ATARI EUROPE SAS qu'elle se réserve de demander la compensation de la condamnation prononcée à l'encontre de ALDEN GLOBAL VALUE RECOVERY MASTER FUND avec toute somme exigible qu'elle pourrait devoir au titre du Credit Facility Agreement ;
- **Condamner** la société ALDEN GLOBAL VALUE RECOVERY MASTER FUND à payer aux demanderesses un montant de 50.000 euros au titre de l'article 700 du Code de procédure civile.

Sous toutes réserves

LISTE DES PIECES

PIECE n°1 :	K-BIS DE LA SOCIETE ATARI EUROPE SAS ET DE LA SOCIETE ATARI SA
PIECE n°2 :	CONVENTION DE PRET ENTRE ATARI EUROPE SAS ET BANC OF AMERICA EN DATE DU 21 AVRIL 2006(le « *Credit Facility Agreement* »)
PIECE N°3 :	AVENANT NUMERO 16 A LA CONVENTION DE PRET ENTRE ATARI EUROPE SAS ET ALDEN RECOVERY FUND EN DATE DU 24 DÉCEMBRE 2013
PIECE N°4 :	AVENANT NUMERO 17 A LA CONVENTION DE PRET ENTRE ATARI EUROPE SAS ET ALDEN RECOVERY FUND EN DATE DU 9 DECEMBRE 2014
PIECE n°5 :	LETTRE DE NOTIFICATION DU TAUX EFFECTIF GLOBAL EN DATE DU 20 DECEMBRE 2013
PIECE n°6 :	LETTRE DE NOTIFICATION DU TAUX EFFECTIF GLOBAL EN DATE DE MARS 2009
PIECE n°7 :	COURRIER RECOMMANDE ADRESSE A ALDEN RECOVERY FUNDDENONCANT L'APPLICATION DU TEG EN DATE DU 30 MARS 2015
PIECE n°8 :	COURRIER D'ALDEN RECOVERY FUND ADRESSE A ATARI EUROPE EN DATE DU 7 AVRIL 2015
PIECE n°9	RAPPORT FINEXSI EN DATE DU 23 AVRIL 2015
PIECE n°10	COURRIER D'ATARI EUROPE ADRESSE A ALDEN RECOVERY FUND EN DATE DU 29 MAI 2015

WRIT OF SUMMONS
BEFORE THE COMMERCIAL COURT OF PARIS

IN THE YEAR TWO THOUSAND AND FIFTEEN

On

AT THE REQUEST OF:

1/ The company **ATARI EUROPE SAS**, *société par actions simplifiée* [simplified joint stock company] with a share capital of € 190,000.00, entered in the Trade and Companies Register (RCS) of Paris under the number 328 033 410, having its registered office at 78, rue Taitbout 75009 Paris, represented by its legal representatives, domiciled in this capacity at the said registered office.

2/ The company **ATARI SA**, *société anonyme* [limited liability company] with a share capital of € 1,600,540.91, entered in the Trade and Companies Register (RCS) of Paris under the number 341 699 106, having its registered office at 78, rue Taitbout 75009 Paris, represented by its legal representatives, domiciled in this capacity at the said registered office.

3/ The company **ATARI, INC** incorporated under the laws of the United States of America, having its registered office at 475, Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

4/ The company **ATARI INTERACTIVE, INC** incorporated under the laws of the United States of America, having its registered office at 475, Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

5/ The company **CALIFORNIA US HOLDINGS, INC** incorporated under the laws of the United States of America, having its registered office at 475, Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

6/ The company **HUMONGOUS, INC** incorporated under the laws of the United States of America, having its registered office at 475, Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

Having as Lawyer
Maître David MALAMED,
Lawyer at the Paris Bar
Cabinet Brown Rudnick LLP
1, rue François 1 – 75008 PARIS
Tel: 01 85 56 82 20 – Fax: 01 85 56 82 21
E-mail: dmalamed@brownrudnick.com
Box No. L0260

Choosing the offices of the above party as domicile

MARA SCAGLIONI
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 89 40 70
8, ch. du Clotinet - 91140

Maître

Court Bailiff

IS PLEASED TO INFORM

The company **ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P**, an *exempted* company, incorporated under the laws of the Cayman Islands,

Having its registered office at c/o Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman KY1 9007, Cayman Islands, represented by its legal representatives, domiciled in this capacity at the said registered office

And c/o **ALDEN GLOBAL CAPITAL LLC** incorporated under the laws of the United States of America, having its registered office at 885, Third Avenue, Suite 34th Floor, New York 10019, United States of America.

THAT IT MUST APPEAR

At the hearing of **15 October 2015 at 11:00 a.m.**

At the hearing and before the Presiding Judge and Judges of the **Commercial Court of PARIS, 1 QUAI DE CORSE - PALAIS DU TRIBUNAL DE COMMERCE – 75181 PARIS CEDEX 04**

You are reminded, pursuant to articles 56 and 853 of the Civil Procedure Code:

THAT the parties shall defend themselves or shall have the right to be assisted or represented by any person of their choice; that if their representative is not a Lawyer, he must provide evidence of a special power of attorney;

THAT if the parties fail to appear or appoint representatives, they run the risk of a decision being issued against them solely on the basis of the elements provided by their opponents;

You are reminded, pursuant to article 861-2 of the Civil Procedure Code:

THAT without prejudice to the provisions of article 68, the incidental claim aiming to secure the granting of a payment deadline by way of application of article 1244-1 of the Civil Code may be drawn up by a declaration made, submitted or addressed to the Court registry, where it is registered. The author of this claim shall provide evidence before the hearing that the opposing party was made aware of the same by registered letter with notice of receipt. The exhibits which the party invokes in support of its request for a payment deadline are attached to the declaration.

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The author of this incidental claim is not obliged to attend the hearing, pursuant to the second paragraph of article 446-1. In this event, the judge shall only uphold the claims submitted against this party if it considers them to be regular, reliable and well-founded.

You are reminded that the list of exhibits on which the claim is based is indicated at the end of the instrument.

MAY IT PLEASE THE COURT

The company ATARI EUROPE SAS in the capacity of Borrower, on the one hand, and the companies ATARI SA, ATARI INC., ATARI INTERACTIVE INC., CALIFORNIA US HOLDING INC. and HUMONGOUS INC., in the capacity of Guarantor, on the other, hereby request the annulment of the contractual interest rate of the credit facility agreement concluded with the company ALDEN GLOBAL VALUE RECOVERY MASTER FUND and the replacement by the legal interest rate of the contractual interest rate so cancelled. Consequently, the company ATARI EUROPE SAS requests the company ALDEN GLOBAL VALUE RECOVERY MASTER FUND to pay it (i) for the period running from 1 April 2009 to 31 March 2015, an amount of € 14,667,122 on 31 March and (ii) for the period from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, a supplementary amount (corresponding to the difference between the interest and costs paid on 31 March by ATARI EUROPE SAS and the legal interest for the said period) to be drawn up subsequently by the company ATARI EUROPE SAS, or if necessary, by an expert.

1. THE FACTS AND THE PROCEDURE

1.1 The facts

1.1.1 Presentation of the parties

a) ATARI EUROPE SAS and the ATARI group

The company ATARI EUROPE SAS ("**ATARI EUROPE**"), is held 100% by the company ATARI SA ("**ATARI SA**") (Kbis [company registration] of the two companies, **Exhibit No. 1**), itself listed on EURONEXT, with a market capitalisation of € 31 million, for 54.50% of the share capital held by the public.

The principal shareholders are:

- Ker Ventures, LLC (Frédéric Chesnais): 22.91%
- Alden Global Capital: 6.79%
- Alexandre Zyngier: 1.17%

The ATARI group publishes software applications on a wide variety of platforms, video games downloadable on computers, telephones, tablets and other media.

In 1980s, ATARI, originally a US group, experienced very significant growth in the emerging market for video game consoles, becoming a leader together with SEGA and NINTENDO until the end of the 1990s.

In the mid-1990s, SONY entered the video game console market, followed by MICROSOFT.

Thus, at the start of the 2000s, the video game console market was dominated by SONY, MICROSOFT and NINTENDO.

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In the face of this change, ATARI, like other producers of video games, concentrated its activity on the creation and publishing of mass-market video game software.

The group currently owns and manages a portfolio of over 300 franchises, including the internationally known brands such as Asteroids®, Pong®, RollerCoaster Tycoon®.

b) ALDEN GLOBAL VALUE RECOVERY MASTER FUND

The company ALDEN GLOBAL VALUE RECOVERY MASTER FUND ("**ALDEN RECOVERY FUND**"), respondent, is an investment fund.

1.1.2 The events at the origin of the dispute

a) The Credit Facility Agreement

In 2006, ATARI EUROPE contracted a € 60 million credit facility ("**Credit Facility Agreement**") with BANC OF AMERICA to finance its redeployment and particularly the release of new video games (**Exhibit No. 2**).

The Credit Facility Agreement established a credit facility ("*CreditFacility*"), granted by the lender to the benefit of the Borrower (article 2) for the financing of its commercial activity (article 3). The Borrower may use the drawdown facility for a minimum amount of € 500,000 by issuing a "*Utilisation Request*" or, when appropriate, a "*Rollover Request*", if the drawdown is made in order to replace a previous one that has not been reimbursed and which has reached maturity (article 5), being required to specify the desired interest period (otherwise termed the "*duration of the period*" or "*Interest Period*").

The borrowed amounts bear interest at a variable rate including a cash margin ("*Cash Margin*") of 550 basis points, a capitalised margin ("*Capitalized Margin*") of 350 basis points, a EURIBOR or LIBOR rate and mandatory costs ("*Mandatory Cost*") calculated on the basis of a formula including, among other things, costs (termed reference costs) varying according to the amount effectively borrowed on the calculation date (article 10.1 and Schedule 4). The Borrower shall moreover pay a commitment commission ("*Commission Fee*") to the lender's agent ("*Facility Agent*") of 3% per year, calculated on the lender's commitment remaining available ("*Available Commitment*") for a given period.

In this context, the Effective Global Rate ("**EGR**") effectively applied by the lender cannot be known on the date of signing of the Credit Facility Agreement and must be calculated in indicative fashion on this date.

In this way, article 10.5 of the Credit Facility Agreement, entitled the "*Effective Global Rate*", referring to articles L. 313-4 of the Monetary and Financial Code and L. 313-1 *etseq.* of the Consumer Code, expressly confirms that "*the Parties acknowledge that by virtue of certain characteristics of this Credit (and in particular, the variable interest rate applicable to the Loans and to the right of the Borrower to choose the duration of the interest period of each Loan), the* Effective Global Rate *cannot be calculated on the date of this Agreement. Each Borrower nevertheless acknowledges that it has received a letter from the Lender's Agent containing an indicative calculation of the* Effective Global Rate" (**Exhibit No. 2**).

Pursuant to the applicable legislation, the notification obligation incumbent on the lender regarding the rates effectively applied is nevertheless continuous, since the Borrower must be notified immediately by the lender's Agent ("*Facility Agent*") of the interest rates applied by the lender within the context of the Credit Facility Agreement (article 10.4, entitled "*Notification of interest rates*").

ATARI SA is the Guarantor of the commitments of its subsidiary by way of the Credit Facility Agreement.

BANC OF AMERICA transferred the Credit Facility Agreement to BLUEBAY on 10 December 2009.

BLUEBAY then transferred the Credit Facility Agreement to the US investment fund ALDEN RECOVERY FUND on 5 February 2013 (BANC OF AMERICA, BLUEBAY and ALDEN RECOVERY FUND are hereafter referred to jointly as the "**Lender**").

On 24 December 2013, the reimbursement procedures for the balance of the Credit Facility Agreement were negotiated within the context of a Supplementary Agreement No. 16, agreed with ALDEN RECOVERY FUND (**Exhibit No. 3**). The reimbursement procedures were subsequently amended by Supplementary Agreement No. 17 on 9 December 2014 (**Exhibit No. 4**).

The balance of the Credit Facility Agreement amounted, on 31 March 2015, to € 10.6 million in principal and € 1.5 million of interest, it being observed that the reimbursement deadline is set for 30 September 2015.

These two supplementary agreements adapted the Credit Facility Agreement as follows:

- the possibility of advance reimbursement of € 5 million plus interest before 31 March 2015;
- the balance, i.e. € 6 million, would then be postponed until 1 April 2017, on condition of payment on 1 October 2015 of an extension commission of 7% of the postponed amounts;
- it being specified that if this option is not exercised, the maturity date will remain set at 30 September 2015;
- ATARI EUROPE may reimburse the whole of the Credit Facility Agreement at any time.

b) <u>The defaults by the Lender on its notification obligations regarding the Effective Global Rate</u>

It was in this context that the parties signed 22 Supplementary Agreements or Supplementary Agreement Letters to the Credit Facility Agreement, of which, 15 have particularly for object to extend the maturity date of the facility ("*Final Maturity Date*") and hence to amend certain elements of the <u>indicative</u> calculation of the Effective Global Rate notified to the Borrower on signing of the Credit Facility Agreement.

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However, with the exception of Supplementary Agreement No. 8 of 31 March 2009, extending the deadline until 31 December 2009 and of Supplementary Agreement No. 16 of 24 December 2013, extending the deadline until 30 September 2015, none of these supplementary agreements was accompanied by a notification to the Borrower of the new <u>indicative</u> calculation of the Effective Global Rate.

Moreover, the two new <u>indicative</u> calculations of the Effective Global Rate notified to ATARI EUROPE after the signing of Supplementary Agreements No. 8 and No. 16 proved erroneous, whether for the one notified, in March 2009, by BANC OF AMERICA (**Exhibit No. 6**) or for the one notified by letter of 20 December 2013 by ALDEN RECOVERY FUND (**Exhibit No. 5**).

In this way, on 30 March 2015, ATARI EUROPE notified ALDEN RECOVERY FUND by registered letter that it had discovered the erroneous character of the indicative calculations of the Effective Global Rate notified to it. ATARI EUROPE consequently called for the replacement of the contractual rate by the legal interest rate, specifying that it was in the process of finalizing the calculation of the amount of interest unduly received by the lender (**Exhibit No. 7**).

More fundamentally, the Lender in no way satisfied its legal obligation of continuous information on the Effective Global Rate <u>effectively applied</u> to ATARI EUROPE, since the Borrower did not receive periodic statements mentioning the EGR effectively applied.

At the same time, in a letter of 7 April 2015, ALDEN RECOVERY FUND lodged an application to strike out the legitimate claim of ATARI EUROPE for the application of the legal interest rate, instead of the contractual rate provided by the Credit Facility Agreement (**Exhibit No. 8**).

ATARI EUROPE calculated all the interest unduly received by the Lender for the period running from 1 April 2009 to 31 March 2015, it being noted that the calculation is still in progress for the preceding period (2006 to 31 March 2009). This calculation formed the object of the verification by the independent financial consulting firm FINEXSI in a report of 23 April 2015, which was submitted to ALDEN RECOVERY FUND (**Exhibit No. 9**).

By a letter of 29 May 2015, ATARI EUROPE recalled that the replacement by the legal interest rate (€ 1,666,779) of the contractual rate (€ 16,333,901) generated an excess payment by ATARI EUROPE of € 14,667,122, i.e. if account is taken of the outstanding principal amount on 31 March 2015 (€ 10,584,082), a balance in favour of ATARI EUROPE of € 4,080,441, evaluated on 31 March 2015 (**Exhibit No. 10**). This amount does not include the interest unduly paid during the period running from 21 April 2006 to 31 March 2009 and subsequently to 31 March 2015.

1.2 <u>The proceedings</u>

Despite ATARI EUROPE's efforts, the parties did not succeed in reaching a settlement solution for their dispute, especially under the auspices of an *ad hoc* representative, whose mission was transformed into a conciliation procedure.

It is in this context that ATARI EUROPE finds itself obliged to assert its rights before this Court.

2. DISCUSSION

2.1 The nullity of the contractual rate due to serious breaches by the lender of its prior notification obligations regarding the EGR

Article 1907 of the Civil Code provides that:

"The interest is legal or contractual. Legal interest is set by law. Contractual interest may exceed the legal interest, whenever the law does not prohibit this.

The contractual interest rate must be set in writing." (Our underlining)

Article L. 313-4 of the Monetary and Financial Code provides that:

"The rules relating to the Effective Global Rate of the credits are set by articles L. 313-1 and L. 313-2 of the Consumer Code, as reproduced below:

"Art. L. 313-1 - In all cases, in order to determine the Effective Global Rate for the loan, like that of the effective rate taken as a reference, the costs, commissions or remuneration of any kind, whether direct or indirect, including those paid or due to intermediaries, intervening in any way in granting the loan, are added to the interest, even if these costs, commissions or this remuneration correspond to real disbursements.

However, for the application of articles L. 312-4 to L. 312-8, the charges linked to the guarantees which may accompany the credits, as well as judicial officers' fees, are not included in the Effective Global Rate defined above, when their amount cannot be indicated precisely prior to the definitive conclusion of the agreement.

For credit agreements falling within the field of application of chapter I of this heading, the Effective Global Rate termed the "Effective global annual rate", shall not include the costs of the notarial deed.

Furthermore, for the loans forming the object of staggered amortisation, the Effective Global Rate shall be calculated taking account of the procedures for the amortisation of the receivable.

A Council of State decree shall determine the conditions for the application of this article."

"Art. L. 313-2 - The Effective Global Rate, determined as stated in article L. 313-1, shall be mentioned in any written document confirming a loan agreement governed by this section.

Any infringement of the provisions of this article shall be punished with a fine of € 150,000.

Natural persons declared guilty shall also incur, by way of supplementary penalties, the prohibition, pursuant to the procedures described in article 131-27 of the Criminal Code, either on holding a public position or on carrying out their professional or social activity during the performance of which or on the occasion of the performance of which the offence was committed, or of exercising a commercial or industrial profession, of directing, administering, managing or controlling a commercial or industrial enterprise or commercial company, in any capacity, whether directly or indirectly, on their own behalf or on that of another party. These prohibitions on exercise shall not exceed a duration of five years. They may be pronounced cumulatively." (Our underlining)

It results from the combined application of article 1907, paragraph 2 of the Civil Code and of article L. 313-4 of the Monetary and Financial Code that the loan or credit agreement shall expressly mention the contractual rate and the EGR. This rate is the rate actually applied for a given credit operation. It shall include all of the costs necessary for obtaining and executing the loan, namely all "*costs, commissions or remuneration of any nature, whether direct or indirect*" (article L. 313-4 of the Monetary and Financial Code), in order to permit the Borrower to be duly informed of the real global cost of its credit.

This requirement of public order, imposed under penalty of nullity, applies to all types of credits (loans, overdrafts, etc.), whether granted to private individuals or to professionals. It shall apply not only at the time of conclusion of the agreement of the initial credit, but also to all of the supplementary agreements to this agreement when the Effective Global Rate has been amended by it. In this way, as the doctrine recalls, "*when the interest rate is amended by a supplementary agreement to the loan agreement, the supplementary agreement shall mention the new EGR in the result of the modification of the total cost of the resulting credit*" (RD banc. fin, March 2015, No. 2, paragraph 31 note F-J. Crédot and T. Samin). In the event that the Effective Global Rate mentioned in the supplementary agreement is erroneous, case law considers that "*the sanction of this error called for the replacement of the contractual rate by the legal rate, starting from the subscription of the said supplementary agreement*"(Court of Cassation, 1st Civil Division, 27 February 2007, No. 04-20.779).

In addition to the loans in the strict sense, in which "*all of the elements comprising the EGR are known* ab initio", case law recalls that the requirement for a written mention of the Effective Global Rate applied to all of the other credit operations, in which "*all of the elements comprising the EGR were not known* from the start [and] *the definitive cost of which depends on the use made of it by the Borrower.*" (A. Gourio and N. Aynes "The time limitation of the nullity action in the event of irregularity of the EGR" JCP E 2008, No. 41, 2221).

In order to take account of the particular nature of these latter credit operations, case law was obliged to specify the regime of the notification obligation incumbent on the lender:

> "(...) *theobligation to pay contractual premiums from the outset by application of the Effective Global Rate not only requires that the Effective Global Rate is contained in an indicative capacity in a prior written document, but also that the applied Effective Global Rate is contained in periodic statements, received by the Borrower without protest or reservation.*"(Court of Cassation, Commercial Division, 22 May 2007, No. 06-12.180).

In this way, "*mentions of the 'indicative' Effective Global Rate in the prior agreement and of the Effective Global Rate 'applied' to each statement in question, are indispensable*" (Didier R. Martin, "Effective Global Rate and time barring" D2008, p. 2202). As recalled by case law, this latter obligation of periodic submission of documents containing the Effective Global Rate, regularly calculated for the elapsed period, is decisive when it constitutes notification of this rate for the future.

In the absence of information, or in the case of erroneous information in the credit agreement (and when applicable, in its supplementary agreements) on the "indicative" EGR, or in the documents to be submitted periodically on the EGR effectively "applied", the Borrower is well-founded in securing the nullity of the contractual rate, which must be replaced by the legal rate. This action has a limitation period of 5 years, starting from: "*for a loan,* [from] *thedate of the agreement and in other cases,* [of] *the receipt of each of the documents indicating or obliged to indicate the applied EGR*" (Court of Cassation, Commercial Division, 10 June 2008, No. 06-19.452). In this way, in the case of granting of a credit line, the receipt of each of the periodic statements indicating or obliged to indicate the applied EGR constitutes the starting point of the deadline for this limitations period (Court of Cassation, Commercial Division, 10 June 2008, No. 06-18906, Court of Cassation, Commercial Division, 8 October 2013, No. 11-26.600), which supposes that the lender has fulfilled its essential obligation, not only to indicate the EGR, but also to submit this statement on a periodic basis to the Borrower.

In the case in question, however the Lender infringed all of its prior notification obligations regarding the Effective Global Rate, since:

- the two indicative calculations of the EGR, notified to ATARI EUROPE after the signing of the Supplementary Agreements No. 8 and 16 are erroneous, whether with regard to the one notified by BANC OF AMERICA, in March 2009 (**Exhibit No. 6**) or to the one notified, by letter of 20 December 2013 by ALDEN RECOVERY FUND (**Exhibit No. 5**), since in particular, they do not take account of the legal and/or financial costs of this extension of the deadline;

- 13 Supplementary Agreements or Supplementary Agreement Letters have extended the maturity date of the credit (*"Final Maturity Date"*) and hence amended certain elements of the indicative calculation of the Effective Global Rate notified to the Borrower on signing of the Credit Facility Agreement, albeit without being accompanied by a notification of the Borrower regarding the new indicative calculation of the Effective Global Rate.

More fundamentally, the Lender infringed its obligation of continuous notification regarding the Effective Global Rate effectively applied to ATARI EUROPE, despite it being essential, consisting in sending periodically to the Borrower a document or statement mentioning this EGR effectively applied.

In this way, the lender not only failed to indicate or indicated erroneously the EGR effectively applied to the documents to be sent periodically, but purely and simply never sent such periodic information documents on the applied EGR to ATARI EUROPE, thereby seriously infringing its essential obligations, whether these were contractual or legal.

In this way, the infringements by the Lender of its essential obligations are such that ATARI EUROPE was kept in ignorance of its rights by way of the effective global cost of its credit at the end of the Credit Facility Agreement.

Under these conditions, the claims of ATARI EUROPE, ATARI SA, ATARI INC., ATARI INTERACTIVE INC., CALIFORNIA US HOLDING INC. and HUMONGOUS INC. to obtain the nullity of the contractual rate and its replacement by the legal rate are admissible and well-founded, and this since the signing of the Credit Facility Agreement.

2.2 The impact of the defaults by ALDEN RECOVERY FUND on the amounts due from the parties

Over the duration of the loan, around € 60 million of the credit line was drawn down by ATARI EUROPE and the applied interest rate exceeded 10% per year, i.e. a rate noticeably higher than the legal interest rate.

ATARI EUROPE calculated the whole of the interest unduly received by the lender for the period from 1 April 2009 to 31 March 2015, it being noted that the calculation is still in progress for the previous period (2006 to 31 March 2009). This calculation was verified by the independent financial consulting firm FINEXSI, which concluded, in its report of 23 April 2015 (**Exhibit No. 9**):

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Conclusions

In view of the elements provided to us, we observe that the data included in the calculation are consistent with the accounting demonstrations. In the same way, the calculation procedures adopted and the arithmetic of the calculations seem appropriate to us.

The result of the calculations made by ATARI on 31 March 2015 are summarised in the following table:

Results obtained by ATARI

	Actual amounts	Amounts calculated at the legal rate
Principal amount remaining outstanding on 31/03/2015	10,584,095	(4,080,970)
Interest expenses for the period	(16,333,901)	(1,666,237)

By carrying out our own calculation, we arrived at the following results on 31 March 2015:

Results obtained by FINEXSI

	Actual amounts	Amounts calculated at the legal rate
Principal amount remaining outstanding on 31/03/2015	10,584,082	(4,080,441)
Interest expenses for the period	(16,333,901)	(1,666,779)

The observed divergence between the two calculations amounts to € 528 and is not significant.

On 31 March 2015, on the basis of our calculations and applying the calculation principles cited above, the excess payment by Atari Europe amounted overall to € 4,080,441 (including interest and principal), it being recalled that this calculation only covers the period from 1 April 2009 to 31 March 2015 (and thus excludes the period running from 21 April 2006 to 31 March 2009) and does not include certain legal advisory costs borne by the Borrower within the context of the Loan, in the process of being surveyed by Atari's management. **(Exhibit No. 9)**

Under these conditions, ALDEN RECOVERY FUND shall be sentenced to pay ATARI EUROPE (i) for the period running from 1 April 2009 to 31 March 2015 an amount of € 14,667,122 and (ii) for the period running from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE and the legal interest for the said periods) to be drawn up subsequently by ATARI EUROPE, or as necessary, by an expert.

ATARI EUROPE reserves the right to claim compensation for the sentence pronounced against ALDEN RECOVERY FUND with any due amount which it may owe by way of the Credit Facility Agreement.

2.3 Article 700 of the Civil Procedure Code

It would be unfair to let the claimants pay the amounts which they are obliged to incur, in order to assert their rights. The Court shall thus sentence ALDEN RECOVERY FUND to pay the amount of € 50,000 by way of Article 700 of the Civil Procedure Code.

MARA SCAGLIONE Expert Traducteur-Interprète Cour d'Appel de Paris Italien-Anglais-Français Tél. 01 42 89 40 70 8, ch. du Clotinet - 91140 Villejust

FOR THESE REASONS

Pursuant to article 1907 of the Civil Code,

Pursuant to article L. 313-4 of the Monetary and Financial Code,

Pursuant to article 1147 of the Civil Code

Pursuant to article 700 of the Civil Procedure Code,

<u>The Court is requested to</u>:

- **Pronounce** the nullity of the contractual interest rate stipulated in the Credit Facility Agreement;
- **Order** the replacement of the contractual rate by the legal interest rate;
- **State and rule** that the excess amount paid by ATARI EUROPE SAS by way of the interest paid within the context of the Credit Facility Agreement amounts (i) for the period running from 1 April 2009 to 31 March 2015, to € 14,667,122 and (ii) for the period from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, to a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE SAS and the legal interest) to be drawn up subsequently by the company ATARI EUROPE SAS, or as necessary by a judicial expert;
- Consequently, **Sentence** ALDEN GLOBAL VALUE RECOVERY MASTER FUND to pay ATARI EUROPE SAS (i) for the period running from 1 April 2009 to 31 March 2015, an amount of € 14,667,122 and (ii) for the period from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE SAS and the legal interest for the said periods), to be drawn up subsequently by ATARI EUROPE SAS, or as necessary, by expert study, plus the legal interest starting from the forthcoming decision;
- **Give notice** to ATARI EUROPE SAS that it reserves the right to demand the offsetting of the sentence pronounced against ALDEN GLOBAL VALUE RECOVERY MASTER FUND against any due amount which it may owe by way of the Credit Facility Agreement;
- **Sentence** ALDEN GLOBAL VALUE RECOVERY MASTER FUND to pay to the claimants an amount of € 50,000, by way of article 700 of the Civil Procedure Code.

Without prejudice

LIST OF EXHIBITS

EXHIBIT No. 1: K-BIS OF ATARI EUROPE SAS AND OF ATARI SA

EXHIBIT No. 2: LOAN AGREEMENT BETWEEN ATARI EUROPE SAS AND BANC OF AMERICA OF 21 APRIL 2006(the "*Credit Facility Agreement*")

EXHIBIT No. 3: SUPPLEMENTARY AGREEMENT NUMBER 16 OF THE LOAN AGREEMENT BETWEEN ATARI EUROPE SAS AND ALDEN RECOVERY FUND OF 24 DECEMBER 2013

EXHIBIT No. 4: SUPPLEMENTARY AGREEMENT NUMBER 17 TO THE LOAN AGREEMENT BETWEEN ATARI EUROPE SAS AND ALDEN RECOVERY FUND OF 9 DECEMBER 2014

EXHIBIT No. 5: NOTIFICATION LETTER OF THE EFFECTIVE GLOBAL RATE OF 20 DECEMBER 2013

EXHIBIT No. 6: NOTIFICATION LETTER OF THE EFFECTIVE GLOBAL RATE OF MARCH 2009

EXHIBIT No. 7: REGISTERED LETTER ADDRESSED TO ALDEN RECOVERY FUND, GIVING NOTICE OF THE APPLICATION OF THE EGR ON 30 MARCH 2015

EXHIBIT No. 8: LETTER FROM ALDEN RECOVERY FUND, ADDRESSED TO ATARI EUROPE ON 7 APRIL 2015

EXHIBIT No. 9 FINEXSI REPORT OF 23 APRIL 2015

EXHIBIT No. 10 LETTER FROM ATARI EUROPE ADDRESSED TO ALDEN RECOVERY FUND OF 29 MAY 2015

SIGNIFICATION DE L'ACTE X8

Acte ...... : 0401 ASSIGNATION
Date ...... : 16/07/15
Dossier ... : 1135720 ATARI /ALDEN GLOBAL

>01< **Société de droit des Îles Caîmans ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P C/°ALDEN GLOBAL VALUE CAPITAL LLC (USA)**

Chaque copie du présent acte comprend: 36 feuilles.

COUT en Euros	Enregistré
ART 6:DROIT FIXE	72,60
ART 18:FRAIS DE DEPLACEMENT	7,67
SOUMIS à T V A 20,000 %	---------
	80,27
T. V. A.	16,05
TAXE FORFAITAIRE	11,16

T O T A L	107,48

Visa par l'Huissier de Justice des mentions relatives à la signification

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SCP F. CHEVRIER de ZITTER, M. ASPERTI Huissiers de Justice associés
Huissier de Justice salarié
RÉPUBLIQUE FRANÇAISE
1, Quai de la Corse - 75004 PARIS

MATTHIEU ASPERTI

COPY [FIRST AUTHENTIC COPY]

SERVICE ABROAD OF AN ACT

File reference: **no. 113 572**
Case: SAS ATARI EUROPE, SA ATARI, a company governed by US law ATARI INC, a company formed under US law ATARI INTERACTIVE, a company governed by US law CALIFORNIA US HOLDINGS, a company governed by US law HUMONGOUS/ALDEN GLOBAL VALUE RECOVERY MASTER FOUND

THE ***SIXTEENTH OF JULY***, TWO THOUSAND AND FIFTEEN

I, the undersigned, Matthieu ASPERTI, Court Bailiff in partnership at the Société Civile Professionnelle (private professional company) Fabienne CHEVRIER de ZITTER and Matthieu ASPERTI, holding an appointment as Court Bailiff, Court Ushers at the Paris Commercial Court, located at 1 Quai de la Corse, 75004 Paris,

AT THE REQUEST OF:

1/ **ATARI EUROPE SAS**, a *sociéte par actions simplifiée* (simplified joint stock company) with capital of 190,000.00 Euros, registered with the Paris Trade and Companies Register 328 033 410, having its registered office at 78, rue Taitbout 75009 Paris, acting through its legal representatives domiciled in this capacity at such registered office.

2/ **ATARI SA,** a *société anonyme* (public limited company) with capital of 1,600,540.91 Euros, registered with the Paris Trade and Companies Register 341 699 106, having its registered office at 78, rue Taitbout 75009 Paris, acting through its legal representatives domiciled in this capacity at such registered office.

3/ **ATARI, INC**, a company governed by US law, having its registered office at 475 Park Avenue South, New York, NY 10016, USA, acting through its legal representatives domiciled in this capacity at such registered office.

4/ **ATARI INTERACTIVE, INC**, a company governed by US law, having its registered office at 475 Park Avenue South, New York, NY 10016, USA, acting through its legal representatives domiciled in this capacity at such registered office.

5/ **CALIFORNIA US HOLDINGS, INC**, a company governed by US law, having its registered office at 475 Park Avenue South, New York, NY 10016, USA, acting through its legal representatives domiciled in this capacity at such registered office.

FIRST AUTHENTIC COPY
PLACED ON
17/07/2015

SCP CHEVRIER DE ZITTER & ASPERTI
Court Bailiffs in partnership

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 89 40 70
8, ch. du Cl[illegible] - 91140 Villejust

[FIRST AUTHENTIC COPY]

6/ **HUMONGOUS, INC**, a company governed by US law, having its registered office at 475 Park Avenue South, New York, NY 10016, USA, acting through its legal representatives domiciled in this capacity at such registered office.

Having as their lawyer
Mr David MALAMED
Lawyer before the Paris Bar
Law firm Brown Rudnick LLP
1, rue François 1er – 75008 PARIS
Tel: 01 85 56 82 20 – Fax: 01 85 56 82 21
E-mail: dmalamed@brownrudnick.com
Bar no. L0260

At the firm where domicile is elected

I sent on **this date,** by **DHL, to**:

PROCESS FORWARDING INTERNATIONAL (PFI)
633 Yesler Way
SEATTLE, WA 98104 USA

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 89 40 70
8, ch. du Clotinet - 91140 Villebon

[FIRST AUTHENTIC COPY]

In two original copies:

- Form F2 duly filled in, in French.

- A credit transfer of 95 dollars in accordance with the attached supporting documents

- A draft writ of summons for a hearing which will be held at the Paris Commercial Court, for a hearing that will take place on 15 October 2015 at 11:00 am in French.

- A draft writ of summons for a hearing which will be held at the Paris Commercial Court, for a hearing that will take place on 15 October 2015 at 11:00 am in English.

The draft act is to be served upon or notified to:

Company governed by the law of the Cayman Islands
ALDEN GLOBAL VALUE RECOVERY MASTER FUND LP
c/o ALDEN GLOBAL VALUE CAPITAL LLC
885 Third Avenue Suite 34th Floor
10019 NEW YORK (USA)

This notification meets the requirements of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial acts in civil or commercial matters.

All submitted exhibits are attached to the Original and to the First Authentic Copy.

[Court Bailiff's stamp]
/signature/

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français

Crédit du Nord

Printed on 16/07/2015 14:25:40

International Credit Transfer Order
Request for credit transfer submitted by Internet on 16 July 2015 at 14:25
Reference: **31489-27101 Comex Centre: .UAA.COMEX**

Instructing party:	CHEVRIER DE ZITTER ASPER
Account to be debited	02023 29801400200 EUR CURRENT ACCOUNT
Beneficiary	
Name:	PROCESS FORWARDING INTERNATIONAL
Address:	PFI 633 YESLER WAY SEATTLE WA 98104
Country:	UNITED STATES
Banking details	
Account:	2007107119
Beneficiary's bank	
BIC Code:	WFBIUS6S
Name:	WELLS FARGO BANK N.A.
Address:	1763 4TH AVE SOUTH SEATTLE WASHINGTON 98134
Country:	UNITED STATES
Amount:	95.00 USD
Reason for credit transfer	
Additional reason	FILE: 113572
Economic code	
Costs:	Shared (SHA)
Disbursement account:	02023 29801400200 EUR CURRENT ACCOUNT
Execution date*:	17/07/2015

* Subject, on this date, to a sufficient balance in the debited account and compliance with daily maximums.

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Tél. 01 42 89 40 70
6, ch. du Clos... - 91140 Villejust

F2 (page 1)

REQUEST

FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed in the Hague, 15 November 1965.

Identity and address of the applicant	**Address of receiving authority**
SCP CHEVRIER de ZITTER & ASPERTI Huissiers de Justice Associes 1, Quai de la Corse - 75004 PARIS (FRANCE)	PROCESS FORWARDING INTERNATIONAL (PFI) 633 Yesler Way SEATTLE, WA 98104 USA

The undersigned applicant has the honour to transmit -in duplicate- the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the address, i.e.

(Identity and address)

ALDEN GLOBAL VALUE RECOVERY MASTER FUND LP, a Cayman Islands company c/o ALDEN GLOBAL VALUE CAPITAL, LLC 885 Third Avenue, 34th Floor, New York, NY 10019, USA

a) in accordance with the provision of sub-paragraph (a) of the first paragraph of article 5 of the Convention*

~~b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of article 5)*~~

c) by delivery to the addressee, if he accepts it voluntary (second paragraph of article 5)*

The authority is requested to return or to have returned to the applicant a copy of - and of the annexes*- with a certificate as provided on the reverse side.

List of documents

Done in PARIS on the 16/07/2015

Signature and/or stamp

(signature) [stamp]

MATTHIEU ASPERTI

* Delete if inappropriate

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français

F2 (page 2)

CERTIFICATE

SECTION TO BE COMPLETED BY THE FOREIGN AUTHORITY REQUIRED TO PROVIDE THE NOTIFICATION

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,

1. that the document has been served*

- the (date) ....
- at (place, street, number) ......
- in one of the following methods authorised by article 5:

a) in accordance with the provision of sub-paragraph (a) of the first paragraph of article 5 of the Convention*

b) in accordance with the following particular method*:

c) by delivery to the addressee, who accepted it voluntarily*

The documents referred to in the request have been delivered to

- (identity and description of person) ....
- relationship to the addressee (family, business or other) - ....

2. that the document has not been served, by reason of the following facts*:

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expense detailed in the attached statement*.

Annexes:

Documents returned:

In appropriate cases, documents establishing the service:

Done in , on the

Signature and/or stamp

* delete if inappropriate

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
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F2 (page 3)

SUMMARY OF THE DOCUMENT TO BE SERVED

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed in The Hague on 15 November 1965.

(article 5, fourth paragraph)

Name and address of the requesting authority:

SCP CHEVRIER de ZITTER & ASPERTI
Huissiers de Justice Associes
1, Quai de la Corse - 75004 PARIS (FRANCE)

Particulars of the parties*:

Plaintiffs: ATARI EUROPE, ATARI, ATARI INC, ATARI INTERACTIVE INC, CALIFORNIA US HOLDINGS INC, HUMONGOUS INC
Defendant: ALDEN GLOBAL VALUE RECOVERY MASTER FUND LP

JUDICIAL DOCUMENTS**

Nature and purpose of the document: **Summons**

Nature and purpose of the proceeding and, where appropriate, the amount in dispute:

Date and place for entering appearance**: **15 October 2015, 11:00 am, before the Commercial Court of Paris, 1 Quai de la Corse, 75004 Paris, France**

Court which has given judgement**:

Date of judgment**:

Time limits stated in the document**:

EXTRAJUDICIAL DOCUMENT**

Nature and purpose of the document:

Time and purpose in the document**:

* if appropriate, identity and address of the person interested in the transmission of the document.

** delete if inappropriate

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Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 89 40 70
8, ch. du Clo... - 51140 V...

Identity and address of the addressee

ALDEN GLOBAL VALUE RECOVERY MASTER FUND LP, a Cayman Islands company c/o Alden Global Capital LLC 885 Third Avenue, 34th Floor, NEW YORK, NY 10019 (USA)

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE 'SUMMARY OF THE DOCUMENT TO BE SERVED' WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO:

It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in one of the official languages of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.

MARA SCAGLIONE
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Tél. 01 42 89 43 70
8, ch. du Cl... 91140 Villejust

WRIT OF SUMMONS
BEFORE THE COMMERCIAL COURT OF PARIS

IN THE YEAR TWO THOUSAND AND FIFTEEN

On

AT THE REQUEST OF:

1. The company **ATARI EUROPE SAS**, *société par actions simplifiée* [simplified joint stock company] with a share capital of €190,000.00, entered in the Trade and Companies Register (RCS) of Paris under the number 328 033 410, having its registered office at 78, rue Taitbout, 75009 Paris, represented by its legal representatives, domiciled in this capacity at the said registered office.

2. The company **ATARI SA**, *société anonyme* [limited liability company] with a share capital of €1,600,540.91, entered in the Trade and Companies Register (RCS) of Paris under the number 328.033.410, having its registered office at 78, rue Taitbout, 75009 Paris, represented by its legal representatives, domiciled in this capacity at the said registered office.

3. The company **ATARI, INC**, incorporated under the laws of the United States of America, having its registered office at 475 Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

4. The company **ATARI INTERACTIVE, INC**, incorporated under the laws of the United States of America, having its registered office at 475 Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

5. The company **CALIFORNIA US HOLDINGS, INC**, incorporated under the laws of the United States of America, having its registered office at 475 Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

6. The company **HUMONGOUS, INC**, incorporated under the laws of the United States of America, having its registered office at 475, Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

Having as Lawyer
Maître David MALAMED,
Lawyer at the Paris Bar
Cabinet Brown Rudnick LLP
1, rue François 1 – 75008 PARIS
Tel.: 01 85 56 82 20 – Fax: 01 85 56 82 21
E-mail: dmalamed@brownrudnick.com
Box No. L0260

Choosing the offices of the above party as domicile

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 89 40 70
8, ch. du Clo... 91140 Villebon

Maître
Court Bailiff

IS PLEASED TO INFORM

The company **ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P**, an *exempted* company, incorporated under the laws of the Cayman Islands,

Having its registered office at c/o Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman KY1 9007, Cayman Islands, represented by its legal representatives, domiciled in this capacity at the said registered office,

And c/o **ALDEN GLOBAL CAPITAL LLC** incorporated under the laws of the United States of America, having its registered office at 885 Third Avenue, 34th Floor, New York, NY 10019, United States of America.

THAT IT MUST APPEAR

At the hearing of **15 October 2015 at 11:00 a.m.**

At the hearing and before the Presiding Judge and Judges of the **Commercial Court of PARIS, 1 QUAI DE CORSE - PALAIS DU TRIBUNAL DE COMMERCE – 75181 PARIS CEDEX 04**

You are reminded, pursuant to articles 56 and 853 of the Civil Procedure Code:

THAT the parties shall defend themselves or shall have the right to be assisted or represented by any person of their choice; that if their representative is not a Lawyer, he must provide evidence of a special power of attorney;

THAT if the parties fail to appear or appoint representatives, they run the risk of a decision being issued against them solely on the basis of the elements provided by their opponents;

You are reminded, pursuant to article 861-2 of the Civil Procedure Code:

THAT without prejudice to the provisions of article 68, the incidental claim aiming to secure the granting of a payment deadline by way of application of article 1244-1 of the Civil Code may be drawn up by a declaration made, submitted or addressed to the Court registry, where it is registered. The author of this claim shall provide evidence before the hearing that the opposing party was made aware of the same by registered letter with notice of receipt. The exhibits which the party invokes in support of its request for a payment deadline are attached to the declaration.

The author of this incidental claim is not obliged to attend the hearing, pursuant to the second paragraph of article 446-1. In this event, the judge shall only uphold the claims submitted against this party if it considers them to be regular, reliable and well-founded.

You are reminded that the list of exhibits on which the claim is based is indicated at the end of the document.

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Tél. 01 42 89 40 70
3 ch. du Clotinet - 91140 Villejust

MAY IT PLEASE THE COURT

The company ATARI EUROPE SAS in the capacity of Borrower, on the one hand, and the companies ATARI SA, ATARI INC., ATARI INTERACTIVE INC., CALIFORNIA US HOLDING INC. and HUMONGOUS INC., in the capacity of Guarantor, on the other, hereby request the cancellation of the contractual interest rate of the credit facility agreement concluded with the company ALDEN GLOBAL VALUE RECOVERY MASTER FUND and the replacement of the contractual interest rate so cancelled with the legal interest rate. Consequently, ATARI EUROPE SAS requests ALDEN GLOBAL VALUE RECOVERY MASTER FUND to pay it (i) for the period running from 1 April 2009 to 31 March 2015, the amount of €14,667,122 on 31 March and (ii) for the period from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE SAS and the legal interest for the said period) to be drawn up subsequently by ATARI EUROPE SAS, or if necessary, by an expert.

1. THE FACTS AND THE PROCEDURE

1.1 The facts

1.1.1 Presentation of the parties

a) ATARI EUROPE SAS and the ATARI group

ATARI EUROPE SAS ("**ATARI EUROPE**"), is held 100% by ATARI SA ("**ATARI SA**") (Kbis [company registration] of the two companies, **Exhibit No. 1**), itself listed on EURONEXT, with a market capitalisation of €31 million, with 54.50% of the share capital held by the public.

The principal shareholders are:

- Ker Ventures, LLC (Frédéric Chesnais): 22.91%
- Alden Global Capital: 6.79%
- Alexandre Zyngier: 1.17%

The ATARI group publishes software applications on a wide variety of platforms, video games downloadable on computers, telephones, tablets and other media.

In the 1980s, ATARI, originally a US group, experienced very significant growth in the emerging market for video game consoles, becoming a leader together with SEGA and NINTENDO until the end of the 1990s.

In the mid-1990s, SONY entered the video game console market, followed by MICROSOFT.

Thus, at the start of the 2000s, the video game console market was dominated by SONY, MICROSOFT and NINTENDO.

In the face of this change, ATARI, like other producers of video games, concentrated its activity on the creation and publishing of mass-market video game software.

The group currently owns and manages a portfolio of over 300 franchises, including internationally known brands such as Asteroids®, Pong®, and RollerCoaster Tycoon®.

b) <u>ALDEN GLOBAL VALUE RECOVERY MASTER FUND</u>

ALDEN GLOBAL VALUE RECOVERY MASTER FUND ("**ALDEN RECOVERY FUND**"), respondent, is an investment fund.

1.1.2 The events at the origin of the dispute

a) <u>The Credit Facility Agreement</u>

In 2006, ATARI EUROPE contracted a €60 million credit facility ("**Credit Facility Agreement**") with BANC OF AMERICA to finance its redeployment and particularly the release of new video games (**Exhibit No. 2**).

The Credit Facility Agreement established a credit facility ("*Credit Facility*"), granted by the lender to the Borrower (article 2) for the financing of its commercial activity (article 3). The Borrower may use the drawdown facility for a minimum amount of €500,000 by issuing a "*Utilisation Request*" or, when appropriate, a "*Rollover Request*", if the drawdown is made in order to replace a previous one that has not been reimbursed and which has reached maturity (article 5), being required to specify the desired interest period (otherwise termed the "*duration of the period*" or "*Interest Period*").

The borrowed amounts bear interest at a variable rate including a cash margin ("*Cash Margin*") of 550 basis points, a capitalised margin ("*Capitalized Margin*") of 350 basis points, a EURIBOR or LIBOR rate and mandatory costs ("*Mandatory Cost*") calculated on the basis of a formula including, among other things, costs (termed reference costs) that vary according to the amount effectively borrowed on the calculation date (article 10.1 and Schedule 4). The Borrower must also pay a commitment commission ("*Commission Fee*") to the lender's agent ("*Facility Agent*") of 3% per year, calculated on the lender's commitment remaining available ("*Available Commitment*") for a given period.

In this context, the Effective Global Rate ("**EGR**") effectively applied by the lender cannot be known on the date the Credit Facility Agreement is signed and must be calculated on an indicative basis on that date.

Thus, article 10.5 of the Credit Facility Agreement, entitled "*Effective Global Rate*", referring to articles L. 313-4 of the Monetary and Financial Code and L. 313-1 *et seq.* of the Consumer Code, expressly confirms that "*the Parties acknowledge that by virtue of certain characteristics of this Credit (and in particular, the variable interest rate applicable to the Loans and the right of the Borrower to choose the duration of the interest period of each Loan), the* Effective Global Rate *cannot be calculated on the date of this Agreement. Each Borrower nevertheless acknowledges that it has received a letter from the Lender's Agent containing an indicative calculation of the* Effective Global Rate" (**Exhibit No. 2**).

MARA SCAGLIONE
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Traducteur-Interprète
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Pursuant to the applicable legislation, the notification obligation incumbent on the lender regarding the rates effectively applied is nevertheless continuous, since the Borrower must be notified immediately by the lender's Agent ("*Facility Agent*") of the interest rates applied by the lender within the context of the Credit Facility Agreement (article 10.4, entitled "*Notification of interest rates*").

ATARI SA is the Guarantor of the commitments of its subsidiary under the Credit Facility Agreement.

BANC OF AMERICA transferred the Credit Facility Agreement to BLUEBAY on 10 December 2009.

BLUEBAY then transferred the Credit Facility Agreement to the US investment fund ALDEN RECOVERY FUND on 5 February 2013 (BANC OF AMERICA, BLUEBAY and ALDEN RECOVERY FUND are hereafter referred to jointly as the "**Lender**").

On 24 December 2013, the reimbursement procedures for the balance of the Credit Facility Agreement were negotiated within the context of an Amendment No. 16, agreed with ALDEN RECOVERY FUND (**Exhibit No. 3**). The reimbursement procedures were subsequently amended by Amendment No. 17 on 9 December 2014 (**Exhibit No. 4**).

The balance of the Credit Facility Agreement amounted, on 31 March 2015, to €10.6 million in principal and €1.5 million in interest, it being noted that the repayment term is set for 30 September 2015.

These two amendments adjusted the Credit Facility Agreement as follows:

- the option for advance repayment of €5 million plus interest before **31 March 2015;**
- the balance, i.e. € 6 million, would then be carried to 1 April 2017, on condition of payment on 1 October 2015 of an extension commission of 7% of the sums carried;
- it being specified that if this option is not exercised, the maturity date will remain set at 30 September 2015;
- ATARI EUROPE may reimburse the entirety of the Credit Facility Agreement at any time.

b) <u>The defaults by the Lender on its notification obligations regarding the Effective Global Rate</u>

It was in this context that the parties signed 22 Amendments or Side Letters to the Credit Facility Agreement, of which 15 are specifically intended to extend the maturity date of the facility ("*Final Maturity Date*") and hence to amend certain elements of the <u>indicative</u> calculation of the Effective Global Rate notified to the Borrower when the Credit Facility Agreement was signed.

However, with the exception of Amendment No. 8 of 31 March 2009, extending the deadline until 31 December 2009, and Amendment No. 16 of 24 December 2013, extending the deadline until 30 September 2015, none of these amendments was accompanied by a notification to the Borrower of the new <u>indicative</u> calculation of the Effective Global Rate.

Moreover, the two new <u>indicative</u> calculations of the Effective Global Rate communicated to ATARI EUROPE after the signing of Amendments No. 8 and No. 16 proved erroneous, both for the calculation communicated, in March 2009, by BANC OF AMERICA (**Exhibit No. 6**) and the calculation communicated by letter of 20 December 2013 by ALDEN RECOVERY FUND (**Exhibit No. 5**).

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Tél. 01 42 89 40 70

Thus, on 30 March 2015, ATARI EUROPE notified ALDEN RECOVERY FUND by registered letter with acknowledgement of receipt that it had discovered the erroneous nature of the indicative calculations of the Effective Global Rate that were communicated to it. ATARI EUROPE consequently called for the replacement of the contractual rate with the legal interest rate, specifying that it was in the process of finalizing the calculation of the amount of interest unduly collected by the lender (**Exhibit No. 7**).

More fundamentally, the Lender in no way satisfied its legal obligation of continuous notification regarding the Effective Global Rate effectively applied to ATARI EUROPE, since the Borrower did not receive periodic statements indicating the EGR effectively applied.

At the same time, in a letter of 7 April 2015, ALDEN RECOVERY FUND lodged an application to strike out the legitimate claim of ATARI EUROPE for the application of the legal interest rate, instead of the contractual rate set forth in the Credit Facility Agreement (**Exhibit No. 8**).

ATARI EUROPE calculated all the interest unduly collected by the Lender for the period running from 1 April 2009 to 31 March 2015, it being noted that the calculation is still in progress for the preceding period (2006 to 31 March 2009). This calculation was verified by the independent financial consulting firm FINEXSI in a report of 23 April 2015, which was submitted to ALDEN RECOVERY FUND (**Exhibit No. 9**).

In a letter of 29 May 2015, ATARI EUROPE recalled that the replacement of the contractual rate (€16,333,901) with the legal interest rate (€1,666,779) generated an excess payment by ATARI EUROPE of €14,667,122, i.e. if account is taken of the outstanding principal amount on 31 March 2015 (€10,584,082), a balance in favour of ATARI EUROPE of €4,080,441, evaluated on 31 March 2015 (**Exhibit No. 10**). This amount does not include the interest unduly paid during the period running from 21 April 2006 to 31 March 2009 and subsequent to 31 March 2015.

1.2 The proceedings

Despite ATARI EUROPE's efforts, the parties did not succeed in reaching a settlement for their dispute, especially under the auspices of an *ad hoc* agent, whose mission was transformed into a conciliation procedure.

It is in this context that ATARI EUROPE finds itself obliged to assert its rights before this Court.

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2. DISCUSSION

2.1 The nullity of the contractual rate due to serious breaches by the lender of its prior notification obligations regarding the EGR

Article 1907 of the Civil Code provides that:

"The interest is legal or contractual. Legal interest is set by law. Contractual interest may exceed the legal interest, whenever the law does not prohibit this.

The contractual interest rate must be set in writing." (Our underlining)

Article L. 313-4 of the Monetary and Financial Code provides that:

"The rules relating to the effective global rate of the credits are set by articles L. 313-1 and L. 313-2 of the Consumer Code, as reproduced below:

"Art. L. 313-1 - In all cases, in order to determine the effective global rate for the loan, like that of the effective rate taken as a reference, the costs, commissions or remuneration of any kind, whether direct or indirect, including those paid or due to intermediaries, intervening in any way in granting the loan, are added to the interest, even if these costs, commissions or this remuneration correspond to real disbursements.

However, for the application of articles L. 312-4 to L. 312-8, the charges linked to the guarantees which may accompany the credits, as well as judicial officers' fees, are not included in the effective global rate defined above, when their amount cannot be indicated precisely prior to the definitive conclusion of the agreement.

For credit agreements falling within the field of application of chapter I of this heading, the effective global rate termed the "Effective global annual rate", shall not include the costs of the notarial deed.

Furthermore, for the loans forming the object of staggered amortisation, the effective global rate shall be calculated taking account of the procedures for the amortisation of the receivable.

A Council of State decree shall determine the conditions for the application of this article."

"Art. L. 313-2 - The effective global rate, determined as stated in article L. 313-1, shall be mentioned in any written document confirming a loan agreement governed by this section.

Any infringement of the provisions of this article shall be punished with a fine of €150,000.

Natural persons declared guilty shall also incur, by way of supplementary penalties, the prohibition, pursuant to the procedures described in article 131-27 of the Criminal Code, either on holding a public position or on carrying out their professional or social activity during the performance of which or on the occasion of the performance of which the offence was committed, or of exercising a commercial or industrial profession, of directing, administering, managing or controlling a commercial or industrial enterprise or commercial company, in any capacity, whether directly or indirectly, on their own behalf or on that of another party. These prohibitions on exercise shall not exceed a duration of five years. They may be pronounced cumulatively." (Our underlining)

MARA SCAGLIONE Expert Traducteur-Interprète Cour d'Appel de Paris Italien-Anglais-Français Tél. 01 42 89 40 70 9, ch. du Ch... - 94140 Villejuif

From the combined application of article 1907, paragraph 2 of the Civil Code and of article L. 313-4 of the Monetary and Financial Code, it is clear that the loan or credit agreement must expressly mention the contractual rate and the EGR. The latter is the rate actually applied for a given loan transaction. It must include all of the costs necessary for obtaining and executing the loan, namely all "*costs, commissions or remuneration of any nature, whether direct or indirect*" (article L. 313-4 of the Monetary and Financial Code), in order to permit the Borrower to be duly informed of the real global cost of its credit.

This requirement of public order, imposed under penalty of nullity, applies to all types of credits (loans, overdrafts, etc.), whether granted to private individuals or to professionals. It shall apply not only at the time the initial credit agreement is signed, but also to all of the supplementary agreements to that agreement when the Effective Global Rate has been amended by it. Thus, as the doctrine recalls, "*when the interest rate is amended by an amendment to the loan agreement, the amendment must mention the new EGR in the result of the modification of the total cost of the resulting credit*" (RD banc. fin, March 2015, No. 2, paragraph 31 note F-J. Crédot and T. Samin). In the event that the effective global rate mentioned in the amendment is erroneous, case law considers that "*the sanction of this error called for the replacement of the contractual rate by the legal rate, starting from the subscription of the said amendment*"(Court of Cassation, 1st Civil Division, 27 February 2007, No. 04-20.779).

In addition to the loans in the strict sense, in which "*all of the elements comprising the EGR are known* ab initio", case law recalls that the requirement for a written mention of the effective global rate applied to all of the other credit transactions, in which "*all of the elements comprising the EGR were not known* from the start [and] *the definitive cost of which depends on the use made of it by the Borrower*" (A. Gourio and N. Aynes, "La prescription de l'action en nullité en cas d'irregularité" (The time limitation of the nullity action in the event of irregularity of the EGR), JCP E 2008, No. 41, 2221).

In order to take account of the particular nature of these latter credit transactions, case law was prompted to specify the type of notification obligation incumbent on the lender:

> "(...) *the obligation to pay contractual premiums from the outset by application of the effective global rate not only requires that the effective global rate be contained on an indicative basis in a prior written document, but also that the effective global rate applied be contained in periodic statements, received by the Borrower without protest or reservation*"(Court of Cassation, Commercial Division, 22 May 2007, No. 06-12.180).

Thus, "*mentions of the 'indicative' effective global rate in the prior agreement and the 'applied' effective global rate in each relevant statement, are indispensable*" (Didier R. Martin, "Taux effectif global et prescription" (Effective global rate and time barring), D2008, p. 2202). As is stated in case law, this latter obligation to periodically submit documents containing the effective global rate, regularly calculated for the elapsed period, is decisive insofar as it constitutes notification of this rate for the future.

In the absence of information, or in the case of erroneous information, in the credit agreement (and when applicable, in its amendments) regarding the "indicative" EGR, or in the documents to be submitted periodically regarding the EGR effectively "applied", the Borrower is well-founded in securing the nullity of the contractual rate, which must be replaced by the legal rate. This action has a limitation period of 5 years, starting from: "*for a loan,* [from] *the date of the agreement and in other cases,* [of] *the receipt of each of the documents indicating or required to indicate the applied EGR*" (Court of Cassation, Commercial Division, 10 June 2008, No. 06-19.452). Thus, when credit is granted, the receipt of each of the periodic statements indicating or required to indicate the applied EGR constitutes the starting point for this limitation period (Court of Cassation, Commercial Division, 10 June 2008, No. 06-18906, Court of Cassation, Commercial Division, 8 October 2013, No. 11-26.600), which supposes that the lender has fulfilled its essential obligation, not only to indicate the EGR, but also to submit this statement on a periodic basis to the Borrower.

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In the case in question, however the Lender infringed all of its prior notification obligations regarding the effective global rate, since:

- the two indicative calculations of the EGR, communicated to ATARI EUROPE after the signing of Amendments No. 8 and 16, are erroneous, both the calculation communicated by BANC OF AMERICA, in March 2009 (**Exhibit No. 6**) and the calculation communicated by letter of 20 December 2013 by ALDEN RECOVERY FUND (**Exhibit No. 5**), since in particular, they do not take account of the legal and/or financial costs of this extension of the term;

- 13 Amendments or Side Letters were signed in order to extend the maturity date of the credit ("*Final Maturity Date*") and hence amended certain elements of the indicative calculation of the Effective Global Rate communicated to the Borrower when the Credit Facility Agreement was signed, albeit without being accompanied by a notification of the Borrower regarding the new indicative calculation of the Effective Global Rate.

More fundamentally, the Lender infringed its obligation of continuous notification regarding the Effective Global Rate effectively applied to ATARI EUROPE, despite it being essential, consisting in periodically sending to the Borrower a document or statement indicating this EGR effectively applied.

In this way, the lender not only failed to indicate or indicated erroneously the EGR effectively applied in the documents to be sent periodically, but purely and simply never sent such periodic notification documents regarding the applied EGR to ATARI EUROPE, thereby seriously infringing its essential obligations, whether these were contractual or legal.

In this way, the infringements by the Lender of its essential obligations are such that ATARI EUROPE was kept in ignorance of its rights with regard to the effective global cost of its credit at the end of the Credit Facility Agreement.

Under these conditions, the claims of ATARI EUROPE, ATARI SA, ATARI INC., ATARI INTERACTIVE INC., CALIFORNIA US HOLDING INC. and HUMONGOUS INC. to obtain the nullity of the contractual rate and its replacement by the legal rate are admissible and well-founded, since the signing of the Credit Facility Agreement.

2.2 The impact of the defaults by ALDEN RECOVERY FUND on the amounts due from the parties

Over the duration of the loan, around €60 million of the credit line was drawn down by ATARI EUROPE and the applied interest rate exceeded 10% per year, i.e. a rate significantly higher than the legal interest rate.

ATARI EUROPE calculated the whole of the interest unduly collected by the lender for the period from 1 April 2009 to 31 March 2015, it being noted that the calculation is still in progress for the previous period (2006 to 31 March 2009). This calculation was verified by the independent financial consulting firm FINEXSI, which concluded, in its report of 23 April 2015 (**Exhibit No. 9**):

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Conclusions

In view of the elements provided to us, we observe that the data included in the calculation are consistent with the accounting documentation. In the same way, the calculation procedures adopted and the arithmetic of the calculations seem appropriate to us.

The result of the calculations made by ATARI on 31 March 2015 are summarised in the following table:

Results obtained by ATARI

	Actual amounts	Amounts calculated at the legal rate
Principal amount remaining outstanding on 31/03/2015	10,584,095	(4,080,970)
Interest expenses for the period	(16,333,901)	(1,666,237)

By carrying out our own calculation, we arrived at the following results on 31 March 2015:

Results obtained by FINEXSI

	Actual amounts	Amounts calculated at the legal rate
Principal amount remaining outstanding on 31/03/2015	10,584,082	(4,080,441)
Interest expenses for the period	(16,333,901)	(1,666,779)

The divergence found between the two calculations amounts to €528 and is not significant.

On 31 March 2015, on the basis of our calculations and applying the calculation principles cited above, the excess payment by Atari Europe amounted overall to €4,080,441 (including interest and principal), it being recalled that this calculation only covers the period from 1 April 2009 to 31 March 2015 (and thus excludes the period running from 21 April 2006 to 31 March 2009) and does not include certain legal consulting costs borne by the Borrower pursuant to the Loan, which are currently being identified by Atari's management. (**Exhibit No. 9**)

Under these conditions, ALDEN RECOVERY FUND should be sentenced to pay ATARI EUROPE (i) for the period running from 1 April 2009 to 31 March 2015 an amount of €14,667,122 and (ii) for the period running from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE and the legal interest for the said periods) to be established subsequently by ATARI EUROPE, or as necessary, by an expert.

ATARI EUROPE reserves the right to claim compensation for the sentence pronounced against ALDEN RECOVERY FUND with any due amount which it may owe pursuant to the Credit Facility Agreement.

2.3 Article 700 of the Civil Procedure Code

It would be unfair to require the claimants to bear responsibility for the amounts which they are obliged to incur in order to assert their rights. The Court shall thus sentence ALDEN RECOVERY FUND to pay the amount of €50,000 pursuant to Article 700 of the Civil Procedure Code.

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FOR THESE REASONS

Pursuant to article 1907 of the Civil Code,

Pursuant to article L. 313-4 of the Monetary and Financial Code,

Pursuant to article 1147 of the Civil Code

Pursuant to article 700 of the Civil Procedure Code,

The Court is requested to:

- **Pronounce** the nullity of the contractual interest rate stipulated in the Credit Facility Agreement;
- **Order** the replacement of the contractual rate with the legal interest rate;
- **Rule and hold** that the excess amount paid by ATARI EUROPE SAS as interest pursuant to the Credit Facility Agreement amounts (i) for the period running from 1 April 2009 to 31 March 2015, to €14,667,122 and (ii) for the period from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, to a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE SAS and the legal interest) to be established subsequently by ATARI EUROPE SAS, or as necessary by a judicial expert;
- Consequently, **sentence** ALDEN GLOBAL VALUE RECOVERY MASTER FUND to pay ATARI EUROPE SAS (i) for the period running from 1 April 2009 to 31 March 2015, an amount of €14,667,122 and (ii) for the period from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE SAS and the legal interest for the said periods), to be established subsequently by ATARI EUROPE SAS, or as necessary, by a judicial expert, plus the legal interest starting from the forthcoming decision;
- **Acknowledge** that ATARI EUROPE SAS reserves the right to demand that the sentence pronounced against ALDEN GLOBAL VALUE RECOVERY MASTER FUND be applied against any payable amount which it may owe pursuant to the Credit Facility Agreement;
- **Sentence** ALDEN GLOBAL VALUE RECOVERY MASTER FUND to pay to the claimants the amount of €50,000, pursuant to article 700 of the Civil Procedure Code.

Without prejudice

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LIST OF EXHIBITS

EXHIBIT No. 1: K-BIS (EXTRACT FROM THE CORPORATE REGISTER) FOR ATARI EUROPE SAS AND ATARI SA

EXHIBIT No. 2: LOAN AGREEMENT BETWEEN ATARI EUROPE SAS AND BANC OF AMERICA OF 21 APRIL 2006 (the "*Credit Facility Agreement*")

EXHIBIT No. 3: AMENDMENT NUMBER 16 OF THE LOAN AGREEMENT BETWEEN ATARI EUROPE SAS AND ALDEN RECOVERY FUND OF 24 DECEMBER 2013

EXHIBIT No. 4: AMENDMENT NUMBER 17 OF THE LOAN AGREEMENT BETWEEN ATARI EUROPE SAS AND ALDEN RECOVERY FUND OF 9 DECEMBER 2014

EXHIBIT No. 5: NOTIFICATION LETTER OF THE EFFECTIVE GLOBAL RATE OF 20 DECEMBER 2013

EXHIBIT No. 6: NOTIFICATION LETTER OF THE EFFECTIVE GLOBAL RATE OF MARCH 2009

EXHIBIT No. 7: REGISTERED LETTER ADDRESSED TO ALDEN RECOVERY FUND, GIVING NOTICE OF THE APPLICATION OF THE EGR ON 30 MARCH 2015

EXHIBIT No. 8: LETTER FROM ALDEN RECOVERY FUND, ADDRESSED TO ATARI EUROPE ON 7 APRIL 2015

EXHIBIT No. 9 FINEXSI REPORT OF 23 APRIL 2015

EXHIBIT No. 10 LETTER FROM ATARI EUROPE ADDRESSED TO ALDEN RECOVERY FUND OF 29 MAY 2015

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SERVICE OF THE DOCUMENT **X8**

Document.....: 0401 WRIT OF SUMMONS
Date...............: 16/07/15
File.................: 1135720 ATARI /ALDEN GLOBAL

>01< **Company governed by the law of the Cayman Islands ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P**
C/O ALDEN GLOBAL VALUE CAPITAL LLC (USA)

Each copy of this act includes: 36 pages.

COST in Euros	Entered
ART. 6: FIXED FEE	72.60
ART. 18: TRAVEL EXPENSES	7.67
SUBJECT TO 20% VAT	------
	80.27
VAT	16.05
FLAT-RATE TAX	11.16

TOTAL	107.48

Approval by the Court Bailiff
of statements concerning
service of process

[Stamp]
/signature/
MATTHIEU ASPERTI

Certifié conforme à ~~l'original~~ la copie
N° d'inscription : 15-5740/A
Écrit en langue : Française
Fait le : 24/07/2015

MARA SCAGLIONE
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COPIE

PREMIERE EXPEDITION

SIGNIFICATION D'UN ACTE A DESTINATION DE L'ETRANGER

Références du dossier : ***n° 113 572***
Affaire : SAS ATARI EUROPE, SA ATARI, Société de droit américain ATARI INC, Société de droit américain ATARI INTERACTIVE, Société de droit américain CALIFORNIA US HOLDINGS, Société de droit américain HUMONGOUS / ALDEN GLOBAL VALUE RECOVERY MASTER FOUND

L'AN DEUX MILLE QUINZE ET LE ***SEIZE JUILLET***

Je, soussigné, Matthieu ASPERTI, Huissier de Justice associé au sein de la Société Civile Professionnelle Fabienne CHEVRIER de ZITTER et Matthieu ASPERTI titulaire d'un Office d'Huissier de Justice, Audienciers près le Tribunal de Commerce de PARIS, y demeurant, 1 Quai de la Corse 75004 PARIS,

N° 15-5744A

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A LA DEMANDE DE :

1/ **La société ATARI EUROPE SAS**, société par actions simplifiée au capital de 190.000,00 euros, immatriculée au RCS Paris 328 033 410 et dont le siège social est situé 78, rue Taitbout 75009 Paris, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

2/ **La société ATARI SA**, société anonyme au capital de 1.600.540,91 euros, immatriculée au RCS Paris 341 699 106 et dont le siège social est situé 78, rue Taitbout 75009 Paris, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

3/ **La société ATARI, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

4/ **La société ATARI INTERACTIVE, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

5/ **La société CALIFORNIA US HOLDINGS, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

PREMIERE EXPEDITION
PLACÉE LE :
17/07/2015
SCP CHEVRIER de ZITTER & ASPERTI
Huissiers de justice associés

PREMIERE
EXPEDITION

6/ **La société HUMONGOUS, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

Ayant pour Avocat
Maître David MALAMED,
Avocat au Barreau de Paris
Cabinet Brown Rudnick LLP
1, rue François 1er – 75008 PARIS
Tél : 01 85 56 82 20 – Fax : 01 85 56 82 21
E-mail : dmalamed@brownrudnick.com
Toque n°L0260

Au cabinet duquel domicile est élu

J'ai envoyé, ce jour, par DHL, à :

THE CLERK OF THE COURTS **GRAND CAYMAN, CAYMAN ISLANDS**

MARA SCAGLIONE
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Traducteur-Interprète
Cour d'Appel de Paris
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8, ch. du Clotinet - 91140 Villejust

PREMIERE EXPEDITION

En double exemplaire :

- Un formulaire F2 dûment complété en français.

- Un projet d'assignation pour une audience qui aura lieu le Tribunal de Commerce de PARIS, pour une audience qui se tiendra le 15 Octobre 2015 à 11 heures en langue française.

- Un projet d'assignation pour une audience qui aura lieu le Tribunal de Commerce de PARIS, pour une audience qui se tiendra le 15 Octobre 2015 à 11 heures en langue anglaise.

Le projet d'acte étant destiné à être signifié ou notifié à :

Société de droit des Îles Caïmans ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P Siège Social c/o Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman KY1 9007, ÎLES CAÏMAN

Cette notification satisfait aux exigences de la Convention de la Haye du 15 novembre 1965 relative à la signification et la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale.

L'ensemble des pièces communiquées est joint à l'Original et à la Première Expédition.

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F2 (PAGE 1)

DEMANDE
REQUEST
AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ETRANGER D'UN ACTE JUDICIAIRE OU EXTRAJUDICIAIRE
FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at the Hague, November 15, 1965.

Identité et adresse du requérant Identity and address of the applicant	**Adresse de l'autorité destinataire** Address of receiving authority
SCP CHEVRIER de ZITTER & ASPERTI Huissiers de Justice Associés 1, Quai de la Corse - 75004 PARIS (FRANCE)	THE CLERK OF THE COURTS GRAND CAYMAN, CAYMAN ISLANDS

Le requérant soussigné a l'honneur de faire parvenir -en double exemplaire- à l'autorité destinataire les documents ci-dessous énumérés, en la priant conformément à l'article 5 de la Convention précitée, d'en faire remettre sans retard un exemplaire au destinataire, à savoir :
The undersigned applicant has the honour to transmit -in duplicate- the documents listed below and, in conformity with article 5 of the above-mentionned Convention, requests prompt service of one copy thereof on the addresse,i.e,

(Identité et adresse)
.(Identity and address)

Société de droit des îles Caïmans ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P
Siège Social
c/o Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Camana Bay,
Grand Cayman KY1 9007, ÎLES CAÏMAN

a) selon les formes légales (article 5, alinéa premier,lettre a)*
a) in accordance with the provision of sub-paragraph (a) of the first paragraph of article 5 of the Convention*

~~**b) selon la forme particulière suivante (article 5, alinéa premier,lettre b)* :**~~
~~b) in accordance with the following particular method (sub-paragraph(b) of the first paragraph of article 5)* :~~

c) le cas échéant, par remise simple (article 5, alinéa 2)*
c) by delivery to the addresse, if he accepts it voluntary (second paragraph of article 5)*

Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte -~~et de ses annexes~~ *- avec l'attestation figurant au verso.
The authority is requested to return or to have returned to the applicant a copy of the documents - and of the annexes*- with a certificate as provided on the reverse side

Enumérations des pièces
List of documents
....
....
....
....

Fait à PARIS **, le** 16/07/2015
Done at , the

Signature et/ou cachet
Signature and/or stamp

MATTHIEU ASPERTI

*** Rayer les mentions inutiles***
Delete if inappropriate

Expert Traducteur-Interprète Cour d'Appel de Paris Anglais-Français Tél. 01 42 89 40 70

F2 (PAGE 2)

ATTESTATION PARTIE A REMPLIR PAR L'AUTORITE ETRANGERE
CERTIFICATE DEVANT EFFECTUER LA NOTIFICATION

L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,
The undersigned authority has he honour to certify, in conformity with article 6 of the Convention,

1. que la demande a été exécutée*
1. that the document has been served*

- **le (date)** ....
- the (date) ....
- **à (localité, rue , numéro)** ....
- at (place, street, number) ....
- **dans une des formes suivantes prévues à l'article 5 :**
- in one of the following methods authorised by article 5 :

a) selon les formes légales (article 5, alinéa premier, lettre a)*
a) in accordance with the provision of sub-paragraph (a) of the first paragraph of article 5 of the Convention*
b) selon la forme particulière suivante* :
b) in accordance with the following particular method* :
c) par simple remise*
c) by delivrery to the address, who accepted it voluntarily*

Les documents mentionnés dans la demande ont été remis à :
The documents referred to in the request have been delivered to :

- **(identité et qualité de la personne)** ....
- (identity and description of person) ....
- **liens de parenté, de subordination ou autres, avec le destinataire de l'acte :** .....
- relationship to the address (family, business or other) : ....

2. que la demande n'a pas été exécutée, en raison des faits suivants* :
2. that the document has not been served, by reason of th following facts* :

....
....
....

Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint*.
in conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expens detailed in the attached statement*.

Annexes
Annexes

Pièces renvoyées :
Documents returned :

....
....

Le cas échéant, les documents justificatifs de l'exécution :
in appropriate cases, documents establishing the service :

....
....

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Fait à , **le**
Done at , the
Signature et/ou cachet
Signature and/or stamp

* **rayer les mentions inutiles**
* delete if inappropriate

F2 (PAGE 3)

ELEMENTS ESSENTIELS DE L'ACTE
SUMMARY OF THE DOCUMENT TO BE SERVED

Convention relative à la signification et à la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile ou commerciale, signée à La Haye, le 15 novembre 1965.
Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

(article 5, alinéa 4)
(article 5, fourth paragraph)

Nom et adresse de l'autorité requérante :
Name and address of the requesting authority :

SCP CHEVRIER de ZITTER & ASPERTI
Huissiers de Justice Associés
1, Quai de la Corse - 75004 PARIS (FRANCE)

Identité des parties* :
Particulars of the parties* :

Demandeurs : ATARI EUROPE, ATARI, ATARI INC, ATARI INTERACTIVE INC, CALIFORNIA US HOLDINGS INC, HUMONGOUS INC,
Défendeur : ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P

ACTE JUDICIAIRE**
JUDICIAL DOCUMENTS**

Nature et objet de l'acte :
Nature and purpose of the document :

Assignation

Nature et objet de l'instance, le cas échéant, le montant du litige :
Nature and purpose of the proceding and, where appropriate, the amount in dispute :

Date et lieu de la comparution ** :
Date and place for entering appearance** :

le 15 Octobre 2015 à 11 heures devant le Tribunal de Commerce de PARIS, siégeant 1 Quai de la Corse à PARIS (75004) - FRANCE

Juridiction qui a rendu la décision :**
Court which has given judgement** :

Date de la décision :**
Date of judgment** :

Indication des délais figurant dans l'acte :**
Time limits stated in the document** :

ACTE EXTRAJUDICIAIRE**
EXTRAJUDICIAL DOCUMENT**

Nature et objet de l'acte :
Nature and purpose of the document :

Indication des délais figurant dans l'acte :**
Time and purpose in the document** :

*** s'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte.**
* if appropriate, identity and adress of the person interested in the transmission of the document.
**** rayer les mentions inutiles**
** delete if inappropriate

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Identité et adresse du destinataire
identity and address of the addressee

Société de droit des Îles Caïmans ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P, Siège Social, c/o Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman KY1 9007, ÎLES CAÏMAN

TRÈS IMPORTANT

LE DOCUMENT CI-JOINT EST DE NATURE JURIDIQUE ET PEUT AFFECTER VOS DROITS ET OBLIGATIONS. LES «ELÉMENTS ESSENTIELS DE L'ACTE» VOUS DONNENT QUELQUES INFORMATIONS SUR SA NATURE ET SON OBJET. IL EST TOUTEFOIS INDISPENSABLE DE LIRE ATTENTIVEMENT LE TEXTE MÊME DU DOCUMENT. IL PEUT ÊTRE NÉCESSAIRE DE DEMANDER UN AVIS JURIDIQUE.

SI VOS RESSOURCES SONT INSUFFISANTES, RENSEIGNEZ-VOUS SUR LA POSSIBILITÉ D'OBTENIR L'ASSISTANCE JUDICIAIRE ET LA CONSULTATION JURIDIQUE SOIT DANS VOTRE PAYS SOIT DANS LE PAYS D'ORIGINE DU DOCUMENT.

LES DEMANDES DE RENSEIGNEMENTS SUR LES POSSIBILITÉS D'OBTENIR L'ASSISTANCE JUDICIAIRE OU LA CONSULTATION JURIDIQUE DANS LE PAYS D'ORIGINE DU DOCUMENT PEUVENT ÊTRE ADRESSÉES: .....

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE 'SUMMARY OF THE DOCUMENT TO BE SERVED' WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

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ASSIGNATION
DEVANT LE TRIBUNAL DE COMMERCE DE PARIS

L'AN DEUX MILLE QUINZE

Et le

<u>A LA DEMANDE DE</u> :

1/ La société **ATARI EUROPE SAS**, société par actions simplifiée au capital de 190.000,00 euros, immatriculée au RCS Paris 328 033 410 et dont le siège social est situé 78, rue Taitbout 75009 Paris, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

2/ La société **ATARI SA**, société anonyme au capital de 1.600.540,91 euros, immatriculée au RCS Paris 341 699 106 et dont le siège social est situé 78, rue Taitbout 75009 Paris, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

3/ La société **ATARI, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

4/ La société **ATARI INTERACTIVE, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

5/ La société **CALIFORNIA US HOLDINGS, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

6/ La société **HUMONGOUS, INC**, société de droit américain, dont le siège social est situé 475 Park Avenue South, New York, NY 10016, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège.

<u>Ayant pour Avocat</u>
Maître David MALAMED,
Avocat au Barreau de Paris
Cabinet Brown Rudnick LLP
1, rue François 1er – 75008 PARIS
Tél : 01 85 56 82 20 – Fax : 01 85 56 82 21
E-mail : dmalamed@brownrudnick.com
Toque n°L0260

Au cabinet duquel domicile est élu

Maître

Huissier de Justice

A L'HONNEUR D'INFORMER

La société **ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P**, société *exempted*, constituée en vertu des lois des îles Caïmans,

Dont le siège social se situe c/o Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman KY1 9007, îles Caïman, prise en la personne de ses représentants légaux domiciliés en cette qualité audit siège,

Et chez (c/o) ALDEN GLOBAL CAPITAL LLC, société de droit américain, dont le siège social se situe au 885 Third Avenue, Suite 34th Floor, New York 10019, Etats-Unis d'Amérique.

D'AVOIR A COMPARAITRE

A l'audience du **15 octobre 2015 à 11h00**

À l'audience et par devant Mesdames et Messieurs les Présidents et Juges du **Tribunal de Commerce de PARIS, 1 QUAI DE CORSE - PALAIS DU TRIBUNAL DE COMMERCE – 75181 PARIS CEDEX 04**

Il vous est rappelé, conformément aux articles 56 et 853 du Code de Procédure Civile :

QUE les parties se défendent elles-mêmes ou qu'elles ont la faculté de se faire assister ou représenter par toutes personnes de leur choix ; que leur représentant, s'il n'est pas Avocat, doit justifier d'un pouvoir spécial.

QUE faute de comparaître ou de se faire représenter, elles s'exposent à ce qu'un jugement soit rendu contre elles sur les seuls éléments fournis par leurs adversaires

Il vous est rappelé, conformément à l'article 861-2 du Code de procédure civile :

QUE sans préjudice des dispositions de l'article 68, la demande incidente tendant à l'octroi d'un délai de paiement en application de l'article 1244-1 du code civil peut être formée par déclaration faite, remise ou adressée au greffe, où elle est enregistrée. L'auteur de cette demande doit justifier *avant l'audience que l'adversaire en a eu connaissance par lettre recommandée avec demande d'avis de réception. Les pièces que la partie invoque à l'appui de sa demande de délai de paiement sont jointes à la déclaration.*

L'auteur de cette demande incidente peut ne pas se présenter à l'audience, conformément au second alinéa de l'article 446-1. Dans ce cas, le juge ne fait droit aux demandes présentées contre cette partie que s'il les estime régulières, recevables et bien fondées.

Il vous est rappelé que la liste des pièces sur laquelle la demande est fondée est indiquée en fin d'acte.

PLAISE AU TRIBUNAL

La société ATARI EUROPE SAS en qualité d'emprunteur d'une part, et les sociétés ATARI SA, ATARI INC., ATARI INTERACTIVE INC., CALIFORNIA US HOLDING INC. et HUMONGOUS INC en qualité de garant d'autre part, sollicitent par la présente l'annulation du taux d'intérêt conventionnel du contrat de crédit conclu avec la société ALDEN GLOBAL VALUE RECOVERY MASTER FUND et la substitution du taux d'intérêt légal au taux d'intérêt conventionnel ainsi annulé. En conséquence, la société ATARI EUROPE SAS sollicite la condamnation de la société ALDEN GLOBAL VALUE RECOVERY MASTER FUND à lui payer (i) pour la période courant du 1er avril 2009 au 31 mars 2015 un montant de 14.667.122 euros et (ii) pour la période du 21 avril 2006 au 31 mars 2009 et pour la période postérieure au 31 mars 2015 un montant complémentaire (correspondant à la différence entre les intérêts et frais versés par ATARI EUROPE SAS et les intérêts légaux sur lesdites périodes) à arrêter ultérieurement par la société ATARI EUROPE, ou au besoin par expertise.

1. LES FAITS ET LA PROCEDURE

1.1 Les faits

1.1.1 Présentation des parties

a) ATARI EUROPE SAS et le groupe ATARI

La société ATARI EUROPE SAS (« **ATARI EUROPE** »), est détenue à 100% par la société ATARI SA (« **ATARI SA** ») (extrait kbis des deux sociétés, **Pièce n°1**), qui est elle-même cotée à EURONEXT, et dont la capitalisation boursière représente 31 millions d'euros, pour 54,50% du capital détenu par le public.

Les principaux actionnaires sont les suivants:

- Ker Ventures, LLC (Frédéric Chesnais): 22,91%
- Alden Global Capital : 6,79%
- Alexandre Zyngier : 1,17%

Le groupe ATARI édite des logiciels applicatifs sur une multitude de plateformes, jeux vidéo téléchargeables sur ordinateurs, téléphones, tablettes et autres supports.

Dans les années 80, ATARI, groupe américain à l'origine, a connu un développement très important sur le marché naissant des consoles de jeux-vidéo, pour en devenir le leader avec SEGA et NINTENDO jusqu'à la fin des années 1990.

SONY au milieu des années 1990 s'est lancé dans le marché des consoles de jeux-vidéo, suivi par MICROSOFT.

C'est ainsi qu'au début des années 2000, le marché des consoles de jeux-vidéo s'est structuré entre SONY, MICROSOFT, et NINTENDO.

ATARI, confronté à cette mutation comme d'autres fabricants de jeux-vidéo, a concentré son activité dans la création et dans l'édition de logiciels de jeux vidéo grand public.

Le groupe possède et gère actuellement un portefeuille de plus de 300 franchises, dont des marques mondialement connues comme Asteroids®, Pong®, RollerCoaster Tycoon®.

b) ALDEN GLOBAL VALUE RECOVERY MASTER FUND

La société ALDEN GLOBAL VALUE RECOVERY MASTER FUND (« **ALDEN RECOVERY FUND** »), défenderesse, est un fonds d'investissement.

1.1.2 Les faits à l'origine du litige

a) Le Credit Facility Agreement

ATARI EUROPE avait contracté en 2006 auprès de la BANC OF AMERICA un crédit (« **Credit Facility Agreement** ») de 60 millions d'euros pour financer son redéploiement et notamment la sortie de nouveaux jeux vidéo (**Pièce n°2**).

Le Credit Facility Agreement met en place une ligne de crédit ("*CreditFacility*"), ouverte par le prêteur au profit de l'emprunteur (article 2) pour le financement de son activité commerciale (article 3), sur laquelle l'emprunteur dispose d'une faculté de tirage d'un montant minimum de 500.000 euros en émettant une "*Utilisation Request*" ou, le cas échéant, une "*Rollover Request*", dans l'hypothèse où il réalise un tirage afin de remplacer un précédent crédit non remboursé étant arrivé à maturité (article 5), devant préciser la période d'intérêts souhaitée (autrement dénommée la "*durée de période*" ou "*Interest Period*").

Les montants empruntés portent intérêt à un taux variable incluant une marge cash ("*Cash Margin*") de 550 point de base, une marge capitalisée ("*Capitalized Margin*") de 350 points de base, un taux EURIBOR ou LIBOR et des frais obligatoires ("*Mandatory Cost*") calculés sur la base d'une formule intégrant, entre autres, des frais variables (dits de référence) variant selon le montant effectivement emprunté à la date du calcul (article 10.1 et Schedule 4). L'emprunteur doit par ailleurs verser une commission d'engagement ("*Commission Fee*") à l'agent du prêteur ("*Facility Agent*") de 3% par an calculée sur l'engagement du prêteur demeurant disponible ("*Available Commitment*") sur une période donnée.

Dans ce contexte, le Taux Effectif Global ("**TEG**") effectivement appliqué par le prêteur ne peut être connu à la date de signature du Credit Facility Agreement et doit être calculé de manière indicative à cette date.

Ainsi, l'article 10.5 du Credit Facility Agreement intitulé "*Effective Global Rate (Taux Effectif Global)*", se référant aux articles L313-4 du Code monétaire et financier et L313-1 *et seq.* du Code de la consommation, confirme expressément que "*les Parties reconnaissent qu'en raison de certaines caractéristiques de ce Crédit (et en particulier au taux d'intérêts variable applicable aux Prêts et au droit de l'Emprunteur de choisir la durée de période d'intérêts de chaque Prêt), le* taux effectif global *ne peut pas être* *calculé à la date de cet Accord. Toutefois, chaque Emprunteur reconnaît qu'il a reçu de l'Agent du Prêteur une lettre contenant un calcul indicatif du* taux effectif global" (**Pièce n°2**).

Conformément à la législation applicable, l'obligation d'information à la charge du prêteur quant aux taux effectivement pratiqués n'en est pas moins continue, puisque que l'emprunteur doit se voir notifier sans délai par l'Agent du prêteur ("*Facility Agent*") les taux d'intérêt appliqués par le prêteur dans le cadre du Crédit Facility Agreement (article 10.4 intitulé "*Notification of rates of interest*").

ATARI SA est garante des engagements de sa fille au titre du Credit Facility Agreement.

La BANC OF AMERICA a transféré le Credit Facility Agreement à BLUEBAY le 10 décembre 2009.

BLUEBAY a ensuite transféré le Credit Facility Agreement au fonds d'investissement américain ALDEN RECOVERY FUND le 5 février 2013 (BANC OF AMERICA, BLUEBAY et ALDEN RECOVERY FUND sont ci-après dénommés ensemble le "**Prêteur**").

Le 24 Décembre 2013, les modalités de remboursement du solde du Credit Facility Agreement ont été négociées dans le cadre d'un Avenant n°16 convenu avec ALDEN RECOVERY FUND (**Pièce n°3**). Les modalités de remboursement ont par la suite été modifiées par un Avenant n°17 en date du 9 décembre 2014 (**Pièce n°4**).

Le solde du Credit Facility Agreement s'élève, au 31 mars 2015, à 10,6 millions d'euros en principal et à 1,5 million d'euros en intérêts, étant observé que le terme de remboursement est fixé au 30 septembre 2015.

Ces deux avenants aménageaient le Credit Facility Agreement comme suit :

- la possibilité de rembourser de manière anticipée 5 millions d'euros plus les intérêts avant le 31 mars 2015 ;
- le solde, soit 6 millions d'euros, serait alors reporté au 1er avril 2017, sous la condition de paiement le 1er octobre 2015 d'une commission d'extension de 7% des sommes reportées ;
- étant précisé que si cette option n'est pas exercée, l'échéance reste fixée au 30 septembre 2015 ;
- ATARI EUROPE peut, à tout moment, rembourser l'intégralité du Credit Facility Agreement.

b) <u>Les manquements du Prêteur à ses obligations d'information relatives au Taux Effectif Global</u>

C'est dans ce contexte que les parties ont signé 22 Avenants ou Lettre-avenant au Credit Facility Agreement, dont 15 ont eu notamment pour objet d'étendre le terme du crédit ("*Final Maturity Date*") et donc de modifier certains des éléments du calcul <u>indicatif</u> du Taux Effectif Global communiqué à l'emprunteur lors de la signature du Credit Facility Agreement.

Or, à l'exception de l'Avenant n°8 du 31 mars 2009 prorogeant le terme au 31 décembre 2009 et de l'Avenant n°16 du 24 décembre 2013 prorogeant le terme au 30 septembre 2015, aucun de ces avenants n'a été accompagné d'une information de l'emprunteur quant au nouveau calcul indicatif du Taux Effectif Global.

Au demeurant, les deux nouveaux calculs indicatifs du Taux Effectif Global communiqués à ATARI EUROPE après les signatures des Avenants n°8 et n°16, se sont avérés erronés, qu'il s'agisse de celui notifié, en mars 2009, par la BANC OF AMERICA (**Pièce n°6**) ou de celui notifié, par courrier en date du 20 décembre 2013 par ALDEN RECOVERY FUND (**Pièce n°5**).

Ainsi, le 30 mars 2015, ATARI EUROPE a notifié par courrier recommandé avec accusé de réception à la société ALDEN RECOVERY FUND avoir découvert le caractère erroné des calculs indicatifs du Taux Effectif Global qui lui avaient été communiqués. ATARI EUROPE appelait en conséquence la substitution du taux d'intérêt légal au taux conventionnel et précisait être en cours de finalisation de calcul du montant des intérêts indûment perçus par le prêteur (**Pièce n°7**).

Plus fondamentalement, le prêteur n'a nullement satisfait à son obligation légale d'information continue sur le Taux Effectif Global effectivement appliqué à ATARI EUROPE, puisque l'emprunteur ne recevait pas de relevés périodiques mentionnant le TEG effectivement appliqué.

Pour autant, ALDEN RECOVERY FUND a opposé, par courrier en date du 7 avril 2015, une fin de non-recevoir à la demande légitime d'ATARI EUROPE de voir s'appliquer le taux d'intérêt légal en lieu et place du taux conventionnel prévu par le Credit Facility Agreement (**Pièce n°8**).

ATARI EUROPE a procédé au calcul de l'ensemble des intérêts indûment perçus par le prêteur sur la période courant du 1er avril 2009 au 31 mars 2015, étant noté que le calcul est encore en cours pour la période antérieure (2006 au 31 mars 2009). Ce calcul a fait l'objet d'une vérification par le cabinet indépendant d'expertise financière FINEXSI dans un rapport du 23 avril 2015 qui a été remis à ALDEN RECOVERY FUND (**Pièce n°9**).

Par courrier du 29 mai 2015, ATARI EUROPE rappelait que la substitution du taux d'intérêt légal (1.666.779 euros) au taux conventionnel (16.333.901 euros) induisait un trop-payé par ATARI EUROPE de 14.667.122 euros, soit, si l'on prend en compte le montant en principal restant dû au 31 mars 2015 (10.584.082 euros), un solde en faveur d'ATARI EUROPE d'un montant de 4.080.441 euros évalués au 31 mars 2015 (**Pièce n°10**). Ce montant n'intègre pas les intérêts indûment versés au cours de la période courant du 21 avril 2006 au 31 mars 2009 et postérieurement au 31 mars 2015.

1.2 La procédure

En dépit des efforts d'ATARI EUROPE, les parties ne sont pas parvenues à trouver une solution transactionnelle à leur litige, notamment sous l'égide d'un mandataire ad hoc, dont la mission a été transformée en conciliation.

C'est dans ce contexte qu'ATARI EUROPE se voit contrainte de faire valoir ses droits devant le Tribunal de céans.

2. DISCUSSION

2.1 La nullité du taux conventionnel en raison des manquements graves du prêteur à ses obligations d'information préalables relatives au TEG

L'article 1907 du Code civil prévoit que :

« *L'intérêt est légal ou conventionnel. L'intérêt légal est fixé par la loi. L'intérêt conventionnel peut excéder celui de la loi, toutes les fois que la loi ne le prohibe pas.*

Le taux d'intérêt conventionnel doit être fixé par écrit. » (nous soulignons)

L'article L. 313-4 du Code monétaire et financier prévoit que :

« *Les règles relatives au taux effectif global des crédits sont fixées par les articles L. 313-1 et L. 313-2 du code de la consommation ci-après reproduits :*

"Art. L. 313-1-Dans tous les cas, pour la détermination du taux effectif global du prêt, comme pour celle du taux effectif pris comme référence, sont ajoutés aux intérêts les frais, commissions ou rémunérations de toute nature, directs ou indirects, y compris ceux qui sont payés ou dus à des intermédiaires intervenus de quelque manière que ce soit dans l'octroi du prêt, même si ces frais, commissions ou rémunérations correspondent à des débours réels.

Toutefois, pour l'application des articles L. 312-4 à L. 312-8, les charges liées aux garanties dont les crédits sont éventuellement assortis ainsi que les honoraires d'officiers ministériels ne sont pas compris dans le taux effectif global défini ci-dessus, lorsque leur montant ne peut être indiqué avec précision antérieurement à la conclusion définitive du contrat.

Pour les contrats de crédit entrant dans le champ d'application du chapitre Ier du présent titre, le taux effectif global, qui est dénommé " Taux annuel effectif global ", ne comprend pas les frais d'acte notarié.

En outre, pour les prêts qui font l'objet d'un amortissement échelonné, le taux effectif global doit être calculé en tenant compte des modalités de l'amortissement de la créance.

Un décret en Conseil d'Etat déterminera les conditions d'application du présent article."

"Art. L. 313-2-Le taux effectif global déterminé comme il est dit à l'article L. 313-1 doit être mentionné dans tout écrit constatant un contrat de prêt régi par la présente section.

Toute infraction aux dispositions du présent article sera punie d'une amende de 150 000 euros.

Les personnes physiques déclarées coupables encourent également à titre de peines complémentaires l'interdiction, suivant les modalités prévues à l'article 131-27 du code pénal, soit d'exercer une fonction publique ou d'exercer l'activité professionnelle ou sociale dans l'exercice ou à l'occasion de l'exercice de laquelle l'infraction a été commise, soit d'exercer une profession commerciale ou industrielle, de diriger, d'administrer, de gérer ou de contrôler à un titre quelconque, directement ou indirectement, pour leur propre compte ou pour le compte d'autrui, une entreprise commerciale ou industrielle ou une société commerciale. Ces interdictions d'exercice ne peuvent excéder une durée de cinq ans. Elles peuvent être prononcées cumulativement. » (nous soulignons)

Il résulte de l'application combinée de l'article 1907 alinéa 2 du Code civil et de l'article L313-4 du Code monétaire et financier que le contrat de prêt ou de crédit doit mentionner expressément le taux conventionnel et le TEG. Ce dernier est le taux réellement pratiqué pour une opération de crédit déterminée. Il doit inclure tous les frais nécessaires à l'obtention et à la réalisation du prêt à savoir tous "*les frais, commissions ou rémunérations de toute nature, directs ou indirects*" (article L313-4 du Code monétaire et financier) afin de permettre à l'emprunteur d'être dûment informé sur le coût global réel de son crédit.

Cette exigence d'ordre public, requise à peine de nullité, s'applique à tous les types de crédits (prêts, découverts, etc.) qu'ils soient accordés aux particuliers ou aux professionnels. Elle s'impose non seulement au moment de la conclusion du contrat de crédit initial mais également de tous les avenants à ce contrat dès lors que le taux effectif global s'en trouve modifié. Ainsi, comme le rappelle la doctrine "*dès lors que le taux d'intérêt est modifié par voie d'avenant au contrat de prêt, cet avenant doit mentionner le nouveau TEG au résultat de la modification du coût total du crédit en résultant*" (RD banc. fin mars 2015, n°2, comm.31 note F-J. Crédot et T. Samin). Dans l'hypothèse où le taux effectif global mentionné dans l'avenant est erroné, la jurisprudence considère que "*la sanction de cette erreur appelait la substitution du taux légal au taux conventionnel, à compter de la souscription dudit avenant*"(Cass. Civ 1ère, 27 février 2007, n°04-20.779).

Au-delà des prêts au sens strict, dans lesquels "*tous les éléments composant le TEG sont connus* ab initio", la jurisprudence a rappelé que l'exigence de la mention écrite du taux effectif global s'appliquait à toutes les autres opérations de crédit, dans lesquelles "*tous les éléments composant le TEG ne sont pas connus* ab initio [et] *dont le coût définitif dépend de l'utilisation qui en est faite par l'emprunteur.*" (A. Gourio et N. Aynes "La prescription de l'action en nullité en cas d'irrégularité du TEG" JCP E 2008, n°41, 2221).

Pour tenir compte de la particularité de ces dernières opérations de crédit, la jurisprudence a été amenée à préciser le régime de l'obligation d'information à la charge du prêteur :

> "(...) *l'obligation de payer dès l'origine des agios conventionnels par application du taux effectif global exige non seulement que le taux effectif global soit porté à titre indicatif sur un document écrit préalable, mais aussi que le taux effectif global appliqué soit porté sur les relevés périodiques, reçus par l'emprunteur sans protestation ni réserve.*"(Cass. Com, 22 mai 2007, n°06-12.180).

Ainsi, "*les mentions du taux effectif global 'indicatif' -sur la convention préalable- et du taux effectif global 'appliqué'- sur chaque relevé concerné- sont indispensables*" (Didier R. Martin, "Taux effectif global et prescription" D2008, p2202). Comme le rappelle la jurisprudence cette dernière obligation d'envoyer des documents de manière périodique contenant le taux effectif global régulièrement calculé pour la période écoulée est déterminante puisqu'elle vaut information de ce taux pour l'avenir.

A défaut d'information - ou en cas d'information erronée - dans le contrat de crédit (et le cas échéant ses avenants) sur le TEG "indicatif" ou dans les documents devant être envoyés périodiquement sur le TEG effectivement "appliqué", l'emprunteur est fondé à obtenir la nullité du taux conventionnel auquel doit être substitué le taux légal. Cette action se prescrit par 5 ans à compter "*s'agissant d'un prêt,* [de] *la date de la convention et, dans les autres cas,* [de] *la réception de chacun des écrits indiquant ou devant indiquer le TEG appliqué*" (Cass. Com, 10 juin 2008, n°06-19.452). Ainsi, en cas d'ouverture de crédit, la réception de chacun des écrits périodiques indiquant ou devant indiquer le TEG appliqué constitue le point de départ du délai de cette prescription (Cass. Com, 10 juin 2008, n°06-18906, Cass. Com, 8 octobre 2013, n°11-26.600), ce qui suppose que le prêteur ait rempli son obligation déterminante, non seulement d'indiquer le TEG, mais également d'envoyer cet écrit de manière périodique à l'emprunteur.

Or, en l'espèce, le prêteur a violé l'ensemble de ses obligations d'information préalables relatives au taux effectif global puisque :

- les deux calculs indicatifs du TEG communiqués à ATARI EUROPE après les signatures des Avenants n°8 et 16 sont erronés, qu'il s'agisse de celui notifié, en mars 2009, par la BANC OF AMERICA (**Pièce n°6**) ou de celui notifié, par courrier en date du 20 décembre 2013 par ALDEN RECOVERY FUND (**Pièce n°5**), puisqu'en particulier ils ne prennent pas en compte des frais juridiques et/ou des frais financiers de prorogation du terme ;

- 13 Avenants ou Lettre avenant ont eu notamment pour objet de proroger le terme du crédit ("*Final Maturity Date*") et donc de modifier certains des éléments du calcul indicatif du Taux Effectif Global communiqué à l'emprunteur lors de la signature du Credit Facility Agreement, sans pour autant être accompagnés d'une information de l'emprunteur quant au nouveau calcul indicatif du Taux Effectif Global.

Plus fondamentalement, le Prêteur a violé son obligation d'information continue sur le Taux Effectif Global effectivement appliqué à ATARI EUROPE, pourtant déterminante, consistant à envoyer de manière périodique à l'emprunteur un document ou relevé mentionnant ce TEG effectivement appliqué.

Ainsi, le Prêteur n'a pas seulement omis d'indiquer ou indiqué de manière erronée le TEG effectivement appliqué dans les documents devant être envoyés de manière périodique, il n'a purement et simplement jamais envoyé de tels documents périodiques d'information à ATARI EUROPE sur le TEG appliqué, violation ainsi gravement ses obligations essentielles, qu'elles soient contractuelles ou légales.

Ainsi, les violations par le Prêteur de ses obligations essentielles sont telles qu'ATARI EUROPE a été maintenue dans l'ignorance de ses droits au titre du coût effectif global de son crédit au terme du Credit Facility Agreement.

Dans ces conditions, ATARI EUROPE, ATARI SA, ATARI INC., ATARI INTERACTIVE INC., CALIFORNIA US HOLDING INC. et HUMONGOUS INC. sont recevables et bien fondées à obtenir la nullité du taux conventionnel auquel doit être substitué le taux légal, et ce, depuis la signature du Credit Facility Agreement.

2.2 L'incidence des manquements d'ALDEN RECOVERY FUND sur les montants dus par les parties

Sur la durée du prêt, le montant de la ligne de crédit a été tiré à près de 60 millions d'euros par ATARI EUROPE et le taux d'intérêt appliqué a été supérieur à 10% par an, soit un taux très largement supérieur au taux d'intérêt légal.

ATARI EUROPE a procédé au calcul de l'ensemble des intérêts indûment perçus par le prêteur sur la période du 1er avril 2009 au 31 mars 2015, étant noté que le calcul est encore en cours pour la période antérieure (2006 au 31 mars 2009). Ce calcul a fait l'objet d'une vérification par le cabinet indépendant d'expertise financière FINEXSI qui conclut, dans son rapport en date du 23 avril 2015 (**Pièce n°9**) :

Conclusions

Au vu des éléments qui nous ont été fournis, nous constatons que les données qui ont été intégrées au calcul sont cohérentes avec les justificatifs comptables. De même les principes calculatoires retenus et l'arithmétique des calculs nous apparaissent appropriés.

Le résultat des calculs effectués par ATARI en date du 31 mars 2015 sont résumés dans le tableau suivant :

Résultats obtenus par ATARI

	Montants réels	Montants calculés au taux légal
Principal restant dû au 31/03/2015	10 584 095	(4 080 970)
Charges d'intérêts sur la période	(16 333 901)	(1 666 237)

En effectuant notre propre calcul, nous arrivons aux résultats suivants en date du 31 mars 2015:

Résultats obtenus par FINEXSI

	Montants réels	Montants calculés au taux légal
Principal restant dû au 31/03/2015	10 584 082	(4 080 441)
Charges d'intérêts sur la période	(16 333 901)	(1 666 779)

L'écart constaté entre les deux calculs s'élève à 528€ et n'est pas significatif.

Au 31 mars 2015, sur la base de nos calculs et en appliquant les principes calculatoires évoqués ci-dessus, le trop-payé par Atari Europe s'élèverait au global à la somme de 4 080 441€ (intérêts et principal confondus), étant rappelé que ce calcul ne couvre que la période allant du 1er avril 2009 au 31 mars 2015 (et exclut donc la période allant du 21 avril 2006 au 31 mars 2009) et n'intègre pas certains frais de conseils juridiques supportés par l'Emprunteur dans le cadre du Prêt qui sont en cours de recensement par le management d'Atari. **(Pièce n°9)**

Dans ces conditions, ALDEN RECOVERY FUND doit être condamnée à payer à la société ATARI EUROPE (i) pour la période courant du 1er avril 2009 au 31 mars 2015 un montant de 14.667.122 euros et (ii) pour la période du 21 avril 2006 au 31 mars 2009 et pour la période postérieure au 31 mars 2015 un montant complémentaire (correspondant à la différence entre les intérêts et frais versés par ATARI EUROPE et les intérêts légaux sur lesdites périodes) à arrêter ultérieurement par la société ATARI EUROPE, ou au besoin par expertise.

ATARI EUROPE se réserve de demander la compensation de la condamnation prononcée à l'encontre d'ALDEN RECOVERY FUND avec toute somme exigible qu'elle pourrait devoir au titre du Credit Facility Agreement.

2.3 Article 700 du Code de procédure civile

Il serait inéquitable de laisser à la charge des demanderesses les sommes qu'elles sont obligées d'engager pour faire valoir leurs droits. Le Tribunal condamnera donc ALDEN RECOVERY FUND au versement de la somme de 50.000 euros au titre de l'article 700 du Code de procédure civile.

PAR CES MOTIFS

Vu l'article 1907 du Code civil,

Vu l'article L. 313-4 du Code monétaire et financier,

Vu l'article 1147 du Code civil

Vu l'article 700 du Code de procédure civile,

Il est demandé au Tribunal de :

- **Prononcer** la nullité du taux d'intérêt conventionnel stipulé dans le Credit Facility Agreement;
- **Ordonner** la substitution du taux d'intérêt légal au taux conventionnel ;
- **Dire et juger** que le trop payé par la société ATARI EUROPE SAS au titre des intérêts versés dans le cadre du Credit Facility Agreement s'élève (i) pour la période courant du 1er avril 2009 au 31 mars 2015 à un montant de 14.667.122 euros et (ii) pour la période du 21 avril 2006 au 31 mars 2009 et pour la période postérieure au 31 mars 2015 à un montant complémentaire (correspondant à la différence entre les intérêts et frais versés par ATARI EUROPE SAS et les intérêts légaux) à arrêter ultérieurement par la société ATARI EUROPE SAS, ou au besoin par expertise ;
- En conséquence, **condamner** la société ALDEN GLOBAL VALUE RECOVERY MASTER FUND à payer à la société ATARI EUROPE SAS (i) pour la période courant du 1er avril 2009 au 31 mars 2015 un montant de 14.667.122 euros et (ii) pour la période du 21 avril 2006 au 31 mars 2009 et pour la période postérieure au 31 mars 2015 un montant complémentaire (correspondant à la différence entre les intérêts et frais versés par ATARI EUROPE SAS et les intérêts légaux sur lesdites périodes) à arrêter ultérieurement par la société ATARI EUROPE SAS, ou au besoin par expertise, outre les intérêts légaux à compter du jugement à intervenir ;
- **Donner acte** à la société ATARI EUROPE SAS qu'elle se réserve de demander la compensation de la condamnation prononcée à l'encontre de ALDEN GLOBAL VALUE RECOVERY MASTER FUND avec toute somme exigible qu'elle pourrait devoir au titre du Credit Facility Agreement ;
- **Condamner** la société ALDEN GLOBAL VALUE RECOVERY MASTER FUND à payer aux demanderesses un montant de 50.000 euros au titre de l'article 700 du Code de procédure civile.

Sous toutes réserves

LISTE DES PIECES

PIECE n°1 : K-BIS DE LA SOCIETE ATARI EUROPE SAS ET DE LA SOCIETE ATARI SA

PIECE n°2 : CONVENTION DE PRET ENTRE ATARI EUROPE SAS ET BANC OF AMERICA EN DATE DU 21 AVRIL 2006(le « *Credit Facility Agreement* »)

PIECE N°3 : AVENANT NUMERO 16 A LA CONVENTION DE PRET ENTRE ATARI EUROPE SAS ET ALDEN RECOVERY FUND EN DATE DU 24 DÉCEMBRE 2013

PIECE N°4 : AVENANT NUMERO 17 A LA CONVENTION DE PRET ENTRE ATARI EUROPE SAS ET ALDEN RECOVERY FUND EN DATE DU 9 DECEMBRE 2014

PIECE n°5 : LETTRE DE NOTIFICATION DU TAUX EFFECTIF GLOBAL EN DATE DU 20 DECEMBRE 2013

PIECE n°6 : LETTRE DE NOTIFICATION DU TAUX EFFECTIF GLOBAL EN DATE DE MARS 2009

PIECE n°7 : COURRIER RECOMMANDE ADRESSE A ALDEN RECOVERY FUNDDENONCANT L'APPLICATION DU TEG EN DATE DU 30 MARS 2015

PIECE n°8 : COURRIER D'ALDEN RECOVERY FUND ADRESSE A ATARI EUROPE EN DATE DU 7 AVRIL 2015

PIECE n°9 RAPPORT FINEXSI EN DATE DU 23 AVRIL 2015

PIECE n°10 COURRIER D'ATARI EUROPE ADRESSE A ALDEN RECOVERY FUND EN DATE DU 29 MAI 2015

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Expert
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Tel. 01 42 89 40 70

WRIT OF SUMMONS
BEFORE THE COMMERCIAL COURT OF PARIS

IN THE YEAR TWO THOUSAND AND FIFTEEN

On

AT THE REQUEST OF:

1/ The company **ATARI EUROPE SAS**, *société par actions simplifiée* [simplified joint stock company] with a share capital of € 190,000.00, entered in the Trade and Companies Register (RCS) of Paris under the number 328 033 410, having its registered office at 78, rue Taitbout 75009 Paris, represented by its legal representatives, domiciled in this capacity at the said registered office.

2/ The company **ATARI SA**, *société anonyme* [limited liability company] with a share capital of € 1,600,540.91, entered in the Trade and Companies Register (RCS) of Paris under the number 341 699 106, having its registered office at 78, rue Taitbout 75009 Paris, represented by its legal representatives, domiciled in this capacity at the said registered office.

3/ The company **ATARI, INC** incorporated under the laws of the United States of America, having its registered office at 475, Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

4/ The company **ATARI INTERACTIVE, INC** incorporated under the laws of the United States of America, having its registered office at 475, Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

5/ The company **CALIFORNIA US HOLDINGS, INC** incorporated under the laws of the United States of America, having its registered office at 475, Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

6/ The company **HUMONGOUS, INC** incorporated under the laws of the United States of America, having its registered office at 475, Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

Having as Lawyer
Maître David MALAMED,
Lawyer at the Paris Bar
Cabinet Brown Rudnick LLP
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Tel: 01 85 56 82 20 – Fax: 01 85 56 82 21
E-mail: dmalamed@brownrudnick.com
Box No. L0260

Choosing the offices of the above party as domicile

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél 01 42 89 40 70

Maître

Court Bailiff

IS PLEASED TO INFORM

The company **ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P**, an *exempted* company, incorporated under the laws of the Cayman Islands,

Having its registered office at c/o Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman KY1 9007, Cayman Islands, represented by its legal representatives, domiciled in this capacity at the said registered office

And c/o **ALDEN GLOBAL CAPITAL LLC** incorporated under the laws of the United States of America, having its registered office at 885, Third Avenue, Suite 34th Floor, New York 10019, United States of America.

THAT IT MUST APPEAR

At the hearing of **15 October 2015 at 11:00 a.m.**

At the hearing and before the Presiding Judge and Judges of the **Commercial Court of PARIS, 1 QUAI DE CORSE - PALAIS DU TRIBUNAL DE COMMERCE – 75181 PARIS CEDEX 04**

You are reminded, pursuant to articles 56 and 853 of the Civil Procedure Code:

THAT the parties shall defend themselves or shall have the right to be assisted or represented by any person of their choice; that if their representative is not a Lawyer, he must provide evidence of a special power of attorney;

THAT if the parties fail to appear or appoint representatives, they run the risk of a decision being issued against them solely on the basis of the elements provided by their opponents;

You are reminded, pursuant to article 861-2 of the Civil Procedure Code:

THAT without prejudice to the provisions of article 68, the incidental claim aiming to secure the granting of a payment deadline by way of application of article 1244-1 of the Civil Code may be drawn up by a declaration made, submitted or addressed to the Court registry, where it is registered. The author of this claim shall provide evidence before the hearing that the opposing party was made aware of the same by registered letter with notice of receipt. The exhibits which the party invokes in support of its request for a payment deadline are attached to the declaration.

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The author of this incidental claim is not obliged to attend the hearing, pursuant to the second paragraph of article 446-1. In this event, the judge shall only uphold the claims submitted against this party if it considers them to be regular, reliable and well-founded.

You are reminded that the list of exhibits on which the claim is based is indicated at the end of the instrument.

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MAY IT PLEASE THE COURT

The company ATARI EUROPE SAS in the capacity of Borrower, on the one hand, and the companies ATARI SA, ATARI INC., ATARI INTERACTIVE INC., CALIFORNIA US HOLDING INC. and HUMONGOUS INC., in the capacity of Guarantor, on the other, hereby request the annulment of the contractual interest rate of the credit facility agreement concluded with the company ALDEN GLOBAL VALUE RECOVERY MASTER FUND and the replacement by the legal interest rate of the contractual interest rate so cancelled. Consequently, the company ATARI EUROPE SAS requests the company ALDEN GLOBAL VALUE RECOVERY MASTER FUND to pay it (i) for the period running from 1 April 2009 to 31 March 2015, an amount of € 14,667,122 on 31 March and (ii) for the period from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, a supplementary amount (corresponding to the difference between the interest and costs paid on 31 March by ATARI EUROPE SAS and the legal interest for the said period) to be drawn up subsequently by the company ATARI EUROPE SAS, or if necessary, by an expert.

1. THE FACTS AND THE PROCEDURE

1.1 The facts

1.1.1 Presentation of the parties

a) ATARI EUROPE SAS and the ATARI group

The company ATARI EUROPE SAS (“**ATARI EUROPE**”), is held 100% by the company ATARI SA (“**ATARI SA**”) (Kbis [company registration] of the two companies, **Exhibit No. 1**), itself listed on EURONEXT, with a market capitalisation of € 31 million, for 54.50% of the share capital held by the public.

The principal shareholders are:

- Ker Ventures, LLC (Frédéric Chesnais): 22.91%
- Alden Global Capital: 6.79%
- Alexandre Zyngier: 1.17%

The ATARI group publishes software applications on a wide variety of platforms, video games downloadable on computers, telephones, tablets and other media.

In 1980s, ATARI, originally a US group, experienced very significant growth in the emerging market for video game consoles, becoming a leader together with SEGA and NINTENDO until the end of the 1990s.

In the mid-1990s, SONY entered the video game console market, followed by MICROSOFT.

Thus, at the start of the 2000s, the video game console market was dominated by SONY, MICROSOFT and NINTENDO.

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In the face of this change, ATARI, like other producers of video games, concentrated its activity on the creation and publishing of mass-market video game software.

The group currently owns and manages a portfolio of over 300 franchises, including the internationally known brands such as Asteroids®, Pong®, RollerCoaster Tycoon®.

b) ALDEN GLOBAL VALUE RECOVERY MASTER FUND

The company ALDEN GLOBAL VALUE RECOVERY MASTER FUND ("**ALDEN RECOVERY FUND**"), respondent, is an investment fund.

1.1.2 The events at the origin of the dispute

a) The Credit Facility Agreement

In 2006, ATARI EUROPE contracted a € 60 million credit facility ("**Credit Facility Agreement**") with BANC OF AMERICA to finance its redeployment and particularly the release of new video games (**Exhibit No. 2**).

The Credit Facility Agreement established a credit facility ("*CreditFacility*"), granted by the lender to the benefit of the Borrower (article 2) for the financing of its commercial activity (article 3). The Borrower may use the drawdown facility for a minimum amount of € 500,000 by issuing a "*Utilisation Request*" or, when appropriate, a "*Rollover Request*", if the drawdown is made in order to replace a previous one that has not been reimbursed and which has reached maturity (article 5), being required to specify the desired interest period (otherwise termed the "*duration of the period*" or "*Interest Period*").

The borrowed amounts bear interest at a variable rate including a cash margin ("*Cash Margin*") of 550 basis points, a capitalised margin ("*Capitalized Margin*") of 350 basis points, a EURIBOR or LIBOR rate and mandatory costs ("*Mandatory Cost*") calculated on the basis of a formula including, among other things, costs (termed reference costs) varying according to the amount effectively borrowed on the calculation date (article 10.1 and Schedule 4). The Borrower shall moreover pay a commitment commission ("*Commission Fee*") to the lender's agent ("*Facility Agent*") of 3% per year, calculated on the lender's commitment remaining available ("*Available Commitment*") for a given period.

In this context, the Effective Global Rate ("**EGR**") effectively applied by the lender cannot be known on the date of signing of the Credit Facility Agreement and must be calculated in indicative fashion on this date.

In this way, article 10.5 of the Credit Facility Agreement, entitled the "*Effective Global Rate*", referring to articles L. 313-4 of the Monetary and Financial Code and L. 313-1 *etseq.* of the Consumer Code, expressly confirms that "*the Parties acknowledge that by virtue of certain characteristics of this Credit (and in particular, the variable interest rate applicable to the Loans and to the right of the Borrower to choose the duration of the interest period of each Loan), the* Effective Global Rate *cannot be calculated on the date of this Agreement. Each Borrower nevertheless acknowledges that it has received a letter from the Lender's Agent containing an indicative calculation of the* Effective Global Rate" (**Exhibit No. 2**).

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Pursuant to the applicable legislation, the notification obligation incumbent on the lender regarding the rates effectively applied is nevertheless continuous, since the Borrower must be notified immediately by the lender's Agent ("*Facility Agent*") of the interest rates applied by the lender within the context of the Credit Facility Agreement (article 10.4, entitled "*Notification of interest rates*").

ATARI SA is the Guarantor of the commitments of its subsidiary by way of the Credit Facility Agreement.

BANC OF AMERICA transferred the Credit Facility Agreement to BLUEBAY on 10 December 2009.

BLUEBAY then transferred the Credit Facility Agreement to the US investment fund ALDEN RECOVERY FUND on 5 February 2013 (BANC OF AMERICA, BLUEBAY and ALDEN RECOVERY FUND are hereafter referred to jointly as the "**Lender**").

On 24 December 2013, the reimbursement procedures for the balance of the Credit Facility Agreement were negotiated within the context of a Supplementary Agreement No. 16, agreed with ALDEN RECOVERY FUND (**Exhibit No. 3**). The reimbursement procedures were subsequently amended by Supplementary Agreement No. 17 on 9 December 2014 (**Exhibit No. 4**).

The balance of the Credit Facility Agreement amounted, on 31 March 2015, to € 10.6 million in principal and € 1.5 million of interest, it being observed that the reimbursement deadline is set for 30 September 2015.

These two supplementary agreements adapted the Credit Facility Agreement as follows:

- the possibility of advance reimbursement of € 5 million plus interest before 31 March 2015;
- the balance, i.e. € 6 million, would then be postponed until 1 April 2017, on condition of payment on 1 October 2015 of an extension commission of 7% of the postponed amounts;
- it being specified that if this option is not exercised, the maturity date will remain set at 30 September 2015;
- ATARI EUROPE may reimburse the whole of the Credit Facility Agreement at any time.

b) The defaults by the Lender on its notification obligations regarding the Effective Global Rate

It was in this context that the parties signed 22 Supplementary Agreements or Supplementary Agreement Letters to the Credit Facility Agreement, of which, 15 have particularly for object to extend the maturity date of the facility ("*Final Maturity Date*") and hence to amend certain elements of the indicative calculation of the Effective Global Rate notified to the Borrower on signing of the Credit Facility Agreement.

However, with the exception of Supplementary Agreement No. 8 of 31 March 2009, extending the deadline until 31 December 2009 and of Supplementary Agreement No. 16 of 24 December 2013, extending the deadline until 30 September 2015, none of these supplementary agreements was accompanied by a notification to the Borrower of the new indicative calculation of the Effective Global Rate.

Moreover, the two new indicative calculations of the Effective Global Rate notified to ATARI EUROPE after the signing of Supplementary Agreements No. 8 and No. 16 proved erroneous, whether for the one notified, in March 2009, by BANC OF AMERICA (**Exhibit No. 6**) or for the one notified by letter of 20 December 2013 by ALDEN RECOVERY FUND (**Exhibit No. 5**).

In this way, on 30 March 2015, ATARI EUROPE notified ALDEN RECOVERY FUND by registered letter that it had discovered the erroneous character of the indicative calculations of the Effective Global Rate notified to it. ATARI EUROPE consequently called for the replacement of the contractual rate by the legal interest rate, specifying that it was in the process of finalizing the calculation of the amount of interest unduly received by the lender (**Exhibit No. 7**).

More fundamentally, the Lender in no way satisfied its legal obligation of continuous information on the Effective Global Rate effectively applied to ATARI EUROPE, since the Borrower did not receive periodic statements mentioning the EGR effectively applied.

At the same time, in a letter of 7 April 2015, ALDEN RECOVERY FUND lodged an application to strike out the legitimate claim of ATARI EUROPE for the application of the legal interest rate, instead of the contractual rate provided by the Credit Facility Agreement (**Exhibit No. 8**).

ATARI EUROPE calculated all the interest unduly received by the Lender for the period running from 1 April 2009 to 31 March 2015, it being noted that the calculation is still in progress for the preceding period (2006 to 31 March 2009). This calculation formed the object of the verification by the independent financial consulting firm FINEXSI in a report of 23 April 2015, which was submitted to ALDEN RECOVERY FUND (**Exhibit No. 9**).

By a letter of 29 May 2015, ATARI EUROPE recalled that the replacement by the legal interest rate (€ 1,666,779) of the contractual rate (€ 16,333,901) generated an excess payment by ATARI EUROPE of € 14,667,122, i.e. if account is taken of the outstanding principal amount on 31 March 2015 (€ 10,584,082), a balance in favour of ATARI EUROPE of € 4,080,441, evaluated on 31 March 2015 (**Exhibit No. 10**). This amount does not include the interest unduly paid during the period running from 21 April 2006 to 31 March 2009 and subsequently to 31 March 2015.

1.2 The proceedings

Despite ATARI EUROPE's efforts, the parties did not succeed in reaching a settlement solution for their dispute, especially under the auspices of an *ad hoc* representative, whose mission was transformed into a conciliation procedure.

It is in this context that ATARI EUROPE finds itself obliged to assert its rights before this Court.

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2. DISCUSSION

2.1 The nullity of the contractual rate due to serious breaches by the lender of its prior notification obligations regarding the EGR

Article 1907 of the Civil Code provides that:

"*The interest is legal or contractual. Legal interest is set by law. Contractual interest may exceed the legal interest, whenever the law does not prohibit this.*

The contractual interest rate must be set in writing." (Our underlining)

Article L. 313-4 of the Monetary and Financial Code provides that:

"*The rules relating to the Effective Global Rate of the credits are set by articles L. 313-1 and L. 313-2 of the Consumer Code, as reproduced below:*

"*Art. L. 313-1 - In all cases, in order to determine the Effective Global Rate for the loan, like that of the effective rate taken as a reference, the costs, commissions or remuneration of any kind, whether direct or indirect, including those paid or due to intermediaries, intervening in any way in granting the loan, are added to the interest, even if these costs, commissions or this remuneration correspond to real disbursements.*

However, for the application of articles L. 312-4 to L. 312-8, the charges linked to the guarantees which may accompany the credits, as well as judicial officers' fees, are not included in the Effective Global Rate defined above, when their amount cannot be indicated precisely prior to the definitive conclusion of the agreement.

For credit agreements falling within the field of application of chapter I of this heading, the Effective Global Rate termed the "Effective global annual rate", shall not include the costs of the notarial deed.

Furthermore, for the loans forming the object of staggered amortisation, the Effective Global Rate shall be calculated taking account of the procedures for the amortisation of the receivable.

A Council of State decree shall determine the conditions for the application of this article."

"*Art. L. 313-2 - The Effective Global Rate, determined as stated in article L. 313-1, shall be mentioned in any written document confirming a loan agreement governed by this section.*

Any infringement of the provisions of this article shall be punished with a fine of € 150,000.

Natural persons declared guilty shall also incur, by way of supplementary penalties, the prohibition, pursuant to the procedures described in article 131-27 of the Criminal Code, either on holding a public position or on carrying out their professional or social activity during the performance of which or on the occasion of the performance of which the offence was committed, or of exercising a commercial or industrial profession, of directing, administering, managing or controlling a commercial or industrial enterprise or commercial company, in any capacity, whether directly or indirectly, on their own behalf or on that of another party. These prohibitions on exercise shall not exceed a duration of five years. They may be pronounced cumulatively." (Our underlining)

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It results from the combined application of article 1907, paragraph 2 of the Civil Code and of article L. 313-4 of the Monetary and Financial Code that the loan or credit agreement shall expressly mention the contractual rate and the EGR. This rate is the rate actually applied for a given credit operation. It shall include all of the costs necessary for obtaining and executing the loan, namely all "*costs, commissions or remuneration of any nature, whether direct or indirect*" (article L. 313-4 of the Monetary and Financial Code), in order to permit the Borrower to be duly informed of the real global cost of its credit.

This requirement of public order, imposed under penalty of nullity, applies to all types of credits (loans, overdrafts, etc.), whether granted to private individuals or to professionals. It shall apply not only at the time of conclusion of the agreement of the initial credit, but also to all of the supplementary agreements to this agreement when the Effective Global Rate has been amended by it. In this way, as the doctrine recalls, "*when the interest rate is amended by a supplementary agreement to the loan agreement, the supplementary agreement shall mention the new EGR in the result of the modification of the total cost of the resulting credit*" (RD banc. fin, March 2015, No. 2, paragraph 31 note F-J. Crédot and T. Samin). In the event that the Effective Global Rate mentioned in the supplementary agreement is erroneous, case law considers that "*the sanction of this error called for the replacement of the contractual rate by the legal rate, starting from the subscription of the said supplementary agreement*"(Court of Cassation, 1st Civil Division, 27 February 2007, No. 04-20.779).

In addition to the loans in the strict sense, in which "*all of the elements comprising the EGR are known* ab initio", case law recalls that the requirement for a written mention of the Effective Global Rate applied to all of the other credit operations, in which "*all of the elements comprising the EGR were not known* from the start [and] *the definitive cost of which depends on the use made of it by the Borrower.*" (A. Gourio and N. Aynes "The time limitation of the nullity action in the event of irregularity of the EGR" JCP E 2008, No. 41, 2221).

In order to take account of the particular nature of these latter credit operations, case law was obliged to specify the regime of the notification obligation incumbent on the lender:

> "(...) *theobligation to pay contractual premiums from the outset by application of the Effective Global Rate not only requires that the Effective Global Rate is contained in an indicative capacity in a prior written document, but also that the applied Effective Global Rate is contained in periodic statements, received by the Borrower without protest or reservation.*"(Court of Cassation, Commercial Division, 22 May 2007, No. 06-12.180).

In this way, "*mentions of the 'indicative' Effective Global Rate in the prior agreement and of the Effective Global Rate 'applied' to each statement in question, are indispensable*" (Didier R. Martin, "Effective Global Rate and time barring" D2008, p. 2202). As recalled by case law, this latter obligation of periodic submission of documents containing the Effective Global Rate, regularly calculated for the elapsed period, is decisive when it constitutes notification of this rate for the future.

In the absence of information, or in the case of erroneous information in the credit agreement (and when applicable, in its supplementary agreements) on the "indicative" EGR, or in the documents to be submitted periodically on the EGR effectively "applied", the Borrower is well-founded in securing the nullity of the contractual rate, which must be replaced by the legal rate. This action has a limitation period of 5 years, starting from: "*for a loan,* [from] *thedate of the agreement and in other cases,* [of] *the receipt of each of the documents indicating or obliged to indicate the applied EGR*" (Court of Cassation, Commercial Division, 10 June 2008, No. 06-19.452). In this way, in the case of granting of a credit line, the receipt of each of the periodic statements indicating or obliged to indicate the applied EGR constitutes the starting point of the deadline for this limitations period (Court of Cassation, Commercial Division, 10 June 2008, No. 06-18906, Court of Cassation, Commercial Division, 8 October 2013, No. 11-26.600), which supposes that the lender has fulfilled its essential obligation, not only to indicate the EGR, but also to submit this statement on a periodic basis to the Borrower.

In the case in question, however the Lender infringed all of its prior notification obligations regarding the Effective Global Rate, since:

- the two indicative calculations of the EGR, notified to ATARI EUROPE after the signing of the Supplementary Agreements No. 8 and 16 are erroneous, whether with regard to the one notified by BANC OF AMERICA, in March 2009 (**Exhibit No. 6**) or to the one notified, by letter of 20 December 2013 by ALDEN RECOVERY FUND (**Exhibit No. 5**), since in particular, they do not take account of the legal and/or financial costs of this extension of the deadline;

- 13 Supplementary Agreements or Supplementary Agreement Letters have extended the maturity date of the credit (*"Final Maturity Date"*) and hence amended certain elements of the indicative calculation of the Effective Global Rate notified to the Borrower on signing of the Credit Facility Agreement, albeit without being accompanied by a notification of the Borrower regarding the new indicative calculation of the Effective Global Rate.

More fundamentally, the Lender infringed its obligation of continuous notification regarding the Effective Global Rate effectively applied to ATARI EUROPE, despite it being essential, consisting in sending periodically to the Borrower a document or statement mentioning this EGR effectively applied.

In this way, the lender not only failed to indicate or indicated erroneously the EGR effectively applied to the documents to be sent periodically, but purely and simply never sent such periodic information documents on the applied EGR to ATARI EUROPE, thereby seriously infringing its essential obligations, whether these were contractual or legal.

In this way, the infringements by the Lender of its essential obligations are such that ATARI EUROPE was kept in ignorance of its rights by way of the effective global cost of its credit at the end of the Credit Facility Agreement.

Under these conditions, the claims of ATARI EUROPE, ATARI SA, ATARI INC., ATARI INTERACTIVE INC., CALIFORNIA US HOLDING INC. and HUMONGOUS INC. to obtain the nullity of the contractual rate and its replacement by the legal rate are admissible and well-founded, and this since the signing of the Credit Facility Agreement.

2.2 The impact of the defaults by ALDEN RECOVERY FUND on the amounts due from the parties

Over the duration of the loan, around € 60 million of the credit line was drawn down by ATARI EUROPE and the applied interest rate exceeded 10% per year, i.e. a rate noticeably higher than the legal interest rate.

ATARI EUROPE calculated the whole of the interest unduly received by the lender for the period from 1 April 2009 to 31 March 2015, it being noted that the calculation is still in progress for the previous period (2006 to 31 March 2009). This calculation was verified by the independent financial consulting firm FINEXSI, which concluded, in its report of 23 April 2015 (**Exhibit No. 9**):

Conclusions

In view of the elements provided to us, we observe that the data included in the calculation are consistent with the accounting demonstrations. In the same way, the calculation procedures adopted and the arithmetic of the calculations seem appropriate to us.

The result of the calculations made by ATARI on 31 March 2015 are summarised in the following table:

Results obtained by ATARI

	Actual amounts	**Amounts calculated at the legal rate**
Principal amount remaining **outstanding** on 31/03/2015	10,584,095	(4,080,970)
Interest expenses for the period	(16,333,901)	(1,666,237)

By carrying out our own calculation, we arrived at the following results on 31 March 2015:

Results obtained by FINEXSI

	Actual amounts	**Amounts calculated at the legal rate**
Principal amount remaining outstanding on 31/03/2015	10,584,082	(4,080,441)
Interest expenses for the period	(16,333,901)	(1,666,779)

The observed divergence between the two calculations amounts to € 528 and is not significant.

On 31 March 2015, on the basis of our calculations and applying the calculation principles cited above, the excess payment by Atari Europe amounted overall to € 4,080,441 (including interest and principal), it being recalled that this calculation only covers the period from 1 April 2009 to 31 March 2015 (and thus excludes the period running from 21 April 2006 to 31 March 2009) and does not include certain legal advisory costs borne by the Borrower within the context of the Loan, in the process of being surveyed by Atari's management. **(Exhibit No. 9)**

Under these conditions, ALDEN RECOVERY FUND shall be sentenced to pay ATARI EUROPE (i) for the period running from 1 April 2009 to 31 March 2015 an amount of € 14,667,122 and (ii) for the period running from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE and the legal interest for the said periods) to be drawn up subsequently by ATARI EUROPE, or as necessary, by an expert.

ATARI EUROPE reserves the right to claim compensation for the sentence pronounced against ALDEN RECOVERY FUND with any due amount which it may owe by way of the Credit Facility Agreement.

2.3 Article 700 of the Civil Procedure Code

It would be unfair to let the claimants pay the amounts which they are obliged to incur, in order to assert their rights. The Court shall thus sentence ALDEN RECOVERY FUND to pay the amount of € 50,000 by way of Article 700 of the Civil Procedure Code.

FOR THESE REASONS

Pursuant to article 1907 of the Civil Code,

Pursuant to article L. 313-4 of the Monetary and Financial Code,

Pursuant to article 1147 of the Civil Code

Pursuant to article 700 of the Civil Procedure Code,

The Court is requested to:

- **Pronounce** the nullity of the contractual interest rate stipulated in the Credit Facility Agreement;
- **Order** the replacement of the contractual rate by the legal interest rate;
- **State and rule** that the excess amount paid by ATARI EUROPE SAS by way of the interest paid within the context of the Credit Facility Agreement amounts (i) for the period running from 1 April 2009 to 31 March 2015, to € 14,667,122 and (ii) for the period from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, to a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE SAS and the legal interest) to be drawn up subsequently by the company ATARI EUROPE SAS, or as necessary by a judicial expert;
- Consequently, **Sentence** ALDEN GLOBAL VALUE RECOVERY MASTER FUND to pay ATARI EUROPE SAS (i) for the period running from 1 April 2009 to 31 March 2015, an amount of € 14,667,122 and (ii) for the period from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE SAS and the legal interest for the said periods), to be drawn up subsequently by ATARI EUROPE SAS, or as necessary, by expert study, plus the legal interest starting from the forthcoming decision;
- **Give notice** to ATARI EUROPE SAS that it reserves the right to demand the offsetting of the sentence pronounced against ALDEN GLOBAL VALUE RECOVERY MASTER FUND against any due amount which it may owe by way of the Credit Facility Agreement;
- **Sentence** ALDEN GLOBAL VALUE RECOVERY MASTER FUND to pay to the claimants an amount of € 50,000, by way of article 700 of the Civil Procedure Code.

Without prejudice

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 89 40 70
8, ch. du Clotinet - 91140 Villejust

LIST OF EXHIBITS

EXHIBIT No. 1: K-BIS OF ATARI EUROPE SAS AND OF ATARI SA

EXHIBIT No. 2: LOAN AGREEMENT BETWEEN ATARI EUROPE SAS AND BANC OF AMERICA OF 21 APRIL 2006(the "*Credit Facility Agreement*")

EXHIBIT No. 3: SUPPLEMENTARY AGREEMENT NUMBER 16 OF THE LOAN AGREEMENT BETWEEN ATARI EUROPE SAS AND ALDEN RECOVERY FUND OF 24 DECEMBER 2013

EXHIBIT No. 4: SUPPLEMENTARY AGREEMENT NUMBER 17 TO THE LOAN AGREEMENT BETWEEN ATARI EUROPE SAS AND ALDEN RECOVERY FUND OF 9 DECEMBER 2014

EXHIBIT No. 5: NOTIFICATION LETTER OF THE EFFECTIVE GLOBAL RATE OF 20 DECEMBER 2013

EXHIBIT No. 6: NOTIFICATION LETTER OF THE EFFECTIVE GLOBAL RATE OF MARCH 2009

EXHIBIT No. 7: REGISTERED LETTER ADDRESSED TO ALDEN RECOVERY FUND, GIVING NOTICE OF THE APPLICATION OF THE EGR ON 30 MARCH 2015

EXHIBIT No. 8: LETTER FROM ALDEN RECOVERY FUND, ADDRESSED TO ATARI EUROPE ON 7 APRIL 2015

EXHIBIT No. 9 FINEXSI REPORT OF 23 APRIL 2015

EXHIBIT No. 10 LETTER FROM ATARI EUROPE ADDRESSED TO ALDEN RECOVERY FUND OF 29 MAY 2015

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français

SIGNIFICATION DE L'ACTE X8

Acte ...... : 0401 ASSIGNATION
Date ...... : 16/07/15
Dossier ... : 1135720 ATARI /ALDEN GLOBAL

>02< **Société de droit des Îles Caïmans ALDEN GLOBAL VALUE RECOVERY MASTER FUND L,P**

Chaque copie du présent acte comprend: 35 feuilles.

COUT en Euros	Enregistré
ART 6:DROIT FIXE	72,60
ART 18:FRAIS DE DEPLACEMENT	7,67
SOUMIS à T V A 20,000 %	---------
	80,27
T. V. A.	16,05
TAXE FORFAITAIRE	11,16

T O T A L	107,48

Visa par l'Huissier de Justice des mentions relatives à la signification

MARA SCAGLIONE Expert Traducteur-Interprète Cour d'Appel de Paris Italien-Anglais-Français Tél. 01 42 89 40 70 8, ch. du Clotinet - 91140 Villejust

MATTHIEU ASPERTI

SCP F. CHEVRIER de ZITTER, M. ASPERTI, Huissiers de Justice associés Quentin DUHAMEL, Huissier de Justice salarié Audienciers près le Tribunal de Commerce de PARIS RÉPUBLIQUE FRANÇAISE 1, Quai de la Corse - 75004 PARIS

COPY [FIRST AUTHENTIC COPY]

SERVICE ABROAD OF AN ACT

File reference: **no. 113 572**
Case: SAS ATARI EUROPE, SA ATARI, a company governed by US law ATARI INC, a company formed under US law ATARI INTERACTIVE, a company governed by US law CALIFORNIA US HOLDINGS, a company governed by US law HUMONGOUS/ALDEN GLOBAL VALUE RECOVERY MASTER FOUND

THE ***SIXTEENTH OF JULY***, TWO THOUSAND AND FIFTEEN

I, the undersigned, Matthieu ASPERTI, Court Bailiff in partnership at the Société Civile Professionnelle (private professional company) Fabienne CHEVRIER de ZITTER and Matthieu ASPERTI, holding an appointment as Court Bailiff, Court Ushers at the Paris Commercial Court, located at 1 Quai de la Corse, 75004 Paris,

AT THE REQUEST OF:

1/ **ATARI EUROPE SAS**, a *sociéte par actions simplifiée* (simplified joint stock company) with capital of 190,000.00 Euros, registered with the Paris Trade and Companies Register 328 033 410, having its registered office at 78, rue Taitbout 75009 Paris, acting through its legal representatives domiciled in this capacity at such registered office.

2/ **ATARI SA,** a *société anonyme* (public limited company) with capital of 1,600,540.91 Euros, registered with the Paris Trade and Companies Register 341 699 106, having its registered office at 78, rue Taitbout 75009 Paris, acting through its legal representatives domiciled in this capacity at such registered office.

3/ **ATARI, INC**, a company governed by US law, having its registered office at 475 Park Avenue South, New York, NY 10016, USA, acting through its legal representatives domiciled in this capacity at such registered office.

4/ **ATARI INTERACTIVE, INC**, a company governed by US law, having its registered office at 475 Park Avenue South, New York, NY 10016, USA, acting through its legal representatives domiciled in this capacity at such registered office.

5/ **CALIFORNIA US HOLDINGS, INC**, a company governed by US law, having its registered office at 475 Park Avenue South, New York, NY 10016, USA, acting through its legal representatives domiciled in this capacity at such registered office.

FIRST AUTHENTIC COPY
PLACED ON
17/07/2015

SCP CHEVRIER DE ZITTER & ASPERTI
Court Bailiffs in partnership

[FIRST AUTHENTIC COPY]

6/ **HUMONGOUS, INC**, a company governed by US law, having its registered office at 475 Park Avenue South, New York, NY 10016, USA, acting through its legal representatives domiciled in this capacity at such registered office.

Having as their lawyer
Mr David MALAMED
Lawyer before the Paris Bar
Law firm Brown Rudnick LLP
1, rue François 1er – 75008 PARIS
Tel: 01 85 56 82 20 – Fax: 01 85 56 82 21
E-mail: dmalamed@brownrudnick.com
Bar no. L0260

At the firm where domicile is elected

I sent on **<u>this date,</u>** by **<u>DHL, to</u>:**

THE CLERK OF THE COURTS **GRAND CAYMAN, CAYMAN ISLANDS**

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 69 40 70
8, ch. du Clotinet - 91140 Villejust

[FIRST AUTHENTIC COPY]

In two original copies:

- Form F2 duly filled in, in French.
- A draft writ of summons for a hearing which will be held at the Paris Commercial Court, for a hearing that will take place on 15 October 2015 at 11:00 am in French.
- A draft writ of summons for a hearing which will be held at the Paris Commercial Court, for a hearing that will take place on 15 October 2015 at 11:00 am in English.

The draft act is to be served upon or notified to:

Company governed by the law of the Cayman Islands
ALDEN GLOBAL VALUE RECOVERY MASTER FUND LP
Registered office
c/o Ogier Fiduciary Services (Cayman)
Limited, 89 Nexus Way, Camana Bay
Grand Cayman KY1 9007, CAYMAN ISLANDS

This notification meets the requirements of the Hague Convention of 15 November 1965 on the service abroad of judicial and extrajudicial acts in civil or commercial matters.

All submitted exhibits are attached to the Original and to the First Authentic Copy.

[Court Bailiff's stamp]
/signature/

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 69 40 70
8, ch. du Clothet - 91140 Villebon

F2 (page 1)

REQUEST

FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed in the Hague, 15 November 1965.

Identity and address of the applicant	**Address of receiving authority**
SCP CHEVRIER de ZITTER & ASPERTI Huissiers de Justice Associes 1, Quai de la Corse - 75004 PARIS (FRANCE)	THE CLERK OF THE COURTS GRAND CAYMAN, CAYMAN ISLANDS

The undersigned applicant has the honour to transmit -in duplicate- the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the address, i.e.

(Identity and address)

ALDEN GLOBAL VALUE RECOVERY MASTER FUND LP, a Cayman Islands company
Registered office
c/o Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Carmana Bay,
Grand Cayman KY1 9007 CAYMAN ISLANDS

a) in accordance with the provision of sub-paragraph (a) of the first paragraph of article 5 of the Convention*

~~b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of article 5)*~~

c) by delivery to the addressee, if he accepts it voluntary (second paragraph of article 5)*

The authority is requested to return or to have returned to the applicant a copy of - and of the annexes*- with a certificate as provided on the reverse side.

List of documents

Done in PARIS on the 16/07/2015

Signature and/or stamp

(signature) [stamp]

MATTHIEU ASPERTI

* Delete if inappropriate

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 69 40 70
8, ch. de Clotinet - 91140 Villebon

F2 (page 2)

CERTIFICATE

Section to be completed by the foreign authority required to provide the notification

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,

1. that the document has been served*

- the (date) ....
- at (place, street, number) ......
- in one of the following methods authorised by article 5:

    a) in accordance with the provision of sub-paragraph (a) of the first paragraph of article 5 of the Convention*

    b) in accordance with the following particular method*:

    c) by delivery to the addressee, who accepted it voluntarily*

The documents referred to in the request have been delivered to

- (identity and description of person) ....
- relationship to the addressee (family, business or other) - ....

2. that the document has not been served, by reason of the following facts*:

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expense detailed in the attached statement*.

Annexes:

Documents returned:

In appropriate cases, documents establishing the service:

Done in , on the

Signature and/or stamp

* delete if inappropriate

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français

F2 (page 3)

SUMMARY OF THE DOCUMENT TO BE SERVED

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed in The Hague, 15 November 1965.

(article 5, fourth paragraph)

Name and address of the requesting authority:

SCP CHEVRIER de ZITTER & ASPERTI
Huissiers de Justice Associes
1, Quai de la Corse - 75004 PARIS (FRANCE)

Particulars of the parties*:

Plaintiffs: ATARI EUROPE, ATARI, ATARI INC, ATARI INTERACTIVE INC, CALIFORNIA US HOLDINGS INC, HUMONGOUS INC
Defendant: ALDEN GLOBAL VALUE RECOVERY MASTER FUND LP

JUDICIAL DOCUMENTS**

Nature and purpose of the document: **Summons**

Nature and purpose of the proceeding and, where appropriate, the amount in dispute:

Date and place for entering appearance**: **15 October 2015, 11:00 am, before the Commercial Court of Paris, 1 Quai de la Corse, 75004 Paris, France**

Court which has given judgement**:

Date of judgment**:

Time limits stated in the document**:

EXTRAJUDICIAL DOCUMENT**

Nature and purpose of the document:

Time and purpose in the document**:

* if appropriate, identity and address of the person interested in the transmission of the document.
** delete if inappropriate

Identity and address of the addressee

ALDEN GLOBAL VALUE RECOVERY MASTER FUND LP, a Cayman Islands company
Registered office
c/o Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Carmana Bay, Grand Cayman KY1 9007
CAYMAN ISLANDS

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE 'SUMMARY OF THE DOCUMENT TO BE SERVED' WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

IF YOUR FINANCIAL RESOURCES ARE INSUFFICIENT YOU SHOULD SEEK INFORMATION ON THE POSSIBILITY OF OBTAINING LEGAL AID OR ADVICE EITHER IN THE COUNTRY WHERE YOU LIVE OR IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED.

ENQUIRIES ABOUT THE AVAILABILITY OF LEGAL AID OR ADVICE IN THE COUNTRY WHERE THE DOCUMENT WAS ISSUED MAY BE DIRECTED TO:

It is recommended that the standard terms in the notice be written in English and French and where appropriate also in the official language, or in one of the official languages of the State in which the document originated. The blanks could be completed either in the language of the State to which the document is to be sent, or in English or French.

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris

WRIT OF SUMMONS
BEFORE THE COMMERCIAL COURT OF PARIS

IN THE YEAR TWO THOUSAND AND FIFTEEN

On

AT THE REQUEST OF:

1. The company **ATARI EUROPE SAS,** *société par actions simplifiée* [simplified joint stock company] with a share capital of €190,000.00, entered in the Trade and Companies Register (RCS) of Paris under the number 328 033 410, having its registered office at 78, rue Taitbout, 75009 Paris, represented by its legal representatives, domiciled in this capacity at the said registered office.

2. The company **ATARI SA,** *société anonyme* [limited liability company] with a share capital of €1,600,540.91, entered in the Trade and Companies Register (RCS) of Paris under the number 328.033.410, having its registered office at 78, rue Taitbout, 75009 Paris, represented by its legal representatives, domiciled in this capacity at the said registered office.

3. The company **ATARI, INC,** incorporated under the laws of the United States of America, having its registered office at 475 Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

4. The company **ATARI INTERACTIVE, INC,** incorporated under the laws of the United States of America, having its registered office at 475 Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

5. The company **CALIFORNIA US HOLDINGS, INC,** incorporated under the laws of the United States of America, having its registered office at 475 Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

6. The company **HUMONGOUS, INC,** incorporated under the laws of the United States of America, having its registered office at 475, Park Avenue South, New York, NY 10016, represented by its legal representatives, domiciled in this capacity at the said registered office.

Having as Lawyer
Maître David MALAMED,
Lawyer at the Paris Bar
Cabinet Brown Rudnick LLP
1, rue François 1 – 75008 PARIS
Tel.: 01 85 56 82 20 – Fax: 01 85 56 82 21
E-mail: dmalamed@brownrudnick.com
Box No. L0260

Choosing the offices of the above party as domicile

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 89 40 70
8, ch. du Clottrel - 91140 Villejust

Maître

Court Bailiff

IS PLEASED TO INFORM

The company **ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P**, an *exempted* company, incorporated under the laws of the Cayman Islands,

Having its registered office at c/o Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman KY1 9007, Cayman Islands, represented by its legal representatives, domiciled in this capacity at the said registered office,

And c/o **ALDEN GLOBAL CAPITAL LLC** incorporated under the laws of the United States of America, having its registered office at 885 Third Avenue, 34th Floor, New York, NY 10019, United States of America.

THAT IT MUST APPEAR

At the hearing of **15 October 2015 at 11:00 a.m.**

At the hearing and before the Presiding Judge and Judges of the **Commercial Court of PARIS, 1 QUAI DE CORSE - PALAIS DU TRIBUNAL DE COMMERCE – 75181 PARIS CEDEX 04**

You are reminded, pursuant to articles 56 and 853 of the Civil Procedure Code:

THAT the parties shall defend themselves or shall have the right to be assisted or represented by any person of their choice; that if their representative is not a Lawyer, he must provide evidence of a special power of attorney;

THAT if the parties fail to appear or appoint representatives, they run the risk of a decision being issued against them solely on the basis of the elements provided by their opponents;

You are reminded, pursuant to article 861-2 of the Civil Procedure Code:

THAT without prejudice to the provisions of article 68, the incidental claim aiming to secure the granting of a payment deadline by way of application of article 1244-1 of the Civil Code may be drawn up by a declaration made, submitted or addressed to the Court registry, where it is registered. The author of this claim shall provide evidence before the hearing that the opposing party was made aware of the same by registered letter with notice of receipt. The exhibits which the party invokes in support of its request for a payment deadline are attached to the declaration.

The author of this incidental claim is not obliged to attend the hearing, pursuant to the second paragraph of article 446-1. In this event, the judge shall only uphold the claims submitted against this party if it considers them to be regular, reliable and well-founded.

You are reminded that the list of exhibits on which the claim is based is indicated at the end of the document.

MARA SCAGLIONE
Expert
Traducteur-Interprète
Cour d'Appel de Paris
Italien-Anglais-Français
Tél. 01 42 69 40 70
8, ch. du Clottines - 91140 Villebon

MAY IT PLEASE THE COURT

The company ATARI EUROPE SAS in the capacity of Borrower, on the one hand, and the companies ATARI SA, ATARI INC., ATARI INTERACTIVE INC., CALIFORNIA US HOLDING INC. and HUMONGOUS INC., in the capacity of Guarantor, on the other, hereby request the cancellation of the contractual interest rate of the credit facility agreement concluded with the company ALDEN GLOBAL VALUE RECOVERY MASTER FUND and the replacement of the contractual interest rate so cancelled with the legal interest rate. Consequently, ATARI EUROPE SAS requests ALDEN GLOBAL VALUE RECOVERY MASTER FUND to pay it (i) for the period running from 1 April 2009 to 31 March 2015, the amount of €14,667,122 on 31 March and (ii) for the period from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE SAS and the legal interest for the said period) to be drawn up subsequently by ATARI EUROPE SAS, or if necessary, by an expert.

1. THE FACTS AND THE PROCEDURE

1.1 The facts

1.1.1 Presentation of the parties

a) ATARI EUROPE SAS and the ATARI group

ATARI EUROPE SAS ("**ATARI EUROPE**"), is held 100% by ATARI SA ("**ATARI SA**") (Kbis [company registration] of the two companies, **Exhibit No. 1**), itself listed on EURONEXT, with a market capitalisation of €31 million, with 54.50% of the share capital held by the public.

The principal shareholders are:

- Ker Ventures, LLC (Frédéric Chesnais): 22.91%
- Alden Global Capital: 6.79%
- Alexandre Zyngier: 1.17%

The ATARI group publishes software applications on a wide variety of platforms, video games downloadable on computers, telephones, tablets and other media.

In the 1980s, ATARI, originally a US group, experienced very significant growth in the emerging market for video game consoles, becoming a leader together with SEGA and NINTENDO until the end of the 1990s.

In the mid-1990s, SONY entered the video game console market, followed by MICROSOFT.

Thus, at the start of the 2000s, the video game console market was dominated by SONY, MICROSOFT and NINTENDO.

In the face of this change, ATARI, like other producers of video games, concentrated its activity on the creation and publishing of mass-market video game software.

Expert Traducteur-Interprète Cour d'Appel de Paris Italien-Anglais-Français Tél. 01 42 69 40 70

The group currently owns and manages a portfolio of over 300 franchises, including internationally known brands such as Asteroids®, Pong®, and RollerCoaster Tycoon®.

b) ALDEN GLOBAL VALUE RECOVERY MASTER FUND

ALDEN GLOBAL VALUE RECOVERY MASTER FUND ("**ALDEN RECOVERY FUND**"), respondent, is an investment fund.

1.1.2 The events at the origin of the dispute

a) The Credit Facility Agreement

In 2006, ATARI EUROPE contracted a €60 million credit facility ("**Credit Facility Agreement**") with BANC OF AMERICA to finance its redeployment and particularly the release of new video games (**Exhibit No. 2**).

The Credit Facility Agreement established a credit facility ("*Credit Facility*"), granted by the lender to the Borrower (article 2) for the financing of its commercial activity (article 3). The Borrower may use the drawdown facility for a minimum amount of €500,000 by issuing a "*Utilisation Request*" or, when appropriate, a "*Rollover Request*", if the drawdown is made in order to replace a previous one that has not been reimbursed and which has reached maturity (article 5), being required to specify the desired interest period (otherwise termed the "*duration of the period*" or "*Interest Period*").

The borrowed amounts bear interest at a variable rate including a cash margin ("*Cash Margin*") of 550 basis points, a capitalised margin ("*Capitalized Margin*") of 350 basis points, a EURIBOR or LIBOR rate and mandatory costs ("*Mandatory Cost*") calculated on the basis of a formula including, among other things, costs (termed reference costs) that vary according to the amount effectively borrowed on the calculation date (article 10.1 and Schedule 4). The Borrower must also pay a commitment commission ("*Commission Fee*") to the lender's agent ("*Facility Agent*") of 3% per year, calculated on the lender's commitment remaining available ("*Available Commitment*") for a given period.

In this context, the Effective Global Rate ("**EGR**") effectively applied by the lender cannot be known on the date the Credit Facility Agreement is signed and must be calculated on an indicative basis on that date.

Thus, article 10.5 of the Credit Facility Agreement, entitled "*Effective Global Rate*", referring to articles L. 313-4 of the Monetary and Financial Code and L. 313-1 *et seq.* of the Consumer Code, expressly confirms that "*the Parties acknowledge that by virtue of certain characteristics of this Credit (and in particular, the variable interest rate applicable to the Loans and the right of the Borrower to choose the duration of the interest period of each Loan), the* Effective Global Rate *cannot be calculated on the date of this Agreement. Each Borrower nevertheless acknowledges that it has received a letter from the Lender's Agent containing an indicative calculation of the* Effective Global Rate" (**Exhibit No. 2**).

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Pursuant to the applicable legislation, the notification obligation incumbent on the lender regarding the rates effectively applied is nevertheless continuous, since the Borrower must be notified immediately by the lender's Agent ("*Facility Agent*") of the interest rates applied by the lender within the context of the Credit Facility Agreement (article 10.4, entitled "*Notification of interest rates*").

ATARI SA is the Guarantor of the commitments of its subsidiary under the Credit Facility Agreement.

BANC OF AMERICA transferred the Credit Facility Agreement to BLUEBAY on 10 December 2009.

BLUEBAY then transferred the Credit Facility Agreement to the US investment fund ALDEN RECOVERY FUND on 5 February 2013 (BANC OF AMERICA, BLUEBAY and ALDEN RECOVERY FUND are hereafter referred to jointly as the "**Lender**").

On 24 December 2013, the reimbursement procedures for the balance of the Credit Facility Agreement were negotiated within the context of an Amendment No. 16, agreed with ALDEN RECOVERY FUND (**Exhibit No. 3**). The reimbursement procedures were subsequently amended by Amendment No. 17 on 9 December 2014 (**Exhibit No. 4**).

The balance of the Credit Facility Agreement amounted, on 31 March 2015, to €10.6 million in principal and €1.5 million in interest, it being noted that the repayment term is set for 30 September 2015.

These two amendments adjusted the Credit Facility Agreement as follows:

- the option for advance repayment of €5 million plus interest before **31 March 2015;**
- the balance, i.e. € 6 million, would then be carried to 1 April 2017, on condition of payment on 1 October 2015 of an extension commission of 7% of the sums carried;
- it being specified that if this option is not exercised, the maturity date will remain set at 30 September 2015;
- ATARI EUROPE may reimburse the entirety of the Credit Facility Agreement at any time.

b) <u>The defaults by the Lender on its notification obligations regarding the Effective Global Rate</u>

It was in this context that the parties signed 22 Amendments or Side Letters to the Credit Facility Agreement, of which 15 are specifically intended to extend the maturity date of the facility ("*Final Maturity Date*") and hence to amend certain elements of the <u>indicative</u> calculation of the Effective Global Rate notified to the Borrower when the Credit Facility Agreement was signed.

However, with the exception of Amendment No. 8 of 31 March 2009, extending the deadline until 31 December 2009, and Amendment No. 16 of 24 December 2013, extending the deadline until 30 September 2015, none of these amendments was accompanied by a notification to the Borrower of the new <u>indicative</u> calculation of the Effective Global Rate.

Moreover, the two new <u>indicative</u> calculations of the Effective Global Rate communicated to ATARI EUROPE after the signing of Amendments No. 8 and No. 16 proved erroneous, both for the calculation communicated, in March 2009, by BANC OF AMERICA (**Exhibit No. 6**) and the calculation communicated by letter of 20 December 2013 by ALDEN RECOVERY FUND (**Exhibit No. 5**).

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Thus, on 30 March 2015, ATARI EUROPE notified ALDEN RECOVERY FUND by registered letter with acknowledgement of receipt that it had discovered the erroneous nature of the indicative calculations of the Effective Global Rate that were communicated to it. ATARI EUROPE consequently called for the replacement of the contractual rate with the legal interest rate, specifying that it was in the process of finalizing the calculation of the amount of interest unduly collected by the lender (**Exhibit No. 7**).

More fundamentally, the Lender in no way satisfied its legal obligation of continuous notification regarding the Effective Global Rate <u>effectively applied</u> to ATARI EUROPE, since the Borrower did not receive periodic statements indicating the EGR effectively applied.

At the same time, in a letter of 7 April 2015, ALDEN RECOVERY FUND lodged an application to strike out the legitimate claim of ATARI EUROPE for the application of the legal interest rate, instead of the contractual rate set forth in the Credit Facility Agreement (**Exhibit No. 8**).

ATARI EUROPE calculated all the interest unduly collected by the Lender for the period running from 1 April 2009 to 31 March 2015, it being noted that the calculation is still in progress for the preceding period (2006 to 31 March 2009). This calculation was verified by the independent financial consulting firm FINEXSI in a report of 23 April 2015, which was submitted to ALDEN RECOVERY FUND (**Exhibit No. 9**).

In a letter of 29 May 2015, ATARI EUROPE recalled that the replacement of the contractual rate (€16,333,901) with the legal interest rate (€1,666,779) generated an excess payment by ATARI EUROPE of €14,667,122, i.e. if account is taken of the outstanding principal amount on 31 March 2015 (€10,584,082), a balance in favour of ATARI EUROPE of €4,080,441, evaluated on 31 March 2015 (**Exhibit No. 10**). This amount does not include the interest unduly paid during the period running from 21 April 2006 to 31 March 2009 and subsequent to 31 March 2015.

1.2 <u>The proceedings</u>

Despite ATARI EUROPE's efforts, the parties did not succeed in reaching a settlement for their dispute, especially under the auspices of an *ad hoc* agent, whose mission was transformed into a conciliation procedure.

It is in this context that ATARI EUROPE finds itself obliged to assert its rights before this Court.

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2. DISCUSSION

2.1 The nullity of the contractual rate due to serious breaches by the lender of its prior notification obligations regarding the EGR

Article 1907 of the Civil Code provides that:

"The interest is legal or contractual. Legal interest is set by law. Contractual interest may exceed the legal interest, whenever the law does not prohibit this.

The contractual interest rate must be set in writing." (Our underlining)

Article L. 313-4 of the Monetary and Financial Code provides that:

'The rules relating to the effective global rate of the credits are set by articles L. 313-1 and L. 313-2 of the Consumer Code, as reproduced below:

"Art. L. 313-1 - In all cases, in order to determine the effective global rate for the loan, like that of the effective rate taken as a reference, the costs, commissions or remuneration of any kind, whether direct or indirect, including those paid or due to intermediaries, intervening in any way in granting the loan, are added to the interest, even if these costs, commissions or this remuneration correspond to real disbursements.

However, for the application of articles L. 312-4 to L. 312-8, the charges linked to the guarantees which may accompany the credits, as well as judicial officers' fees, are not included in the effective global rate defined above, when their amount cannot be indicated precisely prior to the definitive conclusion of the agreement.

For credit agreements falling within the field of application of chapter I of this heading, the effective global rate termed the "Effective global annual rate", shall not include the costs of the notarial deed.

Furthermore, for the loans forming the object of staggered amortisation, the effective global rate shall be calculated taking account of the procedures for the amortisation of the receivable.

A Council of State decree shall determine the conditions for the application of this article."

"Art. L. 313-2 - The effective global rate, determined as stated in article L. 313-1, shall be mentioned in any written document confirming a loan agreement governed by this section.

Any infringement of the provisions of this article shall be punished with a fine of €150,000.

Natural persons declared guilty shall also incur, by way of supplementary penalties, the prohibition, pursuant to the procedures described in article 131-27 of the Criminal Code, either on holding a public position or on carrying out their professional or social activity during the performance of which or on the occasion of the performance of which the offence was committed, or of exercising a commercial or industrial profession, of directing, administering, managing or controlling a commercial or industrial enterprise or commercial company, in any capacity, whether directly or indirectly, on their own behalf or on that of another party. These prohibitions on exercise shall not exceed a duration of five years. They may be pronounced cumulatively." (Our underlining)

From the combined application of article 1907, paragraph 2 of the Civil Code and of article L. 313-4 of the Monetary and Financial Code, it is clear that the loan or credit agreement must expressly mention the contractual rate and the EGR. The latter is the rate actually applied for a given loan transaction. It must include all of the costs necessary for obtaining and executing the loan, namely all "*costs, commissions or remuneration of any nature, whether direct or indirect*" (article L. 313-4 of the Monetary and Financial Code), in order to permit the Borrower to be duly informed of the real global cost of its credit.

This requirement of public order, imposed under penalty of nullity, applies to all types of credits (loans, overdrafts, etc.), whether granted to private individuals or to professionals. It shall apply not only at the time the initial credit agreement is signed, but also to all of the supplementary agreements to that agreement when the Effective Global Rate has been amended by it. Thus, as the doctrine recalls, "*when the interest rate is amended by an amendment to the loan agreement, the amendment must mention the new EGR in the result of the modification of the total cost of the resulting credit*" (RD banc. fin, March 2015, No. 2, paragraph 31 note F-J. Crédot and T. Samin). In the event that the effective global rate mentioned in the amendment is erroneous, case law considers that "*the sanction of this error called for the replacement of the contractual rate by the legal rate, starting from the subscription of the said amendment*"(Court of Cassation, 1st Civil Division, 27 February 2007, No. 04-20.779).

In addition to the loans in the strict sense, in which "*all of the elements comprising the EGR are known* ab initio", case law recalls that the requirement for a written mention of the effective global rate applied to all of the other credit transactions, in which "*all of the elements comprising the EGR were not known* from the start [and] *the definitive cost of which depends on the use made of it by the Borrower*" (A. Gourio and N. Aynes, "La prescription de l'action en nullité en cas d'irregularité" (The time limitation of the nullity action in the event of irregularity of the EGR), JCP E 2008, No. 41, 2221).

In order to take account of the particular nature of these latter credit transactions, case law was prompted to specify the type of notification obligation incumbent on the lender:

> "(...) *the obligation to pay contractual premiums from the outset by application of the effective global rate not only requires that the effective global rate be contained on an indicative basis in a prior written document, but also that the effective global rate applied be contained in periodic statements, received by the Borrower without protest or reservation*"(Court of Cassation, Commercial Division, 22 May 2007, No. 06-12.180).

Thus, "*mentions of the 'indicative' effective global rate in the prior agreement and the 'applied' effective global rate in each relevant statement, are indispensable*" (Didier R. Martin, "Taux effectif global et prescription" (Effective global rate and time barring), D2008, p. 2202). As is stated in case law, this latter obligation to periodically submit documents containing the effective global rate, regularly calculated for the elapsed period, is decisive insofar as it constitutes notification of this rate for the future.

In the absence of information, or in the case of erroneous information, in the credit agreement (and when applicable, in its amendments) regarding the "indicative" EGR, or in the documents to be submitted periodically regarding the EGR effectively "applied", the Borrower is well-founded in securing the nullity of the contractual rate, which must be replaced by the legal rate. This action has a limitation period of 5 years, starting from: "*for a loan,* [from] *the date of the agreement and in other cases,* [of] *the receipt of each of the documents indicating or required to indicate the applied EGR*" (Court of Cassation, Commercial Division, 10 June 2008, No. 06-19.452). Thus, when credit is granted, the receipt of each of the periodic statements indicating or required to indicate the applied EGR constitutes the starting point for this limitation period (Court of Cassation, Commercial Division, 10 June 2008, No. 06-18906, Court of Cassation, Commercial Division, 8 October 2013, No. 11-26.600), which supposes that the lender has fulfilled its essential obligation, not only to indicate the EGR, but also to submit this statement on a periodic basis to the Borrower.

In the case in question, however the Lender infringed all of its prior notification obligations regarding the effective global rate, since:

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- the two indicative calculations of the EGR, communicated to ATARI EUROPE after the signing of Amendments No. 8 and 16, are erroneous, both the calculation communicated by BANC OF AMERICA, in March 2009 (**Exhibit No. 6**) and the calculation communicated by letter of 20 December 2013 by ALDEN RECOVERY FUND (**Exhibit No. 5**), since in particular, they do not take account of the legal and/or financial costs of this extension of the term;

- 13 Amendments or Side Letters were signed in order to extend the maturity date of the credit ("*Final Maturity Date*") and hence amended certain elements of the indicative calculation of the Effective Global Rate communicated to the Borrower when the Credit Facility Agreement was signed, albeit without being accompanied by a notification of the Borrower regarding the new indicative calculation of the Effective Global Rate.

More fundamentally, the Lender infringed its obligation of continuous notification regarding the Effective Global Rate effectively applied to ATARI EUROPE, despite it being essential, consisting in periodically sending to the Borrower a document or statement indicating this EGR effectively applied.

In this way, the lender not only failed to indicate or indicated erroneously the EGR effectively applied in the documents to be sent periodically, but purely and simply never sent such periodic notification documents regarding the applied EGR to ATARI EUROPE, thereby seriously infringing its essential obligations, whether these were contractual or legal.

In this way, the infringements by the Lender of its essential obligations are such that ATARI EUROPE was kept in ignorance of its rights with regard to the effective global cost of its credit at the end of the Credit Facility Agreement.

Under these conditions, the claims of ATARI EUROPE, ATARI SA, ATARI INC., ATARI INTERACTIVE INC., CALIFORNIA US HOLDING INC. and HUMONGOUS INC. to obtain the nullity of the contractual rate and its replacement by the legal rate are admissible and well-founded, since the signing of the Credit Facility Agreement.

2.2 The impact of the defaults by ALDEN RECOVERY FUND on the amounts due from the parties

Over the duration of the loan, around €60 million of the credit line was drawn down by ATARI EUROPE and the applied interest rate exceeded 10% per year, i.e. a rate significantly higher than the legal interest rate.

ATARI EUROPE calculated the whole of the interest unduly collected by the lender for the period from 1 April 2009 to 31 March 2015, it being noted that the calculation is still in progress for the previous period (2006 to 31 March 2009). This calculation was verified by the independent financial consulting firm FINEXSI, which concluded, in its report of 23 April 2015 (**Exhibit No. 9**):

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Conclusions

In view of the elements provided to us, we observe that the data included in the calculation are consistent with the accounting documentation. In the same way, the calculation procedures adopted and the arithmetic of the calculations seem appropriate to us.

The result of the calculations made by ATARI on 31 March 2015 are summarised in the following table:

Results obtained by ATARI

	Actual amounts	**Amounts calculated at the legal rate**
Principal amount remaining outstanding on 31/03/2015	10,584,095	(4,080,970)
Interest expenses for the period	(16,333,901)	(1,666,237)

By carrying out our own calculation, we arrived at the following results on 31 March 2015:

Results obtained by FINEXSI

	Actual amounts	**Amounts calculated at the legal rate**
Principal amount remaining outstanding on 31/03/2015	10,584,082	(4,080,441)
Interest expenses for the period	(16,333,901)	(1,666,779)

The divergence found between the two calculations amounts to €528 and is not significant.

On 31 March 2015, on the basis of our calculations and applying the calculation principles cited above, the excess payment by Atari Europe amounted overall to €4,080,441 (including interest and principal), it being recalled that this calculation only covers the period from 1 April 2009 to 31 March 2015 (and thus excludes the period running from 21 April 2006 to 31 March 2009) and does not include certain legal consulting costs borne by the Borrower pursuant to the Loan, which are currently being identified by Atari's management. (**Exhibit No. 9**)

Under these conditions, ALDEN RECOVERY FUND should be sentenced to pay ATARI EUROPE (i) for the period running from 1 April 2009 to 31 March 2015 an amount of €14,667,122 and (ii) for the period running from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE and the legal interest for the said periods) to be established subsequently by ATARI EUROPE, or as necessary, by an expert.

ATARI EUROPE reserves the right to claim compensation for the sentence pronounced against ALDEN RECOVERY FUND with any due amount which it may owe pursuant to the Credit Facility Agreement.

2.3 <u>Article 700 of the Civil Procedure Code</u>

It would be unfair to require the claimants to bear responsibility for the amounts which they are obliged to incur in order to assert their rights. The Court shall thus sentence ALDEN RECOVERY FUND to pay the amount of €50,000 pursuant to Article 700 of the Civil Procedure Code.

FOR THESE REASONS

Pursuant to article 1907 of the Civil Code,

Pursuant to article L. 313-4 of the Monetary and Financial Code,

Pursuant to article 1147 of the Civil Code

Pursuant to article 700 of the Civil Procedure Code,

The Court is requested to:

- **Pronounce** the nullity of the contractual interest rate stipulated in the Credit Facility Agreement;
- **Order** the replacement of the contractual rate with the legal interest rate;
- **Rule and hold** that the excess amount paid by ATARI EUROPE SAS as interest pursuant to the Credit Facility Agreement amounts (i) for the period running from 1 April 2009 to 31 March 2015, to €14,667,122 and (ii) for the period from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, to a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE SAS and the legal interest) to be established subsequently by ATARI EUROPE SAS, or as necessary by a judicial expert;
- Consequently, **sentence** ALDEN GLOBAL VALUE RECOVERY MASTER FUND to pay ATARI EUROPE SAS (i) for the period running from 1 April 2009 to 31 March 2015, an amount of €14,667,122 and (ii) for the period from 21 April 2006 to 31 March 2009 and for the period subsequent to 31 March 2015, a supplementary amount (corresponding to the difference between the interest and costs paid by ATARI EUROPE SAS and the legal interest for the said periods), to be established subsequently by ATARI EUROPE SAS, or as necessary, by a judicial expert, plus the legal interest starting from the forthcoming decision;
- **Acknowledge** that ATARI EUROPE SAS reserves the right to demand that the sentence pronounced against ALDEN GLOBAL VALUE RECOVERY MASTER FUND be applied against any payable amount which it may owe pursuant to the Credit Facility Agreement;
- **Sentence** ALDEN GLOBAL VALUE RECOVERY MASTER FUND to pay to the claimants the amount of €50,000, pursuant to article 700 of the Civil Procedure Code.

Without prejudice

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LIST OF EXHIBITS

EXHIBIT No. 1: K-BIS (EXTRACT FROM THE CORPORATE REGISTER) FOR ATARI EUROPE SAS AND ATARI SA

EXHIBIT No. 2: LOAN AGREEMENT BETWEEN ATARI EUROPE SAS AND BANC OF AMERICA OF 21 APRIL 2006 (the "*Credit Facility Agreement*")

EXHIBIT No. 3: AMENDMENT NUMBER 16 OF THE LOAN AGREEMENT BETWEEN ATARI EUROPE SAS AND ALDEN RECOVERY FUND OF 24 DECEMBER 2013

EXHIBIT No. 4: AMENDMENT NUMBER 17 OF THE LOAN AGREEMENT BETWEEN ATARI EUROPE SAS AND ALDEN RECOVERY FUND OF 9 DECEMBER 2014

EXHIBIT No. 5: NOTIFICATION LETTER OF THE EFFECTIVE GLOBAL RATE OF 20 DECEMBER 2013

EXHIBIT No. 6: NOTIFICATION LETTER OF THE EFFECTIVE GLOBAL RATE OF MARCH 2009

EXHIBIT No. 7: REGISTERED LETTER ADDRESSED TO ALDEN RECOVERY FUND, GIVING NOTICE OF THE APPLICATION OF THE EGR ON 30 MARCH 2015

EXHIBIT No. 8: LETTER FROM ALDEN RECOVERY FUND, ADDRESSED TO ATARI EUROPE ON 7 APRIL 2015

EXHIBIT No. 9 FINEXSI REPORT OF 23 APRIL 2015

EXHIBIT No. 10 LETTER FROM ATARI EUROPE ADDRESSED TO ALDEN RECOVERY FUND OF 29 MAY 2015

SERVICE OF THE DOCUMENT **W8**

Document.....: 0401 WRIT OF SUMMONS
Date...............: 16/07/15
File.................: 1135720 ATARI /ALDEN GLOBAL

>02< **Company governed by the law of the Cayman Islands ALDEN GLOBAL VALUE RECOVERY MASTER FUND L.P**

Each copy of this act includes: 35 pages.

COST in Euros	Entered
ART. 6: FIXED FEE	72.60
ART. 18: TRAVEL EXPENSES	7.67
SUBJECT TO 20% VAT	------
	80.27
VAT	16.05
FLAT-RATE TAX	11.16

T O T A L	107.48

Approval by the Court Bailiff
of statements concerning
service of process

[Stamp]
/signature/
MATTHIEU ASPERTI

Certifié conforme à ~~l'original~~ la copie
N° d'inscription : 15-5741/A
Écrit en langue : française
Fait le : 24/07/2015

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