
Telecommunications – International Commercial Arbitration

**ITU – WIPO Symposium
8 October 2009**

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Dispute Resolution

Basic Distinctions

I. Court Proceedings

II. Mediation and other ADR mechanisms

III. Arbitration:

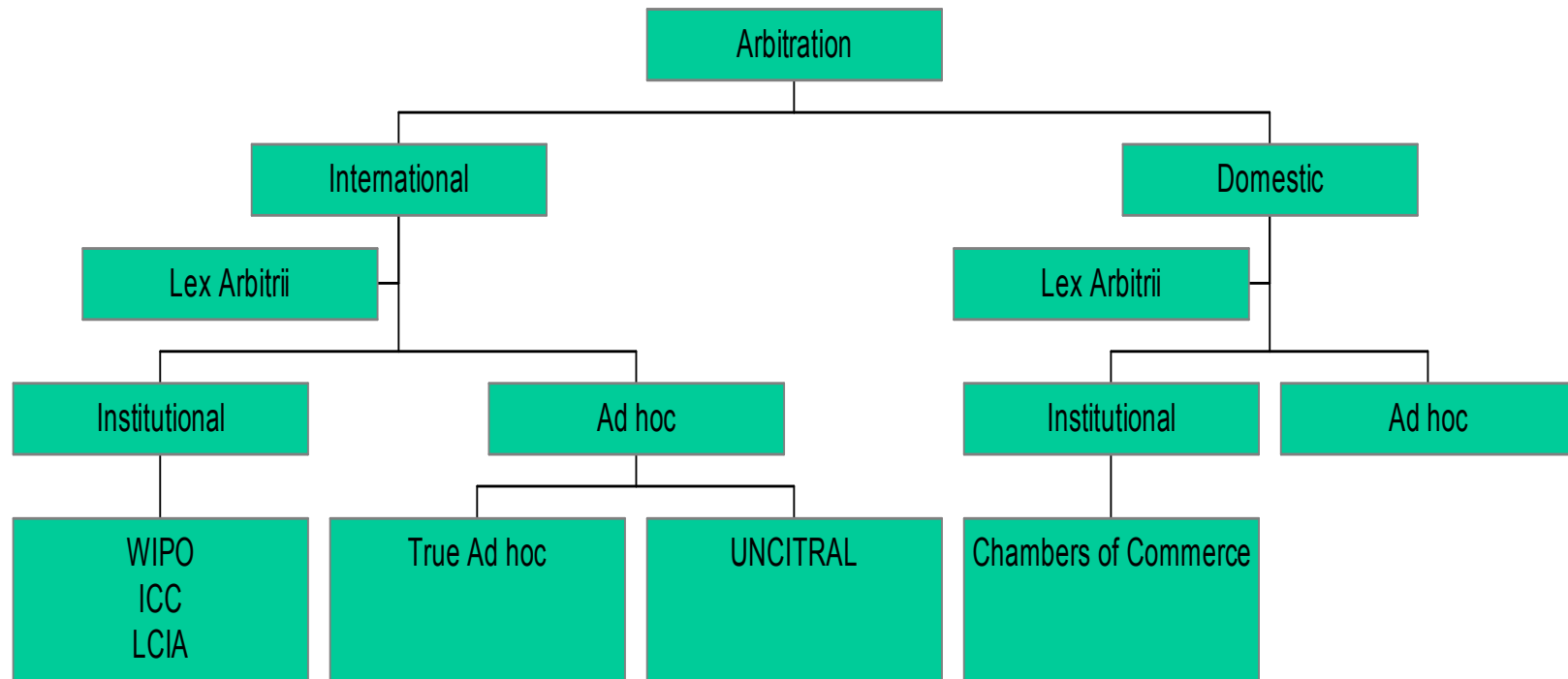
- Commercial arbitration
- Domain name arbitration
- Investment arbitration

IV. Regulatory proceedings

- Telecom Regulator
- Competition Regulator

Arbitration

Commercial Arbitration



Arbitration

Advantages and Disadvantages

- Advantages
 - Choice of arbitrators
 - Specialization of the arbitrators
 - Arbitrators are empowered to grant interim relief
 - Possibility to adopt fast track proceedings
 - Choice of the applicable law
 - Choice of the arbitration venue
 - Choice of the language
 - Limited grounds for appeal
 - Efficient mechanism for enforcing the award (New-York Convention of 1958)

Arbitration

Advantages and Disadvantages

- Disadvantages
 - Costs
 - Confidentiality not fully protected under some institutional rules (ICC).

Arbitration

Limited grounds for Appeal

- Illustration: appeals filed against awards issued in Switzerland
 - Single appeal to the Swiss Supreme Court
 - Limited grounds (art. 190 al. 2 PILS)
 - Irregular constitution of the Arbitral Tribunal
 - Wrongful acceptance or wrongful denial of jurisdiction
 - Arbitral Tribunal has ruled ultra or infra petita
 - Violation of equal treatment of the parties or of their right to be heard
 - Violation of public policy
 - Possible exclusion of setting aside proceedings (art. 192 PILS)

Arbitration

Institutional Rules

- Swiss Rules
 - Unification of the Arbitration Rules of various Chambers of Commerce
 - Advantages
 - Costs
 - Fast track proceedings
 - Confidentiality
 - Modern rules

Arbitration

Fast Track Proceedings

- Swiss Rules (art. 42)
 - Amount in dispute (CHF 1 million or less)
 - Fast track appointment of arbitrator
 - One single filing of written submissions
 - 6 month time-limit to issue the Award
 - Reasons in summary form

Specificity of Billing Disputes

- Tactical games to delay the payments
- Billing Systems are often not 100% reliable
- Expertise process could be helpful but could delay the outcome of the case
- Importance of a careful drafting of the dispute resolution mechanism
- Arbitrators shall have some understanding of the technical issues

Online Arbitration

- Netcase system of the ICC

Thanks!

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