

Arbitration - Switzerland

Subject Matter Jurisdiction over Separate Contracts Between the Same Parties

May 22 2008

Facts
Decision

The Swiss Supreme Court has recently ruled that changing the arbitration clause in a framework agreement does not in itself change the arbitration clauses in connected contracts between the same parties if those contracts contain their own arbitration clauses.⁽¹⁾

Facts

The parties had entered into several contracts with different forum selection clauses:

- a 2000 exclusive delivery contract, which designated Zurich courts and Swiss law;
- a 2004 exclusive delivery contract, which also designated Zurich courts and Swiss law;
- five successive delivery contracts, agreed between 2002 and 2005, which designated arbitration in the Russian Chamber of Commerce; and
- a 2006 amendment to the 2000 and 2004 exclusive delivery contracts which replaced the designation of Zurich courts and Swiss law with arbitration under the rules of the Swiss Chambers of Commerce.

In 2007 one party initiated arbitration in the Swiss Chambers of Commerce, seeking relief under the two exclusive delivery contracts and some of the successive delivery contracts.

Decision

The arbitral tribunal accepted jurisdiction over the claims under the exclusive delivery contracts, but not those under the successive delivery contracts. The Swiss Supreme Court affirmed.

The tribunal's subject-matter jurisdiction depended on whether the arbitration clause agreed in the 2006 amendment also applied to the five successive delivery contracts.

The Supreme Court interpreted the 2006 clause, pursuant to which the arbitration proceedings were commenced, under Swiss law. Since the place of arbitration was Switzerland, the proper law of the contract was Swiss and the parties had not specifically chosen a different law to govern the arbitration clause, the three-pronged test of Article 178(2) of the Swiss Private International Law Act pointed unequivocally to that conclusion.

The court applied the same rules of interpretation as those governing private contracts. It concluded that the 2006 arbitration clause did not apply to the successive delivery contracts. They had their own arbitration clauses and the two regimes had co-existed for some time. Therefore, the intent of the 2006 amendment to replace the arbitration clauses in the exclusive delivery contracts could not without more extend to the successive delivery contracts.

The arbitration clause in the 2006 amendment made no reference to the successive delivery contracts, but it was applicable to disputes arising "in connection with" the 2000 and 2004 exclusive delivery contracts. However, this broad wording could not be construed as encompassing the successively delivery contracts because, although they were connected contracts, they contained their own arbitration clauses.

The court stressed, but did not explicitly outline, the difference between the arbitration

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clauses contained in the 2002 to 2005 successive delivery contracts (designating arbitration in the Russian Chamber of Commerce) and that introduced by the 2006 amendment (designating arbitration in the Swiss Chambers of Commerce).

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Endnotes

(1) Swiss Supreme Court decision of February 29 2008 in X_____ GmbH v Y_____ Corporation, 4A_452/2007 (http://jumpcgi.bger.ch/cgi-bin/JumpCGI?id=29.02.2008_4A_452/2007).

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