

IDArb: Facilitating Arbitration for International Distribution Disputes

The role of former and current in-house counsel as arbitrators for distribution disputes.

Stefano Paolo Catelani

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Arbitrators with experience in distribution for the IDArb Project

- In the IDArb Project the selection criteria for arbitrators focus more on the experience in distribution than on the specific experience as arbitrators (both aspects are relevant)
- Specific attention is devoted to in-house counsels of companies having distribution networks because of their specific knowledge of their respective business.

Arbitrators' experience

- Looking for arbitrators with an actual understanding of the commercial background of the agreement which forms the object of the dispute.
- Arbitrators who know the business as an additional guarantee of a fair and equitable judgment.
- The Selecting Committee has decided to accept also candidates without extensive experience as arbitrators considering the actual experience in distribution even more relevant.

Arbitrators experience

- The specific experience in distribution matters may warrant a special understanding of the underlying economic and managerial situation.
- The cases described by the prospective arbitrator may also describe the experience made in negotiating agreements or preventing litigation through negotiations, settlement agreements either directly or via the intervention of professional mediators.

Arbitrators experience

- The application form allows to mention experience gained as in-house counsel assisting external counsel as well as direct experience as in-house counsel.
- Such an experience useful in case of a pro-active role of the arbitrator in view of the settlement (see recommendations).
- The IDArb commission will organize specific training courses on arbitration with specific reference to the Swiss Rules to be held in Geneva.

Usages, practices and principles

- Arbitrators as commercially minded problem solvers who should give commercially reasonable meaning to the contract keeping in mind usages, practices and principles.
- Especially usages and practices tend to be dignified by the business community with a status equivalent to that of actual law.
- The practitioners could help to discover the law from their knowledge of the international business practices.

Usages, practices and principles

- “Quoi qu’il en soit, qu’elles le précisent ou non dans leur compromis, les parties attendent généralement de l’arbitre qu’il applique à la solution du litige, d’abord leurs stipulations contractuelles et, à côté de ou même à la place d’un droit étatique particulier, les usages du commerce, les conditions générales ou les principes généraux admis dans le milieu ou la branche considérés.” (Pierre Lalive, Sur la contribution de l’arbitrage au développement d’un droit du commerce international- Geneve 1977).