Expedited Arbitration at the SCC: One Year with the 2017 Rules

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> *"In its origins, the concept of arbitration as a method of resolving disputes was a simple one . . . . Two traders, in dispute over the price or quality of goods delivered, would turn to a third whom they knew and trusted for his decision."* (Redfern & Hunter 2014 at 1-03)

Arbitration has strayed quite far from this rosy picture, as business transactions have grown ever more complex and globalized over the past several decades. The trend has consistently led toward longer, more complex and resource-intensive proceedings, causing some users to complain of arbitrations that are over-lawyered and overly sophisticated and neither quicker nor more efficient than proceedings in national courts.

Expedited arbitration stands in contrast to this trend; arguably, it still bears some resemblance to Redfern & Hunter's portrayal of arbitration's origins. In an expedited proceeding, the dispute is heard by a sole arbitrator, and the parties are allowed a limited number of submissions and shorter time frames than in a typical arbitration.

In 2017, the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) launched revised Rules for Expedited Arbitration ("Expedited Rules"), following a two-year review that took into account user feedback and the Institute's own experience. The revision process sought to update the Expedited Rules and offer users an even more streamlined, efficient and cost-effective dispute resolution process. One year after the revised rules entered into force, the following observations can be made.

- ***Front-loading the case.*** One significant change in the 2017 Expedited Rules was that the Request for Arbitration also constitutes the Statement of Claim, and that the respondent's Answer also constitutes the Statement of Defence (Art 6 & 9). This "front-loading" of the case aims to save time by having the main submissions in place when the arbitrator receives the case file. The rules do not stipulate a time limit for the respondent's Answer, but the SCC typically gives four weeks from when the respondent is served. Although some observers were nervous that this "front-loading" would create confusion among users and counsel, the new procedure has been welcomed by parties and arbitrators alike and has worked well in practice.
- ***Limited submissions, short time frames.*** The 2017 Expedited Rules stipulate that each party may make one supplementary written submission in addition to the Request for

Arbitration and the Answer (Art 30). The arbitrator may, of course, request the parties to make additional submissions if the circumstances are compelling. The rules also specify that submissions should be brief and, importantly, that the timeframe for submission must not exceed 15 working days; this time may of course be extended by the arbitrator when necessary. In the spirit of expediency, the rules also require that a case management conference be held *promptly* after referral, and that a timetable be set within seven days. In the SCC's experience, arbitrators, parties and counsel generally accept and comply with these deadlines.

- ***No hearings.*** As a main rule, an expedited arbitration should be in writing, but in practice a brief hearing is often held. In the 2017 Rules, the provision relating to hearings was revised so that a hearing is to be held *only if* a party so requests *and* if the arbitrator considers that special reasons exist (Art 33). So far, a hearing has been held in about one-third of the cases initiated under the 2017 Expedited Rules. The absence of a hearing typically contributes to a quicker resolution of the dispute. In 2017, 54 percent of awards under the expedited rules were rendered within 3 months of referral, and another 38 percent within 6 months.
- ***The arbitrator's mandate.*** Prior to the revision of the Expedited Rules, some arbitrators complained that the parties' expectations of the arbitral proceedings did not match the framework of the rules. This motivated several changes in the revised rules; notably, the arbitrator was given a greater mandate to limit the proceedings and reject parties' requests for further submissions or longer hearings. The Expedited Rules now support the arbitrator's efficient handling of the dispute even in situations where the parties cannot agree on the procedural framework. The article regarding the conduct of the arbitration now places greater emphasis on efficiency and expediency, and instructs the arbitrator to "consider at all times the expedited nature of the proceedings" (Art 24).
- ***Rules upgrade.*** The Expedited Rules apply only where the parties have so agreed. Most commonly, this is by stipulation in the arbitration agreement, but it also happens that the parties agree on the expedited procedure after a dispute has arisen. A new provision was introduced in the 2017 Expedited Rules whereby the SCC may invite the parties to "upgrade" to the regular Arbitration Rules (Art 11). In assessing whether a dispute is suited for expedited arbitration, it is not necessarily the value of the parties' claims that is determinative; the question is rather if the complexity and the nature of the dispute allows for it to be decided through a limited written exchange and without extensive oral evidence.

Of the 200 new arbitrations registered by the SCC in 2017, 72 were expedited cases. This was a significant increase over previous years; typically around one-fourth of the total SCC caseload have been disputes under the Expedited Rules. In 2016, there were 55 expedited arbitrations out of 199 total.

Most of the expedited arbitrations administered by the SCC are related to commercial agreements between small and medium-sized companies in Sweden, or within the EU. These disputes often arise out of relatively limited, straightforward business transactions where there is no need for full-fledged arbitration, or where the value of the transaction makes regular arbitration cost-inefficient. Through the expedited arbitral proceeding, the parties receive a quick and just resolution to their dispute, allowing them to get back to business. Sometimes, the parties' business relationship even survive the brief arbitral process.

In agreeing to arbitrate under the Expedited Rules, arbitration users are aware of the limited scope of the procedure; in a sense, they are agreeing to resolve their disputes in the same spirit as the merchants in Redfern & Hunter's historical retrospect on arbitration. Perhaps this procedural simplicity is precisely what has made expedited arbitration an increasingly attractive dispute resolution method.