

Kluwer Arbitration Blog

What is the Value Proposition of an Arbitration Institute?

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In recent years the arbitration community has embraced digitalisation. Already before the pandemic we were exploring the use of legal tech and even thinking of how artificial intelligence would profoundly change our business and our profession. Most likely the form and content of the services we provide will be different in the future due to the technological development.

The technology driven development is product based – focused on how to change what we do and how we conduct arbitrations. I believe that instead of and on top of focusing on the product and its features, the arbitration community should focus more on our customers and on what they want and need from us.

The first step in focusing on the customer would be to understand who the customer is. As funny as it might sound, I am not sure if this is always that clear in the arbitration community. In arbitration the link to end customers is less clear than in some other fields of law. Part of the business such as arbitrator appointments come mostly through the dispute resolution community and not directly from the end users. From an institute's perspective remembering who the actual customer is might be even harder. The institutes mostly work with and are in contact with other stakeholders than the parties or the end customers in a broader sense, such as the counsel, the arbitrators, the board members, academics and generally the broad arbitration community. This might easily distort the view on the purpose of what we do.

Most of the discussion on arbitration in general and on the services offered by the institutes is within the arbitration community, of which the parties or the actual end customers in a broader sense are rarely a part of. The arbitration community is often interested in very specific issues rising from within the arbitration community such as interesting procedural problems or innovations, legal questions that are of interest mainly to experts and statistics which might not be a priority for the parties. In other words, the discussion is very product orientated and focused on the work of the community. For us in the institute it is easy to join this discussion and focus on these themes rather than on the needs of the parties and the end users, who do not dominate the discussion on arbitration and who do not seem to have a voice.

It is, however, the parties and the end users in general that in the end pay for all the services provided in the system. It is in the end through the parties that all the added value of the institution of arbitration to the society is created. Our WHY, the increased efficiency of the society through expedient conflict resolution and protection of rights, can be served only through the parties and end users. That is why we should always focus on how to serve the parties, not on how to get the

respect and appreciation of our distinguished colleagues or how to serve the interests of other stakeholders in the system.

Knowing that the parties and the end users are our customers, not the arbitrators or the lawyers, we should always remember to ask why the parties wish to use our services. All too often the answer relates to qualities of our product – in relation to institutes we discuss issues such as whether the rules respond to the latest discussion topics of the arbitration community and include rules on emergency arbitration, early dismissal, whether the awards are scrutinised, whether the institute offers a platform for case management or even whether the institute is internationally appreciated and acknowledged. Instead of the qualities of the product we should focus on our value proposition – what is the added value that we provide for the customer, how does using our product benefit the customer, what are the gain creators of our service, which problems of our customers the service solves, and which pains it relieves. All this sounds self-evident, but it has in my opinion been forgotten in the background.

What is the value proposition of arbitration for the end users? What is the reason companies include arbitration clauses in their contracts? The classic arbitration answer would most likely be something in the line of the classic pros of arbitration – speed, expertise, flexibility, enforcement, and confidentiality. These may be competitive advantages of arbitration as a method of dispute resolution but not really value propositions from the customer perspective. From the end customer perspective, I would say, the value proposition is firstly faster, more reliable, and more foreseeable enforcement of their substantive rights than in state courts and thus more foreseeable and financially better result of the project to which the substantive contract relates, as well as shorter duration of uncertainties affecting the business. Secondly, I would emphasise the saving of internal resources and focus on the dispute because of the efficient procedure and thus the alternative results that the resources and time allocated to core operations of the customers. Third value proposition would be the saving of legal costs and the alternative results that saved resources produce when allocated to other projects yield. The important thing to remember is that the customer is not really interested in how the value is created.

From perspective of a service provider in arbitration this approach does not really turn the world upside down. To fulfil the value proposition we need to work for an efficient and reliable procedure and keep the costs under control. The procedure has to be flexible and it has to be fair to guarantee enforcement and acceptability. This is often at what many of the aforementioned discussions of the arbitration community are aiming. The value proposition approach, however, helps us in identifying what is most important to the end users. The topics, products and features which are unrelated to value propositions are a luxury that we should not necessarily allow ourselves, especially since there is always room for improvement in issues related to value propositions.

For example, at the [Finland Arbitration Institute](#) (FAI), we have applied the value proposition approach firstly in focusing our efforts on shortening the internal duration of the cases at the FAI, before the transmission of the case file to the tribunal. We believe that this is crucial for customer pains and gains. Secondly, we planned our annual arbitration event around the needs and problems of our end customers and our solutions to them. We decided to do this although the audience is mostly the arbitration community.

Ultimately, the value proposition of the service for customers is linked to the purpose of the institution of arbitration in the society. The more efficient disputes are solved and the more

efficient the protection of substantive rights is, the more efficient the whole society works. Thus, focusing on value propositions does not mean prioritising business over law.


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