

Videoconferencing Technology in Arbitration: New Challenges for Connectedness (2020 Survey)

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In June 2020, we ran a survey of users' experiences with remote hearings. Our preliminary findings, which we published in *International Arbitration and the COVID-19 Revolution* (edited by Maxi Scherer, Niuscha Bassiri, Mohamed S. Abdel Wahab) showed that over ten times more fully remote hearings appeared to have taken place on an annualised basis in the second quarter of 2020 than at any time previously (for a definition of 'fully remote hearings', see Maxi Scherer's May 2020 blog post, *Remote Hearings in International Arbitration - and What Voltaire Has to Do with It?*).

This dramatic change over a limited period of time in the conduct of arbitration hearings relied on videoconferencing tools that had been available for many years already (at different stages of development), but tended to be reserved for the examination of witnesses and experts who could not physically attend the hearing.

The present post discloses additional, previously unpublished, findings from our survey, including user preferences in relation to the available videoconferencing tools for hearings; users' experiences with webinars; users' priorities when

selecting or investing in technology; and how these various insights might inform or impact users in the workplace.

1. Preferred videoconferencing technology for hearings

The survey identified five preferred videoconferencing platforms out of a selection of eight choices: the most popular was Zoom (first launched in 2013), followed by Microsoft Teams (first launched in 2017), Cisco WebEx (acquired by Cisco in 2007), GoToMeeting (first launched in 2004) and finally BlueJeans (first launched in 2011).

Zoom was appreciated for its ease of access, functionalities and reliability, but questions were raised as to privacy, likely in light of reports in and around April 2020 about Zoombombing (the term has been used for unwanted, disruptive intrusion into videocalls and is not limited to when this happens on Zoom). For this reason, mainly, some users preferred to use Teams and WebEx.

One limitation of these findings is that they do not make reference to the access barriers generated by these technologies. These had become more visible and better understood by the end of 2020, as was apparent from the discussions at GAR Interactive: Africa (2020) or in Maguelonne de Brugiere and Cherine Foty's December 2020 blog post, *Sustainability and Diversity in the Newly Virtual World of International Arbitration*, which considered the impact of "low bandwidth internet connections, poor video streaming quality, or electricity shortages and power outages" (in the context of participation in webinars), and discussed how "the transition of international arbitration to a virtual setting has also impacted historically disadvantaged and underrepresented women and minorities, creating opportunities for increased visibility and participation while exacerbating existing biases."

With hearings moving online came the question of how to show evidence. Survey respondents most preferred screen sharing (39%); next, for everyone to follow on their own side, e.g., in their own paper bundle or on their computer (31%); and, finally, showing excerpts in a PowerPoint during oral submissions (17%) and referring to tags in an electronic bundle (10%). A related question about electronic bundles and providers showed that a majority of survey respondents (74%) did not have an opinion on these tools or their suppliers, which suggests that there is limited experience generally with such solutions.

Finally, users in their comments recommended to exercise caution with electronic solutions so as to avoid, in the words of one survey respondent, the *“risk of a witness being ‘tricked’ into looking at a part of a document by the cross-examiner as [there is] no possibility to ‘scroll down’ or consider the entire document before answering the question”*.

2. Webinars we love to hate

The above videoconferencing platforms also supported the move online of arbitration events and conferences. Survey respondents were asked what they preferred or disliked about webinars, and could provide multiple answers.

They most valued the access webinars provided to knowledge, ideas, speakers from around the world, and global audiences (40%); the convenience of webinars (33%); cost savings (18%, including in relation to the cost of conferences and the cost of travel); and connectedness (10%).

Conversely, webinars were also criticised for failing to facilitate connectedness at the same level as in-person events, due to not being able to network or interact with other participants or the speakers (43%). Other survey respondents stated that there were too many webinars (23%). The remaining answers referred to technological issues (10%), the quality of speakers (10%), digital fatigue (7%), and lengthy speaker introductions (7%).

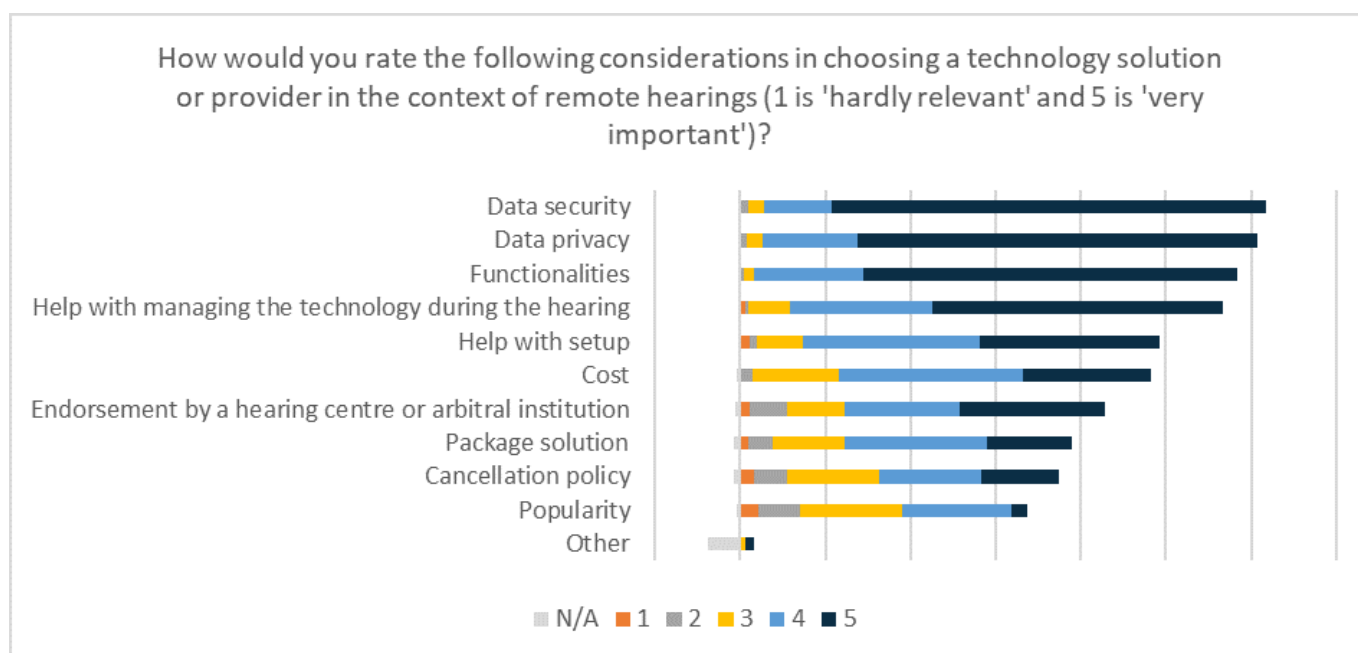
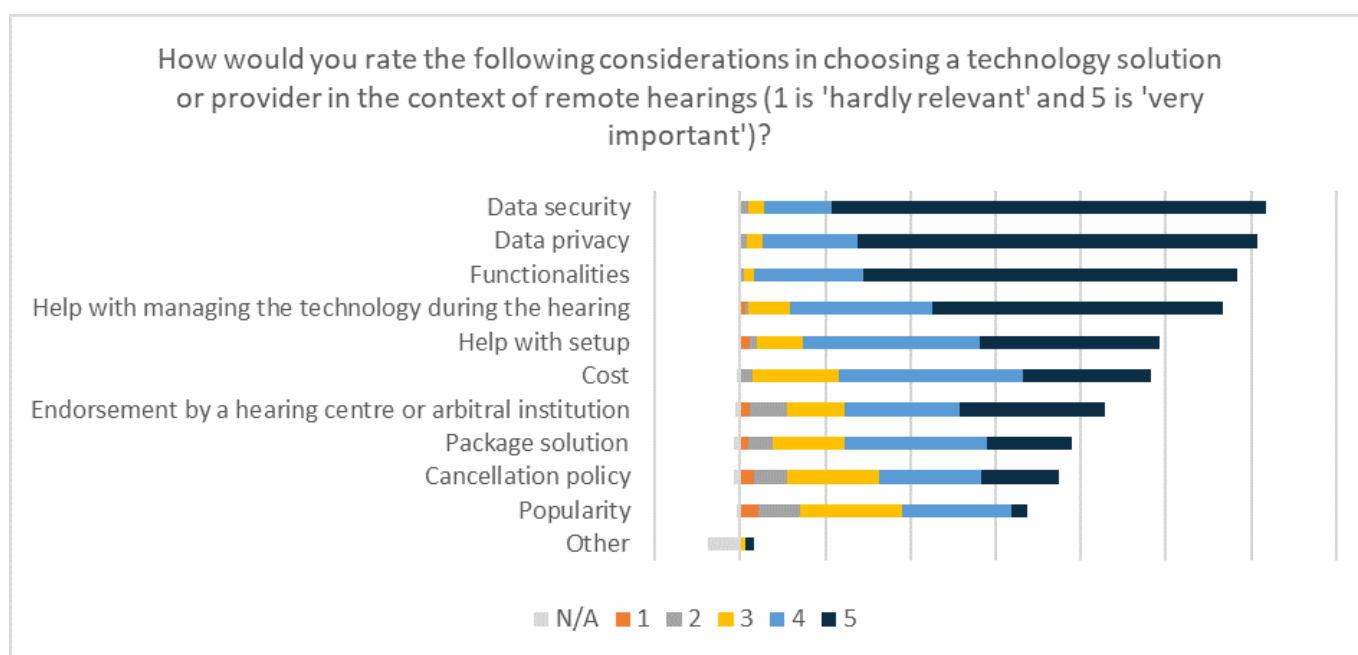
While inevitably there have been concerns over the proliferation of webinars, these new online forms of interactions have also been very positive in terms of diversity – of speakers, of audiences, of ideas. Webinars have helped to ‘open up’ the arbitration community (as discussed at p. 9 of the September 2020 ArbitralWomen Newsletter), and have created ‘Silver Linings for Young Arbitrators in Africa’, as discussed in Ibrahim Godofa and Mercy Okiro’s July 2020 blog post, including from the move online of professional training and skills development courses. An example of this is Delos Dispute Resolution’s Remote Oral Advocacy Programme (ROAP), which brings together participants and faculty across continents and was shortlisted earlier this year for GAR’s Best Innovation Award (2021).

We would also highlight ‘Mute Off Thursdays’ as another successful combination of connectedness, ongoing learning, networking and diversity. The initiative was

shortlisted earlier this year for GAR’s Best Innovation Award (2021) and won the GAR Pledge Best Diversity Initiative Award (2021).

3. Priorities when selecting or investing in technology

Our survey asked respondents to indicate what considerations went into (i) choosing a technology solution or provider in the context of remote hearings, and (ii) investing in technology generally. While both questions did not necessarily call for the same answers, the two following figures show very similar priorities:



In both cases, data security and privacy were top of mind, followed by functionalities/efficiency. It is only in fourth and fifth position that survey respondents referred to the need or a desire for human interaction or help, which suggests an expectation that the technology will be intuitive and relatively easy to use on one's own. Cost was sixth in the order of priorities. All other considerations, including environmental, ranked much lower.

Looking back a year later, one noticeable absence from the list is 'health'. Sophie Nappert and Mihaela Apostol noted in their July 2020 blog post "*the physical and psychological challenges presented by the sudden omnipresence of video conferencing in professional life*", and the consequent physical and mental strain (see Healthy Virtual Hearings). As we gradually become more aware of the multiple implications of our new hybrid environment, it is to be hoped that health considerations will make their way towards the top of the priority list when considering choices of and investments in technology, both for ourselves and for our teams.

4. Videoconferencing and other tech solutions: impact on the workplace?

Our survey asked respondents to reflect on their experience of Covid-19 lockdowns by sharing whether they might henceforth prefer working remotely or at an office (respondents could provide multiple answers).

Proponents of working from home (frequently abbreviated as 'WFH') cited concentration (30%) and flexibility (30%) as the greatest benefits. While only 5% answers expressly mentioned 'family' as a benefit of working from home, we understand 'flexibility' to include family considerations. Additionally, respondents mentioned saving time (20%), the comfort of their home environment (13%), and health reasons (8%) as part of why they enjoyed working from home.

For those who preferred the office environment, the answers highlighted in equal measure team collaboration (ease of communication and coordination, efficiency) (32%), the office setup (meeting rooms, IT, printers and hard copy documents, support staff, library - and separating the workplace from home) (32%) and the atmosphere (collegiality and team culture, socialising) (32%). Only a couple of answers focused on being able to concentrate better.

The final question of our survey asked as follows: “[a]s a law firm, funder, institution or chambers, do you plan on reducing in the medium to long term the size of your offices [referring to the physical space as opposed to staff]? If so, do you already have plans on reinvesting the corresponding savings?” 61% of those who answered the question said that there were no such plans, 6% that there could be, while 33% were clear about downsizing their office space. One respondent indicated that the savings would be used to increase partner returns while another stated that they would be invested in training.

5. Concluding remarks

The picture that emerges from our survey is that, as of July 2020, videoconferencing platforms and related technology had been largely beneficial in supporting remote access, be it for the purposes of hearings, events, or even working from home; but the resulting lack of in-person interaction had created new challenges in terms of connectedness, and users were concerned about data security.

These observations point to the emergence of hybrid solutions in every aspect of our work, which is also a finding of the recently published 2021 International Arbitration Survey, *Adapting Arbitration to a Changing World*, Queen Mary University of London and White & Case (Chart 17).

The results from our survey shared here are companion to, as mentioned, those published in *International Arbitration and the COVID-19 Revolution* (edited by Maxi Scherer, Niuscha Bassiri, Mohamed S. Abdel Wahab), then developed in ‘Remote Hearings (2020 Survey): A Spectrum of Preferences’, (2021), 38, *Journal of International Arbitration*, Issue 3, pp. 292-308. Alongside this post, a data sheet, published by Delos on its website page dedicated to this survey, completes this trilogy of commentary. We take this opportunity to renew our thanks to the many institutions, organizations, and individuals that kindly supported the survey.