Kluwer Arbitration Blog

Efficient Arbitration – Part 1: Metrics

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This is the first in a series of articles by Schoenherr focusing on efficiency in arbitration. In our series, we will explore various tools which serve to improve the efficiency of any given arbitration and so achieve a favourable outcome without wasting resources.

But before exploring those tools we need to determine what efficient arbitration actually means.

Thanks to its well-known advantages, arbitration has grown exponentially over the past few decades. However, as more complex, high-value disputes emerge and become regular subjects of arbitral proceedings, the length and cost of these proceedings inevitably increase. In fact, cost is now regarded as one of, if not the, worst feature of international arbitration (IBA Compendium of Arbitration Practice 2017).

This has not only spawned a torrent of third-party funding (an initiative to de-risk dispute resolution through the involvement of a funder), but a general push for efficiency in arbitration. For the past few years, law firms have been flagging efficiency as the year's hottest trend. Possible solutions and tools have been evaluated in surveys, protocols, institutional guides and panel discussions. The recent tightening of institutional procedures, including expedited and summary disposition, is yet another example of the impact of this quest.

But efficiency is not just about cutting costs. Some argue that efficiency can be measured against two standards: time and money. In his article *Key to Efficiency in International Arbitration*, Veijo Heiskanen explains that in terms of money, arbitration may be deemed efficient if its costs are significantly less than the value in dispute. Thus, the greater the difference between the amount awarded and the fees spent, the more efficient the arbitration. The same could apply in terms of time. But a shorter arbitration is not necessarily an efficient arbitration. While it may save the party money in the immediate term, it could result in a less persuasive case and an unfavourable award. In a slightly longer arbitration, on the other hand, the parties could present their case more compellingly and thoroughly, which may result in a more favourable (and economic) award.

But time and money aren't everything. Efficiency is also about quality. In her article *Efficiency in Arbitration: Whose Duty Is It?*, Jennifer Kirby postulates the concept of the "Iron Triangle", in which efficiency in arbitration is the relationship between time, money and quality. When less time and money are spent on arbitration, its quality suffers. It is only when time and money are spent (or rather, wasted) on things that do not contribute to improving the arbitration that time and money can be reduced without affecting the quality.

Therefore the key to efficiency is to identify when resources are being invested and when they are being wasted – a daunting task. A variety of tools can help to identify and avoid unnecessary expenditures throughout the proceedings. We will introduce and explore these tools in the course of our series.

After all, if the right tools are chosen, arbitration will be efficient. The parties will end up with a quality arbitration free of unnecessary costs, and still be in a position to achieve the best possible outcome.

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