

Swiss Supreme Court upholds broad interpretation of objective scope of arbitration agreement

by *Prof. Dr. Nathalie Voser* (Partner), Schellenberg Wittmer Ltd

Legal update: case report | **Published on 12-Feb-2020** | Switzerland

In *Decision 4A_342/2019*, the Swiss Supreme Court continued its restrictive approach to jurisdictional challenges and dismissed an application to set aside an award in which the arbitral tribunal had assumed jurisdiction on the basis of an arbitration clause in an agreement unrelated to the specific dispute between the parties.

In a German-language decision of 6 January 2020, the Swiss Supreme Court refused to set aside an International Chamber of Commerce (ICC) award and upheld the arbitral tribunal's interpretation of the arbitration clause.

In a partial award on jurisdiction and liability dated 3 June 2019, the arbitral tribunal had held that a Quality Assurance Agreement (QAA) providing for the arbitration of "contract disputes", which formed part of a commercial supply relationship comprising several agreements with substantially similar arbitration clauses, should be interpreted to also include disputes arising from the supply relationship unrelated to quality assurance. The applicant applied to the Supreme Court to vacate the award, arguing that the arbitral tribunal had wrongly assumed jurisdiction as the dispute between the parties undisputedly did not concern matters within the material scope of the QAA.

The Supreme Court considered that it could not be inferred from the term "contract disputes" in the QAA that the parties had intended to submit only disputes arising directly out of the QAA to arbitration. Rather, the QAA, while addressing specific issues, formed part of the contractual framework governing the supply relationship. The court emphasised that it was not extending the arbitration clause in the QAA to other independent contracts, but considered that the applicant could not have, in good faith, understood the arbitration clause in the QAA as covering only specific aspects of the supply relationship. Rather, the applicant should have understood the clause to mean that the chosen form of dispute resolution should apply to the entire supply relationship. Therefore, the Supreme Court concluded that the term "contract disputes" used in the arbitration clause of the QAA had to be understood as covering all disputes relating to the supply relationship, including those concerning the existence of an obligation to supply.

Case: *Decision 4A_342/2019* (6 January 2020).

END OF DOCUMENT

Related Content

Topics

[Arbitral Awards and Challenges](#)

[Arbitration Agreements](#)

Practice notes

[Arbitration in Switzerland](#) • [Maintained](#)

[Enforcing arbitration awards in Switzerland](#) • [Maintained](#)

[Drafting international arbitration agreements: an overview](#) • [Maintained](#)

Standard clauses

[Switzerland: ad hoc arbitration clause](#) • [Law stated as at 20-Mar-2019](#)

Country Q&A

[Enforcement of judgments and arbitral awards in Switzerland: overview](#) • [Law stated as at 01-Nov-2019](#)

Toolkit

[International arbitration clauses toolkit](#) • [Maintained](#)