

INTERNATIONAL WORKSHOP ON ARBITRATION & ALTERNATIVE DISPUTE RESOLUTION (ADR) IN AFRICA

THE FUTURE OF ARBITRATION & ALTERNATIVE DISPUTE RESOLUTION (ADR) IN THE TELECOMMUNICATIONS INDUSTRY

Preliminary Definitions

- Definition of Arbitration :This is the process of dispute resolution in which a neutral third party renders a decision after a hearing at which both parties have the opportunity to be heard. The processes include:
 - Compulsory Arbitration
 - Final Offer Arbitration
 - Voluntary Arbitration
 - Interest Arbitration; and
 - Grievance Arbitration

- Definition of Alternative Dispute Resolution (ADR): This is a blanket term describing a variety of processes designed to resolve disputes without litigation or adversarial hearing procedures. The primary objectives of ADR include
 - To ensure fairness
 - To facilitate and clarify issues through open discussion
 - To develop creative solutions
 - To promote mutually satisfactory resolutions
 - To allow for amore efficient process

Overview of Resolution Techniques

- There are various common official and non-official ways of resolving disputes:
 - Regulatory Adjudication
 - Court Adjudication
 - ADR: Alternative Dispute Resolution
 - Negotiation & Mediation
 - Arbitration

ADR Techniques Available & Benefits

- The following ADR Techniques are available:
 - Conciliation
 - Facilitation
 - Mediation
 - Negotiated Rule making.
 - Ombuds service

- Fact finding
- Early neutral evaluation
- Mini- trial
- The benefits of ADR include
 - Reduced Legal costs
 - More amicable relations amongst disputing parties
 - Greater likelihood of compliance as disputants craft resolution rather than having decisions imposed.
 - Help parties find common ground and discover solutions that provide mutual gain.
 - Parties are more likely to comply with a commission order adopting terms of a joint proposal and achieve satisfaction when they contribute and share responsibility for its creation.

Current practice- Disputes & Techniques

- Disputes arise in various circumstances. Those which have the greatest impact on sector investment and growth include:
 - Disputes related to Liberalization
 - Interconnection disputes
 - Consumer disputes
 - Radio Frequency disputes
 - Investment and Trade disputes

Key perspectives on Dispute Resolution

- Dispute Resolution in the telecom sector is at a relatively early stage. While there are complex issues and perspectives, some key ones are most relevant in designing dispute resolution processes:
 - Changing patterns and assumptions
 - Economics of dispute resolution
 - Market power asymmetries
 - Confidentiality and transparency
 - Dealing with complexity.

The Role of Official and Non-Official Sectors in Dispute Resolution

- A well resourced official sector-utilizing regulatory adjudication and the courts is crucial to a successful dispute resolution environment. However, alternative approaches are often useful to deal with the lack of available regulatory or judicial resources, or where less formal techniques offer particular advantages.
 - Drawing on non-official resources
 - Quality control over official and non-official processes
 - Confidence factors in relying on non-official approaches

Improving Telecom Dispute Resolution

- At this early stage of development of global telecom sector dispute resolution, it is not appropriate to provide uniform recommendations as to how to design and conduct dispute resolution procedures.
- Countries vary in their stage of market development, regulatory approaches, dispute resolution and general business cultures, as well as in types of disputes that commonly arise.
- The following steps can be taken by policy makers and regulators and related organizations to improve approaches to dispute resolution
 - Publish adjudicatory decisions and facilitate access to them through the Internet and other means to provide resources for regulators and other adjudicators as well as other disputing parties and their advisors.
 - Tap into the human resources available to dispute resolution by establishing panels of arbitrators and mediators and collaborating with existing arbitration and mediation institutions.
 - Publish and organize precedents of innovative dispute resolution procedures including less formal approaches, in order to promote their adoption.
 - Improve networking among regulators internationally to exchange dispute resolution experience.
 - Increase cross-pollination of ideas and collegial sharing of experiences between telecom sector and the dispute resolution communities, in order to improve application of effective techniques in resolving disputes.

Conclusion: The Future of Arbitration & ADR

- Successful dispute resolution is increasingly important for attracting investment, competition and development. Dispute resolution mechanisms in the telecom sector need to be as speedy as the networks and technologies they serve.
- It is important for policy makers and regulators to use minimal but well focused regulatory intervention to create an enabling environment where industry players' incentives influence them to resolve disputes constructively.
- This can often involve the use of appropriate alternative dispute mechanisms.