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Lights and Shadows of Commercial Arbitration in Argentina: A Survey of Recent Court Decisions

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Overview

It seemed only natural that after devoting our last two contributions to *The Arbitration Review of the Americas* to issues and developments in the investment arbitration field, our country chapter for this 2012 edition would instead focus on matters concerning commercial arbitration.

This shift is especially fitting as we review the year 2011, which began on a high note right after the end of the January court holidays courtesy of one of the permanent panels of the leading appellate court handling commercial matters in Argentina: the Buenos Aires Commercial Court of Appeal (CNCOM).

The CNCOM is divided into six permanent panels or branches (*salas*), identified with letters A through F, and each panel is in turn composed of three permanent appellate judges.

The high note was a decision rendered on 7 February 2011 by Panel D of the CNCOM in the case of *Sociedad de Inversiones Inmobiliarias del Puerto SA (SIIPSA) v Constructora Iberoamericana SA (CIB)*.[1]

In this article, we will comment on some of the salient features of the *SIIPSA* decision within the context of a broader picture, which has been characterised during the past few years by lights and shadows that seem to dot the landscape of commercial arbitration in Argentina. *SIIPSA* comes more than three years after Panel D of the CNCOM produced another remarkable decision, the widely praised *Mobil v Gasnor* case,[2] which in turn came three years after the widely criticised *Cartellone* decision of the CSJN.[3]

A digression on how to diagnose a healthy arbitration environment

It is no secret that to a large extent, the good health of commercial arbitration in any given country will ultimately be measured by the nature of the interactions that flow between that country's arbitration machinery (arbitrators, arbitral institutions and the businesses and individuals who choose to settle their disputes through arbitration) and the country's court system. Of course, it helps significantly if the country under review has adopted a modern arbitration legislation, preferably one based on the UNCITRAL Model Law, but the most important and pressing questions one normally asks when assessing the state of affairs of commercial arbitration in a specific country have more to do with whether or not at this point in time certain core concepts of arbitration law have been internalised by the courts. We are referring to concepts and principles such as:

- the arbitrability of most (if not all) disputes ultimately involving questions of money, even if the arbitrators – in order to fulfil their jurisdictional task – must examine and apply legal rules and principles that are part of the public policy (*ordre public*), of the relevant jurisdiction;
- the supplementary notion that it is only when the holding of the award is contrary to public policy that the award may be unenforceable or voided;
- the principle of the autonomy of the arbitration agreement and its separability from the contract to which it may be incorporated;
- the concept that arbitral awards should only be set aside when serious procedural defects have affected the conduct of the arbitration (errors in *procedendo*) to the point of hampering due process guarantees (this includes extra petita situations);[4]
- the reverse of the coin, in other words, that errors in judicando, whether of a legal or a factual nature, should never give rise to the annulment of an arbitral award;
- the principle that the parties may waive in advance all ordinary appeals and recourses that may have otherwise been at their disposal, which is a staple in modern institutional rules,[5] acknowledging, however, that the parties may be prevented by law – as it happens under Argentine law – from waiving their right to seek the annulment of the award, a tool of last resort to ensure that due process has been respected;
- the rule that the procedure for obtaining the recognition and enforcement of an arbitral award should never become an opportunity for an overt or covert de novo review of the merits of the case.

The situation in Argentina

In Argentina, we find ourselves in a rather lukewarm middle ground (the lights and shadows of our title). We are far from being in an environment that is completely hostile to arbitration, but we are also far from being the modern arbitration centre that we believe we could be.

Our point of departure is decisively bleak: our arbitration law is outdated, being as it is still encapsulated just as a chapter within our 1967 National Code of Civil and Commercial Procedure (CPCC). Several congressional bills have come and gone, but no concrete progress has been achieved, for example, in the effort to adopt a local version of the UNCITRAL Model Law, such as other Latin American countries have done.[6]

However, looking at the bright side of the image, Argentina ratified the New York Convention in 1989, the Panama Convention in 1994 and the ICSID Convention also in 1994.

Furthermore, the body of jurisprudence that has developed over the course of more than a century, beginning perhaps with a celebrated 1891 decision from the CSJN,[7] is on balance rather favourable to arbitration. Sadly, it is also true that too many court decisions, year after year and even in cases where judges end up upholding an arbitration agreement or an award, routinely include dicta and caveats to the effect that arbitration is an exceptional means of solving disputes and that therefore all arbitral agreements "must be construed narrowly", a sort of dogmatic mantra that has no constitutional or legal basis whatsoever.[8]

Too many courts still confuse the question of the non arbitrability of certain issues[9] (eg, criminal law cases, although civil liabil-

ity issues arising from crimes are subject to arbitration; family law matters, etc) with instances where, in order to adjudicate a perfectly arbitrable dispute, the arbitrators must review and apply laws and regulations that are (correctly or incorrectly) classified a priori as part of the country's public policy.[10]

Seven years ago, a loud noise came to disturb the scene at our semi-comfortable middle ground and it came in the form of the *Cartellone* decision. It is now probably safe to say that some of the most pessimistic forecasts about the future of arbitration in Argentina that came immediately after *Cartellone* proved to be exaggerated, but it is equally safe to say that the adverse effects of that decision are still felt, and that the holdings and dicta of *Cartellone* still pose a serious limitation to the development of a healthy commercial arbitration environment.

Cartellone briefly revisited

As many of our readers may know, the *Cartellone* decision sent shockwaves that still reverberate in the arbitration community. Contrary to what many commentators who favoured the ruling said at the time, in *Cartellone* the Supreme Court was in no way applying time-tested doctrines or principles. Far from that, the June 2004 ruling meant a radical departure from consistent criteria that the Supreme Court had maintained for decades.

The *Cartellone v Hidronor* case pitted a major construction company against a state enterprise that was subsequently liquidated. The parties entered into an arbitration agreement that included a full waiver of any appeals and recourses against the award.

The claimant won the arbitration and the award ordered Hidronor to pay a large sum of money that was made up of the principal amount; an inflation adjustment to the principal, applying official price indexes (indexation became a practice that was sanctioned by the Argentine Supreme Court in 1976 and it lasted until 1991, in the midst of chronic high inflation and even hyper-inflation); and interest, at the rate that had been agreed upon by the parties.

Hidronor filed a request for annulment of the arbitral award and the court in charge of reviewing the case (Panel III of the Buenos Aires Federal Court for Civil and Commercial Matters) dismissed Hidronor's plea in 2001, in a ruling that still represents a fine example of a court correctly applying article 760 of the CPCC.[11]

Hidronor then did something quite unorthodox: it filed an ordinary appeal before the Argentine Supreme Court, based on the fact that as a state enterprise, the now liquidated company had the right to reach the highest court without going through the hurdles and restrictions that private litigants must endure under the rules of the so called extraordinary Supreme Court appeal, a road that is only allowed – at least in theory – when federal or constitutional questions are at stake.

The Supreme Court then effectively treated Hidronor's challenge to the award as an ordinary appeal; an appeal directed not only against the Federal Court's dismissal of the annulment petition, but also at the arbitral award itself. This was indeed a radical departure from the past practice of the Supreme Court, which up until then had only heard arbitration related cases if and when the aggrieved parties managed to show that an extraordinary, constitutional appeal was warranted against the lower courts' dismissal of the annulment petition (extraordinary appeals filed directly against arbitral awards were never permitted by the Court).

To sum up: in *Cartellone* the Supreme Court proceeded to revoke bits and pieces of the arbitral award, just like a regular appellate court might do with an ordinary judgment, for example, by changing the dies a quo of the inflation adjustment mechanism to be applied to the principal amount and by substituting a lower interest rate for the one that had been contractually agreed, even though Hidronor had not questioned the legality of that rate in a timely manner. Moreover, the rate was not challenged as a case of usury.

The Court disregarded the explicit waiver of appeals that the parties had included in their arbitration agreement, finding instead that any such waivers were subject to review by the courts.

The Supreme Court also held that arbitral awards could be set aside by the courts not only for the grounds specified in articles 760 and 761 of the CPCC (all of them directly or indirectly involving due process violations), but also if the awards were found to be "unconstitutional, illegal or unreasonable". This particular catchphrase, which has since been used by many other courts,[12] was actually picked up from a dormant obiter dictum that had been included without any elaboration in a 1975 decision of the Supreme Court concerning an award issued by a now defunct employment relations board.[13]

Early signs of discontent with *Cartellone*: the *Mobil v Gasnor* case

As reported at the time by this author to a mail list formed within the IBA arbitration community, on 8 August 2007, Panel D of the CNCOM unanimously rejected an attempt by a local natural gas distribution company (Gasnor) to set aside an ICC Award that was rendered in favour of a natural gas producer (Mobil Argentina, a subsidiary of Exxon Mobil).

Gasnor not only sought the annulment of the ICC Award, it also attempted to appeal the award on its merits in spite of the clear language of article 28(6) of the 1998 ICC Rules.

Gasnor argued that an all encompassing waiver of recourses, such as that contained in article 28(6) of the ICC Rules, collided with Argentine principles of public policy when the award turns out to be "unjust", "unreasonable" or "arbitrary" to the point of compromising the state's *ordre public*. As our readers may notice, the appellant was trying to use the *Cartellone* decision to its fullest possible extent, but Panel D resoundingly rejected Gasnor's arguments and found:

- that the waiver of ordinary appeals included in article 28(6) of the 1998 ICC Rules was valid and binding in an arbitration agreement entered into under the ICC Rules, and that the will of the parties must be respected by the courts;
- that the Supreme Court dictum in *Cartellone* had been the subject of authoritative criticism from several quarters;
- that the appellant had failed to show that public policy principles had in fact been violated by the ICC award; and
- that even though, with regards to annulment recourses, Argentine law indeed prohibits a priori waivers, in the case at hand, Gasnor had failed to show the actual occurrence of a violation of due process or an event of extra petita that would merit setting aside the award.

The SIIPSA case

Factual background

Sociedad de Inversiones Inmobiliarias del Puerto SA (SIIPSA), a real estate developer, entered into a contract with Constructora Iberoamericana SA (CIB), for the construction of a building complex in one of the most exclusive districts of Buenos Aires, the Puerto Madero area.

The contract was signed in July 1999 and work was expected to be finished by October 2000. Even though there were no international elements in their dealings, the parties included in their contract an ICC arbitration clause.[14] Disputes ensued after a series of delays occurred, and SIIPSA warned CIB that if the stoppages and delays continued, they would terminate the contract. CIB denied any fault on their part and in turn claimed that SIIPSA was at fault.

On 10 August 2000, SIIPSA finally terminated the construction contract and hired another contractor to finish the work in Puerto Madero.

Two weeks after the termination of the contract, CIB filed for protection under Argentina's Bankruptcy Law (ABL), using a procedure that is designed for the reorganisation and rescheduling of debts, without liquidating the assets of the debtor (a mechanism called concurso preventivo, which is analogous to title 11, chapter 11 of the US Code).

A short time after CIB filed for protection, SIIPSA began arbitration proceedings under the ICC Rules, seeking around US$12.5 million in damages. CIB answered the request for arbitration denying any breach or wrongdoing, and filed a counterclaim against SIIPSA for approximately US$8.5 million. The place of arbitration was Buenos Aires.

An overview of relevant aspects of insolvency law

A key feature of a *concurso preventivo* under the ABL is that the debtor retains possession and management of its business and assets. The debtor also retains standing to litigate, either as claimant or respondent, but no new claims arising from obligations that originated before the insolvency filing may be initiated. Instead, all prior creditors of the company undergoing a reorganisation must file proofs of claims with a court-appointed officer: the *síndico* (trustee).

As for lawsuits already in progress at the time of a *concurso preventivo* filing, the rule used to be (and still is, if one reads the first part of article 21 of the ABL) that an automatic stay is in place. However, after an amendment to the ABL was introduced in 2006, most pre-existing lawsuits against an insolvent debtor may continue before their original courts if the claimant so chooses. Once a final judgment is entered, the successful claimant must present its judgment to the trustee under a special procedure for belated proofs of claims. Of course, neither the trustee nor the bankruptcy judge may tamper with the res judicata effect of the other court's judgment, but they certainly can and must apply such mandatory rules of bankruptcy law as article 19 of the ABL, which suspends the running of interest as of the debtor's filing. Also, the judgment creditor must abide by the terms of any arrangement offered by the debtor that may have been approved by the court after passing the required majority of creditors.

Finally, article 21 of the ABL requires that the trustee be notified of any pre-existing litigation in order to allow the trustee to take part in the proceedings; even though, as said before, the debtor in a *concurso preventivo* retains full standing and continues to manage his assets. All this outlook changes dramatically if an individual or company is declared in bankruptcy (*quiebra*), because then the trustee takes over all of the debtor's assets and the debtor is also deprived of any standing in court, save for a very limited type of case.

CIB was ultimately declared bankrupt and put into liquidation. However, for CIB the change from a *concurso preventivo* into a fully fledged bankruptcy took place after the arbitration was concluded, thus not affecting the outcome of the issues we are reviewing.

Some words on insolvency and arbitration

The ABL contains only one provision concerning arbitration, which is included in the chapter dealing with liquidation bankruptcies. Article 134 states that any arbitration agreement to which the debtor may be a party is automatically terminated upon the court entering a bankruptcy decree, unless the arbitration tribunal has already been constituted. Under special circumstances, the court may also approve the constitution of an arbitration tribunal even after entering a bankruptcy decree and it may further authorise the bankruptcy trustee to enter into an arbitration agreement on behalf of the debtor.

In 2005, the Argentine Supreme Court confirmed a decision from Panel D of the CNCOM and ruled that an arbitration agreement was valid and binding on an Argentine company undergoing a *concurso preventivo* (Bear Service SA), thus enforcing the right of the defendant Mexican company (Cervecería Modelo SA de CV) to have the claim heard by an ICC Arbitration Tribunal sitting in Mexico City. In so deciding, the Court held that if article 134 of the ABL permits the continuation of arbitrations in cases of liquidation bankruptcies, a permissive approach towards arbitration was even more justified when the debtor was merely undergoing a reorganisation proceeding (Bear Service had tried to evade the arbitration clause of its importation and distribution agreement with Cervecería Modelo by filing suit with the Argentine courts).[15]

As for the rule in article 21 of the ABL concerning the mandatory notification to the trustee of all pre-existing lawsuits (*juicios*), the law seems not to be clear as to whether or not the word juicios also involves arbitrations. As we shall see very soon, this apparent lacuna in the law gave rise to CIB's principal argument in support of its motion to void the *SIIPSA v CIB* award.

Summary of the procedural history of the *SIIPSA v CIB* arbitration

The tribunal issued two preliminary decisions (described in the court case as "partial awards"), affirming both the validity of the arbitral agreement and the tribunal's jurisdiction to hear the case. The parties did not object or challenge the partial awards, neither then nor at any other time.

The final award was issued on 1 July 2004 and was made solely by the chairman of the tribunal, as prescribed by article 25.1 of the 1998 ICC Rules.[16] An addendum to the award was also issued by the chairman on 3 November 2004.

In short, the award found that SIIPSA was justified in terminating the contract with CIB and ordered CIB to pay the equivalent of approximately US$4.3 million plus interest, which would run until the date of payment (ie, well beyond 24 August 2000, which was the date of mandatory suspension of interest under article 19 of the ABL).

The award also found partially in favour of CIB's counterclaim and ordered SIIPSA to pay approximately US$373,000. However, in order to make matters simpler, in the addendum to the award, the chairman of the tribunal proceeded to offset SIIPSA's and CIB's respective credits and ordered CIB to pay only the balance (an amount just below US$4 million).

At no point during the arbitration proceedings was the trustee in the CIB insolvency case formally notified of the existence of the ICC arbitration, although the facts of the case indicate that the trustee was fully aware of it. CIB was still in full possession and administration of its assets at that time, and it could have raised the issue with the arbitration tribunal and also with the insolvency court; but according to the available information, CIB apparently did not raise any such objections in a timely manner, reserving instead the argument for a later stage, as it finally did, making the omission to notify the trustee the centrepiece of its request for the annulment of the award.

The grounds for annulment raised by CIB

CIB moved to have the award set aside on four sets of grounds.

- The first ground was all-encompassing and aimed at obtaining the total annulment of the award. CIB alleged that the entire arbitration was null and void because the trustee appointed by the insolvency court had not been notified, thereby prevent-

ing him from taking part of the arbitration. CIB thus posited a broader interpretation of article 21 of the ABL.

All of the other grounds were pleaded in the alternative, in the event the first argument was not upheld by the court.

- The second ground was that article 19 of the ABL was a peremptory norm and that the award was wrong in admitting the addition of interest beyond 24 August 2000 (the date when CIB filed for protection). This was pleaded as a request for a partial annulment of the award.
- The third set of arguments consisted of five separate allegations of unequal treatment of the parties by the tribunal, all of them ultimately related to defects in the evidence gathering process that allegedly had prejudiced CIB's case. CIB chose to describe these arguments also as "partial annulment" requests, although one fails to see how the court could have isolated the specific impact of each alleged equal treatment violation.
- Finally, the fourth argument raised by CIB was that the ICC tribunal had exceeded its powers when offsetting the credits of SIIPSA and CIB since no such set-off had been authorised in the terms of reference.

The decisions of the Court

In dismissing all but one of the challenges raised by CIB, Panel D of the CNCOM[17] began by recalling its 2007 decision in the *Mobil v Gasnor* case, stating once again that an express waiver to appeal an arbitral award (or a rule like article 28 (6) of the 1998 ICC Arbitration Rules) did not violate public policy principles, especially considering that article 760 of the CPCC provided enough protection by means of the annulment procedure, which was not subject to a priori waiver. The Court nevertheless emphasised the narrow scope of the review in an annulment case as compared to the broad nature of an appeal.

The total annulment request

In rejecting the main cause for annulment proposed by CIB, the Court points out that, in reality, everyone involved in the case knew from the beginning that CIB was undergoing a debt-reorganisation under insolvency law, as reflected in the award itself. The decision also qualifies the actual importance of article 21 notifications and sees the participation of the trustee in the ongoing lawsuits against a debtor as mainly of an informative nature, as the debtor retains full standing and the trustee does not represent the debtor. Judge Heredia is particularly strong on this issue in his separate opinion.

Therefore, in the view of the panel, the failure to notify the trustee had not raised to the level of an essential breach of procedure fatally damaging the fairness of the arbitration proceedings, as article 760 of the CPCC would require in order to justify the voidance of an award. Furthermore, the Court remarked that there is disagreement among the authors as to whether or not the reference to lawsuits in article 21 of the ABL should be extended to arbitrations as well.

Moreover, the Court rules that even if article 21 of the ABL did require trustees to be notified of arbitrations involving insolvency debtors, no definitive harm could have been caused by the failure to do so in this particular case as the trustee was ultimately able to perform his statutory role within the context of the insolvency proceedings (for example, by vetoing the running of interest beyond the date of the filing, as indeed he did).

In reaffirming the strict interpretation of article 760 of the CPCC and the limits to the type of review that courts are called to perform in the context of annulment requests, the decision says:

> *"It would seem that those limits were exceeded by our Supreme Court of Justice in the Cartellone case."*

and:

> *"It would appear that the Highest Court overstepped the framework within which annulment recourses operate, as the Court not only examined the thema decidendum but also revoked the award in part and ordered that new calculations be performed."*

The Panel finally recalls the broad spectrum of criticism that the *Cartellone* case had elicited among specialised authors, citing five scholarly articles as examples.

The partial annulment requests

Article 19 and the running of interest issue

On this particular argument of the respondent, the Court admits that the arbitral award did not take into account the provision of article 19 of the ABL, but it swiftly dismisses CIB's complaint by stating that it was not the role of the arbitration tribunal to apply that particular provision of bankruptcy law, as that would be the task of the trustee and the bankruptcy court within the context of the proofs of claims process. It also points out that at any rate we would be in front of an error in judicando, unfit for causing the annulment of an award and subject to remedial action at the bankruptcy court level.

The issues on the production of evidence during the arbitration

The Court finds no significant violation of due process in any of the five specific instances of alleged unequal treatment of the parties invoked by CIB. For the purposes of this review, suffice it to say that the Court dismisses each claim by pointing out that all of them involved objections to the way the tribunal had conducted the evidence gathering process, none of which presented signs of due process violations. The panel stresses the fact that tribunals have a reasonable leeway in directing the production of evidence, as long as they respect principles such as the one embodied in article 15 (2) of the ICC Rules of Arbitration, or in the new article 22(4) of the 2012 Rules.

The only successful challenge to the award: The set-off between SIIPSA and CIB

The decision accepts this particular challenge to the award, and it does so based on two factors: that the terms of reference had not contemplated the possibility that the tribunal might unilaterally order a set-off in the event that both the claim and the counterclaim were to succeed (excess of powers); and that the award had violated the legal prohibition to offset credits and debts when one of the parties is undergoing insolvency proceedings.

It is somehow ironic that, in order to explain the latter of the two reasons for admitting CIB's challenge, the Court resorts to none other than the *Cartellone* precedent, stating that in this particular respect, the award might be described as "illegal".

What the future holds

In the aftermath of *Cartellone*, the arbitration community in Argentina looked eagerly for signs that would clarify whether or not that Supreme Court decision would turn out to be an isolated case of overzealous protection of state interests in the middle of a politically charged atmosphere, or a trend-setter that would eventually lead to an irreparable damage to the development of commercial arbitration in our country. It is still early to say which one of the two assumptions was correct. Aside from the commendable *Bear Service* ruling of 2005, the Supreme Court has since then produced only a handful of arbitration related decisions and all of them have applied standard arbitration law precepts to cases that were not particularly controversial.[18] Perhaps the moment of truth will come when the

Mobil v Gasnor decision of 2007 becomes ripe for a Supreme Court review, as the case has now managed its way into the Court after an earlier attempt was dismissed for strictly technical reasons. As for the SIIPSA decision, neither CIB nor the bankruptcy trustee have filed Supreme Court appeals against Panel D's decision, although SIIPSA has decided to take that road in order to challenge the part of the ruling that disregarded the set-off and forced SIIPSA to pay in cash the damages arising from CIB's successful counterclaim.

Notes

1 *Sociedad de Inversiones Inmobiliarias del Puerto SA c/ Constructora Iberoamericana SA s/ queja SA* – CNCOM – SALA D – 7 February 2011 – elDial.com – AA6A60.

2 *Mobil Argentina SA c/ Gasnor SA s/ laudo arbitral*, CNCOM – SALA D – 8 August 2007 – elDial.com – AA4188

3 *José Cartellone Construcciones Civiles SA c/ Hidroeléctrica Norpatagónica SA o Hidronor SA s/ proceso de conocimiento*, – CSJN – 1 June 2004 – elDial.com – AA2145

4 Articles 760 and 761 of the Argentine Code of Civil and Commercial Procedure embody this principle.

5 Such as article 28(6) of the 1998 ICC Rules of Arbitration or article 34(6) of the 2012 ICC Rules.

6 As of September 2011: Chile, Costa Rica, the Dominican Republic, Honduras, Mexico, Nicaragua, Paraguay, Peru and Venezuela, as reported in the UNCITRAL web site: www.uncitral.org

7 *Capitán del vapor "Camila" c/ Patrón de la Lancha Féliz del Plata*, CSJN Fallos 45:78).

8 For example, in a case decided in May 2011 by Panel A of the CNCOM, "*Peide Industria y Construcciones SA c/Mina Pirquitas Inc Suc Arg s/ medida precautoria*" (elDial.com – AA6D4E), the court agreed with the defendant that an arbitration agreement included in certain purchase orders also applied to a matter related to the collection of invoices issued under the purchase orders, but felt obliged to append the "narrow interpretation" caveat at the beginning of its decision.

9 As established by the combined application of article 737 of the CPCC and articles 842-849 of the Civil Code.

10 A recent example of this confusion may be found in *CRI Holding Inc Sucursal Argentina c/Compañía Argentina de Comodoro Rivadavia Explotación de Petróleo SA s/ sumarísimo* – CNCOM – SALA C – 5 October 2010 – elDial.com – AA675F, an October 2010 decision from Panel C of the CNCOM. The case concerned a contractual dispute within a mining company, a specific type of partnership that is ruled by the Mining Code. While the Mining Code contains a number of provisions that are considered to be public policy, the parties had signed an arbitration agreement and their dispute was essentially of a commercial nature. Panel C sided with the defendant and declared that the arbitral tribunal lacked jurisdiction as all issues arising from the Mining Code were deemed not arbitrable per se, because of their public policy nature.

11 *José Cartellone Construcciones Civiles SA v Hidroeléctrica Norpatagónica SA o Hidronor SA s/ Nulidad de Laudo* – 28-08-2001, CNac Civ y Com Fed, sala III – Lexis Nº 30000891

12 For example, in a December 2009 decision from Panel B of the CNCOM: *Edf International SA c/ Endesa Internacional (España) y otros s/ Arbitraje* – CNCOM – SALA B – 9 December 2009 – elDial.com – AA5E18.

13 *In re: Cooperativa Eléctrica y Anexos de General Acha Limitada* – CSJN – 7 July 1975. Lexis Nº 70060940

14 As permitted by article 1(1) of the 1998 ICC Arbitration Rules: "If so empowered by an arbitration agreement, the Court shall also provide for the settlement by arbitration in accordance with these Rules of business disputes not of an international character".

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15 *Bear Service SA c/ Cervecería Modelo SA de CV* – CSJN – 5 April 2005 – elDial.com – AA2A9B

16 ICC Rules of Arbitration (1998), article 25(1): "When the Arbitral Tribunal is composed of more than one arbitrator, an Award is given by a majority decision. If there be no majority, the Award shall be made by the chairman of the Arbitral Tribunal alone". A similar provision is included in article 31(1) of the 2012 Rules.

17 The unanimous decision was written by Judge Gerardo Vasallo, with Judges Juan José Dieuzeide and Pablo D Heredia concurring. Judge Heredia added a separate opinion expanding on his own reasons for turning down the request, especially concerning the alleged violation of article 21 of the ABL.

18 Bear Service, see Note 15. *Cacchione, Ricardo C c/ Urbaser Argentina SA* CSJN – 11 March 2008; DJ-2008-I, 997; *Pestarino de Alfani, Mónica A c/ Urbaser Argentina SA*, CSJN – 11 March 2008; JA-2008-II, 49.

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