

# Around the World

## Switzerland

### SWITZERLAND: ARBITRATION DEADLINES

(FSC Decision 4A\_609  
/2014 Dated 20 February  
2015)

Ⓞ Appeals; Arbitration awards;  
Email; Sporting organisations;  
Switzerland; Time limits

#### Facts

A Spanish cycling team was sponsored by an Italian company. The sponsoring contract—which provided for instalment payments of a total of CHF 6 million over three years—led to a dispute and to two ad hoc arbitration procedures between the parties.

In one of the arbitration procedures, the chairwoman of the arbitral tribunal sent the final award to the parties in the late afternoon of September 23, 2014. She did so by email and by registered letter, stating in her email “Please find enclosed an advance copy of today’s letter of the arbitral tribunal including its attachment (final award)” (originally in Italian). The registered letter contained the phrases “registered letter with advance copy by email” and “Please find enclosed an original copy of the final award” (originally in Italian) and was received by counsel to the Italian party on September 24, 2014.

On October 24, 2014, the Italian party whose claim had been dismissed in the final award filed an appeal with the Swiss Federal Supreme Court (FSC). The Spanish party hereafter requested, among other things, that the appeal not be heard because the respective brief was not filed within the applicable deadline of 30 days as is requested by art.100 of the Swiss Federal Supreme Court Act. It argued that the applicable 30-day period was started by the email of September 23, 2014 whereas the Italian party only considered the receipt of the registered letter on the subsequent day to be relevant for the calculation of the deadline. It was undisputed between the parties that the appeal was filed on time only if the relevant date setting off the appeal period was determined to be September 24, 2014.

#### Held

The FSC analysed whether the parties had decided upon a specific form in which the communication of the final award had to take place. The arbitral clause referred to the regulations of the *Union Cycliste Internationale* (UCI). The UCI’s regulations on discipline and procedures, in their clauses 12.3.028 and 12.3.030, state that the original of the decision shall be signed by the president of the panel and be lodged with the UCI secretariat, and that a copy of the decision shall be sent to each party.

Based thereon, the FSC came to the conclusion that the applicable regulations did not request that the parties receive an original copy of the final award. Further, it stressed the fact that both the parties and the arbitral tribunal had made use of email communications many times during the arbitral proceedings. Additionally, it stated that it did not matter whether the email contained a reference to an “advance copy”, whether the email had arrived without pre-announcement and whether counsel to the Italian party did actually take note of the final award on the date of its arrival by email.

Hence, it qualified the email delivery of the final award, which undisputedly had taken place on September 23, 2014, as the event setting off the deadline of 30 days. For this reason, it refused to hear the appeal which had been filed after the expiry of said deadline.

## Discussion

The Italian party had, in its calculation of the applicable deadline, relied on former case-law of the FSC in which the FSC had not qualified advance email copies of final awards as sufficient service in order to set off the appeal deadline of 30 days. However, it had overlooked that, in those cases, rules and regulations of the Court of Arbitration for Sport and the World International Property Organization, respectively, were applicable which stated that only the notification of an original award may be qualified as due service and therefore set off the applicable appeal deadline.

This goes to show that, even though *ad hoc* arbitration certainly offers certain advantages, it also sets some traps. In the absence of institutional arbitration rules which offer quite a bit of comfort as to having been thoroughly thought through and fought through many times, it is even more important that the arbitral clause and the terms of reference are drafted in a diligent and careful way, and that the parties are aware of their content (or the gaps contained therein) throughout the entire proceedings. Even though 30 days may not be long for the filing of an appeal, it is advisable, when in doubt, to file the relevant brief on the earliest day on which the deadline may expire.

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