

42. Supreme Court of the Russian Federation, 30 May 2017, Case No. A60-12039/2016¹

Parties:	Appellant/Claimant: Digital Service LLC (Ukraine) Respondent/Defendant: Ekaterinburg - 2000 LLC (Russian Federation)
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Topics:	¶ 201; [19]-[20] = ¶ 209

Summary

The Supreme Court reversed the decisions of the lower courts, which had referred the parties to arbitration. The Court confirmed that an arbitration agreement may be concluded by reference to a separate document containing an arbitration clause. However, there was no valid agreement here: the arbitration provision in the RIPE NCC (Réseaux IP Européens Network Coordination Centre) Standard Service Agreement, which governs disputes between the RIPE and its members, did not apply to a dispute between members.

Digital Service LLC (Digital Service) and Ekaterinburg - 2000 LLC (Ekaterinburg 2000) were both members of the Réseaux IP Européens Network Coordination Centre (RIPE NCC), the regional Internet registry for Europe, the Middle East and parts of Central Asia. The relationship between the RIPE NCC and its members is governed by the RIPE NCC Standard Service Agreement; Clause 11 provides that disputes arising from the Agreement shall be settled in accordance with the RIPE NCC Conflict Arbitration Procedure.

1. The General Editor wishes to thank Mikhail Samoylov, Egorov Puginsky Afanasiev & Partners, Moscow, for his invaluable assistance in providing this decision and translating it from the Russian original.

In 2008, the RIPE NCC provided Digital Service with IPv4 addresses 213.151.0.0/19. Digital Service's activity stopped between 23 July and 1 November 2014 because of damage to the communications network; on 3 October 2014, Digital Service transferred the IPv4 addresses to Ekaterinburg 2000; the transfer contract was based on the RIPE NCC's Rules on Transferring Internet Number Resources.

In 2016, Digital Service commenced an action in the *Arbitrazh* (Commercial) Court of the Sverdlovsk Region – a state court – claiming that the 2014 transfer contract was null and void. Digital Service argued in particular that the signature of Digital Service's general director and Digital Service's seal on the contract did not match the originals, and that the information in the contract was incorrect. Ekaterinburg 2000 objected to the *Arbitrazh* Court's jurisdiction, claiming that the dispute should be referred to arbitration.

On 30 June 2016, the Sverdlovsk Court held that Digital Service's claim should be heard by RIPE NCC arbitrators. This decision was upheld by the Seventeenth Court of Appeal on 1 September 2016; on 16 November 2016, the *Arbitrazh* Court of the Ural Region affirmed the appellate decision. All courts found that there was a valid arbitration agreement between the parties. They reasoned that both the Rules on Transferring Internet Number Resources and the RIPE NCC Conflict Arbitration Procedure were binding on the parties as RIPE NCC members pursuant to Clause 6 of the RIPE NCC Standard Service Agreement. As a consequence, the arbitration clause in the RIPE NCC Standard Service Agreement was applicable to the transfer contract concluded by Digital Service and Ekaterinburg 2000, both RIPE NCC members. In its 6 November 2016 decision, the *Arbitrazh* Court of the Ural Region held specifically that the requirements of Art. II(2) of the 1958 New York Convention were met.

Digital Service filed a cassation appeal before the Supreme Court of the Russian Federation, claiming that there had been a serious violation of its rights and legal interest because the courts below had applied the law incorrectly.

By the present decision, the Judicial Board on Economic Disputes of the Supreme Court granted Digital Service's appeal, annulled the decisions below and transmitted the case to the *Arbitrazh* Court of the Sverdlovsk Region for a new examination.

The Supreme Court noted at the outset that its Judicial Board on Economic Disputes may annul or amend decisions where fundamental violations of substantive or procedural law provisions that affect the outcome of the case have occurred – violations that must be rectified if rights, freedoms, public interests and lawful commercial and economic interests are to be protected. This was the case here.

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The conclusion of the courts below that the arbitration agreement in the RIPE NCC Standard Service Agreement applied to the parties' dispute was erroneous.

An *arbitrazh* court shall decline to hear a case when a party timeously objects to the court's jurisdiction on the basis of an arbitration agreement between the parties, unless the court finds that the agreement is invalid, inoperative or incapable of being performed. Pursuant to the 1993 Law on Commercial Arbitration, arbitration agreements must be in writing and may be contained in the contract or in a separate agreement. Thus, reasoned the Court, provided the intention of the parties can be confirmed, an arbitration agreement may be concluded by reference to the model arbitration clause in the rules of an arbitral institution, or in other rules.

In the present case, the RIPE NCC Conflict Arbitration Procedure was an integral part of the RIPE NCC Standard Service Agreement, and was therefore binding on the RIPE NCC members, such as Digital Service and Ekaterinburg 2000. In fact, Digital Service commenced a separate action against the RIPE NCC on the basis of this arbitration clause.

However, the clause only applied, by its terms, to disputes between the RIPE NCC and its members. It did not apply to disputes between members such as the one at issue here.

A detailed report of this decision is available online at www.kluwerarbitration.com/CommonUI/document.aspx?id=KLI-KA-ICCA-YB-XLII-411-n.