Swiss Supreme Court rejects a violation of the right to be heard

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In decision *4A_259/2015*, the Swiss Supreme Court considered a petition to set aside an award based on an alleged violation of the petitioner's right to be heard.

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In an Italian-language decision of 8 July 2016, the Swiss Supreme Court rejected a petition in which a party claimed that its right to be heard was violated by an ad hoc tribunal.

The dispute concerned calculations of royalty payments, under a licence agreement, for the use of a certain brand between an Italian and a Swiss company. In the course of these proceedings, the tribunal instructed its own expert to produce a report.

The Italian party challenged both the original expert report and a second supplemental report in its final brief. The tribunal held such challenge to be inadmissible from a procedural point of view, as it related to the methodology of the report rather than to its content and evidential value. The Italian party challenged the award.

The Supreme Court dismissed the petitioner's argument that its right to be heard was violated. In particular, it held that such a challenge fell outside the scope of a challenge for the violation of the right to be heard, as it addressed and criticised the tribunal's assessment of evidence in the form of the expert report. The Supreme Court further pointed out, that when assessing the evidence and the expert report, the tribunal, much in line with the state court practice, recognised in its award that it could only have deviated from the expert's findings, if it had valid reasons to do so.

Case: *Decision 4A_259/2015 (www.practicallaw.com/w-003-9817)* (Swiss Supreme Court).

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