None of the challenge grounds referenced by Uretek have been precluded under the second paragraph of Section 34 of the Swedish Arbitration Act.

The arbitration award cannot be partially annulled, but if the Court of Appeal would conclude – following its review whether the arbitration award should be annulled in its entirety and having concluded that it should not be annulled in its entirety – that there are grounds to partially annul the arbitration award, Uretek has no objections to a partial annulment.

New circumstances after the expiry of the challenge period

Uretek has not referenced new grounds for the challenge after the expiry of the challenge period. The application for the challenge included a statement that the calling of witnesses Messrs. M and D upon the arbitral tribunal's initiative constituted grounds for the challenge. The fact that this affected the outcome of the entirety of the case was set out already in the application (see paragraph 4.28 of Court of Appeal case document number 1). Thereafter, merely further details have been added in subsequent submissions. As regards submission C5, including appendices, it was also already in the application stated that through the submission three new written witness statements were added and that allowing the submission, including its appendices, affected the outcome of the case (paragraph 4.46 of Court of Appeal case document number 1). Thereafter, only further details have been provided.

The arbitral tribunal's contacts with witnesses

According to Procedural Order No 1, paragraph 5.8, the parties agreed that "[t]he witnesses shall be summoned by the Party which relies on their evidence".

Through Procedural Order No 3, the arbitral tribunal decided, despite Uretek's objections, to grant Doan Technology's request that the arbitral tribunal would contact Messrs. M and D and, in writing, request that they produce written witness statements as well as appear as witnesses in the proceedings. Thereafter, the Chairman sent them e-mails requesting that the written witness statements should be produced as well as that they should appear as witnesses in the arbitration. Messrs. M and D produced written witness statements and appeared as witnesses in accordance with the said request. Messrs. M and D would not have

produced the written statements nor would they have appeared as witness if it were not for the actions of the arbitral tribunal.

By sending the request to Messrs. M and D, the arbitral tribunal voluntarily assisted Doan Technology by ensuring the oral evidence being heard. Thereby, the arbitral tribunal disregarded the principle of equal treatment as well as breached the agreed procedural rules and other rules applicable to the arbitration.

The witness statements of Messrs. M and D affected the outcome of the case, directly by forming the basis of the arbitral tribunal's conclusions in the arbitration award – at least with respect to paragraphs 114 and 116 – as well as indirectly by influencing the reports from expert witness Mr. S.

The arbitral tribunal's decision to allow the submission of documents too late etc.

Procedural Order No 5, paragraph 3, provides that the parties and the arbitral tribunal had agreed that no submissions or further evidence would be allowed after 4 August 2014, unless the arbitral tribunal had granted prior permission, which would only be granted in exceptional circumstances.

The arbitral tribunal incorrectly, and in breach of the agreed procedural rules and the principle of equal treatment, allowed Doan Technology's submission C5, including appendices, which was submitted too late. These documents contained new circumstances, new legal grounds for the case, three new written witness statements and a revised report from Mr. S.

Uretek did not fail to object thereto during the arbitration.

Further, the arbitration also allowed new evidence read out loud by witness Mr. M during the hearing. The agreement between the parties, as well as the arbitral tribunal's mandate, did not allow for new evidence during the hearing.

These actions also entail that Uretek was deprived of the opportunity to sufficiently argue its case.

The arbitral tribunal applied other legislation than Swedish law, etc.

The arbitration clause provides that the arbitral tribunal should resolve the matters of dispute according to Swedish law. In the arbitration award, the arbitral tribunal concluded (paragraph 132) that third parties carry out business for which Doan Technology claims compensation, but nevertheless reviewed whether Doan Technology could benefit from the losses of these third parties and concluded that it was possible. Thereby, and through the report of Mr. S, which formed the basis of the calculation of the amount of the loss, the arbitral tribunal in fact applied other legislation than Swedish law.

Uretek did not become aware of the arbitral tribunal's application of other legislation than Swedish law and was thus unable to object. Uretek has not lost the right to rely on these circumstances in these challenge proceedings.

The arbitral tribunal based its arbitration award (paragraphs 132-133 of the arbitration award) on circumstances which had not been referenced by Doan Technology, namely that it had been necessary for Doan Technology to act through local agents and that Uretek was aware thereof and had not objected. Uretek was not allowed to argue these circumstances.

The arbitral tribunal failed to review Uretek's motion for adjustment

In the arbitration, Uretek presented a motion for adjustment with the following wording:

> In the event that the Arbitral Tribunal would grant Claimant's prayer for compensation of loss in the amounts claimed or substantially the same amounts, such damages shall be mitigated since damages in that amount would be unreasonably burdensome for Uretek.

The arbitral tribunal failed to take this motion into consideration in the arbitration award.

In the arbitration Uretek referenced evidence, the sole purpose of which was to establish the grounds for the motion for adjustment.

Uretek did not contribute or cause the arbitral tribunal to not consider the motion for adjustment.

Doan Technology and Mr. BD

The arbitral tribunal neither exceeded its mandate nor did it commit any other procedural errors. None of the alleged procedural errors could even in theory constitute an excess of mandate. No errors occurred that could have affected the outcome of the arbitration. In the event that the Court of Appeal would conclude that a procedural error occurred, then Uretek contributed to its occurrence.

Some of Uretek's grounds for the challenge have been precluded under the second paragraph of Section 34 and cannot not form the grounds for granting Uretek's challenge.

In the event that the Court of Appeal would conclude that there are grounds to annul the arbitration award partially, then there are grounds to annul the award only with respect to these relevant parts.

New circumstances after the expiry of the challenge period

Before the Court of Appeal, Uretek has only after the expiry of the challenge period referenced certain circumstances in support of the occurrence of procedural errors in the arbitral tribunal's dealing with the counterclaim, which are eligible to be referenced in these challenge proceedings. The relevant referenced circumstances are that Messrs. M and D's witness statements would relate to Uretek's counterclaim concerning "important contractual issues, including royalties" and that Doan Technology's submission C5 introduced three new written witness statements concerning, amongst other things, "sub-licensing" and "royalties". These circumstances should be dismissed under the fourth paragraph of Section 34 of the Swedish Arbitration Act.

The arbitral tribunal's contacts with witnesses

The arbitral tribunal sent, upon the request of Doan Technology, e-mails to Messrs. M and D, requesting them to submit written witness statements to Doan Technology and Mr. BD. The arbitral tribunal did not in its e-mails request that the witness should provide oral witness statements. It was Doan Technology that procured that the witness appeared at the main hearing. Thus, the arbitral tribunal did not contribute in the collection of any evidence nor did it reference any evidence on Doan Technology's behalf.

The witnesses would have testified also without the intervention of the arbitral tribunal. Their testimonies were voluntary and they would have voluntarily appeared as witnesses also without the invitation sent by the arbitral tribunal.

Doan Technology could instead have requested that the arbitral tribunal should accept that Doan Technology turned to the public courts to record the evidence. Doan Technology would have, had it been required to ensure that the witnesses would testify, requested such an approval and it would have been granted by the arbitral tribunal. Then, Messrs. M and D would have provided the same witness statements as they did before the arbitral tribunal.

The arbitral tribunal did not violate the principle of equal treatment, agreed procedural rules or other rules applicable to the arbitration.

The arbitral tribunal's decision to allow documents submitted too late, etc.

Uretek has lost its right to challenge with respect to the arbitral tribunal's allowing submission C5, including appendices. During the first day of the main hearing, there were discussions between the Chairman and Uretek's counsel regarding the decision to allow submission C5. Then, Uretek was awarded the opportunity to inform on the problems with the decision and the opportunity to request any type of measure to address the problems, e.g. by providing further submissions or adding another day to the main hearing at a later stage. Uretek's counsel accepted this, and did not revert to the issue during the remaining days of the main hearing. Thus, Uretek must be deemed to have, by implied action and/or passivity, waived its right to object to the arbitral tribunal's decision to allow submission C5, including appendices. Alternatively, Uretek must be deemed to have, by implied action or passivity, waived its right to reference any possible error with respect to the arbitral tribunal's decision to allow the submission of submission C5, including appendices.

Submission C5, including appendices, was submitted one hour and 52 minutes too late to the arbitral tribunal, because Doan Technology's counsel was experiencing technical difficulties in sending, amongst other things, attachments with e-mails. The delay did not cause Uretek any inconvenience. The arbitral tribunal was correct in allowing the documents, since Doan Technology otherwise would not have been granted the opportunity to sufficiently argue its case. The arbitral tribunal did not deviate from the condition that "exceptional circumstances" should be at hand, but carried out an overall review, which included a

review whether exceptional circumstances were at hand, including whether the submission of submission C5 caused Uretek any inconvenience. The arbitral tribunal would in fact have been entitled to deviate from the said requirement as well as the decision on a "cut-off date", since the parties had authorized the arbitral tribunal to administer the arbitration and since the arbitral tribunal has a broad right to decide on matters of administration and to adjust the administration to the relevant proceedings as the arbitral tribunal deems fit.

Submission C5, including appendices, did not contain any new circumstances or legal grounds in support of Doan Technology's case. The circumstances which could have been introduced through submission C5 and the evidence submitted in conjunction therewith served the purpose of responding to Uretek's previously made statements.

It is correct that new evidence was submitted by the Doans during the main hearing following a decision by the arbitral tribunal. The arbitral tribunal's decision to allow the evidence was correct. The evidence did not affect the outcome of the case in any manner.

Uretek was granted the opportunity to argue its case sufficiently.

The arbitral tribunal applied other legislation than Swedish law, etc.

Uretek has lost its right to rely on the grounds that the arbitral tribunal would have applied other legislation than Swedish law, because Uretek became aware that the arbitral tribunal might consider other legislation than Swedish law but did not raise any objections during the arbitration.

The arbitral tribunal neither applied other legislation than Swedish law, nor did it consider circumstances which had not been referenced by the parties. To apply the substantive laws of another state than Sweden is not an error which is eligible for challenge under Section 34 of the Swedish Arbitration Act.

The arbitral tribunal failed to review Uretek's motion for adjustment

The arbitral tribunal did not fail to review Uretek's motion for adjustment.

In the main, it is maintained that the arbitral tribunal did consider the conditional motion for adjustment, but concluded that it was inapplicable, due to the condition of the objection not having been fulfilled, and consequently rejected it.

In the alternative, it is maintained that the arbitral tribunal did consider the conditional motion for adjustment, through the downward adjustment to 60 percent of the claimed amount and that all circumstances referenced by Uretek were considered in this adjustment.

The motion for adjustment could not entail any other outcome, since Uretek did not reference any circumstances or evidence in support of its objection.

In the event that the Court of Appeal would conclude that a procedural error occurred, then Uretek contributed to the occurrence thereof. Uretek did not reference the motion for adjustment in its later submissions, during the main hearing or thereafter. Uretek did not reference any circumstances or evidence in support of its motion. Uretek did further not clarify to the arbitral tribunal that the motion should be applied also in the event that the arbitral tribunal would conclude that Doan Technology would be entitled to 60 percent or less of the claimed amount.

THE PARTIES' FURTHER DETAILS

Uretek

The arbitral tribunal's contacts with witnesses

During the arbitration, the Doans' counsel attempted to have two people witness on their behalf. The two, Messrs. M and D, declined, however, to participate in the arbitration unless they received a written request from the arbitral tribunal.

Instead of going down the route of procuring permission from the arbitral tribunal and taking the evidence before a public court, the counsel turned to the arbitral tribunal and requested that it should contact Messrs. M and D directly and request that they should produce written witness statements as well as appear as witnesses. The request was forwarded to Uretek for comment. Uretek objected to the draft request and reminded the arbitral tribunal that both the Swedish Arbitration Act as well as SCC's arbitration rules of 2010 (Section 28(1)) provide that it is for the parties to produce and present evidence. Uretek further reminded the arbitral tribunal on the contents of Section 5.8 of Procedural Order No 1: "The witnesses shall be summoned by the Party which relies on their evidence". Procedural Order No 1 had been preceded by a telephone conference between the arbitral tribunal and the parties' counsel. That on which the parties agree during such a meeting

determines the scope of the arbitral tribunal's mandate, and the arbitral tribunal may not deviate from the scope of that mandate without the parties' consent.

Through Procedural Order No 3, the arbitral tribunal decided to grant the Doans' request and the Chairman sent e-mails to Messrs. M and D, requesting that they should produce written witness statements and that they should appear as witnesses in the arbitration. Messrs. M and D produced written witness statements and, in accordance with the arbitral tribunal's request, appeared as witnesses in the arbitration. Messrs. M and D would not have produced written witness statements nor would they have appeared as witnesses unless the arbitral tribunal had intervened. Thus, the arbitral tribunal assisted one party to procure evidence that would not otherwise have been introduced to the arbitration. This violates the principles of the autonomy of the parties as well as the principle of "equality of arms".

The e-mails from the arbitral tribunal to the witnesses was not in the form of an invitation, as maintained by the Doans, but was a "request", i.e. a written request, which was what the witnesses had requested. By producing written witness statements and appearing at the request of the arbitral tribunal, it is obvious that the witnesses understood this to be a "request", which they, as they understood it, could not decline. The e-mails do not provide that their appearance involvement was voluntary.

The witness statements of Messrs. M and D affected the outcome of the case. The fact that Mr. M's witness statement directly affected the outcome of the case is evident particularly in paragraph 114 of the arbitration award. Further, the witness statement indirectly affected the outcome through its influencing expert witness Mr. S's reports. This is evident from the reports and Mr. S's witness statement, from which it is clear that he used the Thai forecasts from Mr. M's written witness statement and oral testimony to estimate the development of the region in which Doan Technology had been active. Based on Mr. M's information, Mr. S was able to calculate/estimate the value of the loss Doan Technology claimed in the arbitration.

The arbitral tribunal appears to have been unable to distinguish between the witnesses Messrs. M and D. Thus, the arbitration award provides (paragraph 50) that only one person had been heard – a "Mr PM". [*Translator's note: First name of Mr. D and last name of Mr. M combined.*] This person does not exist. At least not as a witness in the relevant arbitration. Messrs. M and D have been combined into one person. The mistake is repeated in the

transcript from day 2 (p. 88), according to which Mr. PM was heard. Thus, it is not possible by reading the arbitration award to exclude that the arbitral tribunal was influenced by the witness statements, since the arbitral tribunal has even failed to provide the correct names of the witnesses. That which is stated in paragraph 116 “confirmed by testimony” covers the witness statements of both Messrs. M and D. This means that the witness statements of both witnesses influenced the outcome.

In addition to the above, Mr. M’s witness statement influenced the review of the accuracy of Mr. S’s reports. In paragraph 137 of the arbitration award, the arbitral tribunal refers to the fact that there had been witness statements to the effect that the optimism reflected in the report was justified, something on which specifically Mr. M testified.

The fact that Mr. S’s report in its turn affected the outcome of the case is obvious and is directly set out in the arbitration award. The arbitral tribunal explicitly based the calculation of the damages subsequently awarded to Doan Technology on the report (paragraphs 134 and 137 of the arbitration award).

Since the report is based on Mr. M’s testimony, it is evident that the arbitral tribunal’s above described action of summoning Mr. M undoubtedly affected the outcome of the case to Uretek’s detriment and to Doan Technology’s benefit. The witness statements of Messrs. M and D would, without the intervention of the arbitral tribunal, not have been taken into evidence, and would not have served as the basis for Mr. S’s report, which in its turn formed the basis of the arbitral tribunal’s calculation of the alleged loss.

The arbitral tribunal’s decision to allow documents submitted too late etc.

Procedural Order No 5 had been preceded by a telephone conference between the arbitral tribunal and the parties’ counsel. That on which the parties agree during a meeting of this nature determines the arbitral tribunal’s mandate. The arbitral tribunal may not deviate from the scope of the mandate unless the parties agree thereto.

When deciding the “cut-off date” to fall so close to the main hearing, scheduled to start on 18 August 2014, the parties agreed that for any submission to be allowed thereafter, the following conditions should be met

a) a permission procured in advance from the arbitral tribunal,

b) that the arbitral tribunal – provided that a) was fulfilled – should grant such a permission only in exceptional circumstances, and
c) that such a submission may include nothing beyond that which was in line with the submitting party's case prior to the submission.

Without requesting the arbitral tribunal's prior permission – or even informing the arbitral tribunal or Uretek – Doan Technology submitted its submission C5, including appendices, on 5 August 2014. Doan Technology did not reference any extraordinary circumstances. Further, the contents of submission C5, including appendices, were not in line with the case Doan Technology had argued up until that point (see item c) above).

The e-mail of Doan Technology's counsel of 5 August 2014 does not clarify that the technical difficulties to which they several days later referred were at hand on 5 August 2014. It was only on 7 August 2014 that Doan Technology's counsel mentioned that the documents were submitted late and explained that they had experienced technical difficulties. This explanation was given only after Uretek's objection to submission C5 having submitted after the "cut-off date".

Uretek's counsel was on high alert in preparation for a possible submission on 4 August 2014 and had staff available at the office until midnight of 4 August 2014. When nothing was submitted and no decision from the arbitral tribunal to the effect that Doan Technology had been granted any respite was received, Uretek's counsel left the office under the impression that nothing had been submitted. Only in the morning of 5 August 2014 did Uretek's counsel become aware that Doan Technology – in several parts – had submitted a submission after the "cut-off date" and without any prior respite having been granted.

Submission C5, including appendices, was a new submission which contained, in sum, new circumstances, new legal grounds for the case, three new written witness statements, and one revised report by Mr. S. Through the submission, Doan Technology introduced entirely new grounds for its claim for damages. The claim for damages was now, at least in part, based on a concept called "beneficial ownership". This can briefly be described so that even if Doan Technology did not in all aspects incur any loss, but that the loss had been incurred by other legal entity or individual, Doan Technology should nevertheless be awarded the damages. Also the components forming part of the calculation of the size of the damages

were new. “Beneficial ownership” cannot be deemed to merely supplement the thitherto argued case.

It was, as the Doans have admitted, not intended that further submissions and evidence should be submitted following submission C5. The Doans, however, themselves ignored this by submitting submission C5, including appendices, on the day following the “cut-off date”, and by expanding the arbitration through submission C5, including appendices, in such a manner that the arbitral tribunal considered itself required to, despite the agreed “cut-off” allow Uretek to submit another submission. If nothing new or substantial had been introduced through submission C5, including appendices, then the arbitral tribunal would not have had grounds to allow Uretek to submit another submission.

Uretek objected to the late submission and moved, in the main, that the arbitral tribunal should dismiss submission C5, including the attached evidence. In the alternative, Uretek requested a respite until 25 August 2014 to have time to respond to the submission. Uretek revised its request for respite until 18 August 2014. Despite this, the arbitral tribunal in its Procedural Order No 6, item 2, resolved to allow the documents that had been submitted too late, while maintaining that the late submission could not have been detrimental to Uretek. The provision on “detriment” was new, and cannot be found in Procedural Order No 5 or in subsequent agreements between the parties. However, the arbitral tribunal did not touch upon the existence of any extraordinary circumstances which it had reviewed. By deviating from the agreed provision on “extraordinary circumstances” and instead applying the provision “detriment”, the arbitral tribunal shifted the burden of evidence from Doan Technology and Mr. BD to establish “extraordinary circumstances” onto Uretek to establish “detriment”. In the end, the arbitration award ended up almost entirely based on the contents of submission C5, including appendices. Uretek objected to the submitted documents also from the perspective that the late submission and the material contents of submission C5 was of such nature – in relation to the agreed time plan – that allowing the evidence and the adjustment of the motions entailed that Uretek was, in reality, deprived of the opportunity to sufficiently argue its case, considering that only 14 days remained until the main hearing. Nevertheless, the arbitral tribunal did not grant Uretek’s request for a respite until 18 August 2014 to respond to the contents of submission C5. Instead, the arbitral tribunal decided that Uretek would be granted a respite until 5 pm of 14 August 2014 to respond. Uretek explicitly reserved its rights in its submission R6, p. 3, to challenge the arbitration award as

a consequence of the arbitral tribunal's decision. Uretek has not at any point withdrawn its objection.

In addition thereto, Doan Technology, during the main hearing, i.e. more than 14 days after the "cut-off date", introduced new evidence from which the witness Mr. M read out loud. This caused Uretek to object. The arbitral tribunal allowed the new evidence under reference to extraordinary circumstances being at hand. Also this decision entailed that Uretek was deprived of all possibilities to sufficiently argue its case. The parties' agreement and the mandate granted to the arbitral tribunal did not include the right for the arbitral tribunal to allow the parties to submit new evidence during the main hearing.

The decision to allow submission C5, including appendices, in the aforementioned circumstances and with the aforementioned contents, as well as the decision to allow new evidence during the main hearing, constitute material deviations from the principles of equal treatment and "equality of arms".

Submission C5, including appendices, affected the outcome of the case. The new report by Mr. S, attached to submission C5, provides that he assumed that Doan Technology was the "beneficial owner" of a number of legal entities when he calculated the size of the damage. It is evident from the arbitration award (paragraph 85, footnote 3) that the arbitral tribunal observed Mr. S's assumption. The report affected the outcome of the case in its entirety. It is difficult to speculate on the importance of the written witness statements that were submitted with submission C5 on the outcome of the case, since the arbitral tribunal has not clarified who said what and the influence it had. What is stated in paragraph 116 of the arbitration award as "confirmed by testimony" does at least, however, cover Mr. BD's testimony.

The arbitral tribunal applied other legislation that Swedish law etc.

The arbitration clause establishes that the arbitral tribunal should decide the matters of dispute according to Swedish law.

As an appendix to submission C5 was an updated version of Mr. S's report. This report provides, amongst other things, the following

a) that Mr. S notes that the legal entities which had carried out the business, the losses of which he was to estimate, were other legal entities and individuals than Doan Technology, and

b) that Mr. S, when calculating the damages, assumed that Doan Technology was the "beneficial owner" of a number of legal entities.

It is evident from the arbitration award (paragraph 85, footnote 3) that the arbitral tribunal observed Mr. S's assumption.

In the arbitration, Uretek objected that the legal concept of "beneficial ownership" does not exist in Swedish law, since a party claiming compensation for damages cannot in doing so rely on losses incurred by third parties (paragraphs 111 and 112 of the arbitration award).

In paragraph 131 of the arbitration award, the arbitral tribunal states that the claimants are entitled to compensation for "its loss". The arbitral tribunal noted in the arbitration award (paragraph 132) that third parties carry out the businesses for which Doan Technology claimed compensation, and nevertheless reviewed whether Doan Technology could benefit from the losses of these third parties and concluded this to be the case. Thereby, and by approving the report as the basis for the calculation of the damages (paragraph 134 of the arbitration award) the arbitral tribunal opted to, in fact, apply other legislation than Swedish law. The fact that the arbitral tribunal states that "beneficial ownership" has not been used, does not mean that the arbitral tribunal did not, in fact, apply the concept.

In paragraph 132 of the arbitration award, the arbitral tribunal stated that it had been necessary for Doan Technology to operate through local agents and that Uretek had been aware of this without objecting. These circumstances were never referenced by Doan Technology. Nevertheless, it was these circumstances upon which the arbitral tribunal based its conclusion on Doan Technology's right to compensation (paragraph 133 of the arbitration award – the paragraph refers only to "Claimant" and not to "Respondent"). Thereby, the arbitral tribunal exceeded its mandate. Through this course of action, Uretek was deprived of the right to a fair trial, and the action constitutes a procedural error which was not caused by Uretek. Uretek was in fact not in a position to respond to the circumstances created by the arbitral tribunal only through the arbitration award. The procedural error has had a direct effect on the outcome of the entirety of the arbitration.

The arbitral tribunal did not review Uretek's motion for adjustment

Uretek moved, in the event that the arbitral tribunal would grant Doan Technology's claim for damages, that the arbitral tribunal should adjust the amount of the damages, since

damages would be unreasonably cumbersome for Uretek. The arbitral tribunal failed to review this motion for adjustment. Neither paragraph 145 nor paragraph 152 of the arbitration award can be interpreted as maintained by the Doans. The actions of the arbitral tribunal constitute an excess of mandate and/or a procedural error.

The motion for adjustment was conditional in the manner the Doans now maintain. In the event that the arbitral tribunal would have decided on, objectively, nominally small damages, then the motion for adjustment would have been without grounds, since the damages would not have been unreasonably cumbersome. It is this type of situation at which the wording is aimed.

In the arbitration, Uretek submitted evidence on the company's finances and financial standing. The evidence was referenced specifically to establish the grounds related to the motion for adjustment. Uretek's finances are such that it cannot pay in accordance with the arbitration award. The amount awarded to Doan Technology in the arbitration award is bigger than Uretek's total assets. This was entirely clear from the evidence referenced in the arbitration. Thus, a review of the motion for adjustment would have affected the outcome of the case. To what extent is not possible to determine after the fact. Therefore, there are no grounds to annul the arbitration award partially, and instead it must be annulled in its entirety.

Uretek had reasonable grounds to assume that the motion for adjustment would be reviewed by the arbitral tribunal if it concluded that damages should be awarded. The parties agreed that that, which a party had stated in writing would not need to be repeated orally at the main hearing. Further, no recitals of the parties' respective cases were distributed prior to the main hearing or prior to the rendering of the arbitration award. Therefore, Uretek cannot be deemed to have contributed to the arbitral tribunal's failure to review the motion.

It is correct that the arbitration award did not deal with the so-called principle on ambiguity and the application of Sections 4 and 5 of Chapter 35 of the Swedish Code of Judicial Procedure, but these were not, however and as opposed to Uretek's motion for adjustment, to be deemed as motions in the case.

Partial annulment of the arbitration award

The errors referenced by Uretek are not related only to the main case. The referenced circumstances are relevant also to the arbitral tribunal's review of the counterclaim. Paragraph 114 of the arbitration award establishes that Mr. M's witness statement was referenced to establish that Uretek did not always document important contractual issues, such as royalties, which was indeed relevant to Uretek's counterclaim. Also Mr. D was to testify concerning "royalties" and with submission C5, three new written witness statements were introduced that covered, amongst other things, "sublicensing" and "royalties", circumstances which related also to Uretek's counterclaim. The importance of the witness statements from Messrs. M and D, as well as the decision to allow submission C5, had on the outcome of the case relate also to the review of the counterclaim. Therefore, the arbitration award shall be annulled in its entirety.

Further, the arbitral tribunal failed to review Uretek's motion for adjustment. A review of the motion for adjustment would have affected the outcome of the arbitration, but the extent thereof is not possible to determine afterwards. Thus, also for this reason, there are no grounds to annul the arbitration award partially, but instead it shall be annulled in its entirety.

The Doans' statement to the effect that the arbitration award is easily divisible is incorrect, since the operative part of the award does not lend itself to being divided.

Even if it would be concluded that errors relating only to the review of the main case occurred, it must still be decided which items of the operative part of the arbitration award that were affected by the error and which aspects of the case that are covered by these items and consequently could be affected by a possible annulment.

Paragraph 146 of the arbitration award (operative part of the award) relates to the damages Uretek was ordered to pay to Doan Technology. The awarded amount covers Doan Technology's claim for damages in the main case. However, it covers also the counterclaim, since USD 232,782 was credited to Uretek in accordance with Uretek's motion in the counterclaim (paragraphs 119, 139 and 29 of the arbitration award). In order to address an error subject to challenge concerning the main case, paragraph 146 of the arbitration award

must be annulled, which thus also affects the outcome of the counterclaim, and which would require the parties of the counterclaim being summoned.

As regards paragraphs 147, 148 and 151 of the arbitration award concerning costs for legal counsel and costs for the arbitral tribunal, all aspects of the arbitration are considered in order to decide who should carry the costs for legal counsel and the arbitral tribunal. In the event that an error affected the review of the main case, then these paragraphs are affected as a direct consequence. Even if it would be possible to annul the operative part of the award concerning the main case, which is not the case in the present proceedings, also these items must be annulled. Since the relevant items do not state which parts relate to which parts of the arbitration, the entirety of the paragraphs must be annulled, which would require that all parties be summoned.

Doan Technology and Mr. BD

The arbitral tribunal's contacts with witnesses

Mr. D was employed by a subsidiary of Uretek, and Mr. M had, during the time of the arbitration, contractual relations with Uretek. Thus, they were concerned about what appearing as witnesses would entail for their respective relationships with Uretek. Further, Uretek attempted to persuade them not to testify. When the Doans' counsel asked whether they would appear as witnesses in the arbitration, Messrs. M and D responded that they wanted a request from the arbitral tribunal. With a formal request from the arbitral tribunal it would be easier for them to explain to Uretek why they were testifying in the arbitration. Therefore, the Doans' counsel requested that the arbitral tribunal should send out such requests.

Thus, upon the request of the Doans, the arbitral tribunal sent requests to Messrs. M and D that they should provide written witness statements to the Doans. The witnesses were free to decline. However, the witnesses chose to produce written witness statements and send them to the Doans' counsel. It is undisputed that Messrs. M and D sent their written witness statements to the Doans' counsel and not to the arbitral tribunal. Thereafter, it was for the Doans to decide whether to submit the written witness statements or not. Doan Technology submitted and referenced the relevant written witness statements. Thereafter, Uretek requested cross examination with all witnesses referenced by Doan Technology, including

Messrs. M and D. Since Uretek requested cross examination of the witnesses, it fell upon Doan Technology to ensure that they appeared in person at the main hearing. This was done. The arbitral tribunal was not involved in the procurement of evidence, nor did it reference any evidence on Doan Technology's behalf. It is for the arbitral tribunal to decide, upon a party's request, to invite witnesses and otherwise facilitate the appearance of witnesses in the arbitration. Moreover, the arbitral tribunal has substantial freedom in guiding the proceedings as it deems fit for the relevant dispute. The arbitral tribunal had the mandate to send out the invitations since the parties had authorized the arbitral tribunal to administer the arbitration. The arbitral tribunal did not deviate from Procedural Order No 1, Section 5.8, but even if it did, it was in fact entitled to do so. This is indeed explicitly set forth in Procedural Order No 1, Section 10, which provides that the arbitral tribunal upon its own initiative may amend Procedural Order No 1. The arbitral tribunal neither exceeded its mandate nor did it commit any procedural error in these respects. The alleged error could not even in theory constitute any excess of mandate.

That, on which the parties agree during a telephone conference, the purpose of which is to determine the future administration of the proceedings, does not constitute any delineation of the arbitral tribunal's mandate.

Messrs. M and D did not understand the invitation from the arbitral tribunal as a "request" which they could not refuse. Having regard to the wording of the arbitral tribunal's e-mails, it is impossible that the invitation was understood in that manner. Moreover, it was not Uretek's understanding that a "request" from the arbitral tribunal to Messrs. M and D could be enforced legally. How they actually understood the wording is, however, irrelevant for the issue of whether the arbitral tribunal exceeded its mandate or committed a procedural error. Messrs. M and D would at any event have testified in the arbitration even without an invitation from the arbitral tribunal or a summons from a public court. If the arbitral tribunal had decided not to invite the witnesses to forward written witness statements to Doan Technology or decided not to get involved at all, then Doan Technology could instead have requested the arbitral tribunal's approval to question the witnesses before a public court under Section 26 of the Swedish Arbitration Act, or the corresponding provision under foreign law. The arbitral tribunal would have granted this approval and the witnesses would have been under court order to testify. The witnesses would have provided the same

information before the court as before the arbitral tribunal. Thus, the alleged excess of mandate and/or procedural error had no effect on the outcome.

Mr. S's report of 30 April 2014 was not based solely on Mr. M's written witness statement of 27 April 2014, but also on discussions with Mr. M and certain other individuals, as well as on several documents, which is evident from, amongst other things, p. 4 of the report. Mr. M discussed with Mr. S without any connection to the invitation he received from the arbitral tribunal. Mr. S's report of 4 August 2014 does not, however, clarify that Mr. M's written witness statement formed the basis for, or that it affected, the report. Thus, it is disputed that Mr. S's report was influenced by Mr. M's information. Mr. D is not even mentioned in the arbitration award, and so his witness statement cannot have affected the outcome in any manner. Even if this would have been the case, the influence occurred through the witness statements referenced by Doan Technology. Also for this reason is it impossible that the alleged excess of mandate and/or procedural error could have affected the outcome.

Messrs. M and D's testimonies did not affect the review of the issues relevant in paragraphs 114 and 116 of the arbitration award. The issue reviewed in paragraph 114 did not have any relevance for the outcome of the case. Moreover, there were other circumstances and other evidence than Messrs. M and D's witness statements considered more important by the arbitral tribunal in its review of the issues set forth in paragraphs 114 and 116.

The arbitral tribunal's to allow documents submitted too late etc.

During the first day of the main hearing, there was a dialogue between the Chairman and Uretek's counsel concerning the decision to allow submission C5. Then, Uretek was granted the opportunity to inform as to what issues the decision caused and the possibility to request a measure to mitigate the problem, e.g. by submitting another submission or adding a day to the hearing at a later point in time. Uretek's counsel in the arbitration accepted this and did not revert to the issue for the remainder of the main hearing. Thus, Uretek must be deemed to have, by implied action and by passivity, waived its right to rely on the error. In the alternative, Uretek must be deemed to have, by implied action or by passivity, waived to rely on any possible error in connection with the arbitral tribunal's allowing submission C5, including appendices. Thus, the grounds for challenge are precluded under the second paragraph of Section 34 of the Swedish Arbitration Act.

The arbitral tribunal's decision to allow submission C5, including appendices, as well as the new evidence submitted during the main hearing does not constitute any excess of mandate or any procedural error.

However, it is attested that the relevant submission C5, including appendices, was submitted at 1:52 am on 5 August 2014, roughly two weeks prior to the commencement of the main hearing on 18 August 2014. The reason for the timing of the submission was that the Doans' counsel experienced technical difficulties with its network, scanner and/or document management system. The e-mail of 5 August 2014, to which submission C5 and its appendices were attached, states that such problems had been experienced. The difficulties remained partially until the next day, 12:01, when the last appendix was successfully sent via e-mail.

The Doans explained in an e-mail to the arbitral tribunal on 7 August 2014 that they had experienced technical difficulties in the sending of submission C5, including appendices, and that they had not deemed it purposeful to, around midnight of 4 August 2014, request a respite. However, the fact that the Doans did not request a respite is of no relevance, since Procedural Order No 5 did not provide that respite required the arbitral tribunal's prior approval, as Uretek claims. Only a permission from the arbitral tribunal was required for the submission of new submissions and evidence to be allowed. This interpretation coincides with the fact that the parties had the opportunity to request to be allowed to submit "post-hearing briefs" under Procedural Order No. 5.

It is disputed that Uretek's counsel had been on high alert in the event that any new submission was submitted on the night of 4 August 2014, and that its office was staffed until midnight of 4 August 2014. This statement was not made during the arbitration, and the arbitral tribunal thus had no reason to consider this in its review of whether submission C5, including appendices, should be allowed or not. Moreover, the statement is irrelevant.

The arbitral tribunal did not deviate from the provision on "extraordinary circumstances". The arbitral tribunal carried out an overall assessment whether there were "extraordinary circumstances", including whether the submission of submission C5 was detrimental to Uretek. In fact, the arbitral tribunal was allowed to deviate from this provision as well as the decision on a "cut-off date" since the parties had authorized the arbitral tribunal to administer the arbitration and since the arbitral tribunal had a discretionary right to decide

on the administration and adjust it to the relevant proceedings as it saw fit. It is explicitly set forth in Section 10 of Procedural Order No 1 that the arbitral tribunal, upon its own initiative, could adjust its decisions on administration.

Through Procedural Order No 5 it was never intended that further submissions and evidence should be allowed after submission C5. Despite this, the arbitral tribunal gave Uretek the opportunity to respond to submission C5 in writing. Uretek did use this opportunity and submitted its submission R6 on 14 August 2014. Uretek had also had the opportunity to respond to the submission during the main hearing of 18-22 and 25 August 2014. Thus, Uretek had ample time to respond to the statements of submission C5, and can consequently not have suffered any detriment from the arbitral tribunal's decision to allow submission C5, including appendices. Moreover, Uretek had the opportunity to request further exchange of submissions following the main hearing, or that further days for the main hearing should be scheduled.

Doan Technology did not introduce any new grounds for its claim for damages through submission C5 and the phrase "beneficial ownership". All legal grounds for the claim for damages had been referenced in earlier submissions in the arbitration. The circumstances which might have been added through submission C5 were introduced to respond to Uretek's new claims in submission R4. The Doans had referenced new circumstances which directly related to "beneficial ownership" prior to the submission of submission C5. "Beneficial ownership" can therefore not be deemed as new grounds or new circumstances, but is merely a new phrase.

The evidence that was submitted in conjunction with submission C5 was in response to Uretek's statements in submission R4, and merely supplemented previously submitted evidence. Thus, there already existed evidence that served to establish the same things in the arbitration. The evidence submitted in conjunction with submission C5 can therefore not have affected the outcome of the arbitration.

It is correct that new evidence was submitted by the Doans during the main hearing after the arbitral tribunal's decision. The arbitral tribunal's decision to allow the evidence did not, however, affect the outcome in any manner. Uretek had ample opportunity to submit further evidence and counter the newly submitted evidence during the main hearing. Moreover,

Uretek could have requested continued exchange of correspondence, including new documentary evidence, after the main hearing.

The fact that a party has been granted a too substantial opportunity to respond to the counterparty's arguments does not constitute grounds for challenge, since a party cannot be considered to have an interest worthy of legal protection by winning through procedural decisions on limiting the procedural materials.

The decision of the arbitral tribunal cannot possibly have violated the principle of equal treatment, since a situation in which Uretek requested the arbitral tribunal to send invitations to its witnesses and that the arbitral tribunal rejected this request never arose in the arbitration.

The arbitral tribunal applied other legislation than Swedish law etc.

Through submission C5, including appendices, as well as the arbitral tribunal's allowing these documents by way of Procedural Order No 6, Uretek became aware that the arbitral tribunal could possibly apply the concept of "beneficial ownership" and thereby take other legislation than Swedish law into consideration. Nevertheless, Uretek did not in submission R6 nor during the main hearing object that the arbitral tribunal, by considering "beneficial ownership" would exceed its mandate or commit a procedural error. Therefore, the grounds for challenge have been precluded under the second paragraph of Section 34 of the Swedish Arbitration Act.

It is disputed that the arbitral tribunal in its calculation of the damages applied the legal concept of "beneficial ownership" and thereby applied other legislation than Swedish law. In paragraph 132 of the arbitration award, the arbitral tribunal concluded that such a legal concept does not exist under Swedish law and the arbitration award explicitly provides that the arbitral tribunal would not decide the issue "on basis of beneficial ownership".

Earlier in the arbitration, in submission C4, the Doans had referenced the circumstances that it was necessary for Doan Technology to operate through local agents and that Uretek had been aware thereof without objecting and also referenced this in the opening and closing statements. These circumstances were further brought up in witness statements.

Against this background, the arbitral tribunal neither applied Australian law, nor did it consider circumstances which had not been referenced by the parties. The arbitral tribunal neither exceeded its mandate nor did it commit any procedural error.

The arbitral tribunal found that it had been established, as a factual circumstance, that Doan Technology would have benefited from the revenue that arose at the local agents. Therefore, the arbitral tribunal concluded – under Swedish law – that Doan Technology was entitled to damages for the loss of this revenue. Thus, the arbitral tribunal concluded during its evaluation of the evidence under Swedish law that Doan Technology would receive profits from the local agents and that Doan Technology under Swedish law was entitled to compensation for the loss thereof.

Any incorrect application of a substantive provision as the now relevant clause on the choice of law relates to the merits of the case, and can thus not in any way serve as grounds for a challenge.

The arbitral tribunal failed to review Uretek's motion for adjustment

The motion for adjustment was conditional, so that the arbitral tribunal was limited to review it only in the event that Doan Technology was awarded the full, or nearly the full, amount of the claim ("in the amounts claimed or substantially the same amounts"). Since only 60 percent of the claimed amount was awarded, it was not possible to further adjust the amount. If the arbitral tribunal had nevertheless reviewed the motion, it would have exceeded its mandate.

It is through, amongst other things, paragraphs 56, 145 and 152 of the arbitration award obvious that the arbitral tribunal did review the motion for adjustment.

Paragraph 56 of the arbitration award states: "Following the hearing, the Tribunal has deliberated against the background of all the pleadings, documents and oral submissions filed or made in this case. What has been decisive for the outcome of the dispute is recorded in this Award." Thus, the arbitral tribunal considered all submissions and documents as well as what had been stated orally at the main hearing. The arbitration award deals only with matters that influenced the outcome. Obviously, the arbitral tribunal considered the motion for adjustment, but concluded that it was not of importance for the outcome. It could be noted that the arbitration award did also not deal with, amongst other things, the Doans'

arguments on the principle of ambiguity and the application of Sections 4 and 5 of Chapter 35 of the Swedish Code of Judicial Procedure or Doan Technology's motion for set-off.

Paragraph 145 of the arbitration award states that "[b]ased on the foregoing, and having considered carefully the submissions of the parties and the evidence, the Tribunal awards as follows". Thus, the arbitration award provides that the arbitral tribunal considered all that had been stated previously, and that which had been stated in the parties' submissions. Thus, the motion for adjustment was considered by the arbitral tribunal although it is not specifically mentioned in the arbitration award.

Paragraph 152 of the arbitration award states that "[a]ll other claims or requests by either party are rejected". Through this wording the motion for adjustment, amongst other things, was rejected.

In the main, the arbitration award shall be understood so that the arbitral tribunal reviewed Uretek's conditional motion for adjustment and concluded that the condition set out by Uretek had not been fulfilled. For this reason, it was impossible for the arbitral tribunal to adjust the awarded amount further on these grounds. Therefore, the objection was rejected together with all of Uretek's other objections set forth in the grounds as well as in the operative part of the award.

In the alternative, the arbitration award shall be understood so that the arbitral tribunal considered the conditional motion for adjustment by adjusting the claimed amount down to 60 percent and that all circumstances referenced by Uretek was considered in this adjustment.

This does not involve any excess of mandate or procedural error. The alleged error could at any event not be viewed as an excess of mandate.

Moreover, the motion for adjustment could not have led to any other outcome since Uretek did not reference any circumstances or evidence in support for the motion. The documents submitted in the arbitration concerning Uretek's finances and financial standing were not submitted in conjunction with submission R4, and the conditional motion for adjustment set forth therein, but in conjunction with submission R5, in which they were referenced in support of Uretek's witness, Mr. L's alternative and incorrect calculations of Doan

Technology's loss. None of these documents would have established that the awarded damages were "unreasonable [*sic!*] burdensome for Uretek".

In the event that the Court of Appeal would conclude that a procedural error did occur, then Uretek contributed to the occurrence of the error as follows. Uretek did not stress the motion for adjustment in later submissions, during the main hearing or after the main hearing. Uretek did not reference any circumstances or evidence in support of its motion for adjustment. Further, Uretek did not clarify to the arbitral tribunal that the motion for adjustment should be applied even if the arbitral tribunal concluded that Doan Technology was entitled to only 60 percent or less of the claimed amount.

Partial annulment of the arbitration award

In the event that the Court of Appeal would conclude that there are grounds and reason to annul any part of the arbitration award, then the arbitration award should be annulled only partially in accordance with the following.

The arbitration award is easily divisible in that it relates *to a* main case between Doan Technology as claimant and Uretek as respondent, *and a* counterclaim with Uretek as claimant and Doan Technology and Mr. BD as respondents. The grounds for the challenge referenced within the challenge period relate only to the main case of the arbitration.

The written witness statements by Messrs. M and D were referenced to establish the adjustments to the license agreement and the size of the loss, i.e. only in support of the main case. Mr. D is not even mentioned in the arbitration award, and his witness statement had no effect on the outcome in any manner.

Paragraph 114 of the arbitration award provides that the arbitral tribunal concluded that Mr. M's testimony had established that Uretek had oral agreements with its licensees. However, the arbitral tribunal did not from the witness statement draw any conclusions indicating that it influenced the conclusion as to whether any oral agreement had been reached between Doan Technology and Uretek of the contents asserted by Doan Technology. Thus, Mr. M's testimony cannot have affected the outcome of the counterclaim either. Submission C5, and the thereto attached written witness statements were referenced only with respect to the extent of the loss, which related only to the main case. The fact that the arbitral tribunal allowed submission C5 could thus not have affected the review of the counterclaim.

The challenge grounds relating to Uretek's statements that other legislation than Swedish law has been applied, as well as the statements concerning the conditional motion for adjustment, relate only to the main case of the arbitration.

In sum, Uretek's challenge does not relate to the arbitration award insofar as the award relates to the counterclaim. Thus, the challenge is limited to the main case and only to the extent it relates to the size of the loss.

Paragraph 146 ordered Uretek to compensate Doan Technology for its losses. This item could be partially annulled by the Court of Appeal re-writing the paragraph to cover an affirmation of Uretek's right to compensation from Doan Technology for "running royalties" in the amount of USD 232,782, which was the amount attested by Doan Technology in the arbitration and awarded to Uretek by the arbitral tribunal. In this way, the operative part of the arbitration award concerning the counterclaim could remain, and the arbitral tribunal could in a re-opening of the case limit its review to the main case.

Paragraph 147 of the arbitration award ordered Uretek to compensate Doan Technology for its arbitration costs and paragraph 148 ordered Uretek to bear its own litigation costs. These paragraphs could also be partially annulled by the Court of Appeal re-writing them to cover an affirmation of the costs for the counterclaim. The Doans' specification of the costs in the arbitration show that Doan Technology's costs for the counterclaim amounted to SEK 100,000 and that Mr. BD did not claim compensation for costs in the arbitration. Uretek's response to the Doans' cost specification provides that Uretek's costs in the arbitration for the counterclaim amounted to SEK 150,000.

Paragraph 149 of the arbitration award grants Uretek's motion for affirmation that all rights under the license agreement had been terminated as per 29 June 2012, which was undisputed between the parties in the arbitration. The challenge does not relate to this paragraph. This paragraph shall remain even if the challenge is successful.

Paragraph 151 of the arbitration award ordered Uretek to bear the costs for the arbitration proceedings. Also this paragraph could be partially annulled by the Court of Appeal re-writing it to cover an affirmation that Uretek is liable for the costs for the counterclaim.

Paragraph 152 rejected the parties' other motions and objections, including Uretek's counterclaim and motion for adjustment. This paragraph could be partially annulled by the

Court of Appeal re-writing it to relate to affirmation of the rejection of the counterclaim and affirmation of the rejection of other motions and objections that do not relate to the challenge. As regards the motion for adjustment, the arbitration award could be partially annulled by the Court of Appeal re-writing the operative part of the arbitration award to being declared annulled as far as it relates to the motion for adjustment, and that Uretek's liability for Doan Technology's loss is affirmed.

Thus, there are parts of the arbitration award that are distinctly divisible. Therefore, the arbitration award should be only partially annulled.

THE INVESTIGATION

Upon the request of Uretek, Mr. B, Uretek's counsel in the arbitration has been heard as a witness. Upon the request of Doan Technology, Messrs. M and D have been heard as witnesses. Further, the parties have referenced documentary evidence.

GROUNDS

The issue of the annulment of the arbitration award

Legal starting points

An arbitration award shall be annulled if the arbitrators have exceeded their mandate or if, without it having been caused by the party, a procedural error occurred which affected the outcome (items 2 and 6 of the first paragraph of Section 34 of the Swedish Arbitration Act).

Section 21 of the Swedish Arbitration Act provides that the arbitrators shall administer the arbitration impartially, purposefully and promptly and in so doing shall comply with the parties' agreements, unless there are reasons to deviate therefrom. SCC's arbitration rules of 2010, Section 19, similarly provide that the arbitral tribunal may, taking the SCC's rules and the parties' agreements into consideration, administer the arbitration is it deems appropriate and that the administration should always be impartial, purposeful and prompt in such a manner as to ensure that all parties have equal opportunity to sufficiently argue their respective cases.

After the expiry of the challenge period, a party may not reference new grounds for the challenge – i.e. legally relevant circumstances which, if established, would entail the annulment of the arbitration award – in support for its case (third paragraph of Section 34 of

the Swedish Arbitration Act). However, there is nothing to prevent a party from adjusting its case within a certain set of factual circumstances (see Government Bill 1998/99:35 p. 149 f.).

New circumstances after the expiry of the challenge period

After the expiry of the challenge period, Uretek has maintained that the testimonies of Messrs. M and D in the arbitration actually relate to Uretek's counterclaim and "important contractual issues, including royalties" and that submission C5, including appendices, introduced three new written witness statements relating to, amongst other things, "sublicensing" and "royalties". The Doans have maintained that Uretek thereby have referenced new grounds for its challenge, and that they should be dismissed because the reference was made too late. The Court of Appeal concludes, however, that these are not new grounds for the challenge, but rather a refinement of Uretek's already made statements on alleged errors which affected the outcome of the arbitration. Thus, the Doans' motion for dismissal shall be rejected.

The arbitral tribunal's contacts with witnesses

According to Section 25 of the Swedish Arbitration Act as well as Section 28(1) of the SCC's arbitration rules of 2010, it is for the parties to produce the evidence. The main aim of the provision is to clarify that the arbitral tribunal may not on its own initiative gather evidence (with respect to the legal provision, see Government Bill 1998/99:35 p. 115). The provisions do not prevent the arbitral tribunal, once a party has actually referenced the evidence, from acting to ensure that the evidence can be heard by summoning witnesses (cf. Heuman, Skiljemannarätt, p. 447, and Lindskog, Skiljeförfarande (1 May 2014, Zeteo), the commentary to Section 25, paragraph 4.1.4). According to the Court of Appeal, the provision does not prevent the arbitral tribunal, as in this case, from requesting or inviting witnesses to appear before the tribunal.

The next question is whether the decision of the arbitral tribunal in Procedural Order No 3 to request or invite violated the parties' and arbitral tribunal's agreement or the arbitral tribunal's administrative decision based thereon that the referencing party should be responsible for summoning witnesses (Procedural Order No 1, Section 5.8).

It is commonplace that an arbitral tribunal, after hearing the parties, decides on the more detailed administration of the arbitration, not just by determining the deadlines for submissions etc., but also certain practical issues concerning, e.g. who should do what and when. In most cases, a "procedural order" does not reflect an agreement between the parties, but instead is an administrative decision made by the arbitral tribunal (see Born, International Commercial Arbitration, vol. 2, 2014, p. 2230). According to the Court of Appeal, it is clear that each individual administrative decision cannot, irrespective of whether it is taken after the parties have agreed on the issue or not, always be construed as a determination of the arbitral tribunal's "mandate" in the sense set forth in item 2 of the first paragraph of Section 34 of the Swedish Arbitration Act.

Moreover, it happens that administrative decisions must be adjusted later. Events may transpire that prevent the arbitration from being administered in the agreed and decided manner. In these cases, the arbitral tribunal must do what it deems need be done, obviously while observing the fundamental principles that the parties must be treated equally and have the opportunity to sufficiently argue their respective cases. Most often, this does not mean that the arbitral tribunal commits a procedural error open to challenge (see Heuman, L, op. cit., p. 268 f., and Lindskog, op. cit., the commentary to Section 34, paragraph 4.2.2 and 5.2.6).

The investigation in these challenge proceedings does not clarify anything other than that Procedural Order No 1, Section 5.8, on the relying party's obligation to summon witnesses was of such nature that it did not determine the arbitral tribunal's mandate in the sense intended in item 2 of the first paragraph of Section 34 of the Swedish Arbitration Act. Thus, no excess of mandate in the manner maintained by Uretek occurred.

Based on Procedural Order No 1, Section 10, the arbitral tribunal was entitled to adjust its administrative decision on its own initiative or upon the request of a party, and the Court of Appeal concludes that the arbitral tribunal did not violate the principle of equal treatment by requesting or inviting the witnesses to appear. In these circumstances, the actions of the arbitral tribunal do not constitute any procedural error.

The arbitral tribunal's decision to allow documents submitted too late etc.

<u>The decision to allow submission C5</u>

First, the Court of Appeal will decide whether Uretek shall be deemed to have waived its right to reference the fact that the arbitral tribunal incorrectly allowed submission C5 despite it having been submitted after the "cut-off".

In its submission R6 prior to the main hearing, Uretek objected to the arbitral tribunal's decision to allow submission C5 and to Uretek not having been granted a respite to respond to submission C5. At the same time, Uretek reserved the right to challenge the arbitration award based on these circumstances. During the first day of the main hearing, the Chairman and Uretek's counsel, Mr. B, discussed Uretek's discontent concerning the arbitral tribunal's decision to allow submission C5. As a witness in these challenge proceedings, Mr. B has testified mainly as follows. Uretek ended up severely pressed for time when the company was not granted the requested respite to respond to submission C5. He considered requesting that the main hearing should be cancelled or expanded to cover another day or to be allowed to submit a "post-hearing brief". However, no option appeared meaningful, and so he decided not to take any action following the discussion with the Chairman.

The main hearing was documented in a "transcript". The transcript provides the following on the discussion between the Chairman and Mr. B during the very start of the first day of the main hearing. The Chairman was aware of Uretek's discontent with the arbitral tribunal's decision to allow submission C5, including appendices, and that Uretek had not been granted a respite. The Chairman sought to persuade Mr. B to state how serious Uretek's discontent was and what could be done to rectify the situation. The discussions were closed by the Chairman stating: "And normally things can be sorted out with a time – so I leave that with you." Mr. B simply responded: "Yes." Thereafter, other things were dealt with. Uretek did not revert to its discontent for the remainder of the arbitration.

Considering the said ending to the discussion and considering that Uretek did not revert to its discontent, the Court of Appeal concludes that the company, regardless of its earlier objections, must be deemed to have waived its right to maintain that the arbitral tribunal incorrectly allowed submission C5 and incorrectly rejected Uretek's motion for a respite.

Allowing new evidence during the main hearing

It is undisputed that the Doans referenced new evidence during the main hearing and that the arbitral tribunal allowed this despite it having decided in Procedural Order No 5 that

submissions and evidence only in certain circumstances could be allowed after the "cut-off date". The Court of Appeal concludes that also this administrative decision was of such matter that it did not determine the arbitral tribunal's mandate in the sense set forth in item 2 of the first paragraph of Section 34 of the Swedish Arbitration Act. The Court of Appeal's conclusion is that Uretek has not shown that the arbitral tribunal was not entitled to deviate from this decision concerning the possibility of allowing evidence after the "cut-off date". In these circumstances, Uretek has failed to establish that any excess of mandate or procedural error occurred in the now relevant aspects.

With respect to the issue of whether Uretek has been granted the opportunity to sufficiently argue its case, the referenced "transcript" establishes that Uretek, in response to the Chairman's query, requested and was granted a respite to respond to the new evidence. Therefore, Uretek has not established that it was not granted the opportunity to sufficiently argue its case with respect to this evidence. Therefore, the Court of Appeal concludes that no excess of mandate or procedural error occurred in the arbitration in the now relevant respects.

The arbitral tribunal applied other legislation than Swedish law etc.

The arbitration award (paragraphs 85, footnote 3, and 132) provides that the arbitral tribunal was well aware that expert witness Mr. S had based his calculation of the damage on the concept of "beneficial ownership" and that an application of the "beneficial ownership" concept was questioned by Uretek. In paragraph 132 of the arbitration award, the arbitral tribunal states that "beneficial ownership" does not exist under Swedish law and further states that "[t]his matter is not decided on the basis of beneficial ownership".

The Court of Appeal finds that the arbitral tribunal's statement must be accepted, unless it is obvious from the investigation in these challenge proceedings that this does not accurately reflect the arbitral tribunal's review. The Court of Appeal concludes that the investigation in these challenge proceedings does not support this or that "beneficial ownership" has been at all applied by the arbitral tribunal.

Uretek has further claimed that the arbitral tribunal based its decision on circumstances which had not been referenced by the Doans and that Uretek was not granted the opportunity to respond, specifically *that* it had been necessary for Doan Technology to operate through

local agents, *and that* Uretek had been aware of this without objecting (see paragraphs 132 and 133 of the arbitration award). The investigation in these challenge proceedings has established, however, that the Doans in submission C4, paragraph 38, referenced these circumstances and that Uretek thereafter submitted three submissions. The investigation has further established that the Doans referenced the circumstances during the opening and closing statements at the main hearing in the arbitration. Therefore, the Court of Appeal concludes that the Doans referenced the circumstances, and that Uretek had ample opportunity to respond.

Thus, the Court of Appeal concludes that no excess of mandate or procedural error occurred in the arbitration in these respects.

The arbitral tribunal failed to review Uretek's motion for adjustment

The arbitration award does not explicitly clarify that Uretek moved that possible damages awarded to Doan Technology should be adjusted.

Then, the question is whether the arbitral tribunal in deciding the dispute failed to review this motion.

First, the Court of Appeal notes that the arbitration award (paragraph 56) stresses that the arbitral tribunal has considered all documents and all oral statements, but that only matters of importance for the outcome have been noted in the arbitration award.

Further, the Court of Appeal concludes that the investigation in these challenge proceedings has established that Uretek raised the issue of adjustment very briefly in its submission R4. In the submission, two pages, starting on p. 6 under heading "Relief sought", contain the company's motion. In the same submission, under heading "Legal arguments", starting on p. 67, four lines on page 69 state that possible damages should be adjusted since such an amount would be unreasonably burdensome for Uretek. The submission makes no other mention of the issue. Uretek has not in these challenge proceedings maintained that the statement on page 69 would have been stressed elsewhere in the arbitration, even if Uretek in these proceedings has maintained that evidence was referenced to establish matters only involving the motion for adjustment.

The fact that a motion, a circumstance or piece of evidence is not explicitly mentioned in an arbitration award does not necessarily mean that the arbitral tribunal did not take it into

consideration. If that which is not dealt with relates to circumstances, which should not be expected to be dealt with in the award, then the presumption should be that the circumstance was taken into consideration (see Lindskog, op. cit., the commentary to Section 34, paragraph 5.2.2). The Court of Appeal considers a motion as something that should generally be dealt with in the arbitration award.

That, to which Uretek in these challenge proceedings refers as its "motion for adjustment" was thus not presented together with the company's other motions in submission R4, but many pages later under a heading where motions would not be expected to appear. Moreover, the wording used does not imply that it is in fact a motion. Having regard to the manner in which Uretek introduced the issue of adjustment to the arbitration and to the wording used, the Court of Appeal finds that this can be interpreted to mean that the fact that the issue is not mentioned in the arbitration award implies that the arbitral tribunal did not review the issue when deciding the dispute. In addition, in the operative part of the arbitration award (paragraph 152 of the award) the arbitral tribunal rejected "[a]ll other claims or requests by either party". Through this item of the operative part of the award, the arbitral tribunal must be deemed to have rejected Uretek's motion for adjustment in a contextually appropriate manner.

Thus, the conclusion of the Court of Appeal is that Uretek has not established that the arbitral tribunal incorrectly neglected to decide on the motion for adjustment.

Conclusion summary

The final conclusion of the Court of Appeal is that the arbitration award shall not be annulled because of excess of mandate or procedural error during the arbitration as asserted by Uretek. Thus, the claimant's motions shall be rejected.

Litigation costs

First, the Court of Appeal will decide the motions based on Sections 6 and 7 of Chapter 18 of the Swedish Code of Judicial Procedure that Mr. E, as well as Messrs. N and S and Ms. L shall be held jointly and severally liable with their principals for certain litigation costs regardless of the outcome of the dispute.

In support of its motion against Uretek and Mr. E, Doan Technology and Mr. BD have referenced mainly the following. Uretek has been negligent in not limiting the challenge to

certain aspects of the arbitration award. It was also negligent to first withdraw the case against Mr. BD and subsequently withdraw the withdrawal. Thereby, the manner in which Mr. E has carried out the proceedings has been negligent and has caused Doan Technology and Mr. BD additional costs. Mr. E shall be held jointly and severally liable with Uretek for these additional costs.

Uretek and Mr. E have maintained that Doan Technology and Mr. BD, together with their counsel, have lodged the motion on joint and several liability for litigation costs without grounds and against better knowledge. Further, Uretek has maintained that this motion has caused Uretek additional costs for which the respondents together with their counsel should be held jointly and severally liable, regardless of the outcome of these challenge proceedings.

The Court of Appeal concludes that there are no grounds for any of the arguments that the matter has been litigated negligently. The motions on joint and several liability regardless of the outcome shall thus be rejected.

As regards the compensation which Uretek, as the losing party, shall pay to Doan Technology and Mr. BD, respectively, the Court of Appeal concludes as follows.

Doan Technology and Mr. D have in the main claimed compensation in the amount of SEK 1,245,670, of which SEK 1,055,820 comprises costs for legal counsel. They have explained that the costs have been borne equally between them, i.e. SEK 622,835 for each respondent. In the event that the Court of Appeal would conclude that the respondents have not incurred costs to an identical extent, then Mr. D claims compensation in the amount of SEK 25,000 and Doan Technology claims compensation in the amount of SEK 1,220,670.

Uretek has attested the amount of SEK 1,038,220 for costs for legal counsel and expenses as reasonable. However, Uretek has not attested that half of the costs would relate to Mr. BD's case, but has instead maintained that reasonable litigation costs for Mr. BD would amount to SEK 25,000, whereas the rest of the attested amount has been determined as reasonable for Doan Technology's case.

The Court of Appeal does not question that Mr. BD, who has been summoned as respondent to the same extent as Doan Technology and has retained the same counsel, has incurred the costs for which he claims compensation in these proceedings. The Court of Appeal notes

that Uretek has not attested the reasonableness of the claims for compensation. The Court of Appeal concludes that the costs must be deemed reasonable to protect the interests of Doan Technology and Mr. BD.

Appeals

Pursuant to the second paragraph of Section 43 of the Swedish Arbitration Act the judgment of the Court of Appeal may be appealed only if it is in the interest of the development of case law that an appeal is reviewed by the Supreme Court. The Court of Appeal concludes that grounds are not at hand to grant leave to appeal.

The judgment of the Court of Appeal may not be appealed.

[ILLEGIBLE SIGNATURES]

The decision has been made by: Judges of Appeal UB and PS and Deputy Associate Judge CB, reporting.