

A breach of a contractual obligation can fall outside the scope of the arbitration agreement when the legal action is based on unfair competition legal provisions

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In a decision dated 25 September 2015 the Madrid Court of Appeal found that, despite the existence of an arbitration agreement, state courts are competent to decide on a violation of a confidentiality clause when the action is based, rather than on contractual provisions, on competition legal provisions.

The decision also deals with other matters which this note does not address (namely, the relationship between mandatory legal provisions -competition law- and arbitration and the effects of the arbitration agreement vis-à-vis non-signatories).

The facts that are relevant for the purposes of this note are as follows:

- Two companies signed an agreement that included an arbitration clause whereby the parties agreed to submit to arbitration all disputes arising from or in connection with the contract.
- Apparently, the contract had to do with commercial secrets. It contained a confidentiality clause.
- One of the companies sued the other before the Madrid commercial courts on the grounds that it had inappropriately used certain commercial secrets of the other.
- The claimant held that such violation was a breach of the Spanish Unfair Competition Act.
- The respondent filed a procedural objection arguing that the dispute should be submitted to arbitration.
- The commercial court upheld the objection and dismissed the action, referring the parties to arbitration.
- The claimant challenged the decision before the Court of Appeal on the grounds that it was not exercising a contractual action and that, therefore, the arbitration clause did not apply.

The Court of Appeal found that because the claimant had made the choice to bring an action based on the Spanish Unfair Competition Act, rather than one based on the contract, the arbitration clause did not apply.

The decision of the Court of Appeal does not provide details of the background of the case, but it could be used to claim that, under certain circumstances, the claimant may have the option to circumvent the arbitration clause and resort to state courts when it comes to conducts that can be deemed to breach contractual obligations but can also amount to violations of unfair competition or antitrust rules or present another extra-contractual dimension.