Defining the Limits of Arbitral Discretion: Enforceability of Oral Pronouncements

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While it is indisputable that an arbitrator is the master of the arbitration proceedings, is there nevertheless a framework within which the arbitrator must operate?

In **Telekom Malaysia Bhd v Obnet Sdn Bhd [2025] 1 CLJ 17**, the Federal Court (**FC**) was faced with a novel question – *what is the significance and enforceability of oral pronouncements by an arbitral tribunal in a bifurcated arbitration proceeding? Can the Arbitrator make an oral decision on liability and proceed with assessment of damages thereafter?* We explore the FC's decision on these issues.

Facts of the Dispute

Obnet Sdn Bhd (**Obnet**) entered into two agreements with the Selangor State Government (**State Government**) to connect all State Government departments, statutory bodies, municipals/local authorities, Government-linked companies and Government agencies *via* a high-speed broadband network (**SELNET agreements**). Obnet then appointed Telekom Malaysia Berhad (**Telekom**), to design and build a network infrastructure for the SELNET project. Following this, the 'Metro-E Agreement' was executed between Obnet and Telekom. In the event of a dispute, the dispute shall be referred to arbitration under the KLRCA Arbitration Rules (**AIAC Rules 2021**).

Later in 2008, the SELNET agreements were terminated, and consequently the Metro-E Agreement was terminated. Obnet then commenced an arbitration proceeding against Telekom, alleging that Telekom had unlawfully interfered with and used the confidential information obtained from the SELNET project to provide its own network services to the State Government, resulting in the State Government terminating the SELNET agreement.

Facts of the Arbitration Proceeding

Before the tribunal, the Arbitrator decided to bifurcate the arbitration proceedings. Thus, the Arbitrator will first determine the issue of liability and once liability was established, he would hear and determine the issue of damages.

Almost four years after the commencement of arbitration, the arbitrator orally informed that he allowed both Obnet's claim and Telekom's counterclaim. The arbitrator further notified the parties that he would not publish a written award at that stage. Despite Telekom's written requests for an award to be published in accordance with Sections 2 and 33 of the Arbitration Act 2005 (**AA 2005**) and Article 34 of the UNICTRAL Arbitral Rules (*adopted by the AIAC Rules 2021*), the Arbitrator notified that there was no requirement for an award to be published at that juncture. The Arbitrator informed that the practice in the High Court where written judgments are published at the conclusion after the hearing on quantum.

Before the High Court (HC)

Dissatisfied with the approach taken by the Arbitrator, Telekom filed the originating summons (**OS**) at the Kuala Lumpur High Court seeking for amongst others, (i) a declaration that the oral decision in respect of Telekom's and Obnet's liability is invalid; and (ii) an order to restrain Obnet from taking any further steps to proceed with the arbitration proceedings until the tribunal publishes an award on its determination of liability.

In dismissing Telekom's OS, the HC held that Telekom did not sufficiently plead any cause of action. However, the HC went further to analyse the validity of the oral decision by the arbitrator.

The HC explained that the AA 2005 does not require the arbitrator to immediately publish his award after the determination of liability. Hence, Telekom could not insist on the written award to be published, and the issue of estoppel cannot be raised to negate the operation of a statutory provision as the AA 2005 does not prohibit the issuance of one final award at the end of the arbitration.

Decision by Court of Appeal (CA)

The CA affirmed the HC's decision with no written grounds provided.

Decision by Federal Court (FC)

The central issue for determination before the FC was whether the oral decision delivered by the arbitrator on the issue of liability constituted an "award". As the arbitration was commenced under the AA 2005 and AIAC Rules 2021, the FC had to consider whether it was a valid decision within the meaning of the AA 2005 and the AIAC Rules 2021.

In addressing this issue, the FC made, among others, the following key observations:

(a) Under Section 2 of the AA 2005, for a decision to be an "award", the decision must relate to the substantive legal rights and obligations of the parties as well as have an effect of finality in respect of the issue it disposes.

(b) This definition must be read together with Section 33 of the AA 2005 which prescribes the form and content of an award. In particular, an award must be made in writing and must contain reasons for the decision, unless the parties have agreed that no reasons are necessary.

(c) Under the Model Law, there is no concept of an arbitral tribunal delivering a decision on the substance of a dispute in any form other than an award.

Accordingly, the FC held that a decision on liability constitutes an "award" as it determines a substantive issue affecting the legal rights and obligations of the parties. Therefore, notwithstanding that the arbitrator is the master of the arbitration proceedings and that the arbitrator may decide to bifurcate the proceedings, the arbitrator must still comply with the requirements of the AA 2005 to deliver a valid decision which can be enforced under the AA 2005.

Consequently, where an arbitral tribunal has bifurcated the proceedings and made an oral ruling on liability, the arbitrator cannot proceed to the assessment of quantum until a written award on liability is issued in compliance with the AA 2005.

Given that the arbitration commenced in 2016 and the oral decision was delivered in 2020, the FC found that it was necessary for the written award to be published as soon as reasonably possible. The FC accordingly held that the proceedings on the assessment of damages are to be stayed until the written award on liability is published.

Conclusion

This case underscores the critical importance of compliance with the AA 2005 – the *lex arbitri* applicable to domestic arbitrations seated in Malaysia. While an arbitrator retains broad discretion in managing the conduct of proceedings, including bifurcation, that discretion must be exercised within the framework of the AA 2005. The AA 2005 is designed to uphold the autonomy of parties in arbitration with minimal court intervention, but it also imposes mandatory safeguards—such as the requirement for written awards. Non-compliance with these statutory requirements may render a decision invalid and unenforceable, ultimately defeating the very purpose of arbitration as an effective and final means of dispute resolution.

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定义仲裁自由裁量权的界限：口述裁决的执行效力

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尽管仲裁员毫无疑问地是仲裁程序的主导者，但其裁量权是否仍须在一定的限制范围内行使？

在 *Telekom Malaysia Bhd v Obnet Sdn Bhd [2025] 1 CLJ 17* 一案中，联邦法院面临一个前所未有的问题——在分阶段进行式的仲裁程序中，仲裁庭作出的口述裁决具有什么样的法律意义及执行效力？仲裁员是否可以先以口述形式裁定责任问题，然后再继续进行赔偿的评估？我们将在本文中探讨联邦法院对这一系列问题的裁决。

争议中的主要特点

Obnet有限公司（***Obnet***）与雪兰莪州政府（**州政府**）签订了两份协议，旨在通过高速网络宽带连接各州政府各部门、法定机构、市政/地方当局、政府关联公司及政府机构（**SELNET协议**）。随后，Obnet委任马来西亚电讯有限公司（***Telekom***）为SELNET项目设计并建设网络基础设施。因此,双方其后签署了《**Metro-E 协议**》。根据该协议，如发生争议，应透过仲裁及根据《吉隆坡区域仲裁中心仲裁规则》解决此争议。

随后在 2008 年，SELNET 协议被终止，随之而来的是《Metro-E 协议》也被终止。Obnet 随即启动仲裁程序，指控 Telekom 非法干预并使用从 SELNET 项目中获得的机密信息，向州政府提供其自有的网络服务，导致州政府最终终止了与 Obnet 的 SELNET 协议。

仲裁程序的事实情况

在仲裁庭前，仲裁员决定将仲裁程序分为两个阶段进行。因此，仲裁员将首先裁定关于责任问题，一旦责任确立，他将审理并裁定赔偿评估。

在仲裁程序开始近四年后，仲裁员口头通知双方，他已裁定支持 Obnet 的申诉和 Telekom 的反诉。仲裁员并且通知双方，他在该阶段不会发布书面裁决。尽管 Telekom 根据《仲裁法 2005》第 2 条和第 33 条以及《联合国国际贸易法委员会仲裁条规》第 34 条（该规则已被 KLRCA 条规采纳）透过书面请求要求发布裁决书，仲裁员通知称，没有相关的规则要求在此阶段发布裁决书。仲裁员还说明他将会根据高等法院的做法，在就赔偿金额举行听证会后才发布书面判决。

在高等法院

由于不满仲裁员所采取的做法，Telekom 向吉隆坡高等法院提交了原始传讯令状，寻求两项有关裁决：（一）宣布有关 Telekom 与 Obnet 责任的口述裁决无效；以及（二）发出命令，禁止 Obnet 在仲裁庭就责任并发布裁决书之前采取任何进一步推进仲裁程序的措施。

高等法院驳回了 Telekom 的原始传讯令状，理由是 Telekom 未能充分陈述任何可成立的诉讼理由。然而，高等法院进一步分析了仲裁员所作口述裁决的有效性。

高等法院解释说，《仲裁法 2005》并未要求仲裁员在裁定责任的问题后立即发布裁决书。因此，Telekom 无权坚持要求发布书面裁决。同时, Telekom 也不能援引禁止反言原则（*estoppel*）来否定法定条文的效力，因为《仲裁法 2005》并未禁止在仲裁结束时作出一项最终裁决。

上诉法院的裁决

上诉法院维持了高等法院的判决，但未提供书面判决理由。

联邦法院的裁决

联邦法院需裁定的核心问题是：仲裁员就责任问题作出的口述裁决是否构成一个“裁决”。由于该仲裁是依据《仲裁法2005》和《亚洲国际总裁中心仲裁规则2021》运行的，联邦法院必须考虑该口述裁决属于《仲裁法2005》和《亚洲国际总裁中心仲裁规则2021》中定义的有效裁决。

在处理该问题时，联邦法院作出以下重点观察, 其中包括：

(a) 根据《仲裁法2005》第2条法则，若一项决定要构成“裁决”，该决定必须涉及当事人的实质性法律权利和义务，并且此决定对其问题具有最终决定的效力。

(b) 此定义必须与《仲裁法2005》第33条一并解读，第33条设立了裁决所需的形式和内容。特别是，裁决必须以书面形式作出，并且必须说明裁决理由，除非所有当事人已达成一致认为无需说明理由。

(c) 根据《示范法》（*Model Law*），仲裁庭就争议作出的决定只能通过“裁决”的形式方为有效，不存在其他形式的裁定。

因此，联邦法院裁定，关于责任争议的决定构成一项“裁决”，因为它决定了当事人的法律权利和义务的实质性问题。因此，尽管仲裁员作为仲裁程序的主导者，并且拥有决定将仲裁程序分阶段进行权力，此仲裁员仍必须遵守《仲裁法2005》的相关要求，以作出一项可以根据《仲裁法2005》执行的有效裁决。

因此，在仲裁庭已将程序一分为二并就责任问题作出口述裁决的情况下，在未依据《仲裁法2005》出具书面责任裁决前，仲裁员不得进一步进入赔偿金额的评估程序。

鉴于该仲裁程序始于2016年，而口述裁决是在2020年作出的，联邦法院认为有必要尽快合理地发布书面裁决。因此，联邦法院裁定，赔偿评估程序应暂停，直至仲裁员发布了有关责任的书面裁决为止。

总结

本案强调了遵守《仲裁法2005》的重要性——该法是适用于以马来西亚为仲裁地的国内仲裁的准据法（*lex arbitri*）。虽然仲裁员在管理仲裁程序（包括其决定分阶段进行程序）方面享有广泛自由裁量权，但该裁量权的必须在《仲裁法2005》的允许范围下进行。《仲裁法2005》旨在保障仲裁中的自主权，并尽量减少法院的干预，但同时也设立了强制性保障措施，例如对书面裁决的要求。若不遵守这些法定要求，可能导致

裁决无效且缺乏执行性，从而违背仲裁作为一种有效且最终解决争议机制的根本目的。

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