

ITU European Regional Workshop on Dispute
Resolution
Dispute Resolution by Mediation in Telecoms



John Sykes

CHARLES RUSSELL 

- ◆ What is Mediation
- ◆ Developments in England and Wales
- ◆ Developments in the European Union
- ◆ International Mediation

CHARLES RUSSELL 

What is Mediation?

- ◆ Structured negotiation
- ◆ With assistance of a trained mediator
- ◆ Which is non binding, confidential and without prejudice to Court proceedings
- ◆ And settles the majority of cases

CHARLES RUSSELL 

Why appropriate for telecoms disputes?

- ◆ Complexity: dispute may be
 - ◆ highly technical
 - ◆ cross-border, with choice of law/forum
 - ◆ costly to resolve
- ◆ Confidentiality
- ◆ Continuing business relationship
- ◆ Requiring innovative solutions

CHARLES RUSSELL 

Position in England and Wales

- ◆ Dramatic change in last 5 years
- ◆ By the Woolf reforms and Civil Procedure Rules (CPR) 1999
 - ◆ Exchange information early
 - ◆ Avoid litigation by mediation/settlement
 - ◆ Narrow issues where litigation cannot be avoided
 - ◆ Enforcement by costs orders/increased payment of interest
- ◆ Dunnett .v. Railtrack Plc 22nd February 2002
- ◆ Halsey .v. Milton Keynes NHS Trust 11 May 2004

CHARLES RUSSELL



By inclusion of ADR in commercial contracts:

Typical Clause:

- ◆ **Negotiation, Escalation and Mediation** - If any dispute or claim arises relating to this Agreement or any Contract, you and we will attempt in good faith to negotiate a solution to our differences, including progressively escalating any dispute or claim through senior levels of management. If negotiation does not result in resolution within 15 business days of when one party first notifies the other in writing of the dispute or claim, you and we will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure

Obliges the parties to attempt mediation:

- ◆ Cable & Wireless Plc .v. IBM United Kingdom Ltd [2002] All ER (D) 277 (Oct)

CHARLES RUSSELL



The EU Position on Mediation Why is the EU interested?

- ◆ Single European Market
- ◆ Increased movement of goods and people
- ◆ Creating increased number of disputes between nationals of different member states
- ◆ Cross border issues add to complexity

CHARLES RUSSELL



Embracing the Concept of Mediation

"a consensus based form of social peace-keeping which in many cases will be more appropriate than the Courts or arbitration"

- ◆ Directive on Interconnection in Telecommunications 1997
 - ◆ Telecommunications (Interconnection) Regulations 1997
- ◆ Lisbon Summit, on Employment and the Information Society March 2000
- ◆ Directive 2002/21/EC European Framework Directive for Electronic Communications Networks and Services
 - ◆ OFTEL and Radio Communications Agency Statement 28 February 2003
 - ◆ UK Communications Act 2003

CHARLES RUSSELL



The Green Paper: April 2002 "Alternative Dispute Resolution in civil and commercial law"

- ◆ To generate debate on promotion of ADR
- ◆ 160 replies received: Reaction generally good
- ◆ Conclusions: European plan for best practise in mediation
: Proposal for a Directive on mediation

ADR described as "a political priority" for all EU institutions

CHARLES RUSSELL 

The EU Directive on Certain Aspects of Mediation in Civil and Commercial matters

- ◆ Responses to draft proposal by April 2004
- ◆ Draft directive to be produced September 2004
- ◆ Objective: "to facilitate access to justice by promoting the use of mediation in civil and commercial matters and to ensure a sound articulation between mediation and judicial proceedings"

CHARLES RUSSELL 

International Mediation: a preferred dispute resolution process

- ◆ Even greater potential for complexity than in EU
- ◆ Greater number of legal systems, sometimes in conflict
- ◆ Some of those may be less developed
- ◆ Difficulties of enforcement

CHARLES RUSSELL 

Organisations

- ◆ American Arbitration Association (AAA)
- ◆ Australian Commercial Disputes Centre Limited (ACDC)
- ◆ Centre for Effective Dispute Resolution (CEDR)
- ◆ The Hong Kong Mediation Council (HKMC) (part of the Hong Kong International Arbitration Centre)
- ◆ International Chamber of Commerce (ICC)
- ◆ International Centre for Settlement of Investment Disputes (ICSID)
- ◆ The International Council for Commercial Arbitration (ICCA)

CHARLES RUSSELL 

Organisations continued

- ◆ The United Nations Commission on International Trade Law (UNCITRAL)
- ◆ World Intellectual Property Organisation (WIPO)
- ◆ ADR in South East Asia:
 - ◆ The Asia-Pacific Economic Co-operation (APEC)
 - ◆ The Singapore Bar
 - ◆ The Singapore Arbitration Centre
 - ◆ Malaysian Bar Council

CHARLES RUSSELL



CHARLES RUSSELL

