

# Commercial Court refuses to revisit arbitrators' decision on merits in course of challenge to their jurisdiction

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In a challenge to the arbitrators' jurisdiction, the English Commercial Court has refused to allow the claimant to reopen an issue on the merits which the arbitral tribunal had expressly decided, even though that issue was also arguably relevant to jurisdiction. The claimant contended that because a jurisdictional challenge under section 67 of the Arbitration Act 1996 was a complete rehearing, the court could determine any relevant issue, unfettered by the decision of the tribunal. Carr J disagreed, holding that the arbitrators' decision gave rise to an issue estoppel.

In this case, the claimant was claiming sums due under an agreement for the termination of petroleum production operations that was subject to English law and London Court of International (LCIA) arbitration. It challenged the LCIA arbitrators' jurisdiction over the defendants' counterclaims which arose from alleged breaches of an underlying oil production contract. This contract was subject to Nigerian law and arbitration in Paris.

The court rejected the challenge to the LCIA arbitrators' jurisdiction, applying the "one-stop" / "one jurisdiction" presumption formulated in *Fiona Trust & Holding Corporation v Primalov* [2007] UKHL 40. It held that this presumption may apply with particular potency when there is an agreement subsequently entered into by parties for the purpose of terminating a commercial relationship created by an earlier agreement. The court also held that the tribunal had power to join the third defendant to the arbitration. The parties had not agreed to disapply the joinder power contained in Article 22.1(h) of the LCIA Rules 1998. This would have required a clear written agreement.

This decision gives further guidance for determining jurisdiction over complex arrangements involving several separate agreements. It is particularly interesting for clarifying that the court cannot reopen merits issues when considering a section 67 jurisdiction challenge. Finally, the case establishes that the list of jurisdictional matters in section 30 is exhaustive. (*C v D1, D2 and D3* [2015] EWHC 2126 (Comm).)

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