



Public Competition Policy in International Arbitration

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At the intersection between arbitration and competition law lies private autonomy. The provisions of competition law safeguard what is at the same time the legal foundation of arbitration. In both areas of law, private autonomy enters into conflict with the state's regulatory interest. While this conflict is omnipresent in competition law, it manifests itself in arbitration only when the arbitral proceedings come into contact with mandatory state law, most notably when a state court has to decide on the enforceability of an arbitral award. If this is the case, not only private autonomy and mandatory state law collide, but also arbitration and state court jurisdiction. As far as arbitration and litigation are considered to be equivalent, a state court may not review the substance of an arbitral award on the merits (principle of *non-révision au fond*). It may only consider whether the enforcement of the arbitral award would violate an essential principle of the law of the state that the state court is supposed to protect, i.e. its public policy (*ordre public*). Some of these essential principles derive from a state's competition law and form the state's public competition policy. Public competition policy, its implications for the arbitral tribunal and its protection by state courts form the subject of doctoral thesis.

At the onset, a broad overview of the links between competition law and arbitration is called for (Chapter 1). This chapter presents the theoretical foundations of the connection between the two fields of law as well as the many examples of their interaction in practice. Proceeding from there, the thesis then explores the notion of public competition policy by presenting it in all its different facets, which are classified by their effects and put into categories common in private international law, so as to allow to identify conflicts and possible ways of dealing with them (Chapter 2). Subsequently, it is shown how state courts review arbitral awards for a violation public competition policy, which parameters control their examination, how parallel proceedings before competition authorities affect it and which options state courts have when they establish a violation of public competition policy (Chapter 3). Following this, the thesis explores ways for the arbitral tribunal and the parties to the arbitration to avoid a breach of public competition policy (Chapter 4).

With the results obtained in this process, an attempt is made to find an answer to the question of whether the state court's control of public competition policy represents an effective safeguard mechanism that is capable of preventing serious competition law violations through arbitral awards.