Antitrust Arbitrations in the Context of EC Competition Law: Some Brief Initial Guidance

by

Gordon Blanke MCIArb

I. Introduction

Many globally-operating businesses – even though engaging leading international and European competition counsel – are still unaware of windfall gains they can achieve by committing their antitrust differences with competitors or other third market participants – whether upstream or downstream – to arbitration.

Arbitration over Litigation

Arbitration is essentially a *private* and *confidential* dispute resolution mechanism conducted by a private individual, the arbitrator, who is appointed in private by choice of the parties to the dispute, allowing the disputants to avoid any adverse publicity. Importantly, arbitration is contractual in nature in that it is for the opposing parties to agree the arbitrator's mandate (including the issues to be determined in the arbitration) and the procedure (whether institutional[1] or *ad hoc*[2]) to be adopted for the conduct of the arbitration proceedings. The arbitrator renders an award, which is a private judgment and enforceable in over 140 leading industrial nations under the New York Convention[3]. Arbitration awards are final and binding and cannot be appealed on the merits. Applications for setting aside lie to the national judiciary at the place of arbitration on jurisdictional and procedural grounds only, i.e. if the tribunal lacks jurisdiction over the subject-matter of the dispute or for violation of mandatory

1 Institutional arbitration is administered by an arbitration institution under that institution's rules, such as the International Chamber of Commerce (ICC) International Court of Arbitration, the London Court of Arbitration (LCIA), the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), or the Dubai International Arbitration Centre (DIAC).

2 Ad hoc arbitrations are conducted without the involvement of an arbitration institution, but possibly still under a pre-determined set of rules, such as the UNCITRAL Rules of Arbitration.