Free competition : EU Core Value


  "Article 81 EC constitutes a fundamental provision which is essential for the accomplishment of the tasks entrusted to the Community, in particular, for the functioning of an internal market."

Art. 81 & 82 : public policy ?

- Inside EU : 
  - ECJ *Eco Swiss* : national public policy
  - Manifest breaches.
- Inside E.E.A. :
  - E.E.A. Agreement Arts. 53 & 54
- Outside EU : ????
  - Swiss TF March 8, 2006
    - Shared by whole world ?
    - Pacta sunt servanda ?
    - Regionally shared values ?

The arbitrator
and
Arts. 81 and 82 EC
Prof. Hans van Houtte, FCIArb
KULeuven, Belgium
What can arbitrator do?

- No fines: Art. 81.2
- Nullity of Contract: Art. 81.1
  Applicable law:
  - Whole contract/partial nullity
  - Reconversion?
- Exemption: Art. 81.3
  - Block exemption
  - Individual exemption (analogy Reg. 1/2003)
- Abuse of dominant position
- Compensation
- [Mergers & Acquisitions]

Compensation

- Restitutio in integrum / ab initio ???
  - Nemo auditur propriam turpitudinem allegans
  - In pari delicto cessat repetitio
- Contributory negligence ??

- ECJ Courage (2001): keep incentive

Duty to apply ???

- Place of Arbitration: E.U. (+EEA)
  Lex arbitri
- Proper law of the contract: E.U. (+E.E.A.)
- Otherwise:
  - Foreign mandatory rules ???
  - International public policy ???
- Enforceability abroad ???
Ex officio ???

- ECJ Van Schijndel (1995) : no
- ECJ Eco Swiss (1999) : domestic law

- Outside EU (+ E.E.A.) :
  Swiss Trib. Fed. : no

- Arbitrators raise issue ???

Court Review

- National courts
  - Public policy?
  - Law chosen by parties ??
- ECJ : preliminary question
  - Not in arbitration proceedings
    Nordsee : Denuit
  - National courts within E.U. (+ E.E.A.???)
    • Specific reference ???
    • In exequatur/ nullity proceedings