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REVISITING ARBITRABILITY IN COMPETITION LAW: A COMPARATIVE ANALYSIS AND THE INDIAN DILEMMA

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I. ABSTRACT

The question of whether competition law disputes can be resolved through arbitration has long been a subject of debate. Traditionally, such disputes have been considered non-arbitrable, as they involve public interest concerns like ensuring fair market competition, consumer protection, and preventing monopolistic practices. However, in recent years, jurisdictions like the United States, the European Union, and Canada have gradually recognized the limited arbitrability of competition law disputes, provided they pertain to private commercial arrangements rather than broad regulatory concerns. This shift is driven by a pro-arbitration approach aimed at fostering international business confidence and providing parties with a flexible, efficient dispute resolution mechanism. In contrast, India has yet to formally adopt this evolving stance. Competition law disputes are generally perceived as falling under the exclusive jurisdiction of the Competition Commission of India (CCI), with arbitration being viewed as an inadequate forum due to its private and confidential nature. However, with the increasing complexity of commercial arrangements and the growing importance of arbitration in cross-border trade, it is necessary to reevaluate India's approach. This research examines whether India can allow arbitration in certain competition law matters, particularly those involving rights in personam (private contractual disputes) while safeguarding cases concerning rights in rem (public interest and regulatory matters) within the domain of the CCI. By analyzing legal frameworks in the US and the EU, this study seeks to explore a balanced approach for India. It evaluates the legal challenges, policy considerations, and potential solutions that could allow partial arbitrability of competition law disputes, aligning India with global best practices while upholding its regulatory framework. This research further delves into the key developments under the Competition (Amendment) Act, 2023, all

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of which have implications for arbitrability. The study proposes that adopting mechanisms like the Second Look Doctrine, where courts retain limited review powers over arbitral awards in competition matters, could provide an optimal solution. Ultimately, this paper argues that India must modernize its stance on arbitrability in competition law to facilitate commercial certainty, attract foreign investments, and strengthen its dispute resolution framework. While competition law's core regulatory function must remain intact, selective arbitrability of private disputes can serve as a progressive step toward legal efficiency and economic growth.

II. KEYWORDS

Arbitrability; Competition Law; Competition Commission of India (CCI); Rights in Rem and Personam; Second Look Doctrine.

III. INTRODUCTION AND RESEARCH PROBLEM

In most legal systems around the world, competition law disputes have traditionally been considered non-arbitrable due to their public interest implications. The rationale behind this view is that competition law plays a critical role in ensuring fair market practices, protecting consumer welfare, and preventing monopolistic behaviour. Given that arbitration is a private, confidential, and party-driven mechanism, it was widely seen as unsuitable for handling disputes that impact market dynamics and the broader public.

However, this rigid stance began to shift with the landmark U.S. Supreme Court ruling in *Mitsubishi Motor Corp. v. Soler Chrysler Plymouth*⁴. The court determined that an arbitration agreement between parties could extend to antitrust disputes, thereby affirming that statutory claims under the Federal Arbitration Act, 1925⁵ were not inherently exempt from arbitration. This judgment served as a catalyst for change, influencing courts in jurisdictions such as the European Union, the United Kingdom, and Canada, which gradually started recognizing that certain competition law disputes could be arbitrated, albeit with exceptions for cases involving penal sanctions or rights in rem.

⁴ *Mitsubishi Motors v. Soler Chrysler-Plymouth*, 473 US 614 (1985).

⁵ The United States Arbitration Act, February 12, 1925 (Pub.L. 68-401, 43 Stat. 883; 9 U.S.C. § 1).

Over time, jurisdictions like the U.S. and the EU have established clear frameworks regarding the extent to which competition law disputes can be resolved through arbitration. However, India still lacks a definitive legal position on this issue. Neither the Competition Act, 2002⁶, nor any Supreme Court ruling explicitly clarifies whether competition law disputes can be settled through arbitration. The closest judicial reference is found in the Delhi High Court's decision in *Union of India v. Competition Commission of India*⁷, where the court stated that arbitral tribunals lack the investigative expertise required for competition law matters. While the ruling did not directly declare competition law disputes as non-arbitrable, it implicitly suggested that arbitration may not be the ideal forum for such cases.

Against this backdrop, this research paper aims to explore the current legislative and judicial approach in India towards the arbitrability of competition law disputes. It also undertakes a comparative analysis by examining how arbitration has been integrated into competition law enforcement in the U.S. and EU, before identifying the challenges and potential pathways for India to adopt a similar approach.

A. RESEARCH OBJECTIVES

1. To examine the existing legal framework governing arbitrability in India, with specific reference to the Arbitration and Conciliation Act, 1996 and the Competition Act, 2002.
2. To analyze the judicial approach of Indian courts toward the arbitrability of competition law disputes and identify the gaps in the current legal framework.
3. To undertake a comparative analysis of how the United States and the European Union have integrated arbitration into their competition law enforcement mechanisms.

⁶ Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).

⁷ *Union of India v. Competition Commission of India*, A.I.R. 2012 Del 66.

4. To assess the viability of permitting selective arbitrability of competition law disputes in India, distinguishing between rights in rem and rights in personam.
5. To propose a comprehensive legal and policy framework for India that allows for the partial arbitrability of competition law disputes while preserving the regulatory mandate of the CCI.

B. RESEARCH QUESTIONS

1. Can competition law disputes in India be considered arbitrable under the existing legal framework, and what are the judicial precedents that inform this determination?
2. What is the distinction between rights in rem and rights in personam in the context of competition law, and how does this distinction determine the arbitrability of competition disputes?
3. How have the United States and the European Union resolved the tension between public enforcement of competition law and private arbitration?
4. Is the Second Look Doctrine an appropriate model for India to adopt in order to balance arbitral autonomy with regulatory oversight in competition matters?
5. What legislative amendments are necessary to enable the selective arbitrability of competition law disputes in India while safeguarding the CCI's exclusive regulatory jurisdiction?

C. RESEARCH HYPOTHESES

1. **Primary Hypothesis:** The current legal framework in India does not permit the arbitration of competition law disputes; however, selective arbitrability of disputes involving rights in personam is legally viable and consistent with India's pro-arbitration policy direction.
2. **Secondary Hypothesis I:** The adoption of the Second Look Doctrine, as developed by U.S. jurisprudence in *Mitsubishi Motors Corp. v. Soler*

Chrysler-Plymouth and affirmed in EU competition law through *Eco Swiss China Time Ltd. v. Benetton International NV*, offers a workable model for India that preserves judicial and regulatory oversight without undermining arbitral efficiency.

3. **Secondary Hypothesis II:** Strategic amendments to Section 61 of the Competition Act, 2002 and Section 27 of the Arbitration and Conciliation Act, 1996, coupled with a mandatory CCI consultation mechanism in arbitral proceedings involving competition law issues, would effectively operationalize a framework for partial arbitrability in India.

D. RESEARCH METHODOLOGY

This research adopts a doctrinal legal research methodology, supplemented by a comparative analytical approach. The study is primarily based on an analysis of primary sources including statutes, judicial decisions, and international legal instruments, alongside secondary sources such as academic articles, policy reports, and institutional publications.

The doctrinal approach involves a systematic examination of the relevant provisions of the Arbitration and Conciliation Act, 1996 and the Competition Act, 2002, as well as the judicial interpretations of these statutes by the Supreme Court of India, the Delhi High Court, and the Competition Commission of India. Key decisions such as *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*, *Vidya Drolia v. Durga Trading Corporation*, and *Samir Aggarwal v. CCI* are critically examined to identify the current judicial understanding of arbitrability in competition matters.

The research also draws upon secondary literature including academic scholarship, OECD and ICC institutional reports, and legal commentary to contextualize the doctrinal analysis and support the normative proposals advanced in the paper. The study concludes with specific legislative and policy recommendations based on the findings of the doctrinal and comparative analysis.

IV. LITERATURE REVIEW

The scholarly debate surrounding the arbitrability of competition law disputes has been extensively documented in international academic literature, though the Indian dimension remains comparatively underexplored. The existing literature may be broadly categorized into three streams: works on the theoretical foundations of arbitrability, comparative studies on competition law arbitration in major jurisdictions, and emerging scholarship on the Indian position.

1. Gary Born's seminal text, *International Arbitration: Law and Practice* (3rd edn, Kluwer Law International 2021), provides the definitive doctrinal foundation for understanding the concept of arbitrability. Born identifies public policy, legislative intent, and the nature of the rights in dispute as the primary determinants of arbitrability, a framework that has been consistently applied in Indian jurisprudence. Born's typology of arbitrable and non-arbitrable disputes informs the rights in rem versus rights in personam distinction that is central to this paper.
2. Ioannis Lianos and Daniel Sokol, in 'The Global Limits of Competition Law Arbitration' (2012) 20(3) *George Mason Law Review* 703, offer a comprehensive comparative survey of competition law arbitrability across jurisdictions. The authors trace the transformation from the traditional position of non-arbitrability to the gradual acceptance of arbitration in competition law matters, emphasizing the role of the Mitsubishi decision in the U.S. and the Eco Swiss ruling at the EU level. The paper's central argument that arbitration can complement rather than undermine public competition law enforcement is directly relevant to the Indian context.
3. Neelam Meshram, in 'Arbitrability of Competition Law Issues: An Indian Perspective' (RMNLU Law Review Blog, 2018), provides one of the few dedicated Indian scholarly analyses of this question. Meshram identifies the absence of a statutory framework and authoritative judicial precedent as the primary obstacles to recognizing the arbitrability of competition disputes in India, and notes the public interest dimension of competition law as the key theoretical barrier. Her

analysis of *Union of India v. Competition Commission of India* and its implications for arbitrability is foundational to the present study.

4. The OECD Competition Committee's policy paper, 'Arbitration and Competition Law' (2010), offers an authoritative institutional perspective on the interface between arbitration and competition law. The OECD report concludes that while arbitration of private competition disputes is increasingly accepted across jurisdictions, the enforcement of public competition law must remain with state regulatory bodies. This institutional consensus is reflected in the EU's approach through Regulation 1/2003 and provides a policy rationale for the hybrid framework proposed in this paper.

Collectively, the reviewed literature reveals a clear global trend toward recognizing limited arbitrability of competition law disputes in the private domain, while acknowledging the irreplaceable role of regulatory institutions in enforcing competition law norms in the public interest. The literature identifies a gap in the Indian context, where neither statutory reform nor judicial guidance has kept pace with these international developments. This paper seeks to address that gap by synthesizing the doctrinal, comparative, and policy insights from the reviewed literature to construct a workable framework for Indian law.

V. RESEARCH AND ANALYSIS

A. EXAMINING THE LEGAL FRAMEWORK AND JUDICIAL APPROACH

1) *Defining Arbitrability and Its Legal Significance*

The Arbitration and Conciliation Act, 1996⁸ does not provide a definitive classification of disputes that can or cannot be resolved through arbitration. Section 7 of the Act⁹ grants parties the freedom to refer "all or any disputes" to arbitration, encompassing both contractual and non-contractual matters. However, Section 2(3)¹⁰ introduces a crucial limitation by stating that if a dispute

⁸ Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

⁹ Arbitration and Conciliation Act, 1996, § 7, No. 26, Acts of Parliament, 1996 (India).

¹⁰ Arbitration and Conciliation Act, 1996, § 2(3), No. 26, Acts of Parliament, 1996 (India).

is legally non-arbitrable, the provisions of the Act will not apply. This creates an exception, restricting arbitration in certain cases.

A matter is generally considered non-arbitrable when an arbitral tribunal lacks the jurisdiction to adjudicate on it effectively, or when the relief sought cannot be granted through arbitration. Since arbitral tribunals function as private dispute resolution bodies, their authority is confined to the scope of the parties' agreement, and their ability to grant remedies is inherently limited. Therefore, the key determinant of arbitrability is whether an arbitral award will be legally enforceable within the framework of Indian law. Given the absence of a statutory list of arbitrable and non-arbitrable matters, courts have played a pivotal role in interpreting the scope of arbitration. The Supreme Court, in *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*¹¹, outlined a three-part test to determine whether a dispute can be resolved through arbitration:

1. Whether the nature of the dispute allows it to be adjudicated by an arbitral tribunal, or if it falls within the exclusive jurisdiction of the courts.
2. Whether the dispute falls within the scope of the arbitration agreement.
3. Whether the parties have voluntarily agreed to resolve the dispute through arbitration.

Additionally, under Sections 34¹² and 48¹³ of the Act, an arbitral award may be set aside or denied enforcement if the subject matter is found to be non-arbitrable or if enforcing the award violates public policy. The principle of *kompetenz-kompetenz*, which grants arbitral tribunals the authority to determine their own jurisdiction, must be exercised within the legal framework that defines which disputes can legally be settled through arbitration.

2) Competition Law and the Debate on Arbitrability in India

¹¹ *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 S.C.C. 532.

¹² Arbitration and Conciliation Act, 1996, § 34, No. 26, Acts of Parliament, 1996 (India).

¹³ Arbitration and Conciliation Act, 1996, § 48, No. 26, Acts of Parliament, 1996 (India).

The Competition Act, 2002¹⁴, which governs antitrust regulation in India, does not explicitly recognize arbitration as a mode of dispute resolution. The Competition Commission of India (“CCI”) and the appellate tribunal established under the Act are the primary enforcement bodies, and the statute does not grant them express powers to refer disputes to arbitration. As a result, judicial pronouncements have been relied upon to assess whether competition law disputes can be arbitrated.

So far, Indian courts have not issued a conclusive ruling affirming or rejecting the arbitrability of competition law disputes. However, the Delhi High Court’s decision in *Union of India v. Competition Commission of India*¹⁵ is often cited in this context. In that case, the Ministry of Railways accused the Railway Board of abusing its dominant position by imposing unfair charges under a concession agreement. The Railway Board, in its defense, invoked an arbitration clause in the agreement and argued that the matter should be resolved through arbitration rather than by the CCI. The Delhi High Court, however, held that an arbitration clause cannot override the CCI’s jurisdiction, as arbitral tribunals may lack the expertise to adjudicate complex competition law issues.

Similarly, in *Man Roland v. Multicolour Offset*¹⁶, which was decided under the Monopolies and Restrictive Trade Practices Act, 1969¹⁷ (the precursor to the Competition Act), the Supreme Court observed that statutory remedies under competition law are in addition to those available under other legal frameworks, including arbitration and consumer law.

These judgments suggest that courts have not explicitly barred arbitration in competition law disputes, but they have also not endorsed it. This reluctance stems from the public interest dimension of competition law.

Certain provisions of the Competition Act, 2002¹⁸, such as those dealing with anti-competitive agreements (Section 3¹⁹) and cartelization, affect market structure and

¹⁴ Competition Act, 2002, § 3, No. 12, Acts of Parliament, 2003 (India).

¹⁵ *Union of India v. Competition Commission of India*, A.I.R. 2012 Del 66 (India).

¹⁶ *Man Roland v. Multicolour Offset*, (2004) 7 SCC 447.

¹⁷ Monopolies and Restrictive Trade Practices Act, 1969, No.54, Acts of Parliament, 1969(India).

¹⁸ Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).

¹⁹ Competition Act, 2002, § 3, No. 12, Acts of Parliament, 2003 (India).

economic policy, making them rights in rem (binding on all) and traditionally non-arbitrable.

However, disputes that arise within commercial agreements - such as allegations of abuse of dominance in dealership or franchise contracts - are more private in nature, falling under *rights in personam* (affecting only the parties involved), which could potentially be resolved through arbitration.

With no authoritative legislative or judicial ruling on this matter, the question of whether competition law disputes can be arbitrated in India remains open-ended. The following sections explore international perspectives - examining how jurisdictions like the United States and the European Union have addressed similar issues - and analyse potential hurdles that India must overcome to integrate arbitration within its competition law framework.

B. THE EVOLVING LANDSCAPE OF COMPETITION LAW ARBITRATION: COMPARATIVE PERSPECTIVE

The question of whether competition law disputes can be resolved through arbitration remains a subject of intense debate, particularly in India, where the courts have yet to explicitly allow such disputes to be arbitrable. Historically, jurisdictions worldwide have hesitated to permit arbitration in competition law matters, citing the public interest dimension of competition law, which aims to regulate market conduct rather than just adjudicate private disputes.

However, over time, courts and legislatures in various jurisdictions, notably the United States and the European Union, have adopted a more nuanced approach. The shift has been driven by globalization, the increasing role of arbitration in commercial disputes, and the recognition that private enforcement can complement public regulation. The following sections examine the evolution of this approach in these jurisdictions and its implications for competition law arbitration.

1) The United States: Pioneering the Shift Toward Arbitrability

The United States has historically been a leader in shaping legal doctrines related to arbitration. Until the mid-20th century, competition law disputes (or antitrust cases,

as they are known in the U.S.) were exclusively within the jurisdiction of national courts, as they were considered matters of public interest. Courts believed that allowing private arbitration in such cases would undermine public enforcement efforts and create inconsistencies in competition law application.

This position changed significantly with the landmark ruling in *Mitsubishi Motors v. Soler Chrysler-Plymouth* (1985)²⁰, where the Supreme Court of the United States (SCOTUS) laid the foundation for recognizing the arbitrability of competition law disputes.

a) *The Mitsubishi Case: Redefining the Role of Arbitration*

The case arose when Soler Chrysler-Plymouth alleged that Mitsubishi engaged in market division and restrictive trade practices, violating U.S. antitrust laws. Mitsubishi sought to enforce the arbitration clause in their contract, arguing that competition law violations should not prevent the enforcement of arbitration agreements.

The Supreme Court ruled that as long as statutory claims could be effectively resolved within the arbitration framework, there was no justification for excluding them from arbitration. The ruling made it clear that both contractual and statutory obligations could be adjudicated by arbitrators, provided that parties had equal opportunity to assert their legal rights.

One of the most significant aspects of the Mitsubishi ruling was its emphasis on international commerce. The Court observed that a rigid, court-centric approach to dispute resolution could hinder international trade and discourage foreign investment, making arbitration a crucial tool for resolving commercial disputes across jurisdictions.

b) *The “Second Look” Doctrine: Judicial Oversight in Arbitration*

Following Mitsubishi, U.S. courts further refined their approach in cases such as *GKG Caribe Inc. v. Nokia Mobira, Inc.*²¹ and *Gemco Latino-America, Inc. v. Seiko Time Corp.*²²

²⁰ *Mitsubishi Motors v. Soler Chrysler-Plymouth*, 473 US 614 (1985).

²¹ *GKG Caribe Inc. v. Nokia Mobira, Inc.* 725 F. Supp. 109

²² *Gemco Latino-America, Inc. v. Seiko Time Corp.*, 685 F. Supp. 400.

These rulings reinforced the principle that arbitrators could decide competition law disputes, but courts retained the authority to review arbitral awards at the enforcement stage

This led to the development of the “Second Look” Doctrine, which allows courts to ensure that arbitration does not bypass or dilute competition law enforcement. Under this doctrine, courts do not interfere in arbitration proceedings but retain the power to invalidate awards that contravene fundamental competition law principles. The Second Look Doctrine strikes a balance between judicial oversight and arbitration autonomy, ensuring that arbitration does not serve as a mechanism for evading antitrust laws while still enabling parties to benefit from its efficiency and flexibility.

2) The European Union’s Gradual Acceptance of Arbitration in Competition Law

Unlike the United States, where Mitsubishi marked a clear turning point, the European Union took a more cautious approach to competition law arbitration. Initially, competition disputes were strictly non-arbitrable, as they were seen as matters of public policy requiring state enforcement. A major shift occurred in *Eco Swiss China Time Ltd. v. Benetton International NV* (1999)²³, where the European Court of Justice (“ECJ”) acknowledged that arbitration could play a role in resolving competition law disputes under certain conditions.

a) The Eco Swiss Case: A Landmark in EU Competition Law Arbitration

In *Eco Swiss*, the Supreme Court of the Netherlands sought clarification from the ECJ on two key questions:

1. Should arbitral tribunals consider Article 85 of the European Community Treaty (now Article 101 of the Treaty on the Functioning of the European Union (TFEU) following the Treaty of Lisbon, 2009)²⁴, which regulates anti-competitive agreements?

²³ *Eco Swiss China Time Limited v. Benetton International NV.*, ECLI:EU:C:1999:269.

²⁴ Treaty establishing the European Community, OJ C 325, 24.12.2002.

2. Can national courts annul an arbitral award if it contradicts EU competition law?

The ECJ held that while arbitral tribunals do not have the same regulatory oversight as competition authorities, their decisions must still align with EU competition law principles. The court ruled that if an arbitral award violates competition regulations, national courts have the authority to set it aside on public policy grounds.

This ruling was groundbreaking because, for the first time, an international court implicitly recognized that arbitration and competition law could coexist - so long as safeguards were in place to prevent conflicting or unlawful awards.

b) Legislative and Judicial Trends in EU Member States

Following *Eco Swiss*, various EU member states took different approaches to integrating arbitration into their competition law frameworks:

- **Germany:** Amended Article 1030 of the German Arbitration Act to explicitly allow arbitration of competition law disputes.
- **Italy:** The Bologna Court of Appeal ruled that commercial disputes with competition law elements could be arbitrated.
- **France:** The Paris Court of Appeal, in *Societe Aplix v. Societe Velcro (1993)*²⁵, ruled that arbitrators could apply EU competition laws to assess anti-competitive conduct.
- **United Kingdom:** The High Court of England and Wales, in *ET Plus SA v. Welter (2005)*²⁶, recognized the arbitrability of competition law disputes.

These legal developments illustrate a growing judicial consensus within the EU that arbitration can serve as a legitimate mechanism for resolving private competition law disputes, provided that public policy considerations are upheld.

c) Lessons for India: Finding the Right Balance

²⁵ *Societe Aplix v. Societe elcro*, Appeal Paris, 14 October 1993 [1994] Rev. Arb. 165.

²⁶ *ET Plus SA & Ors v Welter & Ors* [2005] EWHC.

The experiences of the United States and the European Union offer valuable insights for India as it navigates the issue of arbitrability in competition law disputes.

- (i) **From the U.S.:** India can explore the Second Look Doctrine, allow arbitration while retaining judicial oversight to ensure compliance with competition law.
- (ii) **From the EU:** India can adopt a hybrid approach, where arbitration is permitted in private disputes (*rights in personam*), but public enforcement mechanisms remain intact for broader market-impacting cases (*rights in rem*).

Given India's pro-arbitration stance in commercial disputes and its rapidly evolving competition law framework, it is likely that courts will gradually recognize a limited form of arbitrability in competition law disputes. The challenge will be ensuring regulatory consistency while allowing businesses the flexibility of arbitration in disputes that do not undermine public interest.

The U.S. and EU models demonstrate that competition law arbitration is not a black-and-white issue - it requires a careful balancing act between private dispute resolution and public regulatory oversight. While India has yet to make a definitive ruling on this matter, the increasing complexity of commercial transactions and India's ambition to become a global arbitration hub may soon necessitate a more arbitration-friendly approach in competition law disputes.

By integrating global best practices and developing a nuanced legal framework, India can enhance its competition law enforcement while fostering a more efficient dispute resolution system for businesses operating in its rapidly expanding economy.

C. ARBITRABILITY OF COMPETITION LAW DISPUTES IN INDIA: ASSESSING ITS VIABILITY

The question of whether competition law disputes can be resolved through arbitration hinges on two primary considerations:

- (i) The nature of the right involved - whether the dispute pertains to a *right in rem* (affecting the market and public interest) or a *right in personam* (involving private contractual matters).

- (ii) Jurisdictional authority - whether the law grants exclusive powers to a regulatory body or court to handle such disputes, thereby restricting arbitration.

1) Competition Law Disputes: Public Interest v. Private Rights

A well-recognized legal principle is that disputes concerning public interest and regulatory enforcement that are typically associated with *rights in rem*²⁷ - cannot be subject to private arbitration. Competition law primarily serves to regulate market behaviour, curb monopolistic practices, and protect consumer interests, all of which suggest a strong public law dimension.

a) *The Role of Public Interest in Competition Law*

The Competition Act, 2002²⁸ grants wide-ranging powers to the CCI to oversee anti-competitive behaviour. Section 19(1)²⁹ allows any individual, business, or consumer association to file complaints with the CCI regarding market distortions, while Section 53N³⁰ permits third parties to seek damages if they suffer financial harm due to anti-competitive practices. Moreover, non-compliance with CCI orders can expose companies to compensation claims from affected parties.

These statutory provisions underscore the public impact of competition law disputes, reinforcing the argument that such matters generally involve rights in rem, making them unsuitable for arbitration. The Supreme Court, in *Samir Aggarwal v. CCI*³¹, affirmed this position, holding that CCI investigations are public in nature, rather than private disputes between two parties. Similarly, in *Neha Gupta v. Tata Motors Ltd.*,³² the CCI reiterated that competition law enforcement serves the broader market interest rather than individual grievances.

b) *When Can Competition Law Disputes Be Arbitrable?*

²⁷ Neelam Meshram, *Arbitrability of Competition Law Issues: An Indian Perspective*, RMNLU LAW REVIEW BLOG, <https://rmlnlulawreview.com/2018/02/01/arbitrability-of-competition-law-issues-an-indian-perspective/> (last visited May 28 2022).

²⁸ Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).

²⁹ Competition Act, 2002, § 19(1), No. 12, Acts of Parliament, 2003 (India).

³⁰ Competition Act, 2002, § 53N, No. 12, Acts of Parliament, 2003 (India).

³¹ *Samir Aggarwal v. Competition Commission of India*, (2021) 3 SCC 136.

³² *Neha Gupta v. Tata Motors Ltd. & Ors*, 2021 SCC OnLine CCI 25.

Despite the regulatory nature of competition law, not all disputes in this domain involve broad public interest. Certain contractual disputes, such as those arising from:

- Franchise and distribution agreements,
- Abuse of dominance in private business contracts,
- Technology licensing arrangements,

may involve *rights in personam* - which are private disputes between parties, rather than matters affecting the entire market.

The Federal Court of Appeal in *Murphy v. Amway Canada Corporation (Canada)*³³ recognized this distinction and ruled that a private competition law dispute, which did not have broader market implications, could be arbitrated.

Given this international precedent, India could consider a case-by-case approach, where disputes related to competition law violations with purely private implications are permitted to be arbitrated, while those impacting public interest remain within CCI's exclusive jurisdiction.

1) Exclusive Authority of CCI: A Barrier to Arbitration?

The CCI was set up as the primary regulatory authority to monitor and address anti-competitive practices. Section 61 of the Competition Act, 2002³⁴, explicitly bars civil courts from hearing competition law disputes, reinforcing the view that the CCI alone has jurisdiction over such matters.

a) Judicial Interpretation of Exclusive Jurisdiction

The Supreme Court, in *Vidya Drolia v. Durga Trading Corporation*³⁵, laid down a key test for arbitrability: if a special statute designates a particular forum to adjudicate disputes, those matters cannot be arbitrated. Applying this reasoning to competition law, it appears that disputes falling within CCI's jurisdiction - especially those involving market-wide concerns - would not be arbitrable.

³³ *Murphy v. Amway Canada Corporation*, [2013] F.C.R. 38 (Can.).

³⁴ Competition Act, 2002, § 61, No. 12, Acts of Parliament, 2003 (India).

³⁵ *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1.

Further, the Arbitration and Conciliation Act, 1996³⁶, does not override sector-specific laws like the Competition Act, 2002³⁷. Sections 2(3)³⁸ and 5³⁹ of the Arbitration Act clarify that if another statute expressly or implicitly prohibits arbitration, those restrictions will apply. This means that where competition law grants exclusive powers to CCI, arbitration cannot be enforced.

b) A Balanced Approach: Carving Out Space for Arbitration

While CCI's exclusive jurisdiction is a potential roadblock, a clear distinction must be made between:

- (i) Regulatory enforcement matters involving anti-competitive practices that harm the market - which should remain under CCI's jurisdiction.
- (ii) Private commercial disputes with a competition law element - where arbitration should be a valid option.

Globally, competition law is increasingly being harmonized with arbitration. The European Union once held a strict stance against arbitrating competition law disputes but has gradually recognized arbitration in private commercial competition cases. Similarly, in the United States, courts have shifted towards an arbitration-friendly approach, especially after *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*.⁴⁰

India, with its pro-arbitration policies, could benefit from adopting a selective approach, allowing arbitration in *rights in personam* cases while ensuring CCI retains its authority over market-wide issues.

The exclusivity of CCI's jurisdiction remains a challenge for arbitration in competition law disputes. However, a one-size-fits-all approach, treating all competition law disputes as non-arbitrable, is no longer viable in today's globalized legal landscape. Courts should differentiate between:

³⁶ Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

³⁷ Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).

³⁸ Arbitration and Conciliation Act, 1996, § 2(3), No. 26, Acts of Parliament, 1996 (India).

³⁹ Arbitration and Conciliation Act, 1996, § 5, No. 26, Acts of Parliament, 1996 (India).

⁴⁰ *Mitsubishi Motors v. Soler Chrysler-Plymouth*, 473 US 614 (1985).

- (a) Cases involving public interest and market regulation, which should remain under CCI's purview, and
- (b) Private disputes that merely touch upon competition law aspects, which should be arbitrable.

As India moves towards a pro-arbitration regime, recognizing this distinction could not only align Indian law with international best practices but also enhance ease of doing business by providing companies with a predictable and flexible dispute resolution mechanism.

D. ESTABLISHING A FRAMEWORK FOR ARBITRATING COMPETITION LAW DISPUTES

While arbitration in competition law disputes offers potential benefits, the challenge lies in designing a framework that preserves both the efficiency of arbitration and the regulatory oversight required to protect public interest. India must adopt a balanced approach that ensures arbitration does not undermine the objectives of competition law while allowing private parties to resolve their disputes more efficiently.

1. The Second-Look Doctrine: Learning from Mitsubishi

A possible approach India can consider is the Second-Look Doctrine, first introduced by the US Supreme Court in *Mitsubishi Motors v. Soler Chrysler-Plymouth*⁴¹. Under this model, arbitrators can adjudicate competition law disputes, but courts retain the power to review the final award to ensure compliance with competition law principles. If an arbitral award contradicts competition law, courts can refuse enforcement on the grounds of public policy.

This model has also been widely accepted in the European Union, where courts act as a supervisory authority, ensuring that arbitral decisions do not undermine competition law objectives. Adopting this framework in India would allow arbitration to function within competition law while ensuring that CCI and courts can intervene when necessary. Additionally, the CCI could participate in arbitration proceedings as

⁴¹ *Mitsubishi Motors v. Soler Chrysler-Plymouth*, 473 US 614 (1985).

an amicus curiae (friend of the court) to provide expert insights on competition law matters.

2) Strengthening Regulatory Oversight: Amending Section 27 of the Arbitration Act

Another potential reform is amending Section 27 of the Arbitration and Conciliation Act, 1996⁴², which governs judicial assistance in arbitration proceedings. Currently, this provision allows arbitral tribunals or parties to seek court assistance in collecting evidence but does not mandate regulatory involvement. A legislative amendment could require arbitral tribunals to consult the CCI in cases involving competition law disputes.

3) Revisiting CCI's Exclusive Jurisdiction

One of the biggest hurdles to arbitrability in India is Section 61 of the Competition Act, 2002⁴³ which bars civil courts from hearing competition law cases. The intent behind this provision was to establish the CCI as the sole authority for handling such disputes. However, this provision indirectly prevents arbitration, even in cases where competition law issues arise in private commercial agreements.

A potential solution is to narrow the scope of Section 61⁴⁴ to allow arbitration for disputes involving private rights (*rights in personam*) while ensuring that issues affecting the market at large (*rights in rem*) remain under the CCI's exclusive jurisdiction. The European Union took a similar approach in Regulation 1/2003⁴⁵, which decentralized competition law enforcement, allowing private parties to approach regular courts. This move indirectly facilitated the arbitrability of competition disputes, which could serve as a model for India.

If India follows this approach, businesses and investors will have greater confidence in the legal system, knowing that they can resolve certain competition-related disputes through arbitration without unnecessary regulatory hurdles. This change

⁴² Arbitration and Conciliation Act, 1996, § 27, No. 26, Acts of Parliament, 1996 (India).

⁴³ Competition Act, 2002, § 61, No. 12, Acts of Parliament, 2003 (India).

⁴⁴ *ibid.*

⁴⁵ Council Regulation (EC) No. 1/2003 (Dec. 16 2002).

would align with India's broader pro-arbitration policy and its ambition to position itself as a global arbitration hub.

This approach is similar to the European Commission's practice, where competition authorities regularly assist arbitrators in cases involving anti-competitive conduct. By incorporating CCI's expertise in arbitration proceedings, India can ensure that competition law is applied consistently and effectively, without compromising the autonomy of arbitration.

VI. CONCLUSION

There is little doubt that embracing arbitration for competition law disputes can significantly contribute to the growth of both arbitration and competition law in India. The country's arbitration landscape has been evolving rapidly, with key judicial pronouncements shaping its trajectory. A notable example is the Supreme Court's ruling in *PASL Wind Solutions v. GE Power Conversion India*⁴⁴, which reaffirmed the autonomy of Indian parties in choosing a foreign seat for arbitration. India has witnessed a remarkable rise in disputes being resolved through arbitration, reflecting a growing preference among businesses for alternative dispute resolution. Studies indicate that over 90% of companies favor arbitration over litigation, citing efficiency, flexibility, and confidentiality as key advantages.

As outlined in the previous sections, the legal position in India remains clear - in the absence of explicit statutory backing or a definitive judicial precedent, competition law disputes are currently not considered arbitrable. However, the pressing need for arbitration in this domain cannot be ignored, particularly given global trends. Leading economies such as the United States, the United Kingdom, and several European nations - India's primary trading partners—have already integrated arbitration into their competition law frameworks. Their approach serves as a strong reference point for India as it navigates the complexities of competition law enforcement.

While challenges persist, they are not insurmountable. Strategic legislative amendments could pave the way for a balanced framework that allows arbitrability while safeguarding public interest. The critical question is not whether India should permit arbitration in competition law matters, but rather how it should be structured

to ensure a balance between regulatory oversight and business autonomy. Among the possible approaches, the Second Look doctrine - as established in the *Mitsubishi* case - appears most suited for the Indian context. By allowing arbitration while ensuring post-award scrutiny by the CCI on issues concerning competition law, India can establish a regulatory safeguard without undermining the effectiveness of arbitration. Introducing arbitration for competition law disputes, with appropriate safeguards, will bolster India's position in the global arbitration ecosystem. A streamlined and transparent arbitration framework would enhance investor confidence, reduce litigation burdens, and facilitate cross-border commercial transactions. Moving towards a hybrid model - where arbitration and competition law enforcement coexist - would be a progressive step in aligning India with international best practices, ensuring both economic growth and robust competition regulation.

VII. BIBLIOGRAPHY

Articles and Research Papers

1. Ioannis Lianos and Daniel Sokol, *The Global Limits of Competition Law Arbitration* (2012) 20(3) *George Mason Law Review* 703 <https://www.sup.org/books/law/global-limits-competition-law> (last visited March 19 2025).
2. Neelam Meshram, *Arbitrability of Competition Law Issues: An Indian Perspective*, *RMNLU LAW REVIEW BLOG*, <https://rmlnlulawreview.com/2018/02/01/arbitrability-of-competition-law-issues-an-indian-perspective/> (last visited May 28 2022).

Books

1. Gary Born, *International Arbitration: Law and Practice* (3rd edn, Kluwer Law International 2021)

Cases

1. *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 S.C.C. 532.

2. Eco Swiss China Time Limited v. Benetton International NV., ECLI:EU:C:1999:269.
3. ET Plus SA & Ors v Welter & Ors [2005] EWHC.
4. Gemco Latino-America, Inc. v. Seiko Time Corp., 685 F. Supp. 400.
5. GKG Caribe Inc. v. Nokia Mobira, Inc. 725 F. Supp. 109
6. Man Roland v. Multicolour Offset, (2004) 7 SCC 447.
7. Mitsubishi Motors v. Soler Chrysler-Plymouth, 473 US 614 (1985).
8. Monopolies and Restrictive Trade Practices Act, 1969, No.54, Acts of Parliament, 1969(India).
9. Murphy v. Amway Canada Corporation, [2013] F.C.R. 38 (Can.).
10. Neha Gupta v. Tata Motors Ltd. & Ors, 2021 SCC OnLine CCI 25.
11. PASL Wind Solutions (P) Ltd. v. GE Power Conversion (India) (P) Ltd., (2021) 7 SCC 1.
12. Samir Aggarwal v. Competition Commission of India, (2021) 3 SCC 136.
13. Societe Aplix v. Societe Velcro, Appeal Paris, 14 October 1993 [1994] Rev. Arb. 165.
14. The United States Arbitration Act, February 12, 1925 (Pub.L. 68-401, 43 Stat. 883; 9 U.S.C.§ 1).
15. Union of India v. Competition Commission of India, A.I.R. 2012 Del 66.
16. Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1.

Statutes and Other Legislative Materials

1. Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).
2. Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).
3. Competition (Amendment) Act 2023, No. 09, Acts of Parliament, 2023 (India).
4. Council Regulation (EC) No. 1/2003 (Dec. 16 2002).
5. Treaty establishing the European Community, OJ C 325, 24.12.2002.

Websites and Reports

1. OECD, 'Arbitration and Competition Law' (OECD Competition Committee, 2010) <https://www.oecd.org/daf/competition/arbitration-and-competition-law.htm> accessed 01 March 2026.
2. ICC, 'The Arbitrability of Competition Law Disputes' (ICC Dispute Resolution Bulletin, 2022) <https://iccwbo.org/dispute-resolution-bulletin/> accessed 01 March 2026.