

World Arbitration & Mediation Report



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Covering Dispute Resolution in the United States and Around the World

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HIGHLIGHTS

ICSID has **amended** its *Rules and Regulations*. After conducting extensive consultations with governments, arbitration experts, and other parties, the ICSID Secretariat proposed a number of updating changes. The Administrative Council, ICSID's governing body, approved the recommended reforms earlier this year. Among the significant changes are: hastening the preliminary phase of arbitral proceedings by allowing parties to seek **provisional measures** before the arbitral tribunal is constituted and advising them to file the equivalent of a motion for **summary judgment**; the **publication** of award **excerpts**; allowing greater access to arbitral proceedings by **non-parties**; allowing submissions by **amicus** parties; enhanced **disclosure** requirements for arbitrators, and limiting increases in arbitrator **fees**. (Story supplied by **White & Case Arbitration Group** begins on page 294.)

The violation of EU Competition law has been recognized as a basis for the **denial of enforcement** of international arbitral awards. The Court of Appeal of the Hague upheld a lower court decision denying enforcement of three U.S. arbitral awards because they were incompatible with Article 81 of the EC Treaty. Previously, the **Paris Court of Appeal** in *SA Thalés* had rendered a characteristically tolerant result, stating that—although EU competition law is a matter of public policy—an international arbitral award's violation of competition public policy

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must be “flagrant, effective, and concrete” to lead to a denial of enforcement. The Dutch court decision is seen as a setback. (Story supplied by **White & Case Arbitration Group** begins on page 293.)

Christopher R. Drahozal,
John M. Rounds Professor of Law

at the University of Kansas and a contributing editor to **WAMR**, provides a thorough and well-reasoned essay on a recent Kansas state Supreme Court case. In its opinion, the court addresses the issue of **arbitral jurisdiction** and authority to rule on jurisdictional challenges and reaches a conclusion far out-of-keeping with standard views of *compétence-compétence*. (The *Comment* begins on page 296.)

The **National Arbitration Forum (NAF) Case Summaries** canvas recent U.S. decisional law on arbitration. The *Case Summaries* provide easy and accurate access to a great volume of case law. Their range is comprehensive, addressing matters like waiver, arbitral collateral estoppel and *res judicata*, the requirement of mutuality of obligation to arbitrate, service of process in arbitration, the arbitration agreement's range of application, and arbitrator misconduct, among other issues. In particular, the *NAF Case Summaries* include a reference to *Kristian v. Comcast Corp.*, 446 F.3d 25 (1st Cir. 2006), involving the enforceability of **class action waivers** in **antitrust claims**. (The *NAF Case Summaries* begin on page 286.)

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