Ruling Pits EU Competition Law Against Arbitral Awards

By **Josep Galvez** (March 31, 2025)

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In a jurisprudential moment of considerable consequence for the European arbitral framework, the Madrid High Court — the Tribunal Superior de Justicia de Madrid, or TSJM[1] — issued a preliminary reference order to the Court of Justice of the European Union, or CJEU, on March 20.[2]

The matter arises from a contractual dispute between Maxi Mobility Spain SLU — operating under the trade name Cabify — and Auro New Transport Concept SL, concerning a noncompete clause within a private hire vehicle service agreement.

At the core lies the question of whether a national constitutional limitation on the substantive judicial review of arbitral awards can withstand the imperatives of EU law, particularly where Article 101 of the Treaty on the Functioning of the European Union, or TFEU, is engaged.[3]

Cabify initiated proceedings to annul an arbitral award that had invalidated an exclusivity clause in its favor, contending that the tribunal's refusal to apply TFEU Article 101, despite having declared the clause anticompetitive under Spanish law, violated mandatory EU law. The TSJM, initially siding with Cabify, partially annulled the award.

However, this decision was subsequently reversed by the Spanish Constitutional Court, which held that any reevaluation of the merits of the arbitral decision contravened constitutional limits on judicial intervention in arbitration. This doctrinal impasse has now been placed before the CJEU, with implications extending far beyond the facts of the Cabify dispute.

The tension is emblematic of a broader confrontation between the principles of EU law supremacy and the procedural autonomy of member states, particularly as it pertains to arbitration.

Indeed, at stake is whether arbitrators may selectively disregard mandatory EU competition norms without judicial scrutiny, and whether member states may shield such omissions under the guise of procedural regularity.

Background to the Dispute

Cabify and Auro had entered into a contractual arrangement whereby Auro, holder of private hire vehicle licenses, agreed to operate exclusively via Cabify's platform. Clause 2.2 of their agreement prohibited Auro from deploying its licenses through any other intermediary.

This clause became the focus of contention when a dispute arose over its enforceability under competition law.

The arbitral tribunal concluded that the clause contravened Article 1 of the Spanish Competition Act as a restriction of competition "by object."[4] Yet the tribunal conspicuously declined to assess the clause under TFEU Article 101.

The tribunal opined that the conduct lacked cross-border implications and fell outside the scope of EU competition law. Cabify subsequently sought to annul the award before the TSJM, contending that the arbitral panel had failed to discharge its obligation to apply EU law under the CJEU's jurisprudence.

In October 2021, the TSJM partially annulled the award, holding that the tribunal failed to analyze the clause's compatibility with EU law, particularly as interpreted in the CJEU's 2014 judgment in Groupement des Cartes Bancaires v. Commission,[5] and its 2020 decision in Gazdasági Versenyhivatal v. Budapest Bank Nyrt.[6]

The court stressed that arbitrators do not enjoy discretion in disregarding substantive engagement with EU law when it is implicated by the facts. The tribunal's exclusion of TFEU Article 101 was therefore a material error warranting judicial correction.

The Spanish Constitutional Court, however, reversed the TSJM's ruling in December 2024.[7] It reaffirmed the principle that judicial review of arbitral awards in Spain is confined to procedural irregularities, and cannot encompass the substantive correctness of legal interpretations made by the tribunal.

The court held that such intervention would infringe the constitutional guarantee of judicial protection as predicated upon procedural integrity, not substantive adjudication.

By precluding any substantive review of the tribunal's interpretative choices, even where EU public policy norms are in play, the Constitutional Court insulated the award from correction and, by extension, created a potential lacuna in the application of EU law.

This judgment thus brought into sharp relief the potential incompatibility between national arbitration frameworks and the supremacy of EU law, as interpreted in Eco Swiss China Time Ltd. v Benetton International NV, where the CJEU affirmed in 1999 that public policy includes EU competition law.[8]

The TSJM's Preliminary Reference: A Judicial Counterpoint

Confronted with this judicial stalemate, the TSJM issued an extensive reference to the CJEU on March 20. The Spanish court affirmed that TFEU Article 101 constitutes not merely applicable law, but a mandatory norm of public policy, binding on all adjudicatory bodies, including arbitrators.

Where national law permits the annulment of arbitral awards for public policy violations, as under Article 41.1(f) of the Spanish Arbitration Act, it follows that an award rendered disregarding Article 101 must be open to annulment.[9]

The TSJM drew heavily upon the Eco Swiss, Cartes Bancaires and Budapest Bank decisions, arguing that the arbitral tribunal's failure to examine the economic context, consumer impact and potential effects on interstate trade contravened settled CJEU jurisprudence.

Moreover, the TSJM cited the CJEU's 2023 judgment in International Skating Union v. Commission to underscore that even limited judicial review must enable verification of compliance with fundamental EU norms.[10]

Furthermore, by invoking Article 47 of the Charter of Fundamental Rights of the European Union, the TSJM contended that effective judicial protection includes not only access to a court, but access to a forum empowered to engage substantively with EU law.[11]

A judicial system that reduces annulment proceedings to formalistic oversight, the TSJM argued, fails to meet this standard and imperils the coherence of the EU legal order.

Broader Implications: The CJEU's Forthcoming Response

Should the CJEU affirm the TSJM's reasoning, the implications for arbitral practice within the EU will be profound. First, the judgment would reinforce the doctrine that EU law, particularly competition law, forms part of the "public policy" ground for annulment, even when national law circumscribes judicial review.

Second, it may compel constitutional courts across the EU to revisit doctrines that shield arbitral awards from substantive review, particularly when those awards implicate core EU norms.

Crucially, such a ruling would clarify that the formal existence of reasoning within an award does not suffice where the reasoning is legally deficient or demonstrably incompatible with EU law. Arbitrators would be required to engage rigorously with EU law where relevant, and national courts would be obligated to ensure that such engagement has occurred under CJEU standards.

Undoubtedly, this would also recalibrate the balance between arbitral autonomy and judicial oversight, confirming that arbitral tribunals operating within the EU are no longer immune to the imperatives of EU law.

In this regard, while arbitral finality remains a protected value, it cannot override the constitutional obligations of member states to secure the effectiveness and uniform application of EU regulations.

Toward Arbitral Award Judicial Review Under EU Law

The Cabify referral marks a decisive moment in the evolution of arbitral review in the EU. Interestingly, it squarely confronts the question of whether national systems may lawfully immunize arbitrators from meaningful scrutiny when they fail to apply binding EU competition law.

Should the CJEU adopt the TSJM's position, the Eco Swiss doctrine will be fortified and extended, affirming the indispensability of substantive review in matters implicating EU public policy. Such a judgment would stand as a definitive pronouncement that no adjudicatory mechanism, whether arbitral or judicial, can stand above the absolute supremacy of EU law.

It would oblige all member states to reconfigure their procedural frameworks to accommodate the exigencies of supranational legal integration, and ensure that arbitral awards, however final in appearance, remain susceptible to correction where fundamental EU core regulations are disregarded.

In this respect, unquestionably, the shadow cast by Eco Swiss has grown longer — and the future of arbitration within the EU may well hinge on the light shed by the CJEU's response to the Cabify referral.

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[1] Sala de lo Civil y Penal of the Tribunal Superior de Justicia de Madrid.

[2] Auto No. 4/2025, dated March 20, 2025.

[3] Treaty on the Functioning of the European Union, consolidated version published in OJ C 202, 7.6.2016, p. 1-388.

[4] Ley 15/2007, de 3 de julio, de Defensa de la Competencia.

[5] Groupement des cartes bancaires (CB) v. Commission, C-67/13 P, EU:C:2014:2204.

[6] Gazdasági Versenyhivatal v. Budapest Bank Nyrt and Others, C-228/18, EU:C:2020:265.

[7] STC 146/2024, of 4 December 2024 (ECLI:ES:TC:2024:146).

[8] Eco Swiss China Time Ltd v. Benetton International NV, C-126/97, EU:C:1999:269.

[9] Ley 60/2003, de 23 de diciembre, de Arbitraje.

[10] International Skating Union v. Commission, C-124/21 P, EU:C:2023:463

[11] Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012.