

# German Federal Court of Justice (Bundesgerichtshof) rules on the validity of arbitration agreements (Claudia Pechstein)

by Lukas Schmidt, Research Fellow at the Center for Transnational Commercial Dispute Resolution (TCDR) of the EBS Law School, Wiesbaden, Germany.

Claudia Pechstein, an internationally successful ice speed skater, claims damages against the International Skating Union (ISU) because of a two-year-suspension for doping. The essential question was whether an arbitration agreement signed by *Pechstein* is effective. This agreement includes amongst other things the exclusive jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne. Pechstein claimed that the arbitration agreement was invalid under § 19 GWB (German Antitrust Legislation) because the ISU (nationally and internationally only the ISU organizes competitions in ice speed skating) has abused its dominant position. *Pechstein* had to sign the arbitration agreement to be admitted to the competition. She claimed that the list of arbitrators of the CAS, from which the parties must each select an arbitrator, has not been prepared impartially because the sports federations and Olympic committees have a clear predominance in creating the list.

However, the German Federal Court of Justice (Bundesgerichtshof) does not agree with these propositions. The Court, by its decision of 7 June 2016, docket no. KZR 6/15, ruled that the action is inadmissible because of the arbitration agreement. The Court held that the ISU is indeed dominant in the organization of international speed skating competitions, but has shown no abusive conduct because the associations and the athletes do not confront each other as guided by fundamentally conflicting interests. There was no structural imbalance in the composition of the tribunal ruling on *Pechstein's* suspension. Furthermore, in the Court's view, *Pechstein* has signed the agreement voluntarily, even if she otherwise could not have participated in the contest. A consideration of the

mutual interests in the light of § 19 GWB justifies the application of the arbitration clause. However *Pechstein* is entitled to invoke the internationally competent Swiss courts following the arbitral procedure.