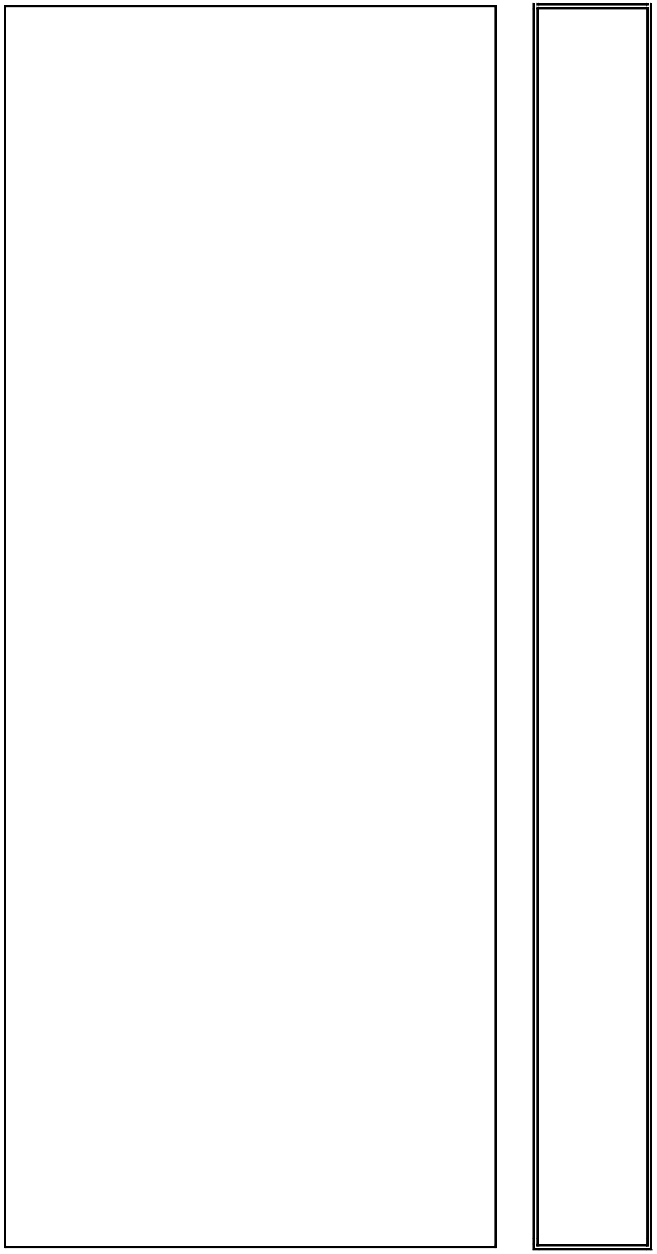

1. This note discusses the arbitrability of private federal antitrust claims in the United States and the approach of the Antitrust Division of the U.S. Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") (collectively, "the U.S. antitrust agencies") towards use of arbitration and mediation in their antitrust enforcement.

1. Arbitrability of private federal antitrust claims

1.1 Introduction

2. The general rule, first articulated by the Supreme Court in 1985 in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, is that U.S. courts enforce agreements to arbitrate private federal antitrust

ordered the parties to arbitrate the federal antitrust claim, but the court of appeals reversed this order, holding that the antitrust counterclaims were not arbitrable.[6]

5. The Supreme Court disagreed with the court of appeals and held that the claims were, in fact, arbitrable. The Court first described the broad federal statutory policy favoring arbitration agreements, and determined that an exception to the FAA was not justified. The Court expressed skepticism regarding each of the reasons cited in ¶2 above for not arbitrating antitrust claims. With respect to the argument that private antitrust suits are not merely a private matter but are part of a broader national policy to ensure "American democratic capitalism," the Court noted [illegible] . . [7]

7.