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**COMMERCIAL ALTERNATIVE DISPUTE
RESOLUTION AND THE PUBLIC INTEREST:****Private Justice and the Rule of Law***ABSTRACT*

The growing use of commercial alternative dispute resolution (ADR) has reshaped the landscape of commercial justice across jurisdictions. Mediation and arbitration are promoted as efficient, flexible mechanisms for reducing court backlogs, supporting economic activity, and responding to the needs of commercial actors. The growing reliance on private dispute resolution raises questions regarding transparency, equality, accountability, and the protection of the public interest, which are functions traditionally entrusted to public courts.

This article examines commercial ADR from a rule-of-law perspective, focusing on the conditions under which private dispute resolution mechanisms can complement, rather than undermine, formal justice systems. It analyses key public interest risks associated with commercial ADR, including power imbalances between the parties, limited procedural safeguards, and barriers to justice faced by small and medium-sized enterprises (SMEs) and underrepresented groups. Drawing on comparative practice and institutional experience, the article identifies legal and institutional features that enable commercial ADR to operate in a manner consistent with rule-of-law principles.

The article argues that commercial ADR can meaningfully serve the public interest when integrated into a coherent legal framework that ensures judicial oversight, enforceability, and procedural fairness. Properly designed and governed, commercial ADR can strengthen access to justice, reduce pressure on courts, and reinforce confidence in commercial dispute resolution without eroding the authority or legitimacy of public adjudication.

Keywords: commercial alternative dispute resolution, rule of law, public interest, private justice, access to justice, judicial oversight, commercial justice

I. Introduction

Effective commercial justice is a foundational element of the rule of law and a prerequisite for sustainable economic activity.¹ Businesses and investors rely on legal systems to enforce contracts, resolve disputes predictably, and protect legitimate expectations. The fair and efficient resolution of commercial disputes strengthens confidence in legal institutions; when such resolution is lacking, economic activity is distorted and trust in justice is eroded.

In recent decades, commercial alternative dispute resolution (ADR), particularly mediation and arbitration, has assumed an increasingly prominent role in resolving commercial disputes. Governments, international organisations, and private actors have promoted ADR as a response to overburdened courts, lengthy proceedings, and the need for flexible, business-oriented solutions.² In many jurisdictions, ADR has become an integral component of commercial justice policy, encouraged through legislative reforms, judicial referrals, and contractual practice.

The growing reliance on commercial ADR reflects legitimate policy objectives. Mediation and arbitration offer faster resolution, procedural flexibility, confidentiality, and greater opportunities for negotiated outcomes that preserve commercial relationships. These aspects are required in complex or cross-border transactions, and in systems undergoing economic transition or legal reform. At the same time, the expansion of private dispute resolution raises questions that extend beyond efficiency and cost reduction.

Commercial justice has traditionally been entrusted to public courts, which operate under principles of transparency, accountability, and equality before the law. Judicial decisions contribute to the development of legal norms, provide authoritative interpretations of legislation, and perform a public function that goes beyond the immediate interests of the disputing parties.³ The growing shift toward private mechanisms of dispute resolution, therefore, invites closer scrutiny of how public interest considerations are addressed when disputes are resolved outside the courtroom.

This article examines commercial ADR from a rule-of-law perspective, focusing on the conditions under which private dispute resolution mechanisms can support,

¹ OECD, *Making Justice Systems More Effective and People-Centred: Advancing a Responsive Rule of Law* (OECD Publishing 2025), https://www.oecd.org/en/publications/making-justice-systems-more-effective-and-people-centred_e02fd90b-en.html, accessed 24 February 2026.

² OECD, *Online Dispute Resolution Framework* (OECD Publishing 2024), https://www.oecd.org/en/publications/oecd-online-dispute-resolution-framework_325e6edc-en.html, accessed 25 February 2026.

³ Lon L. Fuller, 'The Forms and Limits of Adjudication' (1978) 92 *Harvard Law Review*, 353–409, at 357

rather than undermine, public justice. It explores the possible complementary coexistence of commercial ADR with the normative functions of public courts, while mitigating the risks of privatised justice. Particular attention is given to power imbalances between parties, procedural fairness, access to justice for small and medium-sized enterprises (SMEs), and the protection of underrepresented groups in commercial disputes.

The analysis proceeds in five parts. Following this introduction, Section II conceptualises commercial ADR as a form of private justice and positions it within broader debates on the relationship between private ordering and public adjudication. Section III examines key public interest risks associated with commercial ADR, including inequality between parties, limited procedural safeguards, and the potential marginalisation of weaker economic actors. Section IV explores the circumstances under which commercial ADR can serve the public interest, emphasising complementarity with formal justice systems, judicial oversight, and enforceability. Section V distils these insights into a set of design principles for structuring commercial ADR as a rule-of-law tool. The conclusion reflects on the implications of these findings for policymakers and justice institutions seeking to reconcile efficiency and fairness in commercial justice reform.

II. Commercial ADR as Private Justice

Commercial alternative dispute resolution (ADR) occupies a distinctive position within contemporary justice systems. Although increasingly embedded in statutory frameworks and judicial practice, its core logic remains rooted in private ordering. Mediation and arbitration are initiated by party agreement, conducted outside the courtroom, and largely shaped by party autonomy. This positioning places commercial ADR at the intersection of public justice and private governance.

Understanding commercial ADR as a form of private justice is essential to assessing its compatibility with the rule of law.⁴ Unlike public adjudication, which is exercised by state institutions and governed by mandatory procedural rules, private justice mechanisms derive their authority primarily from consent. The legitimacy of such mechanisms rests on the parties' agreement to submit disputes to a neutral third party and to accept the resulting outcome.⁵ This consensual foundation explains both the appeal of ADR and its structural vulnerabilities.

⁴ Carrie Menkel-Meadow, 'Dispute Resolution' in Peter Cane and Herbert M. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 597–601.

⁵ Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014) 71–75.

2.1 Public Adjudication and Private Ordering

Public courts perform functions that extend beyond the resolution of individual disputes. Transparent proceedings and reasoned judgments allow courts to articulate legal norms, ensure equality before the law, and strengthen the coherence and predictability of the legal system. Judicial decisions are subject to appeal, public scrutiny, and institutional accountability, reinforcing their normative authority.

By contrast, private ordering mechanisms prioritise flexibility, confidentiality, and efficiency. In commercial ADR, parties may tailor procedures to the specific dispute, select neutrals with sectoral expertise, and control the pace and scope of proceedings. These features improve effectiveness and user satisfaction, particularly in commercial contexts where speed and discretion are valued. Moreover, they limit the extent to which dispute resolution outcomes contribute to the development of public law or provide broader normative guidance.

This divergence does not suggest that private justice is inherently inferior to public adjudication. Rather, it reflects the distinct objectives served by each mechanism. Tensions arise when private ordering expands into areas traditionally within the domain of public justice without adequate safeguards to protect public interest values.

2.2 Consent, Autonomy, and the Limits of Voluntariness

Consent is the normative cornerstone of commercial ADR. Parties are presumed to enter mediation or arbitration voluntarily, to negotiate on equal terms, and to accept outcomes as an expression of their autonomy. In practice, however, the voluntariness of consent in commercial relationships is often qualified rather than absolute.

Arbitration clauses embedded in standard-form contracts, mandatory mediation requirements, or strong judicial and institutional incentives to settle may constrain genuine choice.⁶ In such circumstances, consent risks becoming formal rather than substantive. From a rule-of-law perspective, this raises concerns as to whether private justice mechanisms sufficiently protect parties who lack bargaining power or legal sophistication.

These limits are particularly salient in commercial contexts involving SMEs, subcontractors, or entrepreneurs operating within asymmetric market relationships. Where consent is weakened by structural inequality, private justice mechanisms may legitimise outcomes that public adjudication would scrutinise more closely.

⁶ OECD, *Legal Provisions Related to Business-to-Consumer Alternative Dispute Resolution in Relation to Privacy and Consumer Protection* (OECD 2002); https://www.oecd.org/content/dam/oecd/en/publications/reports/2002/07/legal-provisions-related-to-business-to-consumer-alternative-dispute-resolution-in-relation-to-privacy-and-consumer-protection_g17a1bb8/233318385765.pdf, accessed 26 February 2026.

2.3 Confidentiality and the Public Interest

Confidentiality is a primary feature of commercial ADR and a central reason for its widespread use. It protects sensitive business information, encourages candid negotiation, and reduces reputational risk. Moreover, confidentiality restricts transparency and limits public visibility in dispute resolution processes and outcomes.

From a public interest perspective, this tension is significant. While individual confidentiality may be justified, the systemic absence of publicly accessible decisions can hinder legal development and obscure patterns of unfairness or abuse. Over-reliance on confidential dispute resolution may weaken the expressive function of law and reduce opportunities for institutional learning.⁷

Balancing confidentiality with accountability does not necessarily require abandoning privacy. Rather, it calls for mechanisms that facilitate aggregate transparency, judicial oversight, and regulatory monitoring, ensuring that private justice does not operate entirely beyond public view.

2.4 The Role of the State in Private Justice

Despite its private character, commercial ADR does not exist outside the state. Its effectiveness depends on legal recognition, the enforceability of outcomes, and the institutional infrastructure provided by courts and legislation. Arbitration awards and mediated settlements ultimately derive their binding force from state authority, particularly at the enforcement stage.

This dependence underscores the continuing responsibility of public institutions to ensure that private justice mechanisms align with fundamental legal principles. Delegating dispute resolution to private actors does not absolve the state of its duty to protect fairness, equality, and legality. Instead, it requires a recalibration of governance, shifting from direct adjudication to regulation, supervision, and systemic integration.

Understanding commercial ADR as private justice embedded within public legal frameworks provides the conceptual foundation for assessing its risks and potential. It clarifies why concerns about power asymmetries, procedural safeguards, and access to justice are not peripheral, but central to evaluating the compatibility of ADR with the rule of law.

⁷ William W Park, 'Arbitration's Discontents: Of Confidence, Crisis, and the Courts' (2002) 27 *Yale Journal of International Law* 1–36, at 5–7.

III. Public Interest Risks in Commercial Alternative Dispute Resolution

Although commercial alternative dispute resolution (ADR) is widely promoted as an efficient and flexible mechanism for resolving commercial disputes, its expanding role also raises concerns directly relevant to the public interest and the integrity of justice systems. These concerns do not stem directly from ADR but from the conditions under which private dispute resolution mechanisms operate when detached from adequate procedural safeguards, institutional oversight, and a coherent relationship with public courts. Examining these risks is therefore essential to assessing whether commercial ADR strengthens or undermines the rule of law.

3.1 Power Asymmetries and Inequality Between Disputing Parties

A central concern for public interest in commercial ADR is power imbalances between parties.⁸ Unlike court proceedings, where procedural rules and judicial oversight are designed to mitigate disparities in resources, information, and bargaining power, ADR processes rely heavily on party autonomy and consensual engagement. While this flexibility may be advantageous, it can also expose weaker parties to pressure or structural disadvantage.

Small and medium-sized enterprises (SMEs), start-ups, and individual entrepreneurs often enter disputes with significantly fewer financial, legal, and informational resources than their larger corporate counterparts. In such circumstances, mediation or negotiated settlement may reflect not a genuinely consensual outcome, but a pragmatic acceptance of unfavourable terms driven by liquidity constraints, time pressure, or the fear of prolonged uncertainty. Arbitration, although more formalised, may similarly disadvantage less-resourced parties where costs, procedural complexity, or repeat-player dynamics prevail.⁹

From a rule-of-law perspective, the concern extends beyond unequal outcomes in individual cases. More fundamentally, the normalisation of inequality within dispute resolution mechanisms that operate largely outside public scrutiny risks undermining confidence in the fairness of the commercial justice system as a whole. Where ADR systematically reproduces existing economic or structural power imbalances, its legitimacy as a component of commercial justice is weakened.

⁸ Marc Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9 *Law & Society Review* 95–160, at 97–100.

⁹ Yves Dezalay and Bryant G. Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (University of Chicago Press 1996), at 15–18.

3.2 Procedural Safeguards, Informality, and Transparency

A second public interest risk arises from the procedural informality and confidentiality that characterise many forms of commercial ADR. Confidentiality is frequently cited as a key advantage of mediation and arbitration, particularly in disputes involving commercially sensitive information. However, excessive or unqualified confidentiality may conflict with broader interests in transparency, legal certainty, and accountability.

In contrast to court judgments, which contribute to the development of jurisprudence and provide public guidance on the interpretation and application of legal norms, ADR outcomes typically remain private. This aspect limits the capacity of commercial dispute resolution to contribute to consistent legal development or to signal acceptable standards of conduct in the marketplace. Over time, reduced visibility of dispute resolution outcomes may weaken predictability and diminish the normative function traditionally performed by public adjudication.

In addition, the absence of standardised procedural guarantees, such as clear rules on representation, disclosure, reasoned decisions, and avenues for review, may create uncertainty as to whether parties have been afforded a fair process.¹⁰ While party autonomy allows ADR procedures to be adapted to the needs of a specific dispute, it also assumes that parties possess the capacity to negotiate procedural arrangements on an informed and equal basis. In practice, this assumption does not always hold.

3.3 Informal Coercion and Settlement Pressure

Commercial ADR, particularly mediation, often places emphasis on efficiency and early settlement. While early resolution can conserve resources and preserve business relationships, it may also generate implicit pressure to settle, regardless of the substantive merits of a claim.¹¹ Such pressure may arise from settlement-oriented mediation practices, institutional performance metrics focused on resolution rates, or the desire of parties to avoid escalation and uncertainty.

These dynamics raise public interest concerns where settlement is encouraged without sufficient attention to legal rights or long-term consequences. Informal coercion may be subtle rather than explicit, yet its effects can be significant, especially for parties with limited legal sophistication or bargaining experience. From

¹⁰ UNCITRAL, *UNCITRAL Model Law on International Commercial Arbitration* (1985), with amendments as adopted in 2006, https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration, accessed 27 February 2026.

¹¹ Owen M Fiss, 'Against Settlement' (1984) 93 *Yale Law Journal* 1073–1090, at 1075–1078.

a rule-of-law standpoint, the risk lies in substituting expediency for justice, and compromise for legality.

Where ADR mechanisms are promoted primarily as instruments for reducing court backlogs or enhancing economic efficiency, without parallel emphasis on fairness and voluntariness, they may inadvertently erode the legitimacy of dispute resolution outcomes and weaken public trust in the justice system.

3.4 Marginalisation of SMEs and Underrepresented Groups

The interaction between commercial ADR and access to justice warrants particular attention with respect to SMEs, women entrepreneurs, and other underrepresented groups in commercial activity.¹² Although ADR is often presented as more accessible than litigation, effective access in practice depends on legal awareness, financial capacity, procedural confidence, and the availability of appropriate support.

In environments where legal information is unevenly distributed or where cultural and social barriers shape participation, ADR may fail to deliver inclusive justice. Women entrepreneurs and minority-owned businesses, for example, may face additional challenges in asserting rights or negotiating on equal terms, particularly in contexts characterised by informal norms or hierarchical business practices.

Absent targeted safeguards, capacity-building measures, or institutional support, commercial ADR risks becoming a mechanism that primarily serves well-informed and well-resourced actors. Such an outcome would conflict with the broader public interest objectives of equality before the law and inclusive economic participation.

IV. When Commercial ADR Serves the Public Interest

The public interest risks associated with commercial ADR do not render private dispute resolution inherently problematic. Rather, they underline the importance of institutional design, legal framing, and systemic integration. When embedded within a coherent justice architecture, commercial ADR can reinforce rule-of-law objectives by expanding access to justice, improving efficiency, and strengthening confidence in dispute resolution mechanisms. The critical question, therefore, is not whether ADR should be used, but how it should be structured and governed.

¹² World Bank, *Women, Business and the Law 2024* (World Bank Group 2024), <https://wbl.worldbank.org/en/wbl>, accessed 28 February 2026.

4.1 Complementarity with Formal Justice Systems

Commercial ADR is most likely to serve the public interest when it operates in complementarity with public courts, rather than as a substitute for them.¹³ Courts play a central role in safeguarding legality, ensuring procedural fairness, and maintaining public confidence in the justice system. ADR mechanisms that operate in isolation from courts risk weakening these functions; those that are integrated into the broader justice ecosystem can reinforce them.

Court-annexed mediation, judicial referrals to ADR, and post-settlement judicial confirmation mechanisms illustrate how private dispute resolution can be anchored in public authority. Such arrangements allow courts to retain a gatekeeping role, ensuring that disputes are suitable for ADR and that parties' consent is informed and voluntary. They also preserve access to adjudication where settlement proves inappropriate or unattainable.

From a public interest perspective, complementarity mitigates the risk that ADR will evolve into a parallel system of private justice detached from public oversight. Instead, ADR becomes part of a graduated dispute resolution framework, offering proportionate responses to different categories of commercial disputes.

4.2 Judicial Oversight and Enforceability as Safeguards

Judicial oversight is a central mechanism for aligning commercial ADR with rule-of-law principles.¹⁴ Such oversight does not require courts to manage ADR processes in detail, but it does require the availability of review, confirmation, and enforcement mechanisms that ensure outcomes are lawful and procedurally sound.

The enforceability of mediated settlements and arbitral awards is particularly significant in this regard. Where ADR outcomes can be readily recognised and enforced by courts, parties gain confidence that private resolution does not come at the expense of legal certainty.¹⁵ Conversely, where enforcement is uncertain or excessively burdensome, ADR risks producing outcomes that are either ineffective in practice or accepted under economic or procedural pressure.

¹³ CEPEJ, *Guide to the Judicial Referral to Mediation* CEPEJ(2018)7, (Council of Europe 2018); <https://rm.coe.int/guide-to-the-judicial-referral-to-mediation-en/1680ac490a> accessed 3 March 2026.

¹⁴ UNCITRAL, UNCITRAL Model Law on International Commercial Arbitration, arts 34–36; https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration accessed 4 March 2026.

¹⁵ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) (adopted 10 June 1958) 330 UNTS 3; United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation) (adopted 20 December 2018).

Judicial confirmation procedures may also serve as safeguards against manifest unfairness, fraud, or abuse of process. Even limited judicial scrutiny, focused on voluntariness, legality, and basic procedural integrity, can strengthen the legitimacy of ADR outcomes without undermining efficiency or flexibility.

4.3 Procedural Fairness and Minimum Standards

For commercial ADR to serve the public interest, it must be underpinned by minimum procedural standards that protect fundamental rights of parties while preserving flexibility.¹⁶ These standards need not replicate formal court procedures, but they should ensure transparency of process, informed consent, equality of arms, and the impartiality of neutrals.

Clear rules governing mediator and arbitrator qualifications, ethical obligations, conflicts of interest, and accountability mechanisms are particularly important. Accreditation and oversight of ADR service providers can help prevent market-driven dilution of quality and reduce the risk of repeat-player bias, while maintaining confidence in the neutrality and competence of ADR practitioners.

Procedural fairness also requires that parties understand the legal implications of engaging in ADR and the rights they may waive by opting out of adjudication. Access to information, legal advice, and structured initial sessions can support informed decision-making, especially for SMEs and less-experienced market participants.

4.4 Addressing Power Imbalances and Protecting Weaker Parties

Commercial ADR can serve the public interest only if it incorporates mechanisms to address power asymmetries between disputing parties. This aspect does not entail paternalistic intervention, but rather the creation of conditions in which negotiation and settlement are genuinely voluntary and balanced.

Measures such as cost controls, simplified procedures, tailored support for SMEs, and mediator training on power dynamics can significantly reduce inequality in ADR processes. In certain contexts, differentiated approaches, such as specialised SME mediation schemes or sector-specific ADR frameworks, may be warranted to reflect market realities and levels of vulnerability.

Attention to gender and inclusion is also essential. Promoting diversity among mediators and arbitrators, increasing awareness of ADR among underrepresented

¹⁶ European Commission, *European Code of Conduct for Mediators* (2004), available at: <https://e-justice.europa.eu/fileDownload.do?id=c0ec51ee-bf0f-4b6b-8cc9-01b305b90d68> accessed 5 March 2026.

entrepreneurs, and designing accessible and culturally sensitive processes contribute to more equitable participation in commercial justice.

4.5 Systemic Efficiency and Public Trust

When appropriately designed, commercial ADR can generate systemic benefits that align with the public interest. By diverting suitable cases from courts, ADR can alleviate judicial backlogs and allow public adjudication to focus on disputes that require authoritative determination. This outcome enhances the overall efficiency and responsiveness of the justice system.

Equally important is the impact of ADR on public trust. Where businesses and individuals experience dispute resolution, whether through courts or ADR, as fair, predictable, and effective, confidence in legal institutions is strengthened. Conversely, ADR that is perceived as opaque, coercive, or biased risks eroding trust and undermining the legitimacy of both private and public justice mechanisms.

V. Designing Commercial ADR as a Rule-of-Law Tool

If commercial ADR is to serve the public interest, its design must reflect both normative rule-of-law requirements and the practical realities of commercial dispute resolution. The challenge for legislators, courts, and justice institutions lies in preserving the flexibility and efficiency that make ADR attractive, while embedding it within a framework that safeguards fairness, accountability, and equality. This section identifies key design principles that enable commercial ADR to function as a complement to public justice rather than as a substitute for it.

5.1 Legal Frameworks Clarifying the Relationship with Courts

A foundational requirement for rule-of-law-oriented commercial ADR is a clear and coherent legal framework defining its relationship with formal adjudication.¹⁷ Laws governing mediation and arbitration should articulate not only the availability of ADR, but also its limits, its interaction with court proceedings, and the circumstances under which judicial intervention is appropriate.

Such frameworks should address issues including referral to ADR, suspension or coordination of court proceedings, recognition and enforcement of outcomes, and access to adjudication where ADR fails or proves unsuitable. Legal ambiguity

¹⁷ UNCITRAL, *Legislative Guide on Privately Financed Infrastructure Projects* (United Nations 2001), https://uncitral.un.org/en/texts/procurement/legislativeguides/privately_financed_infrastructure_projects accessed 6 March 2026.

in these areas may deter the use of ADR, facilitate forum shopping, or undermine confidence in both private and public dispute resolution mechanisms.

From a rule-of-law perspective, clarity promotes legal certainty and ensures that commercial ADR operates within, rather than alongside or outside, the formal justice system.

5.2 Judicial Gatekeeping and Institutional Oversight

Judicial involvement in commercial ADR should be conceived not as managerial control, but as gatekeeping and oversight.¹⁸ Courts are well-positioned to assess whether disputes are appropriate for ADR, whether the consent of parties is informed and voluntary, and whether power imbalances justify additional safeguards.

Judicial gatekeeping mechanisms, such as referral hearings, confirmation procedures, or limited review of settlements and awards, enhance the legitimacy of ADR without compromising efficiency. Crucially, they signal that ADR does not constitute a private justice system operating beyond public authority, but rather an integrated component of the justice ecosystem.

Institutional oversight may further include registers of mediators and arbitrators, reporting obligations for ADR institutions, and structured cooperation between courts and service providers. These measures contribute to consistency, quality assurance, and accountability across the system.

5.3 Procedural Guarantees and Quality Standards

A rule-of-law-oriented ADR system requires minimum procedural guarantees that protect parties while allowing flexibility. These guarantees should emphasise core principles rather than rigid formalism: impartiality of neutrals, transparency of process, equality of arms, and respect for party autonomy.

Quality assurance mechanisms are particularly important in commercial ADR markets, where competition and pressure for speed may incentivise cost reduction at the expense of fairness. Accreditation of mediators and arbitrators, ethical codes, continuing professional development, and accessible complaint mechanisms all contribute to maintaining professional standards and public confidence.

¹⁸ CEPEJ, *Guide to the Judicial Referral to Mediation* (Council of Europe 2018)

<https://rm.coe.int/guide-to-the-judicial-referral-to-mediation-en/1680ac490a> accessed 7 March 2026.

At the same time, procedural requirements must remain proportionate. Over-regulation risks replicating the inefficiencies that ADR seeks to avoid, while under-regulation risks erosion of trust and legitimacy.

5.4 Safeguards for SMEs and Structurally Weaker Parties

Designing commercial ADR as a rule-of-law tool requires particular attention to the position of SMEs and structurally weaker parties. Generic, one-size-fits-all approaches may fail to address the specific vulnerabilities these actors face in commercial disputes.

Targeted measures, such as simplified procedures, capped or transparent fee structures, standardised contractual clauses, access to legal information, and mediator training on power dynamics, can significantly improve fairness without undermining autonomy. In some jurisdictions, specialised ADR tracks for SMEs or sector-specific schemes have proven effective in balancing efficiency with protection.

These safeguards should be framed not as exceptions to party autonomy but as conditions enabling autonomy to be exercised meaningfully and on an informed basis.

5.5 Transparency, Data, and Systemic Learning

While confidentiality remains a legitimate feature of commercial ADR, a complete absence of transparency can undermine systemic learning and accountability. Aggregate and anonymised data on ADR usage, duration, outcomes, and user satisfaction can inform policy decisions and highlight structural issues without compromising individual confidentiality.

Publishing periodic evaluations and statistical information enables justice institutions to assess whether ADR is functioning as intended, whether certain groups are systematically disadvantaged, and whether reforms are required. Transparency at the systemic level thus supports continuous improvement and alignment with public interest objectives.

VI. Conclusion

The growing reliance on commercial alternative dispute resolution (ADR) reflects a broader transformation in the administration of justice, driven by demands for efficiency, flexibility, and responsiveness to the needs of economic actors. Mediation and arbitration offer clear advantages in resolving commercial disputes, particularly in systems where courts face structural constraints or heavy caseloads. At the same

time, their expansion raises legitimate concerns relating to transparency, equality, accountability, and the protection of the public interest.

This article has argued that commercial ADR is neither inherently compatible nor inherently incompatible with the rule of law. Its effects depend on the institutional and legal context in which it operates. When designed or promoted without adequate safeguards, commercial ADR risks reproducing power imbalances, marginalising weaker parties, and shifting dispute resolution into opaque private arenas. Such outcomes may undermine confidence in commercial justice and weaken the normative role traditionally performed by public courts.

Conversely, when embedded within a coherent legal framework that ensures judicial oversight, enforceability, and procedural fairness, commercial ADR can meaningfully serve the public interest.¹⁹ Properly integrated, ADR complements public adjudication by offering proportionate and efficient mechanisms for resolving commercial disputes, reducing pressure on courts, and expanding access to justice for economic actors. In this sense, ADR should be understood not as an alternative to public justice, but as an integral component of a diversified justice architecture in which different mechanisms perform distinct and mutually reinforcing functions.

The analysis further highlights the importance of addressing inequality and power imbalances within commercial dispute resolution. Safeguards for small and medium-sized enterprises (SMEs), attention to the participation of underrepresented groups, and sustained investment in the quality and professionalism of ADR practitioners are essential to ensuring that private dispute resolution remains fair, voluntary, and legitimate. Without such measures, the promise of efficiency risks displacing core rule-of-law values.

Ultimately, the challenge for policymakers and justice institutions is to govern the privatisation of dispute resolution, rather than resist or uncritically embrace it. By anchoring commercial ADR within public legal authority and aligning it with principles of fairness, accountability, and inclusion, states can harness its benefits while preserving the legitimacy of commercial justice. In doing so, commercial ADR can contribute not only to economic activity but also to sustained trust in the institutions that underpin the rule of law.

¹⁹ International Development Law Organization, *Commercial Alternative Dispute Resolution: Powering Economic Growth with Effective Commercial Justice* (IDLO 2026) <https://www.idlo.int/publications/commercial-alternative-dispute-resolution-powering-economic-growth-effective-commercial> accessed 3 March 2026.

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ALTERNATIVNO RJEŠAVANJE TRGOVAČKIH SPOROVA I JAVNI INTERES: PRIVATNA PRAVDA I VLADAVINA PRAVA

SAŽETAK

Širenje upotrebe trgovačkog alternativnog rješavanja sporova (ADR) preoblikovalo je krajolik trgovačke pravde u različitim jurisdikcijama. Medijacija i arbitraža sve se više promoviraju kao učinkoviti i fleksibilni mehanizmi sposobni smanjiti zaostatke na sudovima, podržati gospodarske aktivnosti i odgovoriti na potrebe poslovnih aktera. Istodobno, rastuća ovisnost o privatnopravnom rješavanju sporova otvara temeljna pitanja o transparentnosti, jednakosti, odgovornosti i zaštiti javnog interesa, funkcija koje su tradicionalno povjerene sudovima.

Ovaj članak sagledava trgovačko alternativno rješavanje sporova kroz prizmu vladavine prava s naglaskom na uvjete pod kojima mehanizmi privatnopravnoga rješavanja sporova mogu dopunjavati, a ne potkopavati pravosudni sustav. Analiziraju se rizici koji su ključni za javni interes, uključujući asimetriju moći između spornih strana, ograničenje procesne zaštite i izazove pristupa pravdi za mala i srednja poduzeća te nedovoljno zastupljene skupine. Oslanjajući se na komparativnu praksu i institucionalno iskustvo, članak identificira pravne i institucionalne značajke koje omogućuju komercijalnom ADR-u da djeluje u skladu s načelima vladavine prava.

U članku se zaključuje da trgovačka arbitraža kao alternativni način rješavanja trgovačkih sporova služi javnom interesu kada je ustanovljen koherentan pravni okvir koji osigurava sudski nadzor, provedivost i procesnu pravednost. Kada je trgovačka arbitraža pravilno normirana i kada se postupkom pravilno upravlja, ona može poboljšati pristup pravdi, smanjiti pritisak na sudove i ojačati povjerenje u rješavanje trgovačkih sporova bez narušavanja ovlasti ili legitimnosti javnopravnoga načina rješavanja sporova.

Ključne riječi: alternativni način rješavanja sporova, trgovačka arbitraža, vladavina prava, javni interes, pristup pravdi, sudski nadzor

LJUBOMIR PETRULJEŠKOV međunarodni je stručnjak za vladavinu prava i medijaciju s više od petnaest godina iskustva u podršci reformi pravosudnog sektora, alternativnom rješavanju sporova (ADR) i izgradnji institucionalnih kapaciteta diljem Europe, srednje Azije i jugoistočne Azije. Trenutačno vodi programe za više zemalja u Međunarodnoj organizaciji za razvojno pravo (IDLO), surađujući s vladama, pravosudnim institucijama i međunarodnim partnerima na jačanju pravnih okvira, sustava za rješavanje sporova i ekonomskog upravljanja. Osim rada s IDLO-om, surađuje s međunarodnim financijskim institucijama, uključujući Europsku banku za obnovu i razvoj (EBRD) i Azijsku razvojnu banku (ADB), na inicijativama usmjerenim na poboljšanje pristupa pravdi, jačanje okvira trgovačkog prava i podršku regulatornim i institucionalnim reformama. Kao stipendist i certificirani medijator JAMS Weinsteina Ljubomir Petruljeskov također doprinosi međunarodnim akademskim i profesionalnim programima usavršavanja. Unutar Sveučilišne mreže za djecu u oružanim sukobima njegov rad usmjeren je na ulogu medijacije, olakšavanja dijaloga i inkluzivnog rješavanja sporova pri rješavanju sukoba koji utječu na djecu i promicanju mirne transformacije sukoba.