

COMPETITION GROUP



INTRODUCTION

Our competition team advises many of the UK's leading businesses across a variety of sectors and receives excellent feedback for its pragmatic approach to advisory and transactional work in what is a complex and fast-moving practice area. We pride ourselves on our ability to understand how our clients' businesses work so that we can identify the competition law risks they face, understand the commercial context in which they arise and provide clear recommendations on how to mitigate any related risks. Similarly, we assist large corporate clients which have suffered harm as a result of anti-competitive activity and advise them on how they can protect their interests or recover damages before the courts.

We have a strong team of experienced partners and associates who advise on EU and UK competition law matters and who have the skill set and depth of resource to assist on the most complex and data intensive investigations. Within our team, we have lawyers who specialise in:

- ▶ anti-trust investigations and dawn raids;
- ▶ UK and international merger control clearance;
- ▶ competition litigation and ADR;
- ▶ market investigations; and
- ▶ EU state aid and regulatory advice.

We also have established relationships with other leading international anti-trust firms and provide clients with a "one stop shop" on parallel merger control and anti-trust proceedings (for example, notifications in territories outside the EU).

Our ability to deliver value and "translate" complex advice for our clients is reflected in our feedback, the standard of the work we do and the quality and breadth of our client list, which includes a substantial number of FTSE 100 and 250 organisations. We have assisted clients on most of the Competition and Markets Authority's recent market investigations, and regularly represent clients in anti-trust investigations, merger clearances and competition litigation.

We are ranked highly in all of the legal directories for competition law work (both contentious and non-contentious):

Superb competition group (Chambers)

The competition practice is regarded as 'excellent', 'informative', 'clear' and 'proactive' (Legal 500)



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ANTI-TRUST INVESTIGATIONS

What do we do?

We advise clients defending proceedings brought by the CMA, UK regulators with "concurrent" competition law enforcement powers (in the utility and financial services sector) and/or the European Commission. These are based on allegations of anti-competitive conduct (i.e. abuse of dominance) and/or anti-competitive behaviour (i.e. cartel-type conduct, resale price maintenance and/or other contractual restrictions). We defend our clients' interests from the launch of the investigation (typically via a dawn raid) through to the Statement of Objections, settlement discussions and any related appeals and damages actions.

We also represent clients which have uncovered anti-competitive conduct and have chosen to apply for immunity from civil penalties and criminal sanctions in return for a full "confession" and ongoing cooperation with the authorities. This includes advice on the conduct of related internal investigations.

How do we do it?

Our approach in anti-trust cases is to:

- ▶ conduct any internal investigation (including witness interviews) in a diligent and thorough manner, in order to identify the evidence, evaluate it and maintain the possibility of applying for immunity;
- ▶ ensure that (as far as possible) the interests and incentives of the company and any former and current directors and employees remain aligned; and
- ▶ defend our clients' interest in those proceedings at all times (either by challenging the evidential and legal basis for the investigation, or by cooperating with the inquiry but avoiding any statements or document disclosure which could have an adverse impact on defending future damages actions).

On criminal matters, we work in close collaboration with our corporate crime team to provide clients with an integrated approach to managing investigations or prosecutions by the CMA.

What makes us different?

Since the CMA was launched in April 2014, we have acted for a number of immunity applicants and we have defended clients in competition enforcement proceedings before the CMA and the sectoral competition regulators. We understand how the process works from beginning-to-end from our experience of running those cases (including related damages actions). This means our clients benefit from a team which understands how to run cases in an efficient and cost-effective manner and is able to identify "pinch points" in the process.

Our recent experience includes advising:

- ▶ clients on high-profile CMA competition investigations (including bathroom fittings, bunker fuels, construction, tobacco and e-books);
- ▶ multiple clients on recent applications for anti-trust immunity/leniency, including the conduct of internal investigations;
- ▶ a client defending a current Competition Act investigation brought by a concurrent regulator (including allegations of abuse of dominance);
- ▶ clients which have received "warning letters" from anti-trust regulators (both CMA and concurrent regulators);
- ▶ a Foundation Trust in relation to Monitor's investigation of the commissioning of Greater Manchester cancer surgery services;
- ▶ clients on a number of confidential matters relating to alleged abuse of dominance and information exchange;
- ▶ complainants before the CMA and other sectoral regulators on a number of (confidential) antitrust matters
- ▶ two sporting federations on a complaint lodged with the European Commission alleging anti-competitive marketing of media rights (joint selling);
- ▶ a major bank in securing the closure of the antitrust investigation by the European Commission (EC) into the European Payment Council's standardisation of e-payments; and
- ▶ co-ordinating advice from counsel in other jurisdictions in antitrust investigations, including emerging African and Common Market for Eastern and Southern Africa regimes (COMESA).

MERGER CONTROL

What do we do?

Our team advises clients which are looking to acquire a controlling stakes in target business(es) or joint ventures on their strategy for securing merger control clearance from the European Commission and/or the UK Competition and Markets Authority (CMA). We also regularly support clients on multi-jurisdictional merger clearances in respect of cross-border transactions, working in collaboration with similar market-leading international law firms.

Similarly, we represent companies which are concerned about the impact of potential (or completed) transactions and advise them on how to defend their interests, including whether (and how) to complain to the relevant competition authorities.

How do we do it?

We work with clients and their advisers to ensure that:

- ▶ the strategic rationale for the transaction is clearly understood from the outset and we identify all relevant documents and data to support the merger clearance process;
- ▶ the client is given a clear steer on the prospects of securing unconditional merger control clearance and the process/ timeline for achieving this; and
- ▶ where appropriate, we advise on the scope of any "remedy" (i.e. business divestment) which may be required to secure Phase I clearance so that there is an agreed strategy in this event.

What makes us different?

Our team acts on a regular throughput of cases before the CMA and is highly experienced at identifying the key substantive issues/pressure points at the outset of a transaction and putting in place a strategy to "get the deal through". Where appropriate, we work in parallel with a select group of economic consultants who have a similar approach to partnering with clients.

We have acted on a number of high profile Phase I and Phase II merger control processes in recent years, both at a UK, EU and international level, which means that we can anticipate and deal with issues in a pragmatic and cost-effective manner which takes the burden off the client's management team.

Our recent experience includes advising:

- ▶ two clients in the first two Phase II merger cases considered by the CMA (Alliance Medical/IBA Molecular and Omnicell/Surgichem), both of which were cleared unconditionally by the CMA;
- ▶ Simplyhealth on the disposal of its private medical insurance business to AXA Healthcare (cleared following a Phase I CMA investigation);
- ▶ Tate & Lyle Plc on the restructuring of its Eastern European joint venture, which required merger control notifications in six jurisdictions;
- ▶ Jersey Telecom (JT) Plc on the merger control and regulatory aspects of its proposed acquisition of the Vodafone Airtel business in the Channel Islands from the Bharti Group, which was referred to an in-depth (Phase II) merger inquiry by CICRA;
- ▶ Whittan Intermediate Ltd on the acquisition of Lion Steel Ltd (cleared following a Phase I CMA investigation);
- ▶ CVSL on the completed acquisition of Betterware (cleared following a Phase I CMA investigation);
- ▶ A major multi-national industrial client on confidential merger control matters;
- ▶ Sainsbury's on the formation of its 50/50 JV with Danske Supermarket (Netto Ltd) and the establishment of "Mobile by Sainsbury's";
- ▶ a complainant on a recent high profile Phase II investigation by the CMA; and
- ▶ GVC on the merger control aspects of its acquisition of B.Win.

COMPETITION LITIGATION

What do we do?

Our competition litigation team represents corporate clients bringing and defending competition damages actions and has an established track record before the High Court and the CAT in these cases.

The competition litigation environment is changing rapidly as a result of:

- ▶ The implementation of the Consumer Rights Act 2015, which introduces a new regime for "opt out" collective actions and broadens the jurisdiction of the CAT, making it the preferred forum for all competition law claims; and
- ▶ At an EU level, the Damages Directive introduces minimum standards for competition damages actions across the Union and introduces a rebuttable presumption that cartels cause harm in the form of an "overcharge".

These changes present new tactical opportunities for claimants and are already leading to a significant increase in damages actions, with high profile claims in a range of markets including air cargo, gas insulated switchgear and credit cards fees (amongst others).

How do we do it?

Our competition team comprises experts with expertise in High Court litigation and in advising clients in cartel investigations before the authorities. We work in close collaboration with experts, including forensic accountants and economists, in order to scope the likely claim for damages. This involves assessing the value of commerce affected, the potential level of overcharge, arguments relating to "passing on" and interest, and funding models (which may involve the use of conditional fee arrangements and adverse costs insurance or the involvement of a third party funder).

What makes us different?

A key part of our role is to help clients develop a clear strategy from the outset for the conduct of the litigation and ensure that they achieve a successful outcome. This typically includes managing the claim (both before and after the case management conference), co-ordinating on a common interest privilege basis with co-defendants (as appropriate) and advising on the strategy for settlement (including costs protection).

This is a fast-evolving area and we are up to speed on the key battle grounds, including approaches to disclosure, limitation and quantification of damages, having advised clients in numerous competition disputes, including foam, copper fittings, high voltage cables and numerous other confidential claims. We also work closely with expert forensic and economic advisers and Counsel in order to ensure that clients receive integrated and cost-efficient advice.

Our recent experience includes advising:

- ▶ a number of significant UK based purchasers of the cartelised product in a private follow-on damages claim arising from a cartel investigated around 5 years ago;
- ▶ a co-defendant on its defence of private follow on damages claims brought by National Grid and Scottish Power arising out of the high voltage cables cartel decision issued by the European Commission;
- ▶ Delta plc on its defence of a Part 20 claim brought against it by the first and second Defendants in a private follow on damages claim arising out of a copper fittings cartel;
- ▶ 2Travel Group Plc in its successful follow-on damages action against Cardiff Bus following a Chapter II infringement decision by the OFT which found that Cardiff Bus had abused its dominant position (the first ever award of damages by the CAT in a follow-on damages case);
- ▶ a major UK airport in defence of a stand-alone abuse of dominance claim by a parking company. We are providing competition, litigation advice and strategic advice on the claim;
- ▶ a client on a major threatened competition law claim, which includes a threatened injunction, arising out of alleged abuse of a dominant position;
- ▶ a major UK FTSE100 on a high value competition law damages claim, which is currently at the pre-action stage and is being brought by liquidators of a company;
- ▶ a major UK FTSE100 on a complex and strategically significant series of arbitrations, which included complex issues of competition law; and
- ▶ a major UK airport on the defence of a competition law based claim brought by a major low cost airline.

MARKET INVESTIGATIONS

What do we do?

In recent years, the CMA and sectoral regulators (particularly the FCA) have undertaken a wide range of market studies and market investigations. In the financial services sector, these include the FCA's credit cards, asset management and general insurance add-ons market studies as well as the CMA's in-depth investigations in the PPI, payday lending, private motor insurance and retail banking markets. The CMA has also undertaken detailed probes into the private healthcare and energy supply markets.

If the CMA identifies "features of the market" which adversely affect competition, it has a duty to implement remedies in order to address its concerns. These are typically "behavioural" measures which are designed to address customer inertia but occasionally the CMA imposes more interventionist remedies such as price caps or even a "break up" – as was the case in the airports investigation.

Similarly, the European Commission has the power to undertake sector inquiries (such as e-commerce and the pharma sector), which are typically a precursor to enforcement activity.

Our team represents parties to market studies / investigations and ensures that their interests are protected and that their submissions are evidence-based.

How do we do it?

We work closely with a client's project team to ensure that there is a clear strategy in place for engaging with the authorities and that the client's views on key issues are properly understood. In practice, this means "front-loading" the process to identify key arguments on each theory of harm identified by the authorities, ensuring that senior management are properly briefed ahead of any hearing and working in partnership (where appropriate) with the client's other advisers.

What makes us different?

We are able to deal with the most data intensive inquiries: on the CMA's retail banking investigation, we were engaged as co-counsel to one of the main parties in order to deal with the volume aspects of the inquiry and act as a "second pair of eyes" on the Bank's strategy for the inquiry.

We also approach these investigations in an innovative and proactive manner and the approach that we have adopted in previous inquiries has been highly effective in ensuring that our clients have a "seat at the table" with the CMA panel as the inquiry progresses. This can be critical in shaping the remedies for the inquiry and ensuring that these "fit" with the client's strategic goals.

Our recent experience includes advising:

- ▶ two main parties to the CMA's investigation into the UK market for the supply of private motor insurance, which included responding to key submissions, preparing senior management for hearings and engaging proactively with the CMA throughout the remedies stage of the inquiry;
- ▶ a main party throughout the CMA's investigation into the private healthcare market, which was remitted to the CMA following an appeal brought before the CAT;
- ▶ one of the UK's largest banks on the CMA's retail banking market investigation, where we were instructed as "co-counsel" on an innovative two-firm model which drove substantial cost savings for our client. This included responding to key questionnaires and working papers, feeding into key project documents and engaging proactively with the CMA staff throughout the remedies stage;
- ▶ one of the UK's largest card issuers in relation to UK Financial Conduct Authority's credit cards market study;
- ▶ a major trade association throughout the CMA's investigation into the payday lending market; and
- ▶ multiple clients in relation to the European Commission's e-commerce sector inquiry, which is likely to generate follow-up enforcement activity relating to restrictions on online sales.

STATE AID AND REGULATORY

What do we do?

We provide advice to public sector and private sector clients on the application of the EU state aid rules.

- ▶ For public sector clients, this includes advice on projects backed by the European Structural and Investment Fund (**ESIF**). Our team has substantial experience of advising public sector bodies on how the state aid rules apply and on the various funding routes which are compatible with the EU Treaty rules (including the General Block Exemption, which provides a "route map" for particular categories of funding, such as R&D, environmental aid, training aid and aid to SMEs).
- ▶ For private sector clients, our team has substantial experience of advising on inward investment decisions, grant applications and on the compatibility of other forms of direct and indirect Government funding and support (including advice on whether such measures are consistent with the Market Economy Operator Principle).

How do we do it?

Our team works closely with colleagues in our projects team (who take the lead on project delivery and finance aspects) and our market-leading procurement team in order to structure funding arrangements in a way which is state aid compliant. Where appropriate, we work in conjunction with third party advisers (for example, where the client requires economic/accounting support on the application of the Market Economy Operator Principle).

What makes us different?

The strength of our firm's public sector credentials means that we advise on a significant number of state aid cases for public sector entities. We also advise a substantial number of private sector (and "third sector") entities on funding models – particularly in respect of more complex projects such as public-private partnerships. We also advise clients on strategies for challenging state support which could distort competition (for example, through the submission of a Freedom of Information Act request and complaint strategies).

This volume and variety of work means that we have strong contacts within the relevant Government departments and can provide pragmatic, risk-based advice to our clients on state aid compliance (and how to minimise the risks of subsequent challenge on state aid and/or procurement grounds in the event of a subsequent audit).

Our recent experience includes advising:

- ▶ Various clients, including Manchester City Council, Britain's Energy Coast, Hull City Council and Greater Manchester Chamber of Commerce on the application of the state aid rules to the use of grant funding and new developments;
- ▶ Multiple public authorities on funding arrangements for inward investment (establishment of centres of excellence; support for SMEs; training aid and advice on R&D);
- ▶ A leading financial services client on the application of state aid rules to export credit guarantee schemes and the application of the European Commission's state aid Commitments;
- ▶ A leading network infrastructure manager on the state aid implications of strategic alliances with users of its (publicly funded) network and commercial ventures with third parties;
- ▶ Energy Works (an "energy from waste" gasification plant) on the implications for its state aid clearance (SA.34051) of the UK government's move from ROCs to CfDs;
- ▶ The £400m Gas to the West project in Northern Ireland, which included a £20m state aid compliant grant from the relevant Northern Irish Government Department;
- ▶ A public authority on its successful application for ERDF funding to help develop a series of combined heat and power projects in the region;
- ▶ Several Sector Skills Councils on the EU state aid implications of new projects and associated funding applications to the UK Commission for Employment and Skills and the Skills Funding Agency; and
- ▶ An arm's length body on the state aid aspects of establishing a joint venture with a third party to engage in R&D activity in the energy industry (including advice on potential funding models).

OUR TEAM



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Bruce leads Addleshaw Goddard's competition team, specialising in all aspects of UK and EC competition and merger control law. Recent case highlights include representing clients involved in CMA competition investigations, including *bathroom fittings (RPM)*, *construction* and *ebooks* and representing immunity applicants in related matters. He has also represented multiple clients in complex merger control and market investigation cases before the CMA and the European Commission.

Bruce is recommended in the Legal 500, Chambers and the International Who's Who of Competition Lawyers and has a particular focus on clients in the regulated utility/infrastructure, financial services and retail and consumer sectors.



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Rona specialises in UK and EC competition and regulatory law, including securing merger clearances, representing clients engaged in investigations relating to anti-competitive agreements, abuses of market power and in related anti-trust litigation. Rona has particular expertise in regulated industries, including water, media, transport and telecoms.

Rona is ranked in both Chambers and Legal 500 for competition. She has substantial experience of advising clients before the CAT and the English Courts on competition law matters.

*.....exceptionally bright, affable,
experienced and down to earth.*

CHAMBERS (2016) – CLIENT FEEDBACK RE BRUCE KILPATRICK

*....widely acclaimed as a rising star in
this area.*

CHAMBERS (2016) – CLIENT FEEDBACK RE RONA BAR-ISAAC

*They engage very well with clients and go
out of their way to provide support.*

*They have deep experience in the
competition law arena, and are able to
draw on previous work to inform us of the
process and how to develop our own
responses.*

CHAMBERS (2015)

addleshawgoddard.com

Aberdeen, Doha, Dubai, Edinburgh, Glasgow, Hong Kong, Leeds, London, Manchester, Muscat, Singapore and Tokyo*

* a formal alliance with Hashidate Law Firm

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