



# COMPETITION LAW



## PRACTICE OVERVIEW

Whether your organisation plans to form a business alliance, challenge competitors, implement a new product, develop marketing and distribution strategies, or grow through corporate development, you will need expert knowledge of competition and antitrust laws.

Partnering with experienced specialists in competition law can make the difference between commercial success and regulatory non-compliance blunders, which are costly and fraught with potential reputational harm.

South Africa's competition regulators have been rigorously enforcing the Competition Act since it came into force in 1999.

The Act has fundamentally reformed South Africa's competition regulation regime and has created new competition authorities with significant powers. The Act governs a broad range of anti-competitive conduct, including collusion, vertical restraints and


exclusionary conduct by dominant firms (firms with a market share of 35% or more), and approval procedures for certain mergers and acquisitions. These laws affect almost every aspect of company activity in South Africa.

The Act seeks to balance traditional antitrust regulation with the promotion of other socio-economic goals, including the protection of employees in some merger cases and the promotion of businesses operated by historically disadvantaged persons.

It prohibits restrictive horizontal practices (including collusion and certain competitor agreements and practices), restrictive vertical practices (certain customer or supplier arrangements) and abuses of market power by dominant firms.

Participants in collusion have realised the benefits of reporting transgressions to the Competition Commission under the Corporate Leniency Policy – particularly since the Commission has become more proactive in uncovering cartels and the abuse of market dominance.

A penalty of up to 10% of a company's annual turnover can be imposed for non-compliance with provisions of the Act; offenders can also be stripped of productive assets, operating divisions or subsidiaries. Since 1 May 2016, company directors and managers of colluding firms may face personal criminal liability and run the risk of being fined or jailed.



*"What a pleasure to work with attorneys who have a high regard for the input available from the client, but will not be shaken off course."*

THE LEGAL 500 EMEA 2024



*"The lawyers immerse themselves in understanding the business; over time they become a partner to the business, so it is more like a partnership relationship."*

*"Cliffe Dekker Hofmeyr's competition team is really excellent."*

*"The lawyers are responsive and knowledgeable and give practical advice."*

**CHAMBERS GLOBAL 2024**

*"The team takes the time to really understand the business of each of our clients and have an immense amount of experience in transactions across numerous African jurisdictions. The relationship they have built with the South African competition authorities makes the process so much quicker and easier."*

**THE LEGAL 500 EMEA 2024**



*"The team makes sure that they understand the broader commercial context of the transaction in order to ensure that the filing is fit for purpose. They have also built up a sound understanding of our business over multiple transactions which assists with the processing of new applications."*

**THE LEGAL 500 EMEA 2023**

## OUR EXPERIENCE

Our Competition Law practice has a proven track record of providing strategic advice and practical solutions to competition law issues for clients' business interests in South Africa, Kenya and the rest of Africa. Where transactions span multiple jurisdictions, we are ideally placed to provide comprehensive competition and antitrust services.

Our team has extensive experience in the legal requirements associated with obtaining merger clearance and has successfully represented clients in several high-profile transactions.

We have been involved in landmark cases dealing with restrictive practices (complaints regarding anti-competitive conduct) and we have represented clients in all South African forums, namely: the Competition Commission, the Competition Tribunal, the Competition Appeal Court, the Supreme Court of Appeal and the Constitutional Court. Our team also has significant experience dealing with regulators throughout Africa.

We have been at the forefront of the most recent developments in competition law: defending damages actions brought by alleged victims of anti-competitive conduct, including the first attempt at a class action for damages in South Africa.

Members of our Competition Law team have hands-on experience in merger and acquisition transactions and litigation, and direct experience working at the Competition Commission. When necessary, the team works closely with experts from other business law specialties within our firm, such as tax and exchange control, banking, finance and projects, environmental law and employment law, to provide a fully integrated service and the strategic advice necessary to optimise your organisation's position in your particular market.

Our lawyers have the knowledge of government policies and regulators' enforcement priorities, combined with sector experience and insight, to find practical, creative solutions to your competition law issues.

We represent clients across a wide range of sectors.

## CONSUMER PROTECTION

Lawyers in our team have considerable knowledge of, and experience with the Consumer Protection Act which came into effect in April 2010. This far-reaching legislation is closely aligned to competition regulation.

## OUR SERVICES

Our team is equipped to provide a comprehensive service that encompasses every aspect of competition law, including:

- Opinions on all aspects of the Competition Act, including merger related, prohibited practice or exemption questions
- Reviewing proposed and executed agreements and other business arrangements as a pre-emptive measure to ensure compliance with the Competition Act
- Preparing merger notification documents, guiding clients through merger investigation proceedings and representation at merger hearings
- Opposing mergers
- Advising in cartel enforcement proceedings, abuse of dominance matters (including excessive pricing, exclusionary abuses and price discrimination) and vertical arrangements
- Designing and executing tailored competition law compliance audits
- Initiating and advising on complaint proceedings before the competition authorities
- Defending clients in complaint proceedings
- Advising in respect of damages actions relating to anti-competitive conduct
- Initiating and defending interim relief proceedings before the Competition Tribunal
- Handling applications for exemption
- Handling applications for corporate leniency

## ADDITIONAL SERVICES

An effective competition law compliance programme helps you minimise the risk of infringement and ensures that you have systems in place to deal with investigations.

We offer in-house compliance training seminars and audits, and online compliance training programmes.

## RAPID RESPONSE

Regulatory search and seizure operations (dawn raids) can occur when least expected. If incorrectly handled from the outset, they can have an instant and dramatic impact on your organisation, its reputation and people's livelihoods.

We will provide prompt telephonic assistance and will mobilise a team of regulatory lawyers to assist you on-site.

## RAID TRAINING

No business can completely eliminate risk, but having policies and procedures in place and ensuring that these measures are effectively implemented can reduce their impact. We offer seminars on raid procedures, which include clear and practical guidance on how to handle every stage of a dawn raid – from the moment of first contact with the regulator to the post-raid debriefing.

We help you develop, implement and stress-test emergency response protocols, train your senior management and other employees, and give you support 24-7-365.

*"CDH has a very experienced competition law team and has supported us on a diverse range of issues. The lawyers are very competent and available to provide advice on an urgent basis."*

*"It is a well-staffed team under experienced leadership."*

CHAMBERS GLOBAL 2024



## COMPLIANCE TRAINING AND AUDITS

Our training seminars are informative, interactive and designed to quickly entrench a practical understanding of what competition law compliance requires. These seminars can be tailored to suit any company, industry or audience.

Compliance audit procedures will unearth any anti-competitive conduct that your organisation has knowingly or unwittingly engaged in. Thereafter, we will suggest remedial action. Compliance audits can include document and policy reviews, employee interviews, anonymous tip off lines and other interventions that will detect prohibited conduct.

As a stand-alone offering or a complimentary service to training seminars and compliance audits, we provide a comprehensive online competition law compliance and training programme. We have designed this programme as a tool to educate employees about competition compliance. Employees can use the programme at their own desks and in timeframes that suit them.

In manageable portions, the programme offers a step-by-step guide to competition law and what constitutes prohibited conduct. Multiple choice questions allow users to test their understanding of the material. We are able to track and report on the progress and test score of each user. In this way, we are able to highlight potential problem areas and provide a record of your organisation's important compliance initiatives.

## ABOUT CLIFFE DEKKER HOFMEYR

We are a leading business law firm in South Africa and Kenya.

### OUR AFRICA PRACTICE

Our Africa service offering brings together the resources and expertise of leading law firms across the continent. This experience and geographic spread produce an extensive African capability. We offer our clients a genuine knowledge-based service at locally competitive rates.



### OUR VALUE-CREATING APPROACH

Our partner-led approach ensures clients receive the right level of experience and efficiency and we deliver pragmatic and commercially-focused solutions.



### WE PRIORITISE EFFICIENCY

We manage, apply and share our considerable knowledge assets for the benefit of our clients through continuous skills training. We keep clients informed on regulation developments through seminars, our matters newsletters and regular alerts.



### FULL SERVICE BUSINESS SOLUTIONS

Our legal advice covers the complete spectrum of business legal needs, which we provide through our core practice areas and dedicated teams of specialist lawyers with a wealth of experience in a wide range of industries.

*"What has impressed me is the ability of the team to properly engage, to listen, apply or reject the information fed to them, and turn around the work promptly so that the momentum is not lost and the continuous reviews can take place. We have been super-impressed. In addition, the team displays good commercial sense/acumen to complement their exceptional legal expertise in this field."*

THE LEGAL 500 EMEA 2024



## MARKET RECOGNITION

Our Competition Law team is externally praised for its depth of resources, capabilities and experience.

*Chambers Global 2011–2024* ranked our Competition Law practice in Band 2 for competition/antitrust. *The Legal 500 EMEA 2011–2024* recommended us in Tier 2 for competition.

The way we support and interact with our clients attracts significant external recognition.

**Chris Charter** is the Practice Head of our Competition Law team. *Chambers Global 2018–2024* ranked him in Band 1 for competition/antitrust. *The Legal 500 EMEA 2017–2024* recommended Chris as a 'Leading Individual' for competition. *The Legal 500 EMEA 2012–2016* recommended him for competition. *IFLR1000 2019–2023* recommended him as a highly regarded lawyer. *IFLR1000 2011–2018* recommended Chris as a leading lawyer. *Global Competition Review 2020–2021* named Chris a highly recommended lawyer.

**Sammy Ndolo** is the Kenya Managing Partner. *Chambers Global 2021–2024* ranked Sammy in Band 4 for corporate/M&A. *Chambers Global 2023–2024* ranked him in Band 4 for banking & finance. *The Legal 500 EMEA 2024* recommended Sammy as a 'Leading Individual' for banking, finance & capital markets. *The Legal 500 EMEA 2022–2023* recommended him for banking, finance & capital markets. *The Legal 500 EMEA 2023–2024* also recommended Sammy for corporate, commercial/M&A. *IFLR1000 2021–2023* ranked him as a 'Notable Practitioner'.

*Chambers Global 2023–2024* ranked **Albert Aukema** in Band 5 for competition/antitrust. *Chambers Global 2020–2022* ranked him as an 'Up & Coming' competition/antitrust lawyer. *The Legal 500 EMEA 2021–2024* recommended Albert for competition.

*Chambers Global 2022–2024* ranked **Lara Granville** in Band 5 for competition/antitrust. *Chambers Global 2019–2021* ranked her as an 'Up & Coming' competition/antitrust lawyer. *The Legal 500 EMEA 2018–2024* recommended Lara for competition.

*Chambers Global 2014–2024* ranked **Andries le Grange** in Band 4 for competition/antitrust. *The Legal 500 EMEA 2014–2024* recommended him for competition.

*The Legal 500 EMEA 2024* recommended **Martha Mbugua** for corporate/M&A. *The Legal 500 EMEA 2018* recommended her for corporate/M&A. *IFLR1000 2021–2023* ranked her as a highly regarded lawyer in Private Equity, and M&A. *IFLR1000 2017–2019* ranked her as a 'Rising Star' in Private Equity, and M&A. Martha was ranked by the *Business Daily* newspaper as one of the *Top 40 under 40 Women for 2017* and noted as one of the youngest female partners specialising in Private Equity, and M&A.

**Susan Meyer** is the Joint Head of our Healthcare & Pharmaceuticals sector, and a director in our Competition Law practice. *The Legal 500 EMEA 2021–2024* recommended Susan for competition. *IFLR1000 2018–2023* recommended her as a 'Notable Practitioner'.

*Chambers Global 2024* ranked **Njeri Wagacha** in Band 3 for FinTech. *The Legal 500 EMEA 2022–2024* recommended Njeri for employment. *The Legal 500 EMEA 2023–2024* recommends her for corporate, commercial/M&A.

*The Legal 500 EMEA 2024* recommended **Reece May** for competition.



## OUR TEAM

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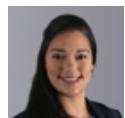
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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

**PLEASE NOTE**

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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