

Antitrust and Competition Representative Matters - U.K. And European Competition Practice

Counseling Mergers

K&L Gates' London office has extensive experience with European merger control regimes. We make frequent merger notifications to the U.K.'s Office of Fair Trading and to the European Commission, and pursue inquiries at all levels within these jurisdictions. Our London lawyers have won numerous merger approvals and negotiated remedies for clients to avoid second phase inquiries and prohibition orders.

K&L Gates' U.S. and London offices provide a coordinated approach to deliver merger-related competition advice, delivering higher value than can be achieved by retaining separate law firms on both sides of the Atlantic. Where filings are required in jurisdictions other than the U.S. and the EU/U.K., K&L Gates' established, close working relationships with competition lawyers around the world enable the firm to provide a seamless service to its clients.

In addition to acting for the parties to a merger, K&L Gates' London office has counseled third parties who wish to have their concerns regarding proposed mergers by others presented to the merger authorities. Such interventions are increasingly manifested as appeals in the courts against decisions of the regulatory authorities.

Competition law and its application to commercial agreements and cartels

Our London office provides practical and commercial advice regarding the implications under EC and U.K. competition law of many and varied commercial agreements. Particular areas of concern for clients have been pan-European distribution strategies, the activities of trade associations (such as information-sharing arrangements), joint research and development programs, and joint buying and selling programs. K&L Gates' London competition partners have reviewed, among others, the following types of agreements for compliance with applicable competition laws:

- distribution and agency agreements (including counseling on the Commercial Agents Regulations)
- standard terms of sale and purchase
- outsourcing agreements
- manufacturing contracts
- supply and purchasing contracts
- research and development contracts
- marketing agreements
- all forms of technology licensing

Significantly, in 2003, criminal sanctions were introduced in the U.K. with up to five years imprisonment and unlimited fines for any individual knowingly engaging in cartel behavior.

K&L Gates' London office has advised a number of clients on these new measures, which have reinforced the need for competition compliance programs.

In addition, resale price maintenance and export bans have been the subject of some significant fines by the European Commission (e.g., an automobile manufacturer was fined over U.S. \$100 million for imposing an export ban on certain of its dealers). Pan-European cartels also continue to attract very high fines from the European Commission and K&L Gates' London office has advised clients seeking to minimize risk in this area.

Abuse of Dominance

K&L Gates' London office provides advice to companies with strong market positions in one or more European markets to ensure they do not infringe the prohibition on the abuse of a dominant position. We have also prepared complaints on behalf of companies who have suffered losses as a result of the activities of dominant companies in their market.

State Aid

K&L Gates' London office has been involved in a number of State aid cases and has provided advice to clients on the State aid procedures under the Treaty of Rome and relevant subordinate European legislation, as well as the risks involved in the receipt of illegal aid. U.S. corporations may find their competitive activities in Europe threatened or restricted by protectionist measures put in place by national governments of the EU Member States. Such protectionist policies are *prima facie* unlawful.

Antitrust Compliance Programs, Training and Audits

K&L Gates' London office has drafted competition law compliance programs for clients and has also provided presentations and training for companies to lessen the risk of antitrust and competition violations. Such programs may be restricted to activities in Europe, or can cover both U.S. and EC laws.

Litigation

K&L Gates' London competition lawyers have litigated a wide range of disputes in the U.K. and before EC competition authorities. Our London competition lawyers brought the first case before the Competition Commission Appeal Tribunal against the Director General of Fair Trading, and successfully challenged his decision to authorise the General Insurance Standards Council to regulate the sale of travel insurance products. Our significant litigation experiences also include:

- bringing and defending complaints before the U.K. and EC competition authorities on behalf of clients in the automotive, beverages, broadcasting, computer software and horse racing markets
- representing corporations in disputes arising from distribution, agency and franchising agreements on a range of competition issues in the areas of industrial coatings, ferrous and non-ferrous metals, foam, security scanning equipment, industrial tooling, industrial paint spraying equipment and specialty chemicals

- defending corporations in franchise networks and obtaining interim measures to restrain anti-competitive practices in the fields of drain cleaning, fashion and food
- representing clients in a European Commission-imposed conciliation process
- successfully appealing fines imposed by the European Commission
- obtaining interim measures in the European Court of Justice as a precursor to the success in the Court of First Instance.