



Gabriela R. Da Costa

Special Counsel

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OVERVIEW

Gabriela da Costa is a special counsel in the London office of K&L Gates' antitrust, competition, and trade regulation practice group and a key member of the firm's cutting-edge e-commerce and vertical distribution practice.

Gabi's niche e-commerce and selective distribution experience is recognized by rankings including The Legal 500, where she has been named as a "Rising Star" in EU and Competition Law for the last two years and described as a "unique lawyer", "incredibly efficient and very personable", and "super attentive, very knowledgeable and commercial" with advice that is "always to the point and useful." Gabi is also ranked as a Future Leader in Competition by Who's Who Legal and a Rising Star in Competition and Antitrust by the Euromoney Expert Guides.

Gabi has led the design, implementation, execution, and enforcement of numerous high-profile go-to-market strategies for major consumer and B2B brands, both in Europe and globally.

She advises product manufacturers, including in fashion, electronics, personal care, sports goods, home goods and appliances, nutrition, and branded commodities (among others), on complex and in-flux competition law questions relating to the sale of their products in Europe, including:

- Resale pricing issues
- Partner authorization criteria and mechanics
- Online resale restrictions
- Online marketplace policies
- Cross-border resale restrictions
- AdWords restrictions
- Price monitoring software
- Discounting and rebate terms

- Direct-to-consumer sales (and brands' interactions and protocols with their customer-competitors)
- E-concession structuring
- The establishment of own-brand marketplaces for resellers
- Market communications
- Partner portal designs
- Dominance / market power issues
- Competition law interactions with intellectual property laws; and
- Reseller strategy interactions with data privacy laws

Gabi has successfully enforced our firm's strategies against unauthorized resellers in various territories, including obtaining an EU-wide court injunction against a major online reseller causing significant damage to our client's brand, network partners and consumers.

She has also defended several major brand owners in challenges by the European competition authorities as well as third parties against their distribution practices, leading to the closure of several investigations without fines.

Gabi co-led our firm's team in the most significant online sales restriction case in recent years in the UK, which went up to the UK Court of Appeal. She has also advocated clients' interests before the European Commission, for example in the context of the e-commerce sector inquiry and the ongoing consultation into the EU competition rules on vertical agreements.

In addition to vertical restraints and dominance matters, Gabi advises clients on:

- Horizontal competitor interactions and agreements, including designing compliant structures and 'rules of the road' and monitoring industry association meetings; and
- Merger control, including handling multi-jurisdictional analyses and filings in M&A transactions.

PROFESSIONAL BACKGROUND

Gabi qualified in early 2012. Prior to joining the firm, she trained and worked in the London office of a Magic Circle law firm and for the Civil Justice Division of the UK Ministry of Justice.

ACHIEVEMENTS

- Awarded Vice-Chancellor and Principal's Medal for Excellent Undergraduate Academic Achievement (highest University of Pretoria academic award for student in any faculty)
- Awarded Butterworth's Prize for final year student with best dissertation
- Awarded Law Society of the Northern Provinces of South Africa Prize for best student in Legal Practice

PROFESSIONAL / CIVIC ACTIVITIES

- Member of the Law Society of England and Wales

SPEAKING ENGAGEMENTS

- Regularly speaks on optimizing go-to-market and marketplace strategy design, including at industry and e-commerce events and seminars.
- Delivers competition law compliance training to client sales teams, distributor partners, and trade association committees.

EDUCATION

- Legal Practice Course, BPP Law School, 2010
- B.C.L., University of Oxford, 2007

ADMISSIONS

- Solicitor of the Senior Courts of England and Wales
- Solicitor, Brussels Bar (Dutch section, EU list)

LANGUAGES

- Afrikaans
- Portuguese

THOUGHT LEADERSHIP *POWERED BY HUB*

- 22 February 2021, Does the French Lego Case Threaten the Building Blocks of Your Pricing Policy for Online Sellers? (*Alerts/Updates*)
- 28 January 2021, The Enforcement of Abuse of Economic Dependence in the EU (*Alerts/Updates*)
- 4 November 2020, What an Awful Racket... Acoustic Product Trade Mark Case Provides Opportunity for Brands Being Piggy-Backed to Drive Search Traffic (*BlogPost*)
- 28 October 2020, Vertically Challenged - Insight into the EU Commission's Efforts to Update the EU Rules on Vertical Agreements (*Alerts/Updates*)
- 8 September 2020, E-Concessions and Competition Law (*Alerts/Updates*)

- 7 July 2020, Enforcement of Customer-Competitor Infringements and Price Monitoring Tools Intensifies (*Alerts/Updates*)
- 20 April 2020, COVID-19: Beware Illegal Use of Price Monitoring Tools (*Alerts/Updates*)
- 2 April 2020, COVID-19: Preserving Brand Equity and the Health of a Go-To-Market Strategy During the Pandemic and Beyond (*Alerts/Updates*)
- 20 March 2020, COVID-19: Taking Extraordinary Measures at Times of Crisis- COVID-19 and the Boundaries of Cooperation Under European Competition Law (*Alerts/Updates*)
- 20 March 2020, COVID-19: The European Commission Sets Out State Aid Strategy – Opportunities and Challenges for EU Businesses (*Alerts/Updates*)
- 14 February 2019, Court confirms additional tools for trade mark owners to protect their brand where they operate a selective distribution system in the EU (*BlogPost*)
- 13 February 2019, Court Confirms Additional Tools for Trade Mark Owners to Protect their Brand Where They Operate a Selective Distribution System in the EU (*Alerts/Updates*)
- 11 February 2019, Opportunity to Help Shape the Key Rules that Affect How You Sell Your Products in Europe (*Alerts/Updates*)
- 13 November 2018, Opportunity for Product Manufacturers to Comment on EU Distribution Rules (*Alerts/Updates*)
- 7 August 2018, Continued Antitrust Enforcement Against Non-Compliant Manufacturers in Europe: Significant Penalties Imposed for Fixing Resale Prices (*Alerts/Updates*)
- 2 May 2018, EU Selective Distribution Update: Recent Developments Regarding Marketplace Bans and The Requirement for a Physical Point of Sale (*Alerts/Updates*)
- 01 February 2018, EU Judgment On Banning Sales Via Online Marketplaces - What Does It Mean For Non-Luxury Brands? (*Alerts/Updates*)
- 7 February 2017, European Commission Opens Investigation into Suspected Price Restrictions by Electronic Goods Producers (*Alerts/Updates*)
- 2 December 2016, Proposed Legislation Could Extend Geoblocking Restrictions to Traders' Unilateral Conduct (*Alerts/Updates*)
- 11 November 2016, UK Competition Authority Warns Online Sellers about Unlawful Pricing (*Alerts/Updates*)
- 11 October 2016, European Commission's Preliminary Report in the E-Commerce Sector Inquiry: Highlighting Risk Areas for Suppliers of Branded Goods (*Alerts/Updates*)
- 30 September 2016, European Commission Challenges Sports Governing Body's Non-Compete Rules (*Alerts/Updates*)

- 14 July 2016, CJEU Confirms EU Competition Law Does Not Prevent Royalties for Revoked Patent Licences (*Alerts/Updates*)
- 10 June 2016, UK Competition Authority Challenges Online Resale Ban (*Alerts/Updates*)
- May 2016, EU Competition Law Does Not Prevent Royalties for Revoked Patent Licences (*Alerts/Updates*)

OTHER PUBLICATIONS

- “Now screening: Europe,” *Ragtrader*, April 2018
- “Agency Under EU Competition Law,” *A Lexis®PSL document produced in partnership with K&L Gates*, June 2015
- Regularly writes on online marketplace and e-commerce developments under EU vertical distribution laws, including for publications such as *Lexology*, the *Journal of European Competition Law & Practice*, and specialist industry papers.
- Author and reviewer of numerous competition law publications for LexisNexis PSL Service, including guidance and drafting notes on:
 - vertical commercial agreements between non-competitors, including supply and distribution agreements;
 - vertical commercial agreements between competitors;
 - horizontal commercial agreements between competitors, including joint production, commercialization, purchasing, and research and development agreements;
 - competition law issues in intellectual property agreements;
 - technology transfer agreements; and
 - competition law issues in corporate agreements.
- Has published articles and case notes in *Croner's Europe* and *Thomas Reuters*.
- Research assistant and editor of Cloete (ed.) 2005 *Introduction to Sports Law in South Africa* (Durban: Lexis Nexis Butterworths).

NEWS & EVENTS

- 10 March 2021, Entrepreneurship, Corporate Culture, and the Gender Agenda (*Upcoming Event*)
- 6 April 2020, K&L Gates Advises Shareholders of Pedal Pulses Limited/Margaret Dabbs London on Investment by Best World International (*Press Release*)

AREAS OF FOCUS

- Antitrust, Competition, and Trade Regulation

REPRESENTATIVE EXPERIENCE

- Advising a leading media company in a high-profile Phase II merger review by the then Competition Commission, being the second ever “fast-track” reference case and involving the third public interest intervention in history by the UK Secretary of State for
- Advising a leading diamond wholesaler on negotiations with and a possible complaint against several industry participants for potential cartel/coordinated activities and abuses of dominance in relation to commercial terms.
- Advising a major international chemicals company on its formal response to the preliminary findings of the Ukraine Competition Authority regarding alleged abuse of dominance.
- Advising a major European football body on several high-profile projects, including potential competition law and governance challenges before the European Commission and national competition authorities against the rules and practices of UEFA and FIFA.
- Successfully defending a major sports brand against allegations of suspected resale price maintenance by the Competition and Markets Authority, leading to closure of the initial inquiry without a formal investigation being opened.
- Successfully defending a premium sports brand against allegations of unlawful cross-border resale restrictions by the Swiss Competition Commission, leading to closure of the investigation.
- Advising EuroChem on its fertilizer production joint venture with Migao Corp.
- Advising Euro Car Parts on its acquisition of the Andrew Page Business, seeking consent from the Competition and Markets Authority and involving an initial enforcement order.
- Advising NEP Group Inc. on various transactions, including its recommended takeover of Avesco Group plc., acquisition of SIS Live, and the acquisition of joint control in NEP Inc. by Crestview Partners and Carlyle Group.
- Advising Darling Ingredients Inc., the leading provider of rendering and recycling solutions to the U.S. food industry, on its acquisition of Europe-headquartered Vion Ingredients for approximately €1.6 billion, creating the global leader in converting bio-nutrients streams into specialty products and ingredients for multiple industries.
- Advising the Camera Nazionale della Moda Italiana (National Chamber for Italian Fashion) and the Fédération de la Haute Couture et de la Mode (the governing body for the French fashion industry) respectively on their submissions to the European Commission in the context of its e-commerce sector inquiry and its review of the EU vertical rules.