



COMPETITION

An overview of our practice



EVERYTHING MATTERS

COMPETITION

Our competition practice group has extensive experience in all of the legal requirements associated with obtaining merger clearance and has successfully represented clients in many high-profile transactions. We have also been involved in a number of landmark cases dealing with restrictive practices (complaints regarding anti-competitive conduct).



The Competition Act No. 89 of 1998 (the Act) which came into operation in September 1999 has far-reaching implications for local and foreign businesses operating in South Africa.

The Act prohibits restrictive horizontal practices (certain competitor agreements and practices), restrictive vertical practices (certain customer/supplier arrangements) and abuses of dominance.

In recent years the Competition Commission has become increasingly active in monitoring and enforcing compliance with the restrictive practice provisions of the Act. Victims of anticompetitive conduct are realising the benefits of reporting transgressions of the Act to the Competition Commission.

A penalty of up to 10% of a firm's annual turnover can be imposed for non-compliance with many provisions of the Act and in certain circumstances, an offending firm can be ordered to divest itself of assets. In addition, proposed amendments to the Act may in future expose directors and officers of colluding firms to personal criminal liability.

In association with DLA Piper, we offer a Rapid Response hotline aimed solely at handling crises and major incidents relating to 'dawn raids' (surprise search and seizure operations), an investigative tool which has gained increased utilisation by the Competition Commission recently.

Cliffe Dekker Hofmeyr's Rapid Response Team is just a phone call away, 24 hours a day, every day of the year. We will give you immediate advice on the telephone and mobilise a team of regulatory lawyers to assist you anywhere in South Africa.

The hotline is available to clients of Cliffe Dekker Hofmeyr at no cost by dialing **0800 980 623**.

Our Clients

Cliffe Dekker Hofmeyr has a specialist competition practice that deals with all aspects of competition law and is regarded as a leader in the field. We represent clients in a wide range of sectors, including: **chemical, gas, beverage, aviation, mining, construction, banking, media, broadcasting, technology, telecommunications, property, food, clothing, furniture, insurance and healthcare.**

Our Services

Our comprehensive service offering encompasses every aspect of competition law practice including:

- providing opinions in respect of all aspects of the 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 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 in respect of vertical arrangements
- designing and executing tailored competition law compliance audits
- training programmes for clients that wish to ascertain the status of their compliance or educate employees about the Act
- initiating and advising in respect of complaint proceedings before the Competition Authorities
- defending clients in complaint proceedings
- initiating and defending interim relief proceedings before the Competition Tribunal
- applications for exemption
- applications for corporate leniency
- assisting with 'dawn raids' by the Competition Commission

RECENT REPRESENTATIVE WORK

Restrictive practices

- Representing Harmony Gold Mining Company in the Competition Tribunal and Competition Appeal Court, in a long-standing excessive pricing complaint against ArcelorMittal South Africa in which the Tribunal ruled against ArcelorMittal. The decision is a first of its kind in South Africa and resulted in a fine of almost R7 million imposed on Mittal, 15 times the previous record for a fine imposed by the Tribunal.
- Acting for Pioneer Foods in the alleged bread price fixing complaint by the Competition Commission.
- Acting for Parmalat in regard to the Competition Commission's referral of a complaint to the Competition Tribunal in respect of an alleged milk cartel.
- Acting for Shoprite Checkers in regard to the Competition Commission's investigation into supermarket chains.
- Acting for Cape Concrete Works in the concrete pipes and culverts price fixing and market allocation complaint.
- Acting for South African Airways in a complaint regarding allegations of abuse of dominance, including representation in the civil court for damages claims by competing airlines.
- Acting for Senwes in the first margin squeeze case in South Africa, currently on appeal by Senwes.

Mergers

- Acting for Lonmin in a transaction valued at approximately US\$10 billion, involving a hostile take-over of Lonmin by Xstrata, one of a few hostile merger cases in South Africa, involving a takeover of the third largest platinum producer, in an industry previously regarded by the authorities as uncompetitive. The transaction also raised complex procedural issues relating to separate notification.
- Acting for Vodacom in its acquisition by Vodafone, following Telkom's divestment of its 50% shareholding in Vodacom, a transaction valued at approximately R23 billion.
- Acting for Massmart in merger proceedings involving a number of acquisitions affecting the wholesale and retail industry, including representing Masscash, a division of Massmart, in the opposed merger between Masscash and Finro Cash and Carry, a wholesaler in Port Elizabeth.
- Acting for Remgro Limited and Venfin Limited in merger proceedings in terms of which Remgro will acquire control of Venfin.
- Acting for Investec Bank Limited in the opposed merger between itself and RJ Southey. The transaction raised horizontal issues in the ship repair market, and was conditionally approved.

WHY CHOOSE CLIFFE DEKKER HOFMEYR?

With more than 130 directors and 300 lawyers, Cliffe Dekker Hofmeyr is one of the largest business law firms in South Africa, combining a strong national presence with global reach.

Our legal teams are fairly evenly split between our Johannesburg (Sandton) and Cape Town offices, giving us sizeable influence in both key financial centres in South Africa.

Our vision is to be the leading South African business law firm, delivering excellent service to our clients.

Our roots go back to 1853. The firm has evolved and grown through a series of mergers, culminating in the milestone merger on 1 September 2008 of two of South Africa's leading corporate law firms, Cliffe Dekker and Hofmeyr Herbstein & Gihwala.

Our global reach

Our exclusive relationship with DLA Piper, one of the largest legal services organisations in the world, extends our reach on behalf of our clients to all the major business centres globally.

With more than 3,700 lawyers located in 28 countries and 66 offices throughout Asia, Europe, the Middle East and the US, DLA Piper is positioned to help companies with their legal needs anywhere in the world.

Our Africa group

Africa is a key growth area. As a member of DLA Piper Group with its network of firms across the African continent, we offer our clients an unparalleled pan-African service that combines international expertise with an excellent knowledge of local legal and cultural frameworks.

(Read more at www.dlapiper.com/africa)

Our business legal services

We offer a full complement of business legal services in ten core Practice Areas:

- Corporate and Commercial including Intellectual Property
- Competition
- Dispute Resolution: Litigation and Arbitration
- Employment
- Environmental
- Finance, Projects and Banking
- Real Estate
- Tax
- Technology, Media and Telecommunications
- Trusts and Estates

We also have niche practices focusing on specific sectors including:

aviation; black economic empowerment; energy; healthcare/pharmaceuticals; infrastructure; insolvency; Islamic finance; mergers and acquisitions; mining; occupational health and safety; outsourcing; pensions, projects and PPPs; public sector law and private equity.

Our lawyers are specialists. The scale of the firm gives our lawyers the capacity to narrow their area of expertise, allowing them to specialise in a particular field of law and broaden their level of knowledge in that specialist area.

Our capacity brings the depth of skills and specialisation needed to meet the full service business needs of our clients, no matter the size of the transaction - large or small - anywhere in the world.

Empowerment and transformation

Cliffe Dekker Hofmeyr can confidently claim to be a champion of empowerment in the legal profession. We aspire to be a firm that cherishes diversity and equal opportunity by actively contributing to attaining the objectives of Black Economic Empowerment. Cliffe Dekker Hofmeyr has a **Level 3 Contributor** EmpowerDEX BEE rating. The firm has some 30% of its shares controlled by black directors while 25% are held by women.

We have committed to developing a practice that values diversity and we actively contribute to achieving the objectives of black economic empowerment through transformation within the firm and investment in our communities.

Our philosophy is that if it matters to our clients, it matters to us

WHAT OTHERS SAY ABOUT US

Cliffe Dekker Hofmeyr is regularly ranked as a first-rate firm in authoritative legal professional directories and many of the firm's lawyers are highly recommended in their respective fields.

Selected recent accolades, which are based on client reviews in independent surveys, include:

World Finance Legal Awards 2010, named us Best Competition & Anti-Trust Team, and named **Mondo Ntlha** Best Competition Lawyer, South Africa 2009.

Who's Who Legal - The International Who's Who of Competition Lawyers 2010 and **The International Who's Who of Business Lawyers 2010 - Mondo Ntlha** and **Chris Charter** are among only 750 competition lawyers worldwide selected by Global Competition Review to appear in the Who's Who of Competition Lawyers and Economists 2010

The **IFLR1000 - Guide to the World's Leading Financial Law Firms, 2010** lists **Nick Altini**, **Andries le Grange** and **Mondo Ntlha** as leadings lawyers. **Natalie von Ey**, **Chris Charter** and **Petra Krusche** all command strong reputations and comments.

According to competitors, Cliffe Dekker Hofmeyr's strength in the competition area comes from having a solid team. The firm has 'a more capable practice than most, which supports them better and has good underlying exposure,' according to one peer. **Mondo Ntlha** is 'really is hot stuff' says one peer, while **Altini**, says another peer, 'is a very smart partner in competition and somewhat of a face of the firm'.

Our competition team is highly recommended in the **Practical Law Company Cross-border Competition Handbook 2009** which says of **Mondo Ntlha**, competition practice head: 'A former deputy commissioner at the South African competition commission, she is building a solid private competition practice, with substantial experience of competition law in both the public and private sectors'.

Petra Krusche is recommended. 'Recently arrived as the Regional Practice Head of the firm's competition practice in Cape Town, her practice covers the entire range of competition law issues, from merger control and restrictive trade practices to litigation and leniency applications'.

Vishal Koojee is recognised for having 'extensive competition law experience, especially in relation to merger control'.

Chris Charter is recognised as an 'up-and-coming competition law practitioner, with a growing profile in the market for his broad practice, which includes merger control, prohibited practices and compliance issues'.

Andries le Grange is recognised as a 'commercial lawyer developing a strong presence in the competition law market'.

Chambers Global Guide: The World's Leading Lawyers for Business 2010 ranks our Competition practice in Band 2.

Chambers comments: The ten-partner competition team at this national outfit has been active in both M&A and restrictive practice cases. It represented Vodacom in its high-profile and much-publicised acquisition by Vodafone, and acted for Investec Bank in securing conditional merger clearance for a proposed acquisition of control over RJ Southey. In its restrictive cases work, it has attracted clients including Harmony Gold Mining, Parmalat and South African Airways.

Sources remark on the 'keen understanding of how clients operate.' **Mondo Ntlha** heads the department and was part of the team that acted for Lonmin in a proposed hostile takeover of Lonmin by Xstrata.

Natalie von Ey is developing a reputation for 'fantastic work' in the competition arena. She rises in the rankings after interviewees described her as 'tenacious, quick in what she does and highly energetic'.

Nick Altini 'knows the law and how to apply it in a commercial context'. Commentators compliment his provision of 'concise advice in an understandable manner'.

CONTACT US

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