COMPETITION
PRACTICE OVERVIEW

Whether your organisation plans to form a business alliance, challenge competitors, implement new product, marketing and distribution strategies, or it grows 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 could damage your company’s reputation.

South Africa’s competition regulators have been rigorously enforcing the Competition Act which 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 previously 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. 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 be stripped of productive assets, operating divisions or subsidiaries. Under proposed amendments to the act, in effect from 1 May 2016, company directors and managers of colluding firms may face personal criminal liability and run the risk of being fined or jailed.

OUR EXPERIENCE

Our Competition practice has a proven track record of providing strategic advice and practical solutions to competition law issues for clients with business interests in South Africa 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). We have represented clients in all forums: before the Competition Commission, the Competition Tribunal, the Competition Appeal Court, the Supreme Court of Appeal and the Constitutional Court.

We have been at the forefront of the most recent development 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 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, finance and banking, environmental 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 in the Consumer Protection Act which came into effect in April 2010. This far-reaching legislation is closely aligned to competition regulation.
Clients recognise its quality service, describing its strengths as “their availability, willingness to assist and ability to meet tight deadlines. They have excellent knowledge and resources as well as great skills and experience.”

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

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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 give you immediate advice on the telephone and 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 includes clear guidance on how to handle every stage of a dawn raid – from the first moment of contact with the regulator to the post-raid debriefing.

We can help you develop, implement and stress-test emergency response protocols, train your senior management and other employees, and give you support 24-7-365.
Clients appreciate the firm’s accessibility: “They are a large firm that offers in-depth expertise in many fields. But of major importance is that they don’t give you the perception that they are too big. Access to senior people is seamless and you have the feeling that you are a priority.”

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The lawyers are praised for their impressive knowledge of competition-related issues as well as their ability “to build a good rapport in getting projects done.”

CHAMBERS GLOBAL 2017
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.

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.

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.

ABOUT CLIFFE DEKKER HOFMEYR

We are a leading business law firm in South Africa with a strong national presence in Johannesburg and Cape Town.

The practice is applauded for “taking the time to understand our industry. By doing so, they were able to provide us with practical, pragmatic advice and guidance, not just a theoretical approach.”

CHAMBERS GLOBAL 2017

Compliance audit procedures will unearth any anti-competitive conduct that your organisation has knowingly or unwittingly engaged in. We then suggest remedial action. Compliance audits can include document and policy reviews, employee interviews, anonymous tip off lines and other interventions that will detect conduct that should not remain hidden. Once you are aware of anti-competitive behaviour, you are able to deal with it before it comes to the attention of the authorities.

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.

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Cliffe Dekker Hofmeyr’s extremely professional, commercial and prompt department has an excellent record in South African merger control with advisory roles in nearly a quarter of merger filings in the jurisdiction in recent years.

LEGAL 500 EMEA 2016

Clients cite the team for its “expertise, dedication, and ability to inform and communicate with the client every step of the way.”

CHAMBERS GLOBAL 2020

Quick, excellent strategic advice with a good knowledge of the business.

CHAMBERS GLOBAL 2018

Cliffe Dekker Hofmeyr’s extremely professional, commercial and prompt department has an excellent record in South African merger control with advisory roles in nearly a quarter of merger filings in the jurisdiction in recent years.

LEGAL 500 EMEA 2016
MARKET RECOGNITION


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