



COMPETITION LAW



INCORPORATING
KIETI LAW LLP, KENYA

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.



"Excellent team with great technical skills, combined with a practical and commercially minded approach to competition issues."

THE LEGAL 500 EMEA 2022



"They are hands on, always available and very knowledgeable on mergers in Africa," laud interviewees, further commending the firm's *"extensive experience and practical knowledge."*

CHAMBERS GLOBAL 2022

"The team has a particularly strong reputation for advising in relation to market inquiries and investigations by The Competition Commission though also advises major clients on a wide range of other matters."

THE LEGAL 500 EMEA 2023

"Clients appreciate the team's commercial awareness is excellent, and the lawyers have a good understanding of our industry and business."

CHAMBERS GLOBAL 2023



"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 with 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). 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 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, finance and banking, 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 in 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 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.

"CDH houses a robust team recognised for its excellent client relationships and deep experience in the field of competition law."

CHAMBERS GLOBAL 2023



**COMPLIANCE
TRAINING
AND AUDITS**

Our training seminars are informative, interactive and designed to quickly entrench a working 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. 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.

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.

"They know the businesses of our clients and spend time understanding it. They are ALWAYS available and have extensive experience and practical knowledge regarding the processes. The team is also very knowledgeable on mergers in the rest of Africa."

THE LEGAL 500 EMEA 2022

MARKET RECOGNITION

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

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Chambers Global 2011–2023 ranked our Competition Law practice in Band 2 for competition/antitrust. *The Legal 500 EMEA 2011–2023* 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 the Competition Law team. *Chambers Global 2018–2023* ranked him in Band 1 for competition/antitrust. *The Legal 500 EMEA 2017–2023* recommended Chris as a leading individual for competition. *The Legal 500 EMEA 2012–2016* recommended him for competition. *IFLR1000 2019–2022* 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 2021–2023* ranked Sammy in Band 4 for corporate/M&A. *Chambers Global 2023* ranked him in Band 4 for banking & finance. *The Legal 500 EMEA 2022–2023* recommended him for banking, finance & capital markets *The Legal 500 EMEA 2023* also recommended Sammy for corporate, commercial/M&A. *IFLR1000 2021–2022* ranked Sammy as a notable practitioner.

Chambers Global 2023 ranked **Albert Aukema** in Band 5 for competition/antitrust. *Chambers Global 2020–2022* ranked him as an up and coming competition/antitrust lawyer. *The Legal 500 EMEA 2021–2022* recommended Albert for competition.

Chambers Global 2022–2023 ranked **Lara Granville** in Band 5 for competition/antitrust. *Chambers Global 2019–2021* ranked her as an up and coming competition/antitrust lawyer. *The Legal 500 EMEA 2018–2023* recommended Lara for competition.

Chambers Global 2014–2023 ranked **Andries le Grange** in Band 4 for competition/antitrust. *The Legal 500 EMEA 2014–2023* recommended him for competition.

IFLR1000 2021–2022 ranked **Martha Mbugua** 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. *The Legal 500 EMEA 2018* listed Martha as a recommended lawyer. 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 Head of the Healthcare & Pharmaceuticals sector, and a director in our Competition Law practice. *The Legal 500 EMEA 2021–2023* recommended Susan for competition. *IFLR1000 2018–2022* recommended her as a notable practitioner.

The Legal 500 EMEA 2022–2023 recommended **Njeri Wagacha** for employment. *The Legal 500 EMEA 2023* recommends Njeri for corporate, commercial/M&A.



OUR TEAM

For more information about our Competition Law practice and services in South Africa and Kenya, please contact:



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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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