

# ANTITRUST COUNSELING & LITIGATION

## Abuse of Dominance

Our team is routinely involved in counseling on the most complex dominance issues, often in business areas critical to our clients. We have, for example, restructured the distribution systems and rebate policies of several leading companies and offered day-to-day counseling to undertakings in the telecommunications, high-tech, energy, tobacco, automotive, agricultural and commodities sectors. We have particular experience in counseling firms on issues involving potential dominance in relation to IP, technology and aftermarkets. Our objective is always to reduce risk without hindering our clients' pursuit of their commercial objectives.

We also have extensive experience advising in the context of abuse of dominance investigations, both at the EU level and before various national authorities. In most cases, our work has been on the defense side. However, we have also successfully submitted complaints to various competition authorities.

## Joint Ventures and Competitor Collaborations

In addition to standard joint venture counseling – from commercial alliances to autonomous entities requiring notification under the EU Merger Regulation – we offer a range of services in relation to competitor collaborations. These extend from the relatively straightforward: day-to-day counseling for trade associations, to the highly technical: advice to merchant bank consortia in relation to the establishment of trading platforms and to patent pools in relation to their operation and licensing activities. In between, we counsel clients regularly on joint purchasing, licensing and distribution via competitors and information sharing.

## Distribution

Our team has a thorough knowledge of a wide range of distribution models, including online distribution,

agency arrangements, exclusive and non-exclusive distribution, franchising and selective distribution. As a result, we can advise clients seeking to select the appropriate model for their operations, as well as those seeking to maximize existing models. We can draft or review the agreements that constitute the backbone of a client's distribution networks.

## Cartels

Our European competition law team has extensive experience with cartel procedures, at both EU and national levels (including Belgium, Spain, the Netherlands and the U.K.), and are currently representing several clients in ongoing cartel investigations. Our experience includes multinational leniency applications, covering the EU and other jurisdictions, and conducting settlement discussions both at European and national levels.

In addition to traditional horizontal cartels, we have particular experience in cases involving allegations of information exchange and hub-and-spoke style collusion between suppliers and distributors. In terms of relevant sectors, our lawyers have acted in investigations concerning air cargo, consumer goods, construction, agriculture, telecoms and a range of chemicals products.

## Litigation

Litigation experience is at the heart of much of what we do. We regularly litigate before national and EU courts in competition law matters. The issues involved range from patent settlements and state aid, to distribution questions and pricing questions relating to dominance.

Crowell & Moring lawyers have been involved in more than 50 cases before the EU courts in Luxembourg. We have extensive experience of how to bring a claim, how to intervene, how to claim damages and with preliminary references to the Court of Justice of the European Union from national courts.

## Our Team

Our lawyers combine their thorough knowledge of competition law with skills acquired through their work for a broad range of industries. In addition, Sean-Paul Brankin's previous post as legal director at the U.K. Office of Fair Trading gives him a unique perspective in this complex area of law.

*"Thomas de Meese is a well-known practitioner with extensive experience in the media and telecoms sectors. He is singled out for his work in the areas of competition, technology and gambling legislation."*

Chambers Europe, 2017

*"Sean-Paul Brankin is UK-qualified and an expert in all aspects of UK and European competition law. One client states: 'Sean-Paul has delivered first-class advice for highly complex, major projects.'" Chambers Europe, 2017*

## Representative Matters

- Advised leading U.S. and European investment banks, including Goldman Sachs and others, in relation to the establishment, management and sale of trading platform for derivatives, foreign exchange and other products as well as related software and back-office functions.
- Advised a leading worldwide organizer of patent pools in relation to the operation of its pools, its licensing activities and its general compliance.
- Advised a leading European power exchange in relation to a dispute with its competitors in the context of rules governing the establishment of a joint trading platform.
- Successfully represented a telecoms operator in its dispute with an industry trade association over membership and access to information.
- Advised a major supplier of capsule coffee systems in relation to all aspects of its distribution, pricing and licensing models.
- Successfully advised the same company in relation to complaints of abuse of dominance made to an EFTA regulator, resulting in the closing of the file without detailed investigation.
- Successfully advised a market-leading paper manufacturer in relation to various disputes involving allegations of abuse of dominance resulting, among others, in a supplier offering improved discount terms.
- Advised the U.K. subsidiary of a leading German manufacturer of power tools in relation to its on-line distribution model.
- Advised a number of parties involved in cartel investigations involving allegations of information sharing.
- Represented the generics industry in relation to strategic litigation concerning the assessment of patent settlement agreements under EU competition law.

## CONTACTS



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