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# CMS Competition Group

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# CMS Offices

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# Why choose CMS for competition law?

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The CMS Competition Group is one of the largest competition teams in Europe and at the same time the most wide-spread in terms of countries covered. The CMS competition practice has more than 150 competition lawyers based in 23 European countries and in China. We offer a one-stop-shop solution to clients for all their competition law needs across Europe and beyond. With a track record of more than 40 years of experience CMS lawyers have been involved in a high number of competition cases, many leading to landmark decisions by the EU courts or a national level.

The CMS Competition Group acts for clients in all areas of competition law: merger control, cartels, abuse of dominance, horizontal and vertical restraints, private enforcement, investigations, and compliance.

Our global approach is reflected by our offering and track record. Next to our local advice we often coordinate work that involves other jurisdictions outside Europe. In this case, we work together with member firms of the World Law Group, an organisation which was co-founded by CMS member firms and combining 52 leading law firms worldwide.

## Key statistics

- More than 150 competition lawyers
- 31 offices in 24 jurisdictions in Europe and China
- Worldwide network of competition experts via the World Law Group
- In the last three years alone more than 250 merger control filings and more than 250 other competition law proceedings
- Strong presence in Brussels through the CMS EU Law Office



In all our questions CMS provides a full spectrum of possibilities through very clear answers.

*Chambers Europe*

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# What we can do for you

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## Focus on clients' needs

- **EU and national merger control:** Obtaining clearances and coordinating multi-jurisdictional filings worldwide. Advising on merger control feasibility. Acting on behalf of interveners.
- **Cartels:** Representing clients in dawn raids, cartel proceedings and leniency applications.
- **Abuse of dominance:** Representing clients in investigations. Advising on commercial agreements of potentially dominant companies. Structuring and advising on business and pricing strategies.
- **Horizontal restraints:** Advising on, screening and structuring joint ventures, marketing, cooperation and other commercial agreements.
- **Vertical restraints:** Structuring and advising on distribution agreements and licensing agreements. Advice on e-commerce and international trade strategies.
- **Private enforcement:** Advising and representing clients concerning cartel damages claims and access to supply claims.
- **Competition compliance:** Audits, internal investigations, implementation of compliance programmes and training.

- Compliance with other **regulatory issues** in numerous sectors such as **electricity, gas, water and telecommunications**.
- **Access to Authorities:** Representation before the European Commission and national competition authorities as well as before courts, at the EU or the national level.

## Sector specialisation

What makes our practice outstanding is the extent of our specialisation in particular industry sectors. We tirelessly build up expertise with the sole aim of understanding better the needs of our clients. We combine industry and competition law expertise to the benefit of our clients. Our advice includes:

- E-commerce and pricing, distribution systems, shelf space arrangements, category management and listing fee issues when advising consumer products companies.
- Access to essential facilities, long-term and capacity reservation agreements when advising the energy, oil and gas sector.
- Pricing of dominant products, parallel trade and stock management systems when working for pharmaceutical businesses.



Faultless in terms of legal knowledge, and the speed and quality of the team's work more than met our expectations.

*Chambers Europe*

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# Merger control

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Acquisitions and disposals of shares or assets, trade marks or even a clientele, as well as the creation of joint ventures can require regulatory approval either at EU level from the European Commission or at a national level from the relevant national merger control authorities.

As part of the M&A team our competition lawyers analyse the proposed structure, provide advice on options and prepare the required submissions, where relevant in close cooperation with competition colleagues in other countries. We have vast experience of the practicalities of dealing with the European Commission's services and national competition authorities, enabling us to lead clients safely through the maze of formal and informal processes. We provide initial guidance via our Guide to Merger Control that is accessible online: <http://eguides.cmslegal.com/mergercontrol>



## Highlights of our recent experience

We have been involved in some of the most complex merger control cases at the EU level, including advising

- **Hansamilch** and **Milchunion Hocheife** | on two (separate) very complex EU merger control cases in the dairy sector in the context of their mergers with Arla.
- **Mayfair/Germanischer Lloyd/DNV** | on the merger of Germanischer Lloyd and DNV and the related joint-venture of the parent companies on merger control proceedings at the European Commission.
- **MOL** | on various EU merger control procedures concerning transactions involving ENI and Lukoil.
- **Schuler** | the acquisition by Andritz on merger control proceedings at the European Commission and in non-EU jurisdictions.
- **Takeda** | in its EUR 9.6bn acquisition of Nycomed.
- **Telefónica** | very detailed on EU merger control law relating to the EUR 8.5bn merger with KPN's German business (E-plus). Representation at EU Commission, German Bundeskartellamt and German telecoms regulator. Highly complex technical and regulatory issues. The merger created the market leader based on customers and lead to a 4-to-3 consolidation in the German mobile telecoms sector.

Multi-jurisdictional mergers are a particular strength of the CMS competition team. Highlights of our recent work include advice to

- **Atlas Copco** | the Swedish conglomerate on the acquisition of the English Edwards Group Ltd with a transaction volume of USD 1.6bn and merger control notifications in the US, China, Korea and Brazil.
- **Delhaize Group** | on multi-jurisdictional merger control proceedings for its EUR 932.5m take-over of Delta Maxi, the leading Balkan-based food retailer.
- **LUKOIL** | Russia's second largest oil company on EU merger control clearance and a prior referral request to the European Commission in connection with the acquisition of the lubricants business in ten countries.
- **MetLife Inc.** | on the complex merger clearance procedure relating to the merger of Ahico and Aviva in the Czech Republic, Hungary and Romania.
- **Mori Seiki** | on a number of multi-jurisdictional merger control proceedings, inter alia the creation of a joint venture with Gildemeister and notifications in six European jurisdictions.
- **Samsung** | on and coordination of all merger control assessments and proceedings in the EU and Russia concerning Samsung SDI's USD 3.3bn merger with Cheil Industries. High complexity due to high number of affected markets.

- **Scholz Recycling** | on a number of multi-jurisdictional merger control proceedings for several transactions before the European Commission and national competition authorities.

Advice to non-strategic investors such as

- **BC Partners** | on various merger control filings on various industries at EU level and at national levels, including several multi-jurisdictional filings in five or more jurisdictions, regarding the acquisitions of, for example, Grohe, Sanitec, Techem, Synlab, Future Lab, Aenova, Temmler, Haupt Pharma and others.
- **KKR** | the world's leading private equity firm KKR on obtaining the merger clearance in Serbia, Bosnia, Montenegro, Macedonia and Slovenia for its acquisition of SBB/Telemach Group, the biggest media content distributor and broadcaster in the ex-Yugoslavia region.
- **Mid Europa Partners** | on the merger control aspects of various investment projects in Poland. In particular we represented the prestigious investor in merger control proceedings relating to privatisations.
- **3i Group** | on various merger control proceedings in particular in the CEE region.

At national level, CMS experience is likely to be unmatched by any other firm. Highlights of our recent merger control work include advice to

- **Acor** | on a number of complex transactions before the Spanish competition authority, including the creation of two joint ventures with the German group ED&F Man and the Portuguese Sovenia for the production and commercialization of enriched molasses and refined oilseeds respectively.
- **Akzo Nobel** | on various complex merger control proceedings in Austria, Germany and other countries, including second phase merger control proceedings in Germany.
- **Bechtel** | on merger control proceedings regarding several acquisitions in Germany.
- **Cheung Kong Infrastructure Holdings Limited** | on the acquisition of Wales and West Utilities, one of the eight gas distribution networks in the UK.

- **Crédit Agricole** | on the acquisition of parts of the business of competing bank KBC in Belgium.
- **Dominion Technology Gases (UK)** | on competition and merger control issues. The transaction involved the sale of Dominion to Praxair, a global supplier of industrial gases headquartered in Connecticut, USA.
- **Gazprom** | on merger control regarding transactions in Germany and Serbia.
- **Landesbank Baden-Württemberg** | on merger control proceedings regarding several transactions in Germany.
- **Metro/Media Markt Saturn** | on French merger control proceedings in the highly complex sale of Media Markt Saturn's entire French business of Boulanger/Auchan (clearance granted with commitments).
- **Ortec group** | on the notification to the French Competition Authority of the acquisition by Ortec Group (a leading European group specialized in providing services relating to industry, energy and the environment) of the Sonovision Group.
- **Porsche** | on various merger control proceedings in several jurisdictions including Germany, Italy and further non-EU jurisdictions.
- **Rossmann** | the drugstore chain in its acquisition of more than 100 Ihr Platz drugstores in Germany.
- **RREEF (Deutsche Bank Group)** | on the merger control aspects of their EUR 300m acquisition of Rondo 1, one of the largest and most prestigious office buildings in Poland and the CEE region.
- **RTL/Bertelsmann** | in their acquisition of seven broadcasting channels in Hungary.
- **Total/OMV/Repsol** | on merger control aspects of their joint bid for grant of a licence for prospecting and exploration rights at a deepwater gas field in the Bulgarian territorial waters of the Black Sea.

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# Cartels and other competition proceedings

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Our competition practice has handled some of the most complex cartel cases and has acted on behalf of clients in many other competition proceedings before EU or national courts and authorities.

Regular issues include investigations into cartels or dominant companies. We offer a coordinated response in the event of dawn raids on an international or a national level.

## Highlights of our recent experience

At EU level, highlights of our recent practice with regard to **cartel investigations** include the successful defence of our clients in cartel proceedings, such as

- **Baerlocher** | achieving a reduction of the fine by 90 % in the EU cartel investigation on heat stabilizers.
- **Ballast Nedam** | representing the company in the appeal before the Court of Justice of the European Union against a Commission decision in the EU bitumen case.
- **Trajektna Split (Ferry Port of Split)** | representing in complaint proceedings at the EU Commission against anti-competitive tariff decisions by Port Authority Split. First ever complaint by a Croatian company to EU Commission following Croatia's accession to the EU. Case includes discussions up to (and including) EU Commissioner level.
- **Yusen Shenda** | limiting the fine to a nominal amount of EUR 300,000 in the EU cartel investigation on Freight Forwarding.

Also at national level we have vigorously defended our clients' interests in cartel proceedings, and highlights of our work include

- **AbbVie** | defending a claim brought by Chemistree in the UK alleging a breach of Article 102 TFEU. AbbVie prevailed in the Court of Appeal and Chemistree was refused permission to appeal to the Supreme Court. This is now a leading case for the approach to market definition in the pharmaceutical sector.
- **ADVEO** | on four different cartel investigations initiated by the Spanish competition authority in relation to envelopes, envelopes'exports, filing products and paper products (notebooks, exercise books, etc.), concluded with fines amounting to EUR 66.2m. ADVEO has been granted full immunity in all cases (except in the cartel for envelopes'export) given its leniency application (which meant an exemption accounting for EUR 28.3m).
- **AIG Europe** | in proceedings before the Luxembourg Competition Council on an alleged cartel in relation to the application of the mandatory bonus/malus insurance scheme. The Luxembourg Competition Council concluded the existence of a cartel and fined nine insurance companies. Our client was imposed a symbolic fine of EUR 200. We also advised it in the review of a worldwide pool insurance contract under EU competition law.
- **Ballast Nedam** | reduction of the fine by almost 90% in the Dutch construction cartel proceedings and by more than 90% at the UK Competition Appeal Tribunal in a UK cartel case, both decisions widely recognised as landmark cases.
- **Bayer AG** | representation in the investigation into the Swiss pharmaceutical market.





- **Budapest Bank (GE Money Bank)** | in a major cartel case initiated by the Hungarian Competition Office (HCO) in relation to the alleged agreement and information sharing between the major commercial banks concerning the fixed-rate final-mortgage loan repayments.
  - **Chamber of Commerce and Industry Marseille Provence** | representation of the Chamber of Commerce and Industry Marseille Provence, manager of Marseille Airport in the investigation of the European Commission on the commercial incentives granted to Ryanair and the financing of its low cost terminal. This investigation results from a complaint lodged by Air France in 2009 against around 25 French regional airports operating Ryanair flights.
  - **FMCG manufacturer** | representation in a grocery cartel investigation in the UK.
  - **Johnson & Johnson** | representation in three different cartel investigations in Germany and in a cartel case in Bulgaria.
  - **Lactalis and Forlactaria** | in a landmark investigation against most of the players in Spain for horizontal agreements concerning prices and market sharing. This includes several appeals before different courts against the dawn raids carried out by the SCA officials in 2012.
  - **Plant constructor** | reduction of an almost three-digit million fine in Germany by more than 50%.
  - **Rabobank** | LIBOR/TIBOR/EURIBOR investigations of the Swiss competition authorities.
  - **Richemont** | representation in the Swiss investigation into an information sharing scheme in the market for luxury perfumes.
  - **Sara Lee** | on the first leniency proceeding opened up by the Spanish competition authority against several companies operating in the cosmetic products business for alleged restrictive practices. Sara Lee was fined with almost EUR 4m, although it received a 40% reduction following its leniency application. Advice on the appeal before the Supreme Court.
- Various highlights are noteworthy in our practice regarding cases on **the abuse of dominance**, such as
- **Birkenstock** | acting for the shoe manufacturer in several matters in Germany.
  - **Iberdrola** | representation in the successful claim against Gas Natural for abuse of dominance before the Spanish authorities.
  - **Link2biz** | representation of Link2Biz International, an undertaking active in postal services, before the Belgian Competition Authorities and the Belgian jurisdictions against Belgian historic postal services operator La Poste (now BPost) for abuses of a dominant position.
  - **PZU** | acting for Poland's biggest insurance company in the appeal against a fining decision.
  - **Rossmann** | acting for the drugstore chain in the landmark case fully acquitting the company of the allegation of below cost sales in Germany.
  - **Slovak Telekom** | annulment of the largest fine ever in Slovakia for abuse of dominance.
  - **Slovnaft** | annulment of a fining decision for abuse of dominance for one of the largest European refineries.

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# Compliance

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We believe prevention is better than cure. We focus not only on problem solving but also on how to avoid problems in the first place. We advise international and national organisations on all aspects of compliance affecting businesses across Europe.

## In terms of compliance services we offer:

- **Implementation of compliance programmes:** setting up tailor made codes of conduct, holding compliance training sessions, setting up ombudsman networks or whistleblower hotlines, etc.
- **Preparation for dawn raids:** holding dawn raid training, implementing dawn raid guidelines, setting up dawn raid response teams (internal and external), carrying out mock dawn raids.
- **Carrying out internal competition audits:** reviewing agreements and other hard copy documents, interviews with employees, checking mailboxes and computer documents (IT audits), support in internal investigations.

Our solutions are based on a broad experience of specific business environments and industry sectors. We offer integrated compliance advice through an interdisciplinary, multi-jurisdictional team covering the various vital areas of competition law affecting compliance issues.

## Highlights of our recent experience

- **Europe's largest chemicals distributor** | CMS-wide competition law compliance audit covering the whole of Europe.
- **Global leader in the heavy vehicles industry** | implementation of dawn raid network in more than 35 jurisdictions worldwide.
- **Hanjin Shipping & Co.** | introduction of a Europe-wide compliance programme.
- **Kali und Salz (K+S) Group** | implementation of a compliance programme and competition law training in 21 countries worldwide.
- **Mann + Hummel** | implementation of a compliance programme in more than 25 jurisdictions and compliance training in Asia, EU and the US.



A proactive and creative team.

*Chambers Europe*



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# Day-to-day competition law needs

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We advise a high number of clients on their day-to-day competition law needs in various jurisdictions. This work includes advice on pricing and business strategies, rebate schemes, exclusive and selective distribution contracts and networks, licensing agreements, cooperation with competitors in the fields of purchasing, R&D, production and marketing.

## Highlights of our recent experience

- **Ball Packaging** | on a regular basis leading world can producer Ball Packaging. In the past year, CMS Serbia several times advised Ball Packaging with respect to different antitrust aspects of its sale agreements (mostly with filling companies) and provided guidance for dawn raid procedures.
- **Consumer products company** | in the Czech Republic on distribution agreements, compliance with the new regulatory regime, rebates, sponsorship and sector specific template agreements as well as advice on market dominance.
- **Essilor** | on several aspects related to competition law and distribution issues on a daily basis. Finally, we are also implementing a competition law compliance programme together with Essilor International, comprising different activities.
- **Heineken** | on competition and distribution matters in Spain for more than 16 years, including a wide range of competition law issues arising from its day-to-day business practice (distribution policies for the on-trade and off-trade channels, implementation of competition law compliance programs together with HEINEKEN INTERNATIONAL, etc.)
- **IKEA** | on its franchise agreements in Serbia.
- **Johnson & Johnson, Eli Lilly** | on the strategic relationship with the two major lifesciences companies in competition matters on an ongoing basis.
- **Leading world car manufacturer** | on the car sales policy in China. This included legal comments on the car sales policy and communication with the Chinese National Development and Reform Commission.
- **Porsche** | ongoing (distribution) competition law advice and numerous compliance trainings.
- **Siemens' Austrian and Slovak subsidiaries** | in a dispute over alleged pre-tender contractual liabilities and breach of competition law (by alleged abuse of Siemens' dominance) linked to an important bidding process for railway security equipment.
- **The partners in a North Sea oil pipeline** | on joint marketing and selling of capacity.
- **The UK's National Grid** | on a range of merger clearance, competition and utility procurement issues including the Western Link HVDC project.
- **Various energy companies** | on competition issues in the import of natural gas into the EU, on destination clauses and similar restrictions and on the trading of capacity in pipelines and terminals.
- **Various energy companies** | on restrictive arrangements, market sharing, the exchange of confidential information and similar issues, for example a consortium on antitrust issues in its agreements with Oil Spill Response on the procurement, availability and operation of capping devices for major incidents and a joint venture on brokerage and trading arrangements.
- **Various utilities** including in the up/mid/downstream oil and gas industry | on long term supply contracts, on access to and use of infrastructure, on joint selling and purchasing, and on miscellaneous competition and procurement issues.
- **Wind farm joint ventures** (involving Mainstream Renewable Power, Siemens, DONG, MEAG and others) | on competition issues, merger control and procurement strategies including appointment of a consortium member as O&M contractor and on sales of renewables portfolios.

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# Private enforcement

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Actions for damages brought by private parties are today a typical consequence of a fining decision. The amount of damages claimed is generally significantly higher than the fine imposed by competition authorities. Such damages proceedings frequently involve parties from several countries and tend to be very complex. They are subject to national laws of the EU Member States, as the European Commission has not finished its work on uniform rules for such actions. CMS has a long-standing track record of representing claimants as well as defendants in cartel damages cases, starting with the first successful action for damages in a cartel case in Europe in the vitamins saga.

## Highlights of our recent experience

We have been involved

- in defending **Ballast Nedam** against the damages claim of a competitor on the bitumen cartel before Dutch courts,
- **Delhaize Group** | Belgium's largest food retailer operating on three continents, on a damage claim against Mastercard relating to "interchange fees" (transaction fees on card payments between the banks of the shops and those of the consumers). This is a claim for all of Delhaize's European operations against Mastercard Europe and Mastercard US,
- in the defence in the **Deutsche Bahn** case with claims of EUR 550m as a follow on to the German rail track cartel,
- in claiming a three-digit damages amount for **Kabel Deutschland** against **Deutsche Telekom** for charging excessive rents for cable ducts,
- in claiming damages for **Link2Biz** in the EUR 27m damages claim against **BPost** for abuse of dominance in Belgium,
- in claiming damages as a follow on to a European Commission decision on household appliances,
- in defending against six damages claims as a follow on to the German TV-broadcasting cartel.



Bright, quick and straight  
to the point

*The Legal 500*

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# The CMS Dawn Raid Network

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Our well established CMS Dawn Raid Network provides immediate response by experienced lawyers in more than 50 countries around the globe. Our own CMS practice is extended and supported by offices of the World Law Group. Consistent with our belief that prevention is better than cure, we offer a CMS Dawn Raid Package of guidelines and action points, standardised across all CMS member jurisdictions and available in local languages, together with training on dealing with investigations and raids.

## The CMS Dawn Raid Package includes:

- **Standard emergency plan:** This plan sets out all the organisational measures which should be put in place to ensure that the company is properly equipped to deal with a dawn raid.
- **In-house response team:** Ideally each site should have its own in-house dawn raid response team. The package includes all organisational measures concerning the implementation (including alert plans) and the training of such teams.
- **Guidelines:** The package contains guidelines for the reception/front desk and for the in-house dawn raid response team. The reception/front desk needs clear instructions on how to react and who to call. The guidelines for the in-house response team contain a prioritised step-by-step guide to what to do in the event of a dawn raid plus a list of rights and duties in case of an inspection.
- **Mock Dawn Raids:** We provide mock dawn raids whose purpose is to test the functioning of the alert lines and the initial reaction of the in-house response team.

## Our experience

The CMS Dawn Raid Network has already been implanted at a **high number of multinational companies**. One of the most prominent is a **global player in the heavy vehicles industry** where the global dawn raid network comprises **more than 35 jurisdictions**.

In addition CMS lawyers have supported clients in a **high number of dawn raids** both by the European Commission and by national authorities. In some of these cases parallel investigations have been undertaken by the competent authorities in the US and/or Japan.



Great communication skills,  
excellent sense of urgency, and  
impressive market awareness

*Chambers Europe*

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# Adding value

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We offer a number of value-added services to our clients. We seek to identify these through feedback, transaction reviews and relationship meetings. Our approach is flexible and innovative, and we are always keen to develop services that provide real benefit to our clients.

- **Seminar programme:** We have an established seminar programme in place and we will ensure that you are invited to these events. If you wish to receive an invitation to such events, please provide us with contact details of the relevant person at your company. Additionally, we would be happy to provide tailored seminars/training at your offices.
- **CMS Competition Conference:** Our bi-annual CMS Competition Conference in Brussels has become one of the most prestigious events of its type in Europe. We are very proud that each time a high number of competition law experts from private companies and trade associations meet with officials from the European Commission and national authorities and judges from EU and national courts to discuss the hottest topics in competition law. Each time EU Commissioners or other high-ranking EU policymakers give an insight into actual EU trends at our networking dinner.
- **Monitoring:** Upon request we can monitor relevant publications and legal developments (e.g. concerning upcoming new legislation affecting your business).
- **Law-Now:** Our market leading electronic information service provides regular updates on key legal issues. This free service enables you to remain up-to-speed with legal developments, tailored to you.
- **Training:** We see it as our objective to keep you up-to-date with important legal developments; we would be happy to do this in person, through tailored seminars or via online webinars.
- **Guides:** We produce handy guides for our clients such as our popular CMS Dawn Raid Response Pack and our CMS Guide to Merger Control in Europe which is now also available as an electronic edition (e-Guide).



Competition & Anti-Trust  
Firm of the Year

*Belgian Legal Awards 2013*



Our relationship with CMS fills a niche: there are probably no other partners like these. They communicate well, have good legal brains and commercial nous. They also have complete commitment to the transaction. You don't see this much.

*A client*

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CMS delivers outstanding service, and in the field of competition law it has one of the largest teams in Germany.

*Chambers Europe*

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I find these lawyers excellent: they have strong business acumen and a high level of confidence in what they do. They are hands-on and responsive, maintaining an ideal balance between professionalism and warmth.

*Chambers Europe*

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CMS is 'masterful both from a technical and tactical point of view'.

*Legal 500*

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This highly recommended firm in antitrust impressed once again in proceedings for long-standing clients.

*Juve*

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

**CMS locations:**

Aberdeen, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Belgrade, Berlin, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Geneva, Glasgow, Hamburg, Istanbul, Kyiv, Leipzig, Lisbon, Ljubljana, London, Luxembourg, Lyon, Madrid, Mexico City, Milan, Moscow, Munich, Muscat, Paris, Podgorica, Prague, Rio de Janeiro, Rome, Sarajevo, Seville, Shanghai, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.