

Advising the insurance industry: competition



Introduction

With more than 140 lawyers and a joint CMS EU Law Office in Brussels which is dedicated to advising clients on competition related matters, the CMS Competition group is one of the largest competition teams within Europe and at the same time one of the most widespread. We offer a one-stop shop solution to clients for all their competition law needs across Europe and beyond. The CMS Competition Group acts for clients in all areas of competition law: cartel investigations, abuse of dominance allegations, merger control filings, private enforcements, compliance and representation in dawn raids.

We have worked closely with clients in the insurance sector for many years and we have close relationships with CMS insurance experts which contributes to the Competition Group's understanding of the relevant insurance markets and in particular of the interplay between regulation and competition. Our service is based on sound technical experience, sector knowledge and, crucially, an appreciation that clients need clear, practical advice based on an assessment of commercial realities.

Our competition law services:

- EU and national merger control: obtaining clearances and co-ordinating multi-jurisdictional filings worldwide. Advising on deal feasibility and acting on behalf of interveners.
- Cartels: representing clients in dawn raids, cartel proceedings and leniency applications.
- Abuse of dominance: advising on commercial agreements of potentially dominant companies. Structuring and advising on business and pricing strategies.
- Private enforcement: advising and representing clients concerning cartel damages actions.
- Competition law compliance: Audits, internal investigations, implementation of compliance programmes, trainings and dawn raid policies.
- Representation before the European Commission and national competition authorities as well as before courts, at the EU or the national level.



CMS has 'great commercial ability' and provides 'a very high-quality service'.

Chambers and Partners, 2013

Cartels, Dawn Raids and Competition Investigations

Our Competition group has handled some of the most complex cartel cases and has acted on behalf of clients in many competition investigations by EU and national authorities.

We are able to offer our established dawn raids and investigations support. This provides clients with a full range of services from identifying compliance risk areas, conducting audits, developing compliance programmes and training employees, to managing raids and investigations by the competition authorities.

We have experience of all types of competition investigation and of all stages from attending dawn raids and responding to requests for information, to submitting leniency applications, responding to statements of objections and ultimately to representing clients in hearings and appeal processes. We have developed the CMS Dawn Raid Package which consists of the same basic elements and documents in all member jurisdictions

Highlights of our recent experience:

- Advising in the **European Commission** cartel investigation into the aviation insurance industry post 9/11 and representing one of the main global industry participant companies involved in the negotiation.
- **BANKIA** (formerly Cajamadrid) – advising in an antitrust case before the Spanish Competition Authorities concerning alleged bundling practices involving insurance policies and loans.
- **PZU Zycie** – representing Poland’s biggest life insurance company in their appeal against the decision of the President of the Polish Competition Authority to impose a PLN 50 million fine.
- **Chartis Europe** – representing client before Luxembourg Competition Council in a cartel procedure
- **Various insurance, reinsurance companies and brokers** – advising on the implications of the EU sector inquiry into insurance, delivering various presentations including to BIPAR
- **Polish insurance group** – advised in a dispute initiated by the Polish Competition Authority on the alleged infringement of collective consumer interests through the alleged application of certain abusive clause in its insurance policies.
- **Major Swiss insurance company** – advising on a competition investigation launched by the Swiss competition authorities
- **US based commercial bank** – representing client in cartel investigation launched in Hungary
- **Credit card company** – advising on the credit card investigations launched by Swiss Competition Authorities, including representing the client in settlement negotiations
- **Insurance trade body** – advising on a potential competition law complaint to the Office of Fair Trading
- **MKB Bank** – representing in judicial review proceedings before court of the HCO’s decision on alleged cartel offence by the two major credit card companies and seven major Hungarian banks relating to the fixing of the interchange fee applicable to credit card transactions.



Specialist competition law advice in the insurance sector

We advise insurance and financial services clients on their day-to-day competition law needs in various jurisdictions. This work includes advising on pricing and business strategies, distribution networks, compliance with the European Commission's insurance block exemption regulation, insurance pools, dealings and collaborations with industry contacts and associations, the use of information on products, premiums and claims and other commercial arrangements.

Highlights of our recent experience:

- **A Russian insurance company** – reviewing a set of agreements entered into by and between the client and its affiliated bank from a Russian competition law perspective.
- **UK insurance broker** – advising on various competition law issues, including a collaboration agreement.
- **A German insurer** – preparing a legal opinion on dissolution of a coinsurance joint venture in compliance with competition law.
- **Various insurance clients** – advising on the application of the European Commission's 2010 insurance block exemption, as well as advising on the application of EU competition law to joint compilations, tables and studies and common coverage of certain types or risks
- **UK life insurer** – advising on various competition law issues concerning the sale of retail insurance products.
- **Global insurance company** – advising on the competition law issues arising from establishment of a coinsurance pool



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- **Global insurer** – advising on best terms clauses
- **Various international and domestic insurance companies** – reviewing general terms and conditions of insurance in order to eliminate any clauses that might be considered unfair terms in consumer contracts under Polish law
- **Insurance broker** – advising on collating brokers' pricing information and industry collaborations
- **Financial services client** – representing a principal investigated party in the Competition Commission investigation into the payment protection insurance market
- **Major insurance group** – advising on Article 101 issues in an industry-wide Code of Practice
- **Major insurance group and trade association** on industry standards in insurance contracts
- **Global reinsurer** – advising on the competition law compliance of information exchanges



Merger control

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

We analyse the proposed structure, provide advice on options and prepare the required submissions, where relevant in close co-operation with our competition colleagues in other countries. We have vast experience of the practicalities of dealing with national competition authorities and the European Commission's services, enabling us to lead clients safely through the maze of formal and informal processes. With many companies in the insurance sector having a global footprint, our large multi-jurisdictional team who work together on a day-to-day basis assisting clients with merger control filings, can ensure our clients receive an efficient, cost effective and coordinated approach in obtaining regulatory approvals.

Highlights of our recent experience:

- **MetLife Inc.** – advising on merger control relating to the merger of Alico and Aviva in the Czech Republic, Hungary and Romania.
- **Insurance broker** – advising on a multi-jurisdictional joint venture including the submission of merger control filings.
- **Multinational insurance corporation** – advising on various investments in Poland including merger control filings
- **British multi-national life insurance and financial services company** – advising on a potential acquisition
- **Large global provider of insurance** – advising on various acquisitions in the insurance sector in relation to the acquisition of a pension fund and a life insurance company in Poland, including obtaining relevant clearances from the Polish Competition Authority
- **Large European financial services group** – advised on merger control issues
- **A Russian subsidiary of one of the major banking and insurance groups** – advising on a notification regarding an acquisition of shares of a Russian limited liability company within a group restructuring proceedings.
- **Direct Line Insurance** – notifying two acquisitions in the insurance sector to the Italian Competition Authority.

Compliance

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

In terms of compliance services, we offer:

- **Implementation of compliance programmes:** setting up bespoke codes of conduct and guidelines, providing compliance training sessions, setting up ombudsman networks or whistleblower hotlines, etc.
- **Preparation for dawn raids:** providing dawn raid trainings, implementing dawn raid guidelines, setting up dawn raid response teams (internal and external) and 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) and providing 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:

- **MetLife** – Advising MetLife on compliance issues following the acquisitions of Aviva Czech Life, Aviva Hungary Life, Aviva Romania Life and Aviva Romania Pensions from UK insurer Aviva.
- **Hungarian bank** – conducting a widespread internal audit including the review of correspondence and documents of key employees and holding a series of competition compliance trainings.
- **Major Swiss bank** – Operating a “Compliance hotline” (24-hour emergency service for the compliance department).
- **UK building societies and retail banks** – providing ongoing dawn raid support and compliance training.
- **Major insurance group** – advising on the roll out of a group-wide competition compliance training programme with a focus on practical examples in day-to-day business
- **Global insurer** – advising on competition compliance, including drafting a bespoke competition compliance toolkit covering practical scenarios faced by the underwriting business in its day-to-day dealings with competitors, brokers and the insured.
- **Various insurance and financial services companies** – advising on the drafting of compliance policies and implementation of dawn raid procedures.

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