

# EU Competition

## EU COMPETITION PRACTICE

Van Bael & Bellis is widely recognised as one of the leading competition law practices in Europe. Since the mid-1970s, members of our firm have been involved in many of the seminal cases in the field. With one of the largest competition practices in Brussels, our firm has extensive expertise in all aspects of EU competition law, including: cartel investigations, abuses of dominance, merger control, the licensing and use of intellectual property rights, the establishment and operation of distribution systems and state aid. In view of the multinational composition of our firm, with more than 20 nationalities represented, we also assist clients in EU Member States proceedings, including making merger control filings at EU Member State level and coordinating such filings internationally.

## "PREFERRED EU COMPETITION LAW FIRM"

As a result of our work on complex and innovative cases, we have developed longstanding relationships with our clients, including many Fortune 500 and leading global companies, who consider us to be their "preferred EU competition law firm". In this capacity, we handle the full

range of competition issues which they face throughout the EEA, from defending clients in investigations to providing counsel on how to avoid an investigation.

What sets Van Bael & Bellis apart is the size and depth of our competition team - 12 partners and 6 counsel, many with more than 20 years of experience. We also have unparalleled expertise in litigating competition issues before the EU Courts, gained from our representation of international clients in landmark EU competition cases such as United Brands, AKZO, Michelin I and II, Woodpulp (representing International Paper), Microsoft, Intel and CISAC to name a few.

*Van Bael & Bellis is a leading independent law firm based in Brussels, with a second office in Geneva exclusively dedicated to WTO matters. We are known for our client-centred approach, commitment to excellence and extensive expertise in EU competition law, EU and international trade law, EU regulatory law as well as Belgian business law. With nearly 70 lawyers coming from 20 different countries, we offer our clients the support of a highly effective team of professionals with multi-jurisdictional expertise and an international perspective.*

*"Van Bael & Bellis is one of the most experienced law firms with regard to European antitrust issues."*

**Chambers Global 2016**

*"Van Bael & Bellis holds a unique position at the top of the EU Competition market. Surrounded in the rankings by US and UK outfits, the Belgian firm has built a niche as a high quality independent."*

**IFLR1000 2014**

*"This firm provides top-flight representation for merger clearances as well as the full range of cartel, dominance and other competition law matters."*

**Chambers Europe 2014**

## CARTELS

Van Bael & Bellis has successfully represented clients in Commission investigations, helping them to escape infringement decisions and the imposition of fines.

We have also successfully assisted clients in obtaining the annulment of infringement decisions or substantial reductions in fine before the EU Courts.

Our firm has considerable experience both in assisting clients during the EU settlement procedure as well as in obtaining partial or total immunity under the Commission's leniency program.

## NOTABLE ASSIGNMENTS

Van Bael & Bellis' extensive experience includes:

- › Assisting JTEKT, a large Japanese multinational, in securing full immunity from fines under the Commission's leniency program during the European Commission's investigation into the automotive bearings cartel which concluded in 2014. We also assisted the client in navigating through the Commission's settlement procedure.
- › Representing Innolux in its appeal before the EU General Court against the €300 million fine imposed by the European Commission in the LCD panel cartel case. On 27 February 2014, the General Court reduced the fine imposed on Innolux by €12 million on the ground that the Commission made errors with regard to calculating the fine.
- › Assisting Carpenter in the settlement procedure in the flexible polyurethane foam case which concluded in 2014.
- › Representing Dole and Dole Fresh Fruit Europe ("DFFE") in their appeals before the General Court and the Court of Justice against the Commission's 2008 Decision imposing a fine of €45.6 million for DFFE's participation in a cartel with Chiquita and Del Monte/Weichert. The case was unique in that the Commission classified an information exchange practice (which it did not itself claim to be a price-fixing cartel) as an infringement "by object".
- › Representing Japan Airlines, Japan's largest flag carrier, and Thai Airways in the cartel proceeding initiated by the Commission against more than 20 airlines in the airfreight sector. The Commission dropped its charges against Thai Airways. We successfully acted for Japan Airlines in its appeal to the General Court. On 16 December 2015, the General Court upheld the appeal and annulled the €35.7 million fine imposed on the company. We also act as coordinating counsel in defending Japan Airlines against national damages actions.

## ABUSES OF DOMINANCE

Van Bael & Bellis is among the most experienced law firms in defending Article 102 cases before the Commission and EU Courts.

## NOTABLE ASSIGNMENTS

Van Bael & Bellis' extensive experience includes:

- › Assisting Canon before the European Commission in relation to an Article 102 complaint filed by EFIM, a European association of producers of printer ink, with respect to alleged exclusionary practices concerning printer cartridges. The Commission rejected EFIM's complaint in May 2009, a decision upheld on appeal by the EU Courts.
- › Representing ACT, a trade association representing more than 5,000 IT firms worldwide, in support of Intel's challenge before the EU Courts of the

Commission's 2009 Decision imposing a record fine of €1.06 billion on Intel for allegedly providing incentives to customers in exchange for exclusivity.

- › Acting as lead counsel in Microsoft's appeal before the General Court against the €899 million fine imposed by the Commission in 2008 for alleged non-compliance with the 2004 Commission Decision fixing the definitive amount of the periodic penalty payment imposed on Microsoft Corporation. On 27 June 2012, Microsoft was granted a €39 million reduction in the fine.
- › Representing Honda Motor Co. in the Commission's investigation of a complaint filed by BR-V against Honda, the FIA, the FIM and others alleging exclusionary conduct in respect of engine technology used in Formula One and Moto GP racing. The complaint was rejected by the Commission.

*"Van Bael & Bellis 'certainly stands up to its excellent reputation' in the competition field, and is 'always quick to respond to queries'."*

**Legal 500 2014**

*"The service provided is comparable to the magic circle firms."*

**Chambers Europe 2015**

## MERGER CONTROL

Van Bael & Bellis has a dedicated team of merger control specialists and regularly represents merging parties in cases involving key issues of jurisdiction, procedure and substantive law. We have succeeded in obtaining clearance of numerous complex transactions before the European Commission.

With our large number of lawyers qualified to practice in a number of Member States, we also routinely help clients to obtain clearance from Member State authorities for transactions which do not meet EU thresholds.

We also are frequently called on to coordinate merger control filing efforts across the world, working with local counsel.

## NOTABLE ASSIGNMENTS

Van Bael & Bellis' extensive experience includes:

- › Representing Halliburton in the context of the EU merger control review of its proposed \$ 34.6 billion acquisition of Baker Hughes. This was one of the largest and most complex transactions ever to be subject to an EU merger control proceeding.
- › Representing Skype and its parent company Silver Lake on the EU merger control aspects of Microsoft's successful USD 8.5 billion acquisition of Skype.

The transaction, the largest acquisition ever by Microsoft at the time, was unconditionally approved by the European Commission after a first phase review, which was upheld on appeal. This transaction was voted Merger Control Matter of the Year at the 2012 Global Competition Review (GCR) awards.

- › Representing the Japanese steel industry in successfully opposing the creation of the proposed \$120 billion iron ore production joint venture (JV) between leading global mining companies BHP Billiton and Rio Tinto. Our firm's involvement in this assignment won us the award for M&A Transaction of the Year – Asia-Pacific, Middle East and Africa at the 2011 Global Competition Review (GCR) awards.
- › Representing Canon in its acquisition of capture software company I.R.I.S. by successfully steering the planned acquisition through referrals from 7 Member States to the European Commission and obtaining an unconditional first phase merger control clearance.
- › Representing Novozymes in the antitrust review and worldwide merger control assessment in relation to its strategic alliance with Monsanto in the field of biological crop protection and yield enhancement products, called the "BioAg Alliance", including taking the lead for both companies in obtaining German merger control approval.
- › Representing Motorola Solutions, the world's leading supplier of ruggedized tablets, handheld computers and barcode scanners, in its acquisition of Psion, one of Motorola's main rivals in this space, by conducting the global filing assessment and coordinating the efforts to file and obtain approval of the deal in the United Kingdom, Germany, Canada and Portugal. After detailed investigations, the transaction was approved unconditionally in all four jurisdictions.
- › Representing Taiwanese Hon Hai/Foxconn group in the merger control proceedings before the European Commission regarding the strategic global partnership in consumer electronics entered into between Hon Hai and Sharp.
- › Representing the Saudi petrochemicals leader, SABIC, in obtaining merger control approval from the European Commission for its USD 11.6 billion acquisition of GE Plastics.
- › Representing Novartis regarding its acquisition of sole control over Chiron, a company active in human vaccines, biopharmaceuticals and blood testing and assisting Novartis in the parallel merger notification proceedings in Albania, Bulgaria and Turkey.

## STATE AID

Van Bael & Bellis has experience advising on a wide variety of complex state aid issues. In various cases before the Commission and the EU Courts, the firm's lawyers have represented alleged aid recipients, complainants, intervening third parties and Member State government entities accused of granting illegal aid in sectors as diverse as steel, zinc, cement, consumer electronics, aerospace and defence equipment. We also assess proposed aid schemes and advise clients on the potential risk of these schemes under the EU state aid rules as well as counsel non-EU Member States on state aid issues.

## NOTABLE ASSIGNMENTS

Van Bael & Bellis' extensive experience includes:

- › Successfully assisting SEA SpA, the state-owned operator of the Milan airports, in the EU state aid investigation concerning ground-handling services at those airports and in the implementation of the European Commission's decision declaring the state aid granted by SEA SpA to its subsidiary SEA Handling to be incompatible with EU state aid rules.
- › Successfully representing the Romanian electricity distributor S.C. Electromagnetica S.A. in a State aid

investigation initiated by the European Commission, which concerned allegations that aid was granted in the form of preferential tariffs in electricity supply contracts between electricity producer S.C. Hidroelectrica S.A., majority-owned by the Romanian State, and several electricity traders, including Electromagnetica.

- › Representing the Italian Region of Campania before the European Commission in the assessment of a series of financial measures with a value of over €1.5 billion to verify their compliance with EU state aid rules.
- › Assisting SOITEC in relation to the notification of a €€12.25 million French state aid package to the European Commission for the Bernin 2010 project. This was one of the first notifications handled by the Commission under the new Community Framework on Research, Development and Innovation Aid.
- › Representing PSEG, a NYSE listed energy company, and its Polish subsidiary, Elcho, on State aid proceedings initiated by the European Commission against Poland in relation to long-term electricity supply contracts.

*"Renowned independent firm advising on the full range of EU and Belgian competition issues. Attracts top-tier Belgian and international clients from a range of sectors due to its excellent track record in complex cartel, merger and state aid cases. Receives praise from interviewees for the strength in depth of the bench."*

**Chambers Europe 2015**

*"Van Bael & Bellis remain in my view, one of the best boutiques in EU and competition. The quality of their work is outstanding, says one peer."*

**Chambers Europe 2014**

*"Van Bael & Bellis' 'experienced' and 'knowledgeable' team is 'a safe home for a complex competition problem.'"*

**Legal 500 2013**

## PATENTS

Van Bael & Bellis has deep experience in the complex area of standard essential patents (SEPs).

The firm also is heavily involved in the appeal against the Commission's first decision on "reverse-payment" patent settlements in the pharmaceutical industry.

## CONCERTED PRACTICES

Van Bael & Bellis' vast competition expertise extends to concerted practices as evidenced by the firm's successful representation of CISAC as well as eight individual copyright management societies in achieving an exceptional result from the EU's General Court in 2013. In particular, we obtained, on substantive grounds, the annulment of the principal part of the Commission's 2008 CISAC decision which had found CISAC and its European members – copyright management societies in different EU Member States – to have engaged in concerted practices in violation of EU competition law. We also coordinated appeals lodged by other society members of CISAC.

## DISTRIBUTION

Van Bael & Bellis regularly advises multinational clients in structuring - and defending - complex pan-European distribution systems, often focusing on issues of pricing and selective distribution. The firm has particularly strong practices in the highly regulated fields of pharmaceutical, and motor vehicle, distribution.

## NATIONAL COMPETITION ADVICE

Van Bael & Bellis regularly advises on the national competition laws of the major EU Member States. Our broad national diversity means that we routinely handle antitrust and merger control cases before national competition authorities and national courts, as well as arbitral panels.

## NOTABLE ASSIGNMENTS

Van Bael & Bellis' extensive experience includes:

- › Assisting EDF Luminus in challenging, along with other electricity producers, the network tariffs charged for the transmission of electricity by Belgian transmission network operator Elia before the Brussels Court of Appeal. EDF Luminus prevailed and the Court of Appeal annulled the tariffs on various grounds including the incompatibility with EU law, discrimination and distortion of competition.
- › Representing Rockwool, one of the world's largest manufacturers of construction materials, in their

acquisition of Chicago Metallic Corporation by taking the lead on the global filing assessment and handling the merger filings in a number of EU Member States.

- › Assisting Coca-Cola Enterprises Belgium (CCEB) on various advisory issues related to Belgian competition law. In addition, Van Bael & Bellis represented CCEB in regard to an informal complaint lodged by a beverage wholesaler with the Belgian Competition Authority, based on allegations of an abuse of dominance, where the Competition Authority decided not to open a formal investigation
- › Assisting Michelin in an investigation of alleged abuse of a dominant position in Romania and obtaining the rejection of the complaint by the Romanian competition authority.
- › Representing a large multinational company in the French Competition Authority's investigation into allegations of anti-competitive practices in the building materials sector.

*"The firm has a unique position in the market as one of the only Benelux domestics to compete with the large international practices, the makeup of its team, which includes a stronger Belgian law contingent than most firms also makes it a key referral partner."*

**IFLR1000 2015**

## COMPLIANCE

Van Bael & Bellis regularly develops and implements compliance programmes and compliance training for clients. As part of our compliance training practice, we have developed an award-winning DVD, "Complying with EU Competition Law", which is available in ten languages and gives practical advice on EU compliance issues.

## CONTACT

<b>Antoine Bailleux</b>	Counsel	<a href="mailto:abailleux@vbb.com">abailleux@vbb.com</a>
<b>Jean-François Bellis</b>	Managing Partner	<a href="mailto:jfbellis@vbb.com">jfbellis@vbb.com</a>
<b>Richard Burton</b>	Partner	<a href="mailto:rburton@vbb.com">rburton@vbb.com</a>
<b>Michael Clancy</b>	Counsel	<a href="mailto:mclancy@vbb.com">mclancy@vbb.com</a>
<b>Fabrizio Di Gianni</b>	Partner	<a href="mailto:fdigianni@vbb.com">fdigianni@vbb.com</a>
<b>Porter Elliott</b>	Partner	<a href="mailto:pelliott@vbb.com">pelliott@vbb.com</a>
<b>Martin Favart</b>	Partner	<a href="mailto:mfavart@vbb.com">mfavart@vbb.com</a>
<b>David W. Hull</b>	Partner	<a href="mailto:dhull@vbb.com">dhull@vbb.com</a>
<b>Tim Kasten</b>	Partner	<a href="mailto:tkasten@vbb.com">tkasten@vbb.com</a>
<b>Etsuko Kameoka</b>	Counsel	<a href="mailto:ekameoka@vbb.com">ekameoka@vbb.com</a>
<b>Andrzej Kmiecik</b>	Partner	<a href="mailto:akmiecik@vbb.com">akmiecik@vbb.com</a>
<b>Peter L'Ecluse</b>	Partner	<a href="mailto:plecluse@vbb.com">plecluse@vbb.com</a>
<b>Charlotte Nassogne</b>	Counsel	<a href="mailto:cnassogne@vbb.com">cnassogne@vbb.com</a>
<b>Stephanie Reinart</b>	Counsel	<a href="mailto:sreinart@vbb.com">sreinart@vbb.com</a>
<b>Andreas Reindl</b>	Counsel	<a href="mailto:areindl@vbb.com">areindl@vbb.com</a>
<b>Johan Van Acker</b>	Partner	<a href="mailto:jvanacker@vbb.com">jvanacker@vbb.com</a>
<b>Kris Van Hove</b>	Partner	<a href="mailto:kvanhove@vbb.com">kvanhove@vbb.com</a>
<b>Markus Wellinger</b>	Partner	<a href="mailto:mwellinger@vbb.com">mwellinger@vbb.com</a>

## PUBLICATIONS

Van Bael & Bellis is the author of one of the leading reference sources for companies, law firms and universities – "Competition Law of the European Community".

In addition, we serve as the General Editors of one of The European Lawyer Reference Series' most popular publications, "Merger Control: Jurisdictional Comparisons", now in its second edition (2014).

### BRUSSELS OFFICE

Glaverbel Building  
Chaussée de La Hulpe 166  
Terhulpesteenweg  
B-1170 Brussels  
Belgium

Phone: +32 (0)2 647 73 50

Fax: +32 (0)2 640 64 99

### GENEVA OFFICE

26, Bd des Philosophes  
CH-1205 Geneva  
Switzerland

Phone: +41 (0)22 320 90 20

Fax: +41 (0)22 320 94 20

[www.vbb.com](http://www.vbb.com)