

## → EU Competition and Regulatory

EU laws and regulations are increasingly shaping clients' corporate and commercial strategies. Policymakers and regulators are tightening their grip and increasing their scrutiny. In competition matters, the case law of the Court of Justice ("CJEU") and the General Court ("GCEU") of the European Union as well as the decisional practice of the European Commission (the "Commission") are rapidly evolving. The complex web of regulators in the European Union encompass not only the Commission but also the 28 national competition authorities. Investigating powers and penalties are becoming more severe. More generally, the top EU regulatory framework, with legislative powers shared among the Commission, the Council of Ministers and the European Parliament, has never been so complex and active.

Sheppard Mullin's EU competition and regulatory lawyers in Brussels, highly ranked by *Legal 500 Europe*, *Chambers Europe*, *JUVE* and *GCR*, work across the whole of the European Union. They join forces with colleagues in the US and in Asia to ensure our clients' global business needs are met, their interests defended and their long term strategies realized. Clients rely on us for expert and commercial advice on complex national (each Member State), EU and global questions.

With a multinational and multilingual team of 4 EU competition partners (3 in Brussels, 1 in London/Brussels) and 5 other competition/regulatory lawyers, we provide our clients with an in-depth understanding of national and EU policies that shape their business environment. Our EU team combines a breadth of experience across various industries in private companies, associations, regulatory agencies and with the EU institutions. We maintain strong relationships with authorities and enforcement agencies in Europe and across the globe to ensure easy and speedy access to regulators. Our key goal is to get the closest to the client in order to understand their business and defend their interests.

Our team offers expert support and hands-on advice in a broad range of EU competition and regulatory matters. Our strong trans-Atlantic ties, flanked by a strategic presence in Asia, allow us to work on the most complex merger control issues and global cartel investigations. We assist clients in abuse of dominance cases, compliance and regulatory matters, and related litigation before the EU courts, the CJEU and the GCEU, as well as before national courts. Our state aid capabilities are unrivaled and we assist clients in some of their most delicate and critical business issues. We represent clients and plead before the CJEU and the GCEU as well as before the Belgian, French, German and UK courts in EU law related matters.

We also have expert understanding of public procurement at national and EU level.

Finally, we help clients anticipate, react and prepare for new EU legislation. Our team of EU and government policy experts provide crucial support to clients throughout the whole legislative process and ensure their interests are defended and business needs heard.

### Merger Control

Our in depth experience in EU merger control (EUMR) and major national (Member States) merger control regimes, including the US Department of Justice and Federal Trade Commission and Asia enables us to help

clients with international transactions that include merger control proceedings.

Our team in Brussels is regularly assisting clients with the coordination of multi-jurisdictional merger proceedings (including in China). We have a track-record in successfully pushing for remedy negotiations and have handled the most complex EUMR investigations (most recently the Phase II GE/ALSTOM Case). We regularly represent clients in court litigation arising from merger proceedings and also advise third parties in merger investigations.

## Cartels

Cartel enforcement continues to be a top priority for competition authorities worldwide and even more so in the EU. The risk of running into heavy financial penalties, criminal sanctions, reputational damage and costly damages actions is becoming a reality for many market actors. In times of crisis, clients need to rely on a team that is experienced in handling cartel cases, from advising on leniency applications through to launch of an investigation, as well as any EU challenge and follow-on damages actions before national courts. We put in a lot of effort to train and prepare our clients to deal with crisis situation and investigations.

Cartel investigations can be initiated in one or multiple national jurisdictions of the EU (i.e. Member States) and the European Commission reserves the prerogative of taking on or referring and investigation to national (Member States) competition authorities. We see an insurgence of cartels being investigated simultaneously by a number of competition authorities. It is therefore crucial that clients can rely on lawyers with the required expertise and ability to timely advice across several jurisdictions. We regularly assist clients in coordinating and leading multi-jurisdictional cartel investigations, providing them with seamless international service.

Some of our team members have been involved in high-profile, complex and innovative cartel investigations on the side of the investigating authorities as well as for clients and are therefore in an adept position to reach the best results. We have experience in launching appeals across multiple jurisdictions or to initiate damages claims resulting from cartel behavior.

## Market Conduct and Dominance

A fierce and competitive global market brings more allegations of abuse of power and other practices that may be prohibited under antitrust and competition laws.

Our team has advised on a full range of practices including alleged excessive pricing; discriminatory pricing or favoring one customer over another in terms of supply; discriminatory discounts and rebates; refusing or limiting access. We represent clients both before the European Commission and national competition authorities and courts and work for both complainants and defendants.

## EU and National Litigation

We have a strong track record in representing clients before European and EU national courts in all types of litigation matters. While we are rightly regarded as among the pre-eminent competition lawyers in the UK and Europe, our litigation expertise extends to patent litigation and commercial/civil litigation matters. Antitrust and competition litigation has gained an international dimension. With our integrated global team of litigators we are able to offer a one-stop-shop service across the US, Europe and Asia to devise a fully comprehensive litigation strategy.

We regularly challenge the validity of European Commission's decisions in competition cases, including cartels, abuses, mergers, State aid, EU regulatory matters and any decisions of other EU Institutions which can be challenged in direct actions. We also intervene in cases that are referred by national courts to the Court of Justice for preliminary rulings on fundamental issues of interpretation of EU law.

Our litigation experts have pleaded more than 55 cases in front of national courts and before the General Court and the Court of Justice of the European Union in Luxembourg. Our substantial expertise includes representing clients in litigation before national courts, primarily in stand-alone or follow-on antitrust damages litigation in the UK, France, the Netherlands and Germany. We also represent clients in procedures before a range of European Agencies (e.g. ECHA, ACER) and national regulatory bodies (e.g. in telecoms or energy).

Clients like ALSTOM, Philip Morris, DHL and FedEx and express carriers' professional organizations, Brussels Airlines, the European Commission itself in EU institutional matters, the EU agency for Fusion for Energy, the BT Pension Scheme Trustees, Tempus Energy, Eurorail and Micula, Sharp Corporation, HTC, SKhynix rely on us to defend them and represent their interests before the EU and national courts. In addition, we have a strong track record in assisting clients in raising or challenging European or competition law defences in IP litigation in particular in relation to standard-essential patents.

## Compliance and Auditing

We offer tailor made compliance and risk audits aimed at a variety of audiences, including sales teams, pricing teams, legal teams, management teams and board members. We are also actively engaged in delivering compliance trainings to help our clients mitigate and resolve issues before they occur.

We believe this is part of the foundation of the trust relationship with our clients. We have designed and implemented multi-jurisdictional comprehensive, tailor-made programs for clients across the globe. We develop these audits and related trainings for business organizations and their clients because we understand that the cost of risk - and often potentially serious risks of non-compliance – in today's regulated world is just too high.

## State Aid

We have an unrivaled experience in representing governments, local authorities, third parties and companies on State aid matters across a range of industry sectors. We have been involved for more than two decades in high profile State aid cases in France, the UK, Germany, Belgium, Poland, Spain, Italy, Greece, the Netherlands, Romania, Bulgaria, Croatia, Sweden, Denmark, Hungary, Estonia, Latvia, as well as in relation to third countries such as Switzerland, Turkey, before the European Commission, the EU courts as well as national courts.

Our State Aid practice offers the following services:

- Advising investors on the structuring of complex transactions which involve public funding or public entities and appropriate means of financing to avoid State aid exposure;
- Assisting public authorities in drafting notifications and representing the authority in ensuing proceedings before the Commission, as well as liaising with national governments;
- Assisting private undertakings in drafting a complaint or defending the beneficiary of an aid before national courts;

- Carrying out M&A due diligence where the acquisition concerns an undertaking which may have received aid which was not duly reviewed by the European Commission or drafting contractual documentation to address these potential State aid issues, for example in the context of privatization;
- Acting on behalf of plaintiffs, beneficiaries or Member States in State aid cases before the General Court of the European Union, the Court of Justice of the European Union, as well as national courts in Belgium, France, Germany, Italy and the UK in particular.

The recent financial crisis and subsequent rescues by national governments combined with the push for an increased competitiveness in attracting new investments have created new and complex cases of State aid. We play a leading role in advising financial institutions, corporations and governments on these complex developments, including the much discussed tax rulings regimes across the European Union.

## Regulatory

Obligations imposed by regulators touch on almost every aspect of commercial life. Brussels is the second largest regulatory center of the world after Washington DC. In fact, 80 percent of national legislation across the EU is derived from or influenced by EU law.

We work with international companies and foreign governments in mitigating issues that may arise from EU regulations and in developing winning strategies for clients beyond just legal advice and counseling as regulatory instruments do not only constitute obligations but also present opportunities to improve a company's competitive edge. These issues and/or opportunities occur in the context of M&A deals, projects & finance, cross-border compliance programs, advocacy and representation, litigation, government inquiry or inspection, lodging complaints, commercial and contract negotiations, and much more.

The Brussels office serves as a one-stop-shop for companies active in Europe and which face a sharp increase in the size and complexity of regulations covering a wide variety of products and services (e.g. consumer products; machinery; energy and natural resources; chemicals; food; life sciences and pharma; communications technologies; transportation; financial services) and also face more draconian investigative powers and sanctions for non-compliance.

## IP / Competition

We have substantial expertise in advising clients on matters in the interface of intellectual property and competition law mainly in the context of EU or national complaint cases, investigations of competition authorities and intellectual property litigation.

We are handling multiple matters for technology and life sciences companies relating to cross-licensing, standard setting, patent pooling, product distribution, and joint ventures and other types of collaborations including R&D.

## European General Data Protection Regulation (GDPR)

Our European experts advise clients on the steps required to ensure compliance with the European General Data Protection Regulation, which came into effect on 25 May 2018. We help build new processes and compliance policies, we advise on IT requirements and architecture to ensure that companies are able to

discharge of their newly imposed obligations under the GDPR, as well as to deal effectively with rights of individuals. We also advise companies on how to efficiently change existing policies in the most cost-effective way to bring them in line with the GDPR globally. The wide jurisdictional scope and the anticipated increased risk of fines, investigations and litigation made this a high-priority area for companies that handle consumer and human resource data of individuals in the European Union.

## Policy Advocacy

The EU legislative process is becoming ever more complex. It is important to bring to clients an understanding of the regulatory and legislative activity in specific areas like competition policy, international trade, safety health & environment (SHE), consumer protection, the Internet and e-commerce, financial services, and life sciences. This targeted approach enables clients' issues to be spotted early, providing further opportunities to advocate their interests.

We assist clients in establishing coalitions, associations and alliances to lobby on EU issues and in supporting their ambitions and strategic interests. This includes drafting and defending concept papers, bringing together defense groups, helping to recruit association members, developing work plans, and supporting ongoing work to maintain momentum towards legislators and regulating authorities.

When needed, we act as a direct advocate on behalf of clients and provide behind-the-scenes support to companies' own personnel, bringing them experience in developing strategies towards various stakeholders including European Commission, the European Parliament, and the Council of Ministers.

Policy development is a long term game, and companies and associations need to plan long term if they want to establish themselves as successful players in the process. Clients need to think through their positioning in Brussels, integrate their corporate citizenship and governmental affairs efforts, and develop effective long term relationships with policy makers. The complex procedural rules that govern EU legislative and regulatory proceedings, (including consultation, co-decision, and comitology procedures) can be overwhelming for clients. Our expertise helps them through these proceedings and enables them to identify the points at which opportunities are greatest to ensure their voice is heard.

We also assist governments, business associations and non-profit organisations on complex policy issues or on international projects.

## Public Procurement

We are experienced in advising clients on all aspects of European, member state and international public procurement law, which includes general advisory work to contracting authorities and assistance in pre-litigation and litigation risk by unsuccessful bidders.

We have a particular focus on the construction industry and our involvement ranges from procurement structuring of transactions to establishing procurement compliance programs for our clients. We are well versed in establishing successful consortium negotiations, drafting and advising on engineering and construction contracts (including design and build and EPC contracts), consultant appointments and contracts for the procurement of materials and systems. We have also assisted a range of clients in this industries in their claims and in dispute resolution matters (adjudication, mediation, arbitration). We regularly represent clients in contentious proceedings both at national and at European level.

## Experience

- **Airbus:** JV with OneWebb micro satellites.
- **Air France:** advised Air France-KLM in securing the European Commission's approval for up to €4 billion in French State aid to recapitalise Air France to help it overcome the impact of the COVID-19 crisis and plan for the future.
- **ALSTOM Transport:** Assisted ALSTOM on its acquisition of GE's signaling business .
- **ALSTOM:** Assisted ALSTOM in the largest ever GE's acquisition (acquisition of ALSTOM Energy business) including Phase II EU clearance across 25+ jurisdictions.
- **Brussels Airlines:** Litigation in Brussels South Charleroi Airport case, supporting the Commission's position in the action lodged by the airport.
- **EDF:** Obtained a successful judgment of the General Court of the European Union for EDF (and other interveners supporting the European Commission) rejecting as inadmissible an action for annulment lodged by French fishermen against a Commission's decision approving a multibillion French State aid for the construction and operation of offshore wind farms. Important case clarifying the notion of "interested parties" admissible in contesting a Commission's decision approving aid without initiating a formal investigation procedure.
- **HTC:** Defended claim brought by IPCOMM in a patent court in Mannheim, Germany where we advised on the European Competition law defence challenging the then Orange Book Standard jurisprudence of the German Supreme Court. Our arguments were in line with later ECJ case law in ZTE v Huawei. **Korean Air.** Represented Korean Air in the EU Air Cargo investigation (no infringement finding, no fine) and SkyTeam case.
- **Micula:** Obtained landmark litigation victory after challenging an unprecedented European Commission decision on State aid through an ICSID arbitration award for damages. In June 2019, the General Court of the EU annulled the Commission's State aid decision, allowing client Viorel Micula to pursue the hundreds euro million damages by Romania that were awarded to them by an ICSID arbitral tribunal.
- **Samsung:** Represented Samsung Mobile Displays and Corning on the EU notification of their Korean JV in OLED production.
- **Sharp Corporation, Sharp Electronics Europe GmbH:** Defended against a claim brought by Nokia Corporation for antitrust damages in the High Court in London.
- **Sharp Corporation, Sharp Electronics Europe GmbH:** Defended against a claim brought by Sony Corporation for antitrust damages in the High Court in London.
- **SK Hynix:** Advised SK Hynix in front of the General Court challenging the Commission's commitment decision against Rambus.
- **SK Hynix:** Advised SK Hynix in front of the General Court of the European Court of Justice challenging the Commission's commitment decision against Rambus, T-148/10.
- **SK Hynix:** Advised SK Hynix in front of the General Court of the European Court of Justice challenging the Commission's decision to reject a complaint T-148/10.
- **Tempus Energy:** Litigation challenging the first Commission decision approving a Member State electricity capacity mechanism in the UK.
- **Tube Lines:** Advised Tubes Lines on the refinancing of the London Underground PPP and received aid.