

MACFARLANES

COMPETITION



INTRODUCTION

Competition law is an important part of everyday commercial relationships. All businesses, no matter what their size or field of activity, need to be aware of the impact that competition law has on prospective mergers and on agreements, strategic plans and general commercial behaviour. The consequences of failing to comply with the law are serious, both for companies themselves and, increasingly, the individuals working for them.

We adopt a commercial and pragmatic approach, delivering practical and tailored advice to a wide range of clients on all aspects of competition law. We have been involved in some of the most ground-breaking cases that have shaped the way in which competition law is enforced in the UK today. We brought the first ever challenge to an Office of Fair Trading (“OFT”) merger clearance decision which, contrary to many commentators’ predictions at the time, was successful and led the OFT to change its approach to assessing mergers. We were also instrumental in securing the first ever intervention by the Secretary of State in a media case (BSkyB/ITV) for the benefit of our client, Virgin.

Our “can do” attitude and ability to find innovative solutions to complex issues enables us to help our clients achieve their business objectives, even in the most difficult cases. By persuading the OFT not to pursue cases of alleged anti-competitive behaviour against Reebok and Woolworths, we ensured that our clients – unlike others – were not fined in cartel cases. On the merger front, our tactics and approach have helped clients to avoid in-depth probes in cases leading to high market shares – in one case over 90 per cent.

MARC ISRAEL ►
PARTNER - HEAD OF
COMPETITION



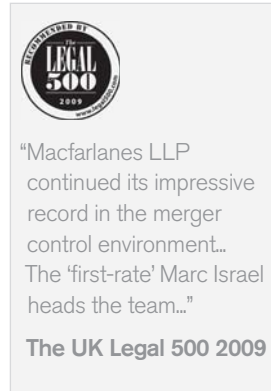
“Competition law often raises complex legal and economic issues. We aim to make these issues easy for you to understand. We will work collaboratively with you, enabling your businesses to exploit the opportunities to use competition law to advance your interests, both in an M&A context as well as when dealing with day-to-day business issues.”

EXPERTISE

The application of competition law requires a detailed understanding of each client's business and the markets in which they operate. We will invest the necessary time and effort to get to know your business and help you to advance your interests whether you are, on the one hand, directly involved in mergers or under investigation by competition authorities or, on the other, seeking to disrupt mergers or complain about the conduct of third parties.

We have extensive experience both pursuing and defending competition-related cases in relation to:

- ◆ **COMMERCIAL ARRANGEMENTS:** We provide clients with regular competition law advice relating to a wide range of commercial arrangements and business practices, such as distribution and franchising agreements.
- ◆ **COMPLIANCE PROGRAMMES AND AUDIT:** We advise companies across a range of industries on competition compliance programmes. We identify specific risk areas and provide advice on how to reduce those risks, whilst at the same time ensuring clients have as much flexibility as possible to run their affairs as they see fit.
- ◆ **INVESTIGATIONS:** We have been involved in many UK and EU investigations into both alleged cartels and abuses of dominance. We have acted for companies which are alleged to have infringed the law (including successfully applying for leniency), as well as for companies who have complained to competition authorities about the conduct of third parties.
- ◆ **LITIGATION:** We advise on private actions (eg claims for damages) by third parties who have suffered loss as a result of breaches of competition law. These claims may be based on infringement decisions by competition authorities following cartel or abuse of dominance investigations (so-called



"follow-on" actions), or "stand alone" cases which are not based on regulators' decisions. We have also successfully advised clients on judicial review of decisions taken by competition authorities.

- ◆ **MERGERS, ACQUISITIONS AND JOINT VENTURES:** We advise on all regulatory aspects of M&A transactions and joint ventures, and regularly deal with the OFT and Competition Commission in the UK, the European Commission, and competition authorities throughout the world. We recently acted on one of the first cases to be dealt with under China's new competition law and secured clearance based on a complex remedy that had never before been considered in China.
- ◆ **PUBLIC PROCUREMENT:** We regularly advise clients on public procurement issues across a wide range of industries. We advise contracting authorities who are required to abide by the relevant rules, as well as companies bidding for contracts who may either wish to challenge the award of contracts to third parties, or ensure that any contracts awarded to them will withstand challenge by others.
- ◆ **STATE AID:** We advise on State aid matters covering a wide range of industries. Our work in this area has included challenging measures taken by HM Treasury.

OUR APPROACH

The way we work with clients is at the heart of our drive for excellence. We build strong and enduring relationships with clients to ensure that our advice is given against a background of a deep understanding of their business activities. Clients appreciate the investment we make to understand them and their business, and value the consistency and continuity of service we offer. We are committed to achieving business-orientated solutions as quickly and cost effectively as possible.

To achieve these goals we ensure that small focused teams work for particular clients. This results in continuity of relationships and enables us to provide practical and commercial advice as we have a detailed knowledge of our clients' business imperatives.

That knowledge can be key to ensuring that the structure of a deal properly addresses potential competition concerns. Our approach has therefore, in appropriate cases, involved not seeking regulatory approval for mergers (in jurisdictions such as the UK where such approval is not mandatory), even though the cases in question might have been expected to raise issues which could have significantly caused delay to closing.

Our team is led by Marc Israel, who has been recognised as one of the world's top 50 competition lawyers under the age of 40 and includes lawyers with many years of experience.

CHAMBERS AND PARTNERS

"The firm handles the full range of competition law issues and provides a quality, partner-led service."

Chambers UK 2010

"The firm is a leader in Chinese competition law."

Chambers UK 2010

"The highly respected team covers both transactional and behavioural work, but clients praise in particular its 'exceptional merger control work'."

Chambers UK 2009



"A proven track record in merger control, behavioural and contentious work."

The UK Legal 500 2008



"It's a pleasure to deal with savvy, solution-oriented lawyers who continue to provide a technically able and commercially focussed service, helping my business understand and navigate the anti-trust minefield."

MARK SCHREIBER
CHIEF OPERATING OFFICER
LIQUIDITYHUB LTD

RECENT WORK



The OFT received a complaint from the MP for the Isle of Wight – backed by 8,000 signatures – arguing that a lack of competition on cross-Solent ferry routes had resulted in fares that were too high and other adverse effects for consumers. As a result of that complaint, the OFT launched a market study into the cross-Solent ferry market to decide whether to initiate a two-year in-depth investigation into the market by the Competition Commission.

Although **Wightlink** accounts for around 70 per cent of all cross-Solent traffic and the OFT considered that features of the market adversely affected competition we persuaded the OFT that no in-depth investigation was warranted. Our pro-active approach enabled us to allay potential concerns about pricing and service levels as a result of which the OFT decided not to refer the market to the Competition Commission (compared to airports and local buses, two other recent transport-related cases which have led to market investigations).



The takeover of **Ottakar's** by HMV/Waterstone's involved an in-depth investigation by the Competition Commission into book retailing. Although generating more complaints than any other previous case it was cleared unconditionally.

Our client received competing bids from management and HMV/Waterstone's. Although HMV/Waterstone's bid was higher, it raised potential competition issues and we advised Ottakar's that, although a reference to the Competition Commission was likely, we believed it would ultimately be cleared. On that advice the board switched its recommendation from management's offer to the bid from HMV/Waterstone's. Our advice was wholly accurate and the deal was unconditionally cleared, thereby achieving the best result for shareholders.



Our client, **Virgin**, wished to oppose the acquisition by BSkyB of a 17.9 per cent stake in ITV.

Although the size of BSkyB's shareholding was below the level that would normally be considered to confer any form of control, we successfully argued that the facts of the case were such that BSkyB did have "material influence" over ITV. This meant that the UK competition authorities had jurisdiction to investigate the deal. Another feature of the case was that we successfully argued that the case merited the Secretary of State to intervene in the matter on the basis of "media public interest" – the first (and to date only) time such an intervention has been made.



Investigation by the OFT into allegations of price-fixing in the retailing of tobacco products. The case involves two manufacturers (Gallaher and Imperial Tobacco) and 12 retailers. Although the case is on-going, one manufacturer and 6 retailers, including **Threshers**, have concluded "early settlement" agreements with the OFT in return for a lower fine than might otherwise be involved.

Although no decision has yet been reached, under the terms of "early settlement" our tactics have resulted in a significantly reduced fine than might otherwise be imposed should a final infringement decision be adopted by the OFT. We were able to achieve this by pro-actively engaging with the OFT which is likely to lead to a material saving to our client in the long run.

INTERNATIONAL

As advisers to many of the world's leading businesses and business leaders, we manage international matters in an effective and seamless manner. Our distinctive approach is founded upon what our clients tell us works best for them.

- ◆ Our lawyers work alongside leading local counsel: always with firms and individual lawyers that are right for the job in hand.
- ◆ We give clients a single point of contact and coordinate advice across all relevant jurisdictions, to make sure that it is seamlessly given.
- ◆ We ensure that advice is always to the point, never "one size fits all" or of a standard that falls short of what you would expect of us, Macfarlanes.

The proven result: the right lawyer, in the right place, giving you the best possible advice.

1 ALCOA INC.

Advising Alcoa Inc. on its joint venture arrangements with Aluminium Corporation of China (Chinalco) and their joint \$14bn purchase of a 12 per cent stake in Rio Tinto.

2 PRIVATE CLIENT

Advising on the establishment of a family office in London to manage investment portfolios worth several billion dollars for two Russian families and arranged for the migration of several family members to the UK.

3 MITSUBISHI RAYON CO., LTD

Advised Mitsubishi Rayon Co., Ltd, alongside Paul Weiss, on its \$1.6bn acquisition of Lucite International, a transaction that included significant real estate, environmental and other due diligence aspects.

4 CSN

Advising CSN on its £6.1bn bid for Corus Group.

5 PERNOD RICARD

Advising Pernod Ricard on its €5.6bn acquisition of Vin & Sprit (owner of the Absolut vodka brand) from the Kingdom of Sweden.

6 AIR LIQUIDE

Advising on the acquisition of Linde's interests in Singapore Oxygen, Brunei Oxygen, Vietnam Industrial Gas and Eastern Industrial Gases (Thailand) and the sale of Air Liquide's interest in Hong Kong Oxygen and Malaysian Oxygen.



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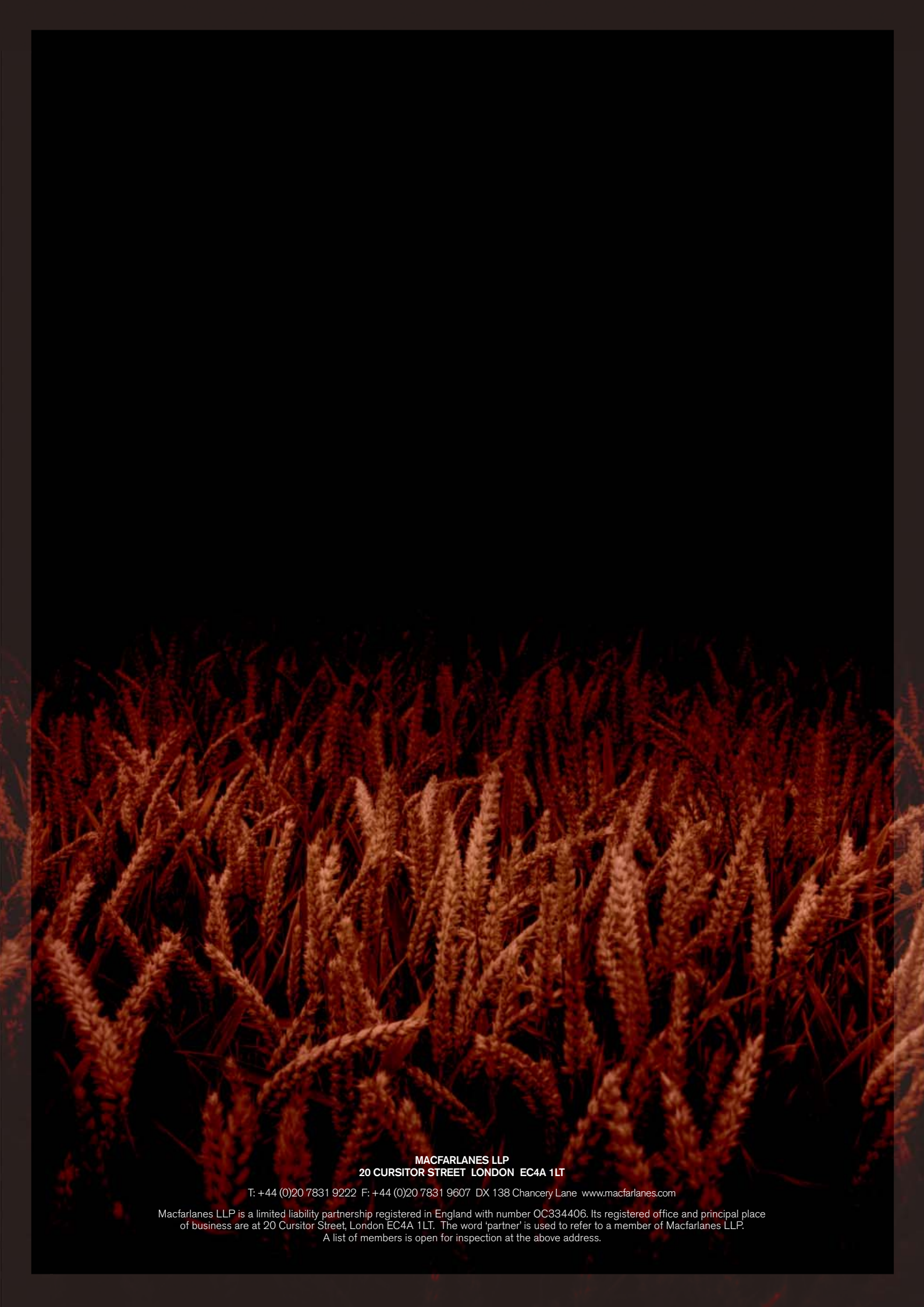
From our base in London, we offer discerning clients an alternative to the world's legal giants. We are recognised for the quality of our work, not just in dealing with the full range of corporate and commercial matters, but in advising our clients on their private affairs. They trust our judgment and we are in a unique position to advise on their most complex matters, whilst at the same time remaining smaller than our competitors. That means that we can maintain the very highest levels of service and partner involvement that our clients expect.

The nature of business today is such that we are usually advising on matters that reach across multiple jurisdictions. By working with other leading independent firms and lawyers around the world in each relevant jurisdiction, we provide a seamless service, wherever and whenever our clients need it.

If you would like further information or specific advice please contact your usual Macfarlanes contact or:

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Macfarlanes LLP is a limited liability partnership registered in England with number OC334406. Its registered office and principal place of business are at 20 Cursitor Street, London EC4A 1LT. The word 'partner' is used to refer to a member of Macfarlanes LLP. A list of members is open for inspection at the above address.