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**Baker  
McKenzie.**

# **Antitrust Compliance**

13 - 17 September 2021

**Annual Compliance Conference**

# Uncovered a Competition Law Infringement? Risks and Rewards of Engaging With the Authorities

Thursday 16 September

3.00 - 4.30 pm BST / 4.00 - 5.30 pm CEST / 10.00 - 11.30 am EDT

# Speakers



**Luis Gomez**  
Partner,  
London (Chair)



**Jeffrey Martino**  
Partner,  
New York



**Harikumar Pillay**  
Partner,  
Singapore



**Francesca Richmond**  
Partner,  
London



**James Robinson**  
Partner,  
London



**Lena Sersiron**  
Partner,  
Paris



**Eren Kilich**  
Associate,  
London

# Background to Fact Pattern

- CHIPZ is a US-headquartered manufacturer of specialist microchips. These microchips are used in the manufacture of highly specialised communications equipment which is used by state-owned rescue services.
- The largest purchasers of these microchips are 15 original equipment manufacturers ("OEMs"), based in different locations across Europe, the US and Singapore. These OEMs incorporate the microchips into their communications equipment, which is then sold to rescue services around the world. CHIPZ sells to OEMs via distributors. The end-user rescue services (via their governments) also order replacement microchips directly from CHIPZ and its competitors.
- The European HQ of CHIPZ is in London, and this is where both the Sales Management Team for EMEA and the Legal Team for EMEA are based. CHIPZ also has smaller offices, including local sales teams, in a number of European countries, as well as sales offices in other locations across the US and Asia Pacific.
- CHIPZ has around 5 key competitors, who all have sales offices across the same regions as CHIPZ.

# The Complaint

## Part 1 – Fact Pattern

- The Sales Manager for CHIPZ Sarl in Paris has received a letter of complaint from a French OEM (Fischer). The letter is complaining about CHIPZ pricing, and alleges that:
  - CHIPZ and its competitors have been colluding to keep prices to distributors high
  - CHIPZ has told its distributors not to discount its microchips beneath a certain level when selling to OEMs
  - Fischer says it has spoken to other OEMs who have the same suspicion. In fact, a European distributor for CHIPZ confirmed as much to Fischer when Fischer pushed back on pricing and tried to get a discount
- The letter states that Fischer is raising the same complaint with other microchip suppliers and distributors, and that, if CHIPZ does not resolve this issue and get prices down, Fischer will consider complaining to the French competition authority.
- The CHIPZ Sarl Sales Manager has flagged the letter to CHIPZ Legal in London, who has reached out to Baker McKenzie to assist.

# First Evidence

## Part 2 – Fact Pattern

- There is an early indication from the first two interviews conducted that a Senior Sales Director in the US and a Senior Sales Director in London have instigated problematic behaviour (of the type alleged by Fischer), but that they have disseminated the implementation of this behaviour across sales locations.
- These Senior Sales Directors have discussed implementation with the local Sales Lead in a number of the jurisdictions where CHIPZ has sales offices, including the US, across Europe and in Singapore.
- The London Senior Sales Director has indicated that much of the conduct has been actively implemented by 4 salespeople: one in San José (US), one in London, one in France and one in Singapore.
- These 4 salespeople are close colleagues, well-connected in the industry, and have a reputation for gossip. They have all worked for competitors in the past, and socialise with salespeople from CHIPZ's 5 key competitors. They also do a lot of hospitality events and sales meetings with their local distributors.
- In addition to numerous emails back and forth between these salespeople, they also make use of WhatsApp, take meeting notes using Evernote on their iPads, and text each other on both work and personal phones.

# Further Evidence Obtained

## Part 3 – Fact Pattern

- Evidence uncovered from the interviews and document review is showing:
  - information exchange on future pricing between CHIPZ and its competitors
  - communications between CHIPZ and its competitors to the effect that they should "hold their nerve", not reduce prices, and police their distributors closely
  - inducements from CHIPZ to its distributors not to discount – e.g. threats of withdrawal of supplies, cutting marketing support etc.
  - CHIPZ passing on complaints from one distributor to another about discounting, telling the discounter to "sort it out", and then copying both distributors (complainant and discounter) on the final email to show that CHIPZ was on top of the issue
- The evidence suggests that the conduct involved CHIPZ personnel, competitors and distributors, and related to sales to OEMs.
- The conduct appears to have taken place across numerous countries: at least 7 EU Member States including France, Germany, Italy, Spain, plus the UK, US and Singapore.

# Further Evidence Obtained (cont'd.)

## Part 3 – Fact Pattern

- The conduct appears to be ongoing, and has been going on for 10 years – the starting point was a big rise in input costs in 2011, which prompted discussions amongst the microchip manufacturers.
- CHIPZ plays a lead role in encouraging the behaviour – it even appears that CHIPZ was instrumental in starting the original conversations.
- There have been sporadic meetings where all 6 microchip manufacturers were present (every couple of years or so), and the head sales office for each competitor has known about and encouraged the conduct, though the majority of the competitor contacts have occurred at a national level, and all exchanges with distributors have been at a national level.
- CHIPZ has received a second letter of complaint, from another French OEM, and the client is asking for advice on how to proceed.

# Living Through Leniency and Settlement

## Part 5 – Fact Pattern

- The competition authorities have been approached in a number of jurisdictions.
- Immunity was available in the US, UK and Singapore.
- Full immunity was not available with the EC, but CHIPZ was "second in" overall (i.e., first leniency applicant).
- The European Commission takes the case, but CHIPZ is considering the merits of pursuing a settlement versus going down the contested/standard route.

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**Questions**



# Catch up on- demand

Global Antitrust Hot Topics

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Antitrust Developments in Distribution / Supply Chain

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# Next week

**Tuesday 21 September,**  
**3.00 - 4.15 pm BST**  
**4.00 - 5.15 pm CEST**  
**10.00 - 11.15 am EDT**

Geopolitical Impact of Biden  
Administration, Brexit and WTO  
on Customs

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**Wednesday 22 September,**  
**3.00 - 4.00 pm BST**  
**4.00 - 5.00 pm CEST**  
**10.00 - 11.00 am EDT**

Navigating Free Trade  
Agreements

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**Thursday 23 September,**  
**3.00 - 4.00 pm BST**  
**4.00 - 5.00 pm CEST**  
**10.00 - 11.00 am EDT**

Understanding Global Customs  
Valuation Issues

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