



# Competition Economics

Cross-sector specialist  
Competition advice

[kpmg.com/uk/competitioneconomics](https://kpmg.com/uk/competitioneconomics)





## Introduction to our services

### **Our competition practice**

KPMG's Competition Economics Team can advise clients on all aspects of competition proceedings before the European Commission, national competition authorities, regulators and the courts:

- Mergers, acquisitions and joint ventures
- Market studies/sector inquiries
- Abuse of dominance
- Vertical and horizontal agreements
- State aid
- Antitrust damages estimation and litigation support
- Regulated industries

### **Sound economics and in-depth knowledge of regulators' practices**

Our economists have strong academic credentials and many continue with research today. We have a track record in applying sound theoretical and empirical techniques to many high profile cases. In addition, a number of our senior economists have held key positions within both UK and EU competition authorities and have a deep understanding of how competition authorities across the world operate.

### **KPMG's wider skills, network and sector expertise**

Our Competition Economics Team sits as part of KPMG's Economics & Disputes Practice and works closely with our KPMG colleagues, enabling us to offer a range of complementary skills to our clients, including forensic accounting, data analytics, financial economics and corporate finance. We also draw on expertise of KPMG's global network of member firms across 155 countries.

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KPMG's Competition Economics advice is tailored to effectively support our clients' individual requirements. Collaborating with our network of academic associates and with colleagues from the wider KPMG network, we deliver high quality economic advice built on deep sector expertise.





## Mergers and joint ventures

### Selected case studies

Our economists have been involved in many of the landmark merger cases of the last decade, including over a dozen Phase II cases at the European Commission.



#### European Commission (EC) Sony/Mubadala Development/EMI Music Publishing merger inquiry

Our economists have acted for Sony in the EC merger investigation into the acquisition of EMI's music publishing business, which was conditionally cleared by the EC following a Phase I investigation. The advice covered numerous aspects of the deal, including providing economic analysis of the potential for unilateral effects, and helping the merging parties to assess potential remedies that could be offered to the EC to obtain merger clearance.



#### European Commission (EC) Western Digital Ireland/Viviti Technologies merger inquiry

Our economists supported Western Digital (WD) and Viviti throughout the EC's Phase I and Phase II investigation into WD's acquisition of Viviti, the hard disk drive business of Hitachi. Our economists also provided support in relation to merger investigations by other national competition authorities into this transaction, including investigations by the ACCC, JFTC, KFTC and MOFCOM. The work performed by our economists included economic analysis on market definition, coordinated effects, unilateral effects and vertical effects, in addition to managing the data room process during which the economic advisors were granted access to the EC's own data and analysis.



#### Competition Commission (CC) Epwin/Latium merger inquiry

KPMG provided economic advice to Epwin, a client in the housing sector, throughout a CC Phase II merger inquiry. Our analyses included setting out the correct theoretical framework for the assessment of the competitive effects of the merger and assessing the appropriateness of the UPP index to simulate the pricing effects of the merger.

We can help clients to conduct an early risk assessment, to anticipate the likely areas of challenge from competition authorities, so that deals can be designed consistent with clients' risk appetite.

We can help clients to build an economic story, to be on the front foot with the competition authorities, increasing the chances of a smooth and effective engagement with the authorities.

We can provide technical economic analysis and help clients put forward an evidence base before competition authorities, challenging their analysis as appropriate.

KPMG's Competition Economics practice can help clients engage effectively with competition authorities during merger investigations to maximise the chances of obtaining a successful outcome. Our team has significant experience of applying economic techniques to merger investigations before competition authorities in the UK, Europe and other jurisdictions worldwide





## Market/sector inquiries

### Selected case studies

KPMG Competition Economics has advised leading parties to market inquiries across many different sectors such as energy, healthcare, motor insurance, banking, audit, credit cards, workplace pension and annuities.



### Private Healthcare Market Investigation

KPMG advised a leading private healthcare provider throughout the Competition and Markets Authority's investigation into private healthcare provision in the UK. Our economists provided economic analysis and support on all aspects of the case, including pivotal support during our client's appeal of the CMA's decision to the Competition Appeal Tribunal, that resulted in the CAT quashing the CMA's divestment decision and remitting the case back to the CMA.



### FCA Market Studies into Retirement Income and Credit Cards

KPMG supported a leading life insurer through a Financial Conduct Authority market study into retirement income products and a leading credit card provider through the FCA market study into credit cards provision. Our team helped to review qualitative and quantitative submissions to the FCA, ensuring that evidence was presented in a clear and compelling way. We also advised and helped our clients anticipate and respond to the FCA's technical analysis.



### Energy Market Investigation

KPMG is currently advising one of the largest six energy suppliers through the ongoing Competition and Market Authority's market investigation into the supply of energy in Great Britain. Our work has included support responding to CMA quantitative and qualitative analysis as well as CMA information requests, support in preparation for CMA hearings, and scrutinising the CMA's analysis in three 'data rooms'.

We can help clients to anticipate the authorities' likely concerns and the impact on their business, helping to anticipate and manage the risks from a market/sector inquiry.

We can help clients to present clear and compelling economic evidence to support their arguments and to help shape the authorities' analysis and conclusions.

We can scrutinise the authorities' technical analysis, in particular quantitative analysis often based on large economic datasets, helping clients to rebut inappropriate or unreliable conclusions.

Market or sector inquiries are an increasingly important area of competition policy for firms to navigate. Economic advice is often key to engaging effectively with competition or regulatory authorities during their market/sector inquiries.





## Anti-competitive conduct

### Selected case studies

Our economists have advised clients in the context of a number of high profile investigations into anti-competitive conduct, across a range of sectors.



#### Large commercial dispute in Canada

Dr Nicola Mazzarotto, Head of Competition Economics at KPMG in the UK, provided an expert witness report and expert witness testimony in the context of a confidential, very large commercial dispute in Canada. The competition economics analysis on this case centred around the competitive effects of joint ventures and individual non-compete clauses, as well as the economic and econometric analysis of buyer power.



#### European incumbent postal services operator

KPMG conducted a review of the cost model developed by a European incumbent postal operator. We evaluated the robustness of its methodology as well as potential competition law risks, including margin squeeze. We also set out a number of recommendations for improvement of that cost model to make it better suited to be used in the context of competition and regulatory investigations.



#### Appeal against OFT Chapter I infringement decision in the sale of tobacco

One of our economists supported Imperial Tobacco during its successful appeal before the Competition Appeal Tribunal against the OFT's Chapter I infringement decision in relation to retail prices for tobacco products in the UK. The work involved economic analysis of pricing practices between manufacturers and retailers. It also involved detailed work on setting out how the allegations developed by the OFT of cartel behaviour in the tobacco retail market related to economic theory.

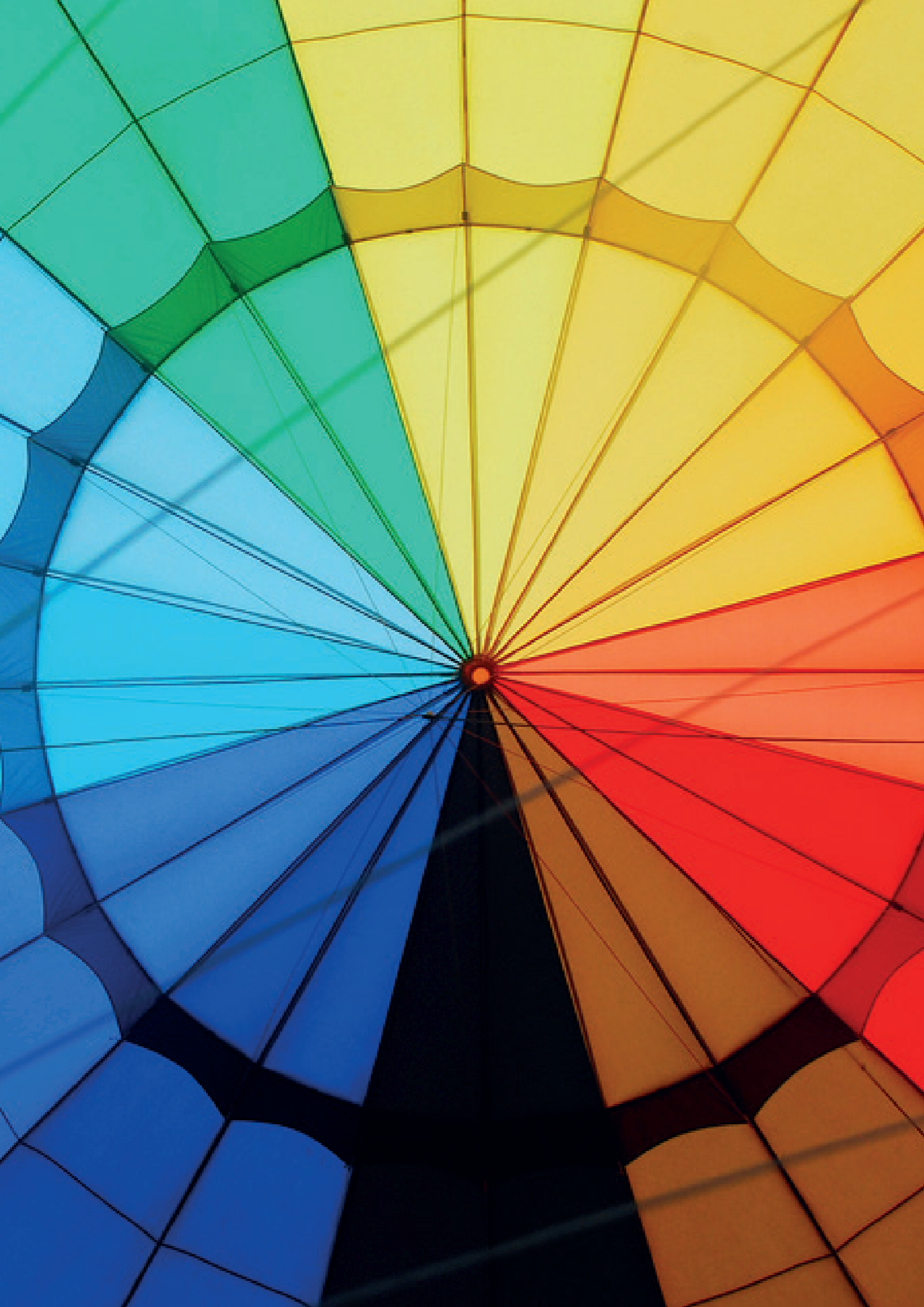
Competition authorities and courts throughout Europe increasingly use economic analysis to determine whether an agreement or practice is anti-competitive. Companies often need economic analysis and advice prior to implementing certain agreements or practices and during investigations into alleged anti-competitive conduct.

We can help clients assess whether their business practices are anti-competitive, assessing the effects of contractual clauses or certain pricing and non pricing practices that may raise concerns.

We can provide technical economic analysis and help clients put forward an evidence base to make their case before competition authorities, challenging the authority's analyses as appropriate.

We can support clients in private action cases related to antitrust matters, either helping to put forward a case or defending against allegations of anti-competitive conduct.





## Antitrust damages

### Selected case studies

Our economists have provided economic evidence for a number of disputes and litigation matters before courts and tribunals across the world.



#### Major computer memory manufacturer

One of our economists advised a major manufacturer of computer memory in a civil cartel case. Our economist's advice ranged from modelling the demand for Dynamic Random Access Memory ('DRAM') and Rambus DRAM, to estimating overcharge and assessing and apportioning damages.



#### Major lithium-ion battery producer

One of our economists assisted a major international producer of lithium-ion batteries facing antitrust accusations relating to collusive conduct and price fixing. The assistance included coordinating data discovery to worldwide competition authorities and developing econometric models to assess to what extent there may have been price impacts from the alleged behaviour.



#### Major LCD panel manufacturer

One of our economists supported a major LCD panel manufacturer through a series of criminal and civil actions in the United States. This included developing econometric models which, among other things, defined the relevant product and geographic markets, assessed potential overcharge and pass-on, and quantified direct and indirect plaintiff damages.

Estimating antitrust damages often requires a range of skills including economics, econometrics, data analytics, forensic accounting, financial cost modelling and sector specific knowledge. As an integrated firm, KPMG's Competition Economics Team works closely with KPMG colleagues thereby providing a one-stop-shop for the skills you may need and increasing the efficiency and quality of the damages estimate.

We can help claimants or defendants to conduct an early risk assessment, to assess the potential strength of the case and help anticipate the likely areas of challenge.

We can help clients to quantify the damages, using techniques to calculate what profits would have been 'but for' the anticompetitive practice.

We can develop the economic arguments and put together the required evidence base to support the case, in order to improve the clients' chances of a successful outcome.





## State aid

### Selected case studies

Our economists have provided economic advice in relation to assessment of State aid on a number of government sponsored measures, across a range of sectors.



#### EC approval for Hinkley Point C (HPC)

KPMG advised the UK's Department of Energy and Climate Change (DECC) in relation to the new nuclear power plant at HPC. We assisted DECC in the context of its State aid application to the European Commission, providing advice and analysis on all of the key aspects of the application as well as an economic assessment of the potential distortions to trade and competition.



#### EC approval of British Business Bank (BBB)

KPMG advised BBB on its key State aid submissions, valuations and due diligence. As part of our work, we analysed and benchmarked all BBB's investments, developing extensive evidence to support its submission to the European Commission. We provided advice on how to structure and deploy investments in a way that was compatible with State aid rules not only to BBB but also to Green Investment Bank and UK's Shareholder Executive.



#### EC approval for biomass conversions at Drax and Lynemouth

KPMG assessed the potential impact on competition as a result of the CfD for biomass conversions at Drax and Lynemouth. We prepared an independent report, which was submitted to the European Commission as part of the UK Government's response to the EC's decision to open an investigation into the CfD for Lynemouth.

We can help to conduct an early risk assessment, to anticipate the likely areas of challenge from the EC, helping to design the measure in a way that is consistent with the aid's objectives.

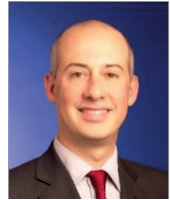
We can help to assess whether an intervention can be viewed by the EC as State aid and suggest terms compatible with State aid rules to help all stakeholders to be on the front foot with the EC.

We can provide technical economic and financial analysis to prepare an evidence base for the case before the EC, including challenging alternative viewpoints as appropriate.

KPMG combines economic, financial and strategic advice, drawing on our global presence and deep sector expertise, to support clients in the context of State aid applications and investigations. We provide advice on the Market Economy Investor Principle, helping to design appropriate measures consistent with State aid rules, and on whether any proposed measures may give rise to concerns in relation to distortions to trade and competition.



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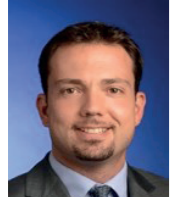
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