Operimentum Littera

The reason I apply is because I’m looking to join a reputable firm and help expand in the area of expertise of Artificial Intelligence. An area with little governance or regulators inevitably leads to major issues in commercial dealings.

It is interesting to see the response in relation to the Competition Act 2022 that has given power to the ECN+ Directive increasing enforcement powers given to the NCA’s, or that Article 63 of the European Draft AI Act allowing for NCA’s access to data that ‘may be of interest’ of them and ‘no suspicious activity’ is needed to do so. With so many businesses now increasingly using algorithms to make strategic decisions, they may be unaware of the associated risk.

NCAs will also have the ability to access data that they deem fit, without the need for suspicious activity. This far-reaching action means there will be significant implications for mergers that will likely result in or prompt parties to voluntary notify of a sub threshold merger in order to avoid a 60-day working CCPC intervention risk. As a result, it will be costly in time and money for both parties. Additionally, with the new regime there will be greater opportunity for the likes of third parties to object to transactions by urging the CCPC to invoke its new powers and require notification.

Furthermore, while leniency applicants obtain full or partial immunity from fines, there is no clear definitive provision to absolve them from follow-on damages actions. The Damages Directive foresees rules on disclosure of evidence, which exempts leniency statements themselves. Yet, it does not cover fining decisions that do not cite leniency applications but refers to them.

There is also no concurrent legal obligation to report the situation to competition authorities and apply for immunity. Making an immunity application is the result of a complex weighing of the benefits and disadvantages, and a detailed risk analysis. Companies may now instead seek to find alternative ways to cease the behaviour and protect their interests, without necessarily combining that with an immunity application.

Article 11 of the Damages Directive marginally limits the joint and several liability of immunity recipients. The amount of contribution of an infringer that has been granted immunity from fines under a leniency programme shall not exceed the amount of the harm it caused to its own direct or indirect purchasers or providers. Therefore, the incentive may not be there for a decision to apply for immunity as there is no degree of certainty that immunity applicants have when determining whether to make the application.

Thus, it only means immunity from administrative fines. There is still a whole layer of private enforcement which the immunity applicant will need to face. In conclusion, it lacks certainty, not only in the aspect of, time, outcome and jurisdiction but whether a business would actually benefit from an application for immunity.

I believe I would be an ideal candidate and an overall positive addition to support the firm in its future endeavours and success. I look forward to hearing from you.