



# MMD

## MONDAY MORNING DISPATCH

BY Chadwick Lawrence

WEEK 5

17 FEBRUARY 2025

📅 **Upcoming Media Law & Defamation Seminar** 📅 – next week, we're hosting a key session on protecting your company's reputation in the media, [register now](#).

Explore our full **2025 seminar & events calendar** below, along with upcoming **Mental Health First Aid courses**. Daniel continues his video series on **commission arrangements**, discussing the need to define various terms at the outset. Jamie from our Litigation Team brings you his second article on **UK Competition Law**, discussing the **Chapter 2 Prohibition**.



UPCOMING EVENTS



THE LEGAL ALTERNATIVE



THE MEDIA HUB



WHAT'S GOING ON

## UPCOMING EVENTS

### Seminars & Events

We're excited to share our 2025 seminar and events line-up! Our **free events** are tailored to offer something for everyone – take a look below to see what we have to offer:

👉 [Register here](#)

UPCOMING  
EVENTS



**26 Feb, 8:30 AM – 10:00 AM |**  
**Hays Leeds Office**  
*Media Law & Defamation*



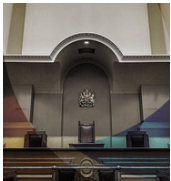
**13 Mar, 8:30 AM – 10:00 AM |**  
**Sedulo Leeds Office**  
*Planning Your Business  
Future with Sedulo*



**27 Mar, 8:30 AM – 10:00 AM |**  
**Location TBA**  
*Conducting a Disciplinary  
on Harassment*



**Details TBA**  
*Creating a Culture of  
Equality, Diversity & Inclusion*



**8 May, 8:30 AM – 12:00 PM |**  
**Headingley Stadium Leeds**  
*Health & Safety Mock Trial  
with Lighthouse*

## Mental Health Awareness Sessions

We're partnering with **Tailored Learning Solutions** to offer accredited Mental Health First Aid courses at our **Wakefield office**:

23–24 April | 25–26 June | 24–25 September

Details & booking: [Tailored Learning Solutions](#)  
For more information, email: [carolgedhill@chadlaw.co.uk](mailto:carolgedhill@chadlaw.co.uk)



## THE LEGAL ALTERNATIVE PODCAST

### New Year, New Podcast

Our podcast is back with a fresh new look and exciting topics ahead. Catch up on past episodes while we prepare for our latest releases.

➤ [Listen here](#)





➤ [Watch here](#)

## THE MEDIA HUB

### Commission Impossible? Not with these tips! 2/3

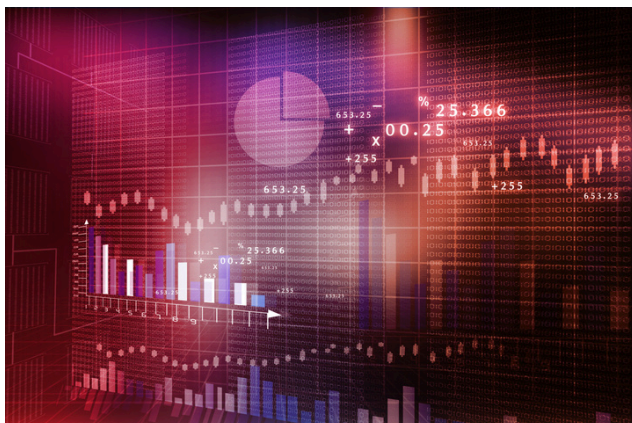
We continue our video bonanza on commission arrangements by discussing the need to very tightly define various terms at the outset. The starting point is to understand exactly what we are trying to reward and what behaviours we are trying to drive. The video then considers how to define customers, sales and reward, and gives tips on options such as differing levels of commission and tapering after a period of time.

## WHAT'S GOING ON

### Understanding the Chapter 2 Prohibition – Competition Law Update

#### Introduction

In our previous article relating to competition law, we covered the Chapter 1 prohibition in the Competition Act 1998. As part of this week's edition of the Monday Morning Dispatch, we thought we would cover the basics of the Chapter 2 prohibition in the Competition Act 1998. We will also cover what action can be taken against a party who you suspect is in breach of said prohibition, and who to contact at Chadwick Lawrence in the event you require any further advice or assistance in that regard.



#### The Chapter 2 Prohibition

The provisions of Article 102 TFEU are incorporated into UK Law by Chapter 2 of the Competition Act 1998.

Section 18 Competition Act 1998 ('CA') provides as follows:

*"Subject to section 19, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the United Kingdom."*

As with the Chapter 1 Prohibition, an undertaking will include companies, partnerships, sole traders, non-profit making organisations, and public organisations carrying on economic or commercial activities. However, in contrast to the Chapter 1 prohibition, Chapter 2 can be breached by the unilateral conduct of an undertaking.

Once the undertaking has been established, they must be deemed to be in a dominant position. The test for dominance is set out in *United Brands v Commission* (1978); the undertaking must be in a position of strength which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave, to an appreciable extent, independently of its competitors, customers, and ultimately of its customers.

For the above-mentioned test to be utilised, the relevant market must first be established. The relevant market is comprised of two elements – the relevant product market and the relevant geographic market.

The relevant product market, as stated in the Market Definition Notice (provided by the European Commission), is considered to be all those products and/or services which are regarded as interchangeable or substitutable by the consumer... by reason of the products' characteristics, their prices, and their intended use.

The relevant geographic market, as stated in the Market Definition Notice, is considered to be the area in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas. Due to the complexities of effectively defining both elements that make up the relevant market, only a brief overview will be provided in today's article.

Once the relevant market has been established, the undertaking's share of that relevant market must be deduced, which will ultimately decide whether the undertaking is in a position of economic strength.

First, the market share of that undertaking will be deduced. Although this is an important factor to consider, it isn't determinative of whether the undertaking will be deemed to be in a position of economic strength. Each category of market share will give rise to certain presumptions; having a 50%+ market share will bring a rebuttable presumption of dominance, 40-50% will have no presumption, and less than 40% will bring a presumption of non-dominance.

Other factors will be considered thereafter, including market trends; barriers to entering the relevant market; and customer buying power. After such factors are considered, a party will be in a position to consider whether an undertaking is in a position of economic strength. If it is decided that the undertaking is in a position of economic strength, the next stage is to show what abuse that undertaking has committed.

Section 18(2) CA 1998 provides specific examples of abuse that an undertaking can commit, the examples being:

- Directly, or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- Limiting production, markets, or technical development to the prejudice of consumers;
- Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts.

Abuse can generally be allocated to two different categories – exploitative abuse and exclusionary abuse.

Exploitative abuse is where an undertaking uses its dominant position to exploit others in the market. Examples of this include charging excessive prices and demanding unreasonably low prices (if the undertaking is a buyer). An undertaking will be judged to be charging excessive prices if, in comparison with the economic value of the product, they are charging a price that is unfair.

Exclusionary abuse is where the undertaking engages in practices that restrict or exclude competitors from the market. Examples of this include predatory pricing; exclusive dealings; refusing to supply; tying; price discrimination; fidelity rebates; and margin squeezes. Both categories of abuse must be capable of affecting trade within the United Kingdom for the provisions of the Chapter 2 prohibition to apply.

### **The Sanctions for Breaching the Chapter 2 Prohibition and how Chadwick Lawrence can help**

As with the Chapter 1 Prohibition, UK competition authorities have the power to impose a fine of up to 10% of an undertaking's worldwide turnover. Pfizer were the subject of this sanction in 2014 when they were fined £84 million for abusing their dominant position – charging excessive and unfair prices – in the UK market for phenytoin sodium capsules. This was along with Flynn, who were fined £5 million for their breaches.

The fine is in addition to the expected reputational damage and third-party court actions that an undertaking will face after being liable for breaching competition law.

That concludes this basic overview of the Chapter 2 Prohibition in Competition Act 1998. Please note that there are defences, block exemptions, and leniency programmes that have not been explained in this article, as this is simply a brief overview of the Prohibition.

If you require any assistance in taking action against an undertaking for their breaches of the Chapter 2 prohibition, establishing the relevant market that applies to your business, explaining what defences may apply, or any general help in ascertaining more details in relation to the provisions of the Chapter 1 or Chapter 2 prohibitions, please do not hesitate to contact Peter Harling and/or Jamie Howard whose contact details are set out below:

**Peter Harling**  
**Partner**

Email: [PeterHarling@chadlaw.co.uk](mailto:PeterHarling@chadlaw.co.uk)

**Jamie Howard**  
**Paralegal**

Email: [JamieHoward@chadlaw.co.uk](mailto:JamieHoward@chadlaw.co.uk)



## Equality & Inclusion Training Sessions

Over the past two weeks, we've hosted 4 **Equality and Inclusion training sessions** for **Drive DeVilbiss Healthcare**. Sam Pawson and Madeleine Partland attended their office in Halifax to discuss the importance of diversity and inclusion – and why they matter.

Our session covered:

- What the legal position is on discrimination and harassment.
- Case studies and examples to clarify where the line is between a joke between colleagues and a potential Tribunal claim.
- Equipping Employees and the Company to have a better understanding of these issues to protect the business, and to protect themselves.



If you're interested in similar training for your business, contact us at [boxhr@chadlaw.co.uk](mailto:boxhr@chadlaw.co.uk) to learn more.

## CONTACT US



### EMAIL

[boxhr@chadlaw.co.uk](mailto:boxhr@chadlaw.co.uk)



### LINKEDIN

[www.linkedin.com/company/employment-law-chadwick-lawrence-llp/](https://www.linkedin.com/company/employment-law-chadwick-lawrence-llp/)



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Our mailing address is:

Chadwick Lawrence LLP Dock Street Leeds, West Yorkshire LS10 1LX United Kingdom