

CRA's announcements

CRA's Annual Brussels Conference to take place on 3 December

CRA's annual competition conference will take place in Brussels on Wednesday 3 December. The conference will cover a range of topics in European competition policy, including **State Aid and the financial sector, Article 82, Mergers, Cartels** and the **review of the Vertical Restraints** guidelines. See the full programme below.

CRA's European news

Lloyds TSB / HBOS merger – October 2008

CRA International advised Lloyds TSB in its merger with fellow UK bank HBOS. Lloyds TSB was encouraged by the UK government to merge with HBOS in light of the latter's financial vulnerability following the crisis in global financial markets. Lloyds TSB's submissions to the Office of Fair Trading included analyses relating to the public interest and post-merger counterfactual (a particularly relevant issue given HBOS's historical performance was unlikely to be a reliable indicator of its future performance if it remained independent), as well as a competitive assessment of a large number of product markets where the OFT had identified potential competition concerns. The OFT concluded that the transaction raised concerns in the markets for personal current accounts, banking services to small and medium-sized enterprises (SMEs) and mortgages. However, the UK government concluded that the importance of the stability of the UK financial system should take precedence and it cleared the proposed merger on public interest grounds. The CRA team included **Alan Overd, Vicki Mertzaniidou, Rameet Sangha** and **Elina Koustoumpardi**.

Co-Op acquisition of Somerfield – October 2008

Alan Overd and **Ian Small** of CRA's London Office advised the parties in the friendly acquisition of Somerfield by the Co-Operative Group Limited (Co-Op). The OFT cleared the transaction in October 2008 subject to the divestment of stores in 126 local areas. The OFT accepted that the merger would not give rise to any competition concerns in the grocery sector at the national level. However, the OFT was concerned about the possible effects of the merger on local competition in areas where the parties' stores overlapped with each other and where Somerfield stores overlapped with regional co-operative stores. The parties undertook consumer surveys in a large number of these areas to assess the competitive interaction between their stores, and offered divestments in those areas where the results suggested there was competition between the parties.

Fresh Del Monte's supply of bananas – EC closes Art. 81 investigation in October 2008

A team from CRA International's London office, led by **Matthias Pflanz** and **Thomas Buettner**, assisted Fresh Del Monte Produce, Inc. throughout an extensive Article 81 investigation by the European Commission in relation to information sharing practices regarding the supply of bananas in Northern Europe. In October 2008 the EC closed its investigation of various subsidiaries of Fresh Del Monte and at the same time, the Commission also announced fines for two other banana importers who, along with another importer that was granted leniency, are alleged to have participated in a price cartel (Fresh Del Monte previously indirectly held a financial interest in one of these importers and was held jointly and severally liable for the payment of that party's fine by the Commission, but was not found to have participated directly in any unlawful practices). The Northern European market for bananas was subject to heavy intervention during the period in question via a system of EU tariffs and quotas.

Olympic Airlines – September 2008

In September 2008, the European Commission approved a plan to privatise Greece's state-owned flagship carrier Olympic Airlines, as well as the separate ground-handling company Olympic Airways Services. A key feature of the Commission's decision, important for future cases, is the conclusion that sale of Olympic's assets as a bundle, rather than piece-meal, does not involve any state aid. The

Recent publications by CRA consultants

TomTom/Tele Atlas: The Non-Horizontal Merger Guidelines in practice

CRA Competition Memo, August 2008

The TomTom and Tele Atlas merger provides an excellent test case for the European Commission's recently adopted Non-Horizontal Merger Guidelines. **Tom Overstreet** analyses this vertical combination and explains why the European Commission decided the merger would not raise competitive concerns.

http://www.crai.com/ecp/assets/Tom_Tom_Tele_Atlas.pdf

Economic Analysis of the Use of Selective Distribution by Luxury Goods Suppliers

Andrea Coscelli and **Thomas Buettner**, with co-authors Thibaud Verge of CREST in Paris and Professor Ralph A. Winter of the University of British Columbia, submitted an economic report to the European Commission titled "An Economic Analysis of the Use of Selective Distribution by Luxury Goods Suppliers". The report contributes to the working group assembled by Commissioner Kroes to discuss "Opportunities in Online Goods and Services" and more generally to the discussion surrounding future revisions of the European Commission's Vertical Restraints Guidelines.

http://www.crai.com/ecp/assets/LVMH_Report_22_Sep_2008.pdf

Commission specifically accepted that the proposed bundled sale of Olympic's assets was in effect equivalent to any other type of asset sales on market terms, and this paves the way for the assets to be privatised in bundled form. A CRA team composed of **Cristina Caffarra, Lorenzo Coppi, Valter Sorana, Matt Tavantzis** and CRA academic consultant **Pierre Régibeau** prepared an economic report on behalf of Olympic showing that the proposed sales of bundled assets was on market terms.

BAGS lost its High Court bid to stop AMRAC supplying bookmakers with horse racing images – August 2008

On 8 August 2008, Justice Hugh Morgan ruled that 31 UK racecourses' exclusive selling of their media rights to AMRAC (part-owned by the racecourses) did not infringe competition law, dismissing claims to this effect by BAGS, a betting industry representative body. Justice Morgan also dismissed AMRAC's counterclaim in so far as it alleged that analogous exclusive agreements between SIS (AMRAC's competitor) and a number of UK and Irish racecourses were anticompetitive.

In dismissing BAGS's complaint and AMRAC's counterclaim, Justice Morgan noted that exclusive agreements are common in sport media rights, and that competition in this market takes the form of ex-ante competition for the media rights. The two sets of exclusive agreements are thus consistent with effective competition in the market, as demonstrated by the fact that AMRAC's exclusive agreements enabled it to enter the market in 2007. Justice Morgan was critical of the claimant's argument that an entrant should be allowed only as much exclusive rights as is necessary to enter the market, as well as the evidence that the claimant put forward to demonstrate that AMRAC had secured more exclusive rights than was strictly necessary to enter the market.

William Bishop of CRA, instructed by SIS to give evidence as an expert witness, opposed both the BAGS claim and AMRAC counterclaim. He was supported by **Lorenzo Coppi** and **Andrien Cervera-Jackson**.

INEOS acquisition of BASF acrylonitrile plant – July 2008

Cristina Caffarra, Diana Jackson, Thomas Buettner and **Katharina Sailer** of CRA's European Competition Practice advised Ineos during the EC investigation of the acquisition of BASF's Seal Sands acrylonitrile (ACN) production facility by Ineos Nitriles. The European Commission unconditionally cleared the acquisition after a Phase I investigation in July 2008. Ineos Nitriles is a major producer of ACN, both to external customers and its own downstream businesses. The Commission found that as BASF was not previously involved to any significant extent in the merchant market, the proposed transaction did not bring about a significant change in competition. This view was confirmed by positive customer responses to the market investigation. CRA's advice had a particular focus on issues of geographic market definition.

Pernod Ricard / V&S merger – July 2008

A CRA team composed of **Ian Small, Vicki Mertzaniidou, Laurent Flochel** and **Pascale Déchamps** advised Pernod Ricard, a French wine and spirits producer, during its acquisition of Swedish alcohol producer Vin & Spirit (V&S). V&S is the maker of Absolut vodka, the world's third-largest premium liquor in terms of volume. In July 2008 the European Commission cleared the transaction at Phase I, subject to remedies. The Commission reviewed the impact of the proposed merger on various national spirit and other alcoholic drinks markets, and accepted that the divestment package offered by Pernod Ricard remedied the concerns the Commission had in a small number of markets. The Commission also examined whether the combination of the parties' portfolios of brands would adversely affect competition, but concluded it would not as there were other competitors in the industry with strong brands.

BAT / STK merger – July 2008

A CRA team including **Cristina Caffarra, Ian Small** and **Jenny Haydock** advised British American Tobacco (BAT) during the European Commission investigation of its acquisition of the cigarette business and certain related interests of Skandinavisk Tobakskompagni (STK), a Danish company. The deal means BAT acquires House of Prince (owner of the Prince brand, among others) and its subsidiaries in various European countries, as well as J.L. Tiedemanns Tobaksfabrik AS in Norway, and Fiedler & Lundgren AB in Sweden. In July 2008, the EC cleared the transaction at Phase I, subject to remedies.

Adopting as in previous cases a national market definition which separates (factory-made) cigarettes from roll-your-own tobacco, the Commission accepted that the transaction would not impede effective competition in any horizontally-affected market, except the market for cigarettes in Norway, where both parties are active. In addition, the Commission was concerned that the coupling of the merged entity's leading position in cigarettes with STK's high share of roll-your-own tobacco in Norway would place the merged entity in a strong position in sales negotiations with its customers. BAT offered to divest a number of tobacco brands, thus reducing the combined share of both cigarettes and roll-your-own tobacco.

Huntsman / Hexion merger – July 2008

The European Commission has approved at Phase I, subject to remedies, the proposed acquisition of Huntsman Corporation by Hexion Specialty Chemicals Inc., both US-based chemical manufacturers with products portfolios that include epoxy resins. The activities of Hexion and Huntsman overlap at all three levels of the epoxy value chain (production of inputs, components and formulated systems) and the transaction led to a number of horizontally and vertically affected markets.

The Commission found that the high market share in Bis-F liquid epoxy resins would not lead to competition concerns because of demand-side substitution and spare capacity in the world market. On the other hand, the Commission's market investigation showed that the proposed transaction, as initially notified, raised horizontal

competition concerns with respect to certain specialty resins and formulated systems in which the merged entity would hold very high market shares both worldwide and in the EEA. The Commission also identified vertical concerns regarding certain specialty resins and curing agents used for aerospace and wind energy applications. To alleviate the Commission's concerns, Hexion offered to divest assets in Germany and the US. The Commission concluded that the proposed remedies were viable and that they addressed the competition concerns.

A CRA team including **Gary Roberts** (Washington DC), **Pablo Florian** (London) and **Yianis Sarafidis** (Washington DC) advised Hexion on the case.

CRA's international news

NFL Wins American Needle Antitrust Lawsuit – August 2008

CRA academic Senior Consultant **Franklin M. Fisher** supported by CRA staff assisted the National Football League (NFL), its member clubs and NFL Properties with economic analysis of the antitrust lawsuit brought against the NFL and its co-defendant, Reebok International, Ltd. In the litigation, American Needle alleged that the NFL teams' exclusive licensing agreement with Reebok violated the Sherman Antitrust Act. The district court granted summary judgment to the NFL defendants, a decision that the Seventh Circuit affirmed. Professor Fisher and CRA analysed the question of whether the NFL Defendants function as a single economic entity with regard to the licensing and marketing of their intellectual property for use on consumer products. Their analysis found that the NFL Defendants do function as a single economic entity in connection with these purposes, and hence the member teams can collectively license their intellectual property without running afoul of the antitrust laws. In addition to Professor Fisher, CRA's team was led by **Evan Schouten** and **Laura Phillips Perkins**.

Economic Analysis In SIRIUS-XM Merger – August 2008

CRA assisted counsel from SIRIUS and XM with economic antitrust analysis of the merger. SIRIUS and XM announced plans to merge in February 2007. The merger received its final regulatory clearance when the Federal Communications Commission announced its approval on July 28, 2008. CRA prepared economic analyses of the competitive effects of the merger that were provided to both governmental agencies (the Department of Justice and the Federal Communications Commission) during their review. CRA prepared reports filed with the Federal Communications Commission and met with the staffs of both agencies.

CRA's team in the matter was led in Washington, DC by **Steven Salop**, Senior Consultant, and **Steven Brenner**. The team included economists from several CRA offices – **Lorenzo Coppi** (London), **Serge Moresi** (Washington DC), **Timothy Savage** (New York) and **Martino De Stefano** (Washington DC).

About CRA's European Competition Practice

CRA's European Competition Practice specialises in providing economic advice to businesses on matters of competition policy and regulatory affairs. Our reputation is for rigorous and innovative economic analysis, careful attention to detail, and the ability to work effectively as part of a wider team of advisors.

CRA's European Competition Practice has over forty staff in London, Brussels, Amsterdam and Paris. Our economists have extensive experience working before DG Competition and the national competition and regulatory authorities of the Member States. We also work closely with our network of internationally renowned academic associates, and CRA colleagues in North America and Australia. We have native speakers of all the major European languages.

Contacts

For additional information, please contact

European Competition Practice

99 Bishopsgate
London EC2M 3XD
+44 (0)20 7664 3700 Tel
+44 (0)20 7664 3998 Fax

Bastion Tower, Floor 21
5 Place du Champ de Mars, B-1050 Brussels
+32 (0) 2 627 1400 Tel
+32 (0) 2 627 1400 Fax

Amsterdam Paris

- 8.00–8.45 Registration**
- 8.45–9.00 Introduction and welcome**
- 9.00–9.30 Keynote: A European competition policy for all weather**
Philip Lowe
Director General, DG Competition
- 9.30–10.30 Hot Topics Part I: Competition policy in troubled times – what priorities for agencies?**
Chair: Alan Overd
CRA
John Fingleton
Chief Executive, Office of Fair Trading
Discussants:
Xavier Vives
IESE, Barcelona
John Van Reenen
London School of Economics
- 10.30–10.50 Coffee break**
- 10.50–11.20 The new Article 82 guidelines**
Damien Neven
Chief Economist, DG Competition
- 11.20–1.00 Hot Topics Part II:**
– **Dominant firm conduct**
– **Evolving rules on vertical restraints**
– **Update on cartels**
Chair: Cristina Caffarra
CRA
Massimo Motta
University of Bologna
Aaron Edlin
Department of Economics and School of Law, University of California at Berkeley
Nils Wahl
Judge, Court of First Instance
Margaret Slade
University of British Columbia
Comments: Damien Neven
Chief Economist, DG Competition
- 1.00–2.00 Lunch**
- 2.00–2.30 Keynote: US antitrust – what lies ahead?**
Bill Kovacic
Chairman, Federal Trade Commission
- 2.30–3.30 Economic assessment in competition enforcement: developments in France and Germany**
Chair: Laurent Flochel
CRA
Bruno Lasserre
President, Conseil de la concurrence
Bernhard Heitzer
President, Bundeskartellamt
- 3.30–3.45 Coffee break**
- 3.45–5.00 Developments in merger analysis**
Chair: Matthias Pflanz
CRA
Guillaume Lorient
Head of Unit, DG Competition
Christian Ewald
Head of Economics Unit, Bundeskartellamt
Bill Kovacic
Chairman, Federal Trade Commission
Amelia Fletcher
Chief Economist, OFT
Bruce Lyons
Centre for Competition Policy, University of East Anglia
- 5.00 Close of conference**