

CRA's European news

Saint-Gobain/Maxit merger – March 2008

Saint-Gobain and Maxit are both active in the manufacture of mortars and gypsum-related products, and in the sale of external insulation systems (ETICS) across Europe. Saint-Gobain also owns a building material distribution network. The Commission's investigation ruled out concerns of horizontal and vertical effects in the mortar, ETICS and distribution markets but was concerned that in the gypsum-related markets the parties would have enjoyed a monopoly or near-monopoly position. The transaction was cleared in Phase I subject to the divestment of Maxit's gypsum subsidiaries (SHG and Maxit Baustoffe). CRA's Andrea Coscelli in London and Pascale Déchamps in Brussels assisted Saint-Gobain in achieving clearance for the transaction.

Access pricing in the French newspaper distribution sector – February 2008

Laurent Flochel (CRA France) assisted Messageries Lyonnaise de Presse (MLP) in a complaint against Nouvelles Messageries de Presse Parisienne (NMPP). Both firms distribute newspapers in France. NMPP, the incumbent newspaper distributor, operates a computer system ('Presse 2000') that captures data on retail sales of newspapers. The system is used to monitor sales levels and ensure the correct quantity of newspapers goes to retailers. NMPP refused to grant direct automated access to Presse 2000 to MLP, its competing distributor. As a result, newspapers choosing to distribute through MLP received a lower quality of service when compared to that available from NMPP. After a long investigation by the Conseil de la Concurrence, NMPP offered commitments which included direct access to Presse 2000 for MLP. The commitments accepted by the Conseil in February 2008 differ substantially from NMPP's initial proposal, especially in relation to access pricing terms. CRA's advice contributed to the final determination of the conditions of access.

Reuters/Thomson merger – February 2008

A team from CRA's London office, led by Matthias Pflanz, and including Ian Small, Geoff Edwards, Ragvir Sabharwal and Rebecca Fordham, assisted Reuters throughout the European Commission's investigation of its merger with Thomson. Both parties are suppliers of real-time and historical financial information and desktop products for financial professionals. In its investigation, the Commission raised initial concerns about harm to competition in a number of categories of historical content – in particular: aftermarket broker research reports; earnings estimates; fundamental financial data; and time series of economic data. The Commission's concerns included adverse horizontal effects on financial institutions and other customers of the parties, as well as potential vertical effects, in the form of a negative downstream impact on rival providers of desktop products that integrate the parties' content into their products. The Commission cleared the transaction, following a Phase II investigation, conditional on both sides selling certain databases – including copies of the databases, source data and training materials, as well as certain contracts and employees connected to the databases.

Recent publications by CRA consultants

'Incentives to innovate – another look at Microsoft's defence in the work group server case', *CRA International Competition Memo*, December 2007 – by Robert Stillman and Hristina Dantcheva

Following the CFI's decision to uphold the European Commission's 2004 finding that Microsoft abused its dominant position in the market for work group server operating systems, the memo comments on the fact that Microsoft never provided a coherent efficiency-based explanation why licensing was not a viable option for recovering its R&D investments in the interfaces and protocols in question. The authors argue that this omission on Microsoft's part strengthens the support for the Commission's and the CFI's finding that Microsoft abused its dominant position by refusing to supply the requested communication protocols and interfaces to competitors in the work group server operating systems market. The Competition Memo is available at: http://www.crai.com/ecp/assets/Microsoft_Incentives-Innovate.pdf.

'Implementing the hypothetical monopolist SSNIP test with multi-product firms', *the antitrust source*, February 2008 – by Serge Moresi, Steven Salop and John Woodbury

The article describes the implementation of the 'hypothetical monopolist SSNIP test' for market definition in the context of merger cases where firms produce multiple differentiated products instead of selling only a single product. The article is available at:

<http://www.crai.com/Publications/listingdetails.aspx?id=7038>.

INEOS/Kerling merger – January 2008

The European Commission unconditionally cleared the acquisition of Kerling ASA of Norway by the UK-based chemicals company INEOS following a Phase II investigation. Both sides produce, market and sell polyvinyl chloride (PVC) and caustic soda, and the Commission was concerned about the impact of the transaction on sales of commodity Suspension PVC (S PVC) – mainly in the UK, but also in Norway and Sweden. After an in-depth investigation, the Commission accepted that customers will remain able to economically source S PVC from other producers located in North Western Europe and therefore the transaction will not reduce competition. A team from CRA's London office led by Cristina Caffarra and Diana Jackson, and including Ian Small, Dan Donath, Vicki Mertzaniidou and Hristina Dantcheva assisted the merging parties during the Phase II investigation.

Cumerio/Norddeutsche Affinerie merger – January 2008

CRA's Andrea Coscelli, Diana Jackson, Elina Koustoumpardi and Adrien Cervera-Jackson provided economic advice on the acquisition of Cumerio SA of Belgium by Norddeutsche Affinerie AG (NA) of Germany, which was cleared by the European Commission following a Phase II investigation. Both parties are involved in the production of copper cathodes, copper rod and copper

shapes, which are used as inputs for the production of downstream processed copper products. The Commission's in-depth investigation focused on the overlap market of copper shapes, and concluded that the proposed transaction would not have a material effect on competition due to overcapacity in the market, substantial in-house production of shapes by other firms, ease of entry, and competition in the downstream production of semi-finished copper products.

INEOS Silicas/PQ Corporation JV – January 2008

Cristina Caffarra and Thomas Buettner assisted INEOS and PQ in gaining unconditional clearance by the European Commission for a joint venture between INEOS Silicas (part of the INEOS Group) and the PQ Corporation (owned by The Carlyle Group). The main overlaps were in respect to sodium silicate and certain derivatives (such as silica gels for polyolefin catalysts and beer gels).

Work in progress

TomTom/Tele Atlas vertical merger

TomTom NV, the world's largest producer of satellite navigation equipment for cars, is buying Tele Atlas NV, the world's second-largest producer of navigable digital maps suitable for use in 'satnav' devices. The deal is purely vertical, with the parties stating that they plan to integrate community feedback from TomTom's customer base into Tele Atlas' digital map database to produce significantly improved digital maps. The merger is currently in Phase II of its European Commission investigation, with a final ruling due by 5 May 2008. A team from CRA including Paul Muysert, Tom Overstreet, Sharon Pang and Steven Salop is advising Tele Atlas.

Advice to Intel in Article 82 EC investigation

In May 2004, the European Commission began to investigate renewed allegations made by Advanced Micro Devices (AMD) that Intel has infringed Article 82 EC by exclusionary conduct in relation to its pricing practices and marketing arrangements, which have foreclosed AMD's access to the market. Prof. Carl Shapiro, John Hayes, and a team from CRA's Oakland office have assisted Intel and its counsel in responding to the Commission's requests since the investigation began. The team has recently been working with Prof. Shapiro to prepare an economic analysis submitted in January 2008 in response to the Commission's July 2007 Statement of Objections. Prof. Shapiro will also appear at the forthcoming Commission hearing to discuss his economic analysis of Intel's pricing practices and marketing arrangements.

UK pay TV market review

Ofcom (the UK communications regulator) has been investigating the pay TV market in the UK following a "super complaint" by BT, Setanta, Top Up TV and Virgin Media in January 2007 alleging that competition in the UK pay TV industry is not working effectively. BSkyB's response to the complaint included two submissions prepared by CRA, and was published by Ofcom in December 2007. CRA provided a critique of an empirical study by economists for the complainants on average pay TV revenues per subscriber across Europe, and of claims by the complainants of Sky's incentives to foreclose

competition in the UK pay TV industry. These submissions are available at: <http://www.ofcom.org.uk/media/news/2007/03/annex3.pdf> and <http://www.ofcom.org.uk/media/news/2007/03/annex4.pdf>. The CRA team was led by Cristina Caffarra and Andrea Coscelli and included Hugh Wills, Vicki Mertzaniidou and Adrien Cervera-Jackson together with CRA academic associates Professors John Van Reenen and Pierre Regibeau. CRA continues to advise BSkyB in these proceedings.

Expert evidence in Hutchison 3G UK v Office of Communications (UK)

Mike Walker of CRA recently gave expert evidence on behalf of T-Mobile (UK) to the UK Competition Appeals Tribunal. The case is part of the process by which H3G and BT are appealing against the level of mobile termination rates recently set by Ofcom. The evidence presented by Dr Walker related primarily to the question of whether it is reasonable ('proportionate') for Ofcom to regulate the charges of H3G despite its status as a relatively new entrant to the UK market. The next stage of the process is for the Competition Commission to investigate whether the precise level of the charges set by Ofcom is reasonable. CRA is advising T-Mobile in this further stage.

Sasol – alleged exclusionary conduct in the South African fertilizer industry

Robert Stillman and Grant Siggers of CRA have submitted a report to the South African Competition Tribunal analysing claims that CRA's client, Sasol, has engaged in exclusionary conduct in the fertilizer industry in South Africa. A hearing on this matter is expected in the near future.

Scaw/Ozz Industries merger in South Africa

Robert Stillman and Elina Koustoumpardi of CRA have submitted a report to the South African Competition Commission analysing the competitive effects of a proposed merger between Scaw (a division of Anglo American) and Ozz Industries. The affected markets primarily involve products used by mining companies to break up and crush ore.

CRA's international news

XM-Sirius: sound advice for satellite radio firms

John Woodbury of CRA's DC office provided expert testimony on behalf of XM Satellite Radio Inc. and Sirius Satellite Radio Inc. before the US Copyright Royalty Board (CRB) on a reasonable rate for the use of sound recording performance rights for music broadcast to satellite radio subscribers. His testimony highlighted the economic factors that distinguish XM and Sirius from other broadcasters that pay substantially higher royalty rates. The CRB decision from January 2008 set the royalty rate between 6 percent and 8 percent over the period 2007 to 2012, significantly lower than the 23 percent royalty rate proposed by SoundExchange (an organisation representing record companies and recording artists). Tasneem Chifty and David Reitman also provided expert testimony on behalf of XM and Sirius and their Canadian affiliates in related proceedings in the United States and Canada.

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, Paris, Munich and Barcelona. 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.

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