

CRA's announcements

Economic Developments in European Competition Policy, 13 December 2007

The conference will cover new developments in various aspects of European antitrust policy, including merger analysis and policy, Article 82, and fines and antitrust damages. The conference has no registration fee. The full programme is on page 3. For further information and registration, please contact Liz Wetherall at ewetherall@crai.com.

Edward Droste joins CRA's Amsterdam office

Dr Edward Droste has joined CRA's European Competition Practice in Amsterdam. Edward has extensive experience in the economics of competition, regulation, competitive strategy and government policy on market design and regulation. He has advised clients and led engagements in the areas of competition and regulation in a wide range of business sectors, including financial services, utilities, telecommunications and media and healthcare. Before joining CRA, Edward was senior economist in the Antitrust Department of the Netherlands Competition Authority (NMa). His responsibilities included support in economic analyses and econometrics in competition cases and market analysis, with special emphasis on the banking and insurance industry.



Daniel Donath moves to European Commission

Dr Daniel Donath is joining the Chief Economist's Team at the European Commission in early December, after three years at CRA's European Competition Practice. Daniel is an experienced econometrician who has advised on a number of high-profile cases, including Ryanair/Aer Lingus and Adidas/Reebok. Daniel's appointment is further evidence of a developing 'revolving door' policy and of the Commission's commitment to sophisticated empirical analysis. CRA welcomes these developments, and wishes Daniel success in his new position.



CRA's European news

EC clears Kraft's acquisition of Danone Biscuits in Phase I subject to conditions—November 2007

On 9 November 2007 the European Commission approved the acquisition of Danone Biscuits—Danone's worldwide biscuits, snacks and cereals business—by the US-based company Kraft Foods Inc., subject to commitments. The Commission found that the transaction would affect only a limited number of Member States where both parties sold biscuits or chocolate confectionery. The initial concerns identified by the Commission in these markets were addressed by some limited divestments of brands and a manufacturing facility.

Matthias Pflanz, Jenny Haydock, Ian Small and Ragvir Sabharwal from CRA's London office assisted Kraft Foods.

EC clears merger in private label ready-to-eat cereal industry—October 2007

The European Commission has cleared the acquisition by One Equity Partners (OEP) and MSP Stiftung (MSP) of joint control over Dailycer Group and De-Vau-Ge Gesundheitswerk GmbH (DVG), producers of ready-to-eat cereals and cereal bars mainly sold under retailers' own labels. The Commission found that the two cereal producers have a different geographic focus: Dailycer sells mainly in France, Spain and the UK, whereas DVG is focused on the German market. Further, even in countries where they are both active, they cannot be considered as close competitors. The Commission also established that the merged entity would continue to face a number of effective competitors supplying private label cereals. Dailycer Group and DVG will combine their activities in a full-function joint venture as a result of the merger.

Matthias Pflanz, Thomas Buettner and Adrien Cervera-Jackson from CRA's London office assisted OEP and MSP.

EC clears proposed acquisition of Saint-Gobain Vetrotex by Owens Corning, subject to conditions—October 2007

On 26 October 2007 the European Commission cleared the proposed acquisition of Saint-Gobain Vetrotex by Owens Corning in Phase I, subject to divestments of European plants. Both companies are large worldwide manufacturers of glass fibre reinforcement and composite fabrics products. The Commission found that the merger would raise competition concerns in three out of seven European product markets due to high levels of concentration. The parties offered to divest the Battice and Birkeland plants in order to remove these concerns. The transaction has been investigated by a number of competition authorities including the FTC in the US as well the Korean, Japanese, Mexican and Brazilian national competition authorities.

CRA assisted the parties throughout all proceedings. The European team was led by Andrea Coscelli and included Vicki Mertzaniidou and Pascale Dechamps. The US-based team, led by Andrew Dick and including Peter Boberg, provided assistance in front of the FTC and on the rest of the world filings.

EC clears proposed acquisition of Altadis by Imperial Tobacco, subject to conditions—October 2007

On 18 October 2007 the European Commission cleared the proposed acquisition of Altadis by Imperial Tobacco in Phase I, subject to divestment of a number of Imperial's brands in certain national markets. These brands include roll-your-own tobacco in France, Italy, Portugal and Spain; pipe tobacco in Finland and France; and cigars in Greece.

The Commission found that the merger would not raise concerns in the cigarette market, due to the fact that the horizontal overlaps between the firms are fairly limited and that the new entity would continue to face strong competitors such as Philip Morris and BAT.

Bill Bishop, Andrea Coscelli and Valter Sorana from CRA's London office assisted Imperial Tobacco.

Fertilizer merger cleared by EC at Phase I subject to conditions—September 2007

The European Commission has cleared the acquisition of Kemira GrowHow by Yara at Phase I, subject to commitments in relation to certain industrial chemical products and fertilizer distribution activities. Yara and Kemira GrowHow are Europe's two largest nitrogen-based fertilizer manufacturers. CRA provided economic advice to the parties, focusing on market definition issues in fertilizer. The Commission concluded that both geographic and product markets were wide, resulting in no requirements for remedies in relation to the manufacture of fertilizers. The CRA team included Cristina Caffarra, Diana Jackson and Ian Small.

CFI upholds EC decision on Microsoft's abuse of dominant market position—September 2007

On 17 September 2007 the Court of First Instance (CFI) dismissed Microsoft's appeal of the European Commission Decision of 24 March 2004, which required Microsoft to bring to an end its behaviour in breach of Art. 82, on all points related to the substance of the abuse. Inter alia, the EC Decision ordered Microsoft to supply information on their communications protocols that would allow non-Windows work group server operating systems to interoperate with Windows PCs and Windows work group servers.

Throughout the appeal proceedings Bill Bishop, Robert Stillman and Hristina Dantcheva from CRA's London office assisted the Software & Information Industry Association (SIIA) and its counsel with economic advice on interoperability issues in their submissions as intervener in support of the Commission. CRA's contribution included written submissions regarding the effects of the proposed remedy on innovation incentives in the industry, as well as on the impact on competition of the interoperability problems created by Microsoft's refusal to supply information. At the CFI appeal hearing in April 2006, Bill Bishop presented on market definition issues and the elimination of effective competition in the work group server operating system market resulting from Microsoft's refusal to supply interoperability information.

Aer Lingus appeals to the CFI to force Ryanair to divest its minority stake—November 2007

Aer Lingus has appealed to the Court of First Instance to overturn the European Commission's decision not to force Ryanair to divest its minority stake in Aer Lingus on the basis of the Merger Regulation. In June 2007 the European Commission prohibited the acquisition of Aer Lingus by Ryanair but did not act on Ryanair's stake in the company (which at the time stood at just over 25%, and is now almost 30%). Aer Lingus is seeking an annulment of the Commission's decision not to force a divestment on the ground that a sizeable minority stake linking two companies which have been held to be each other's closest competitors on air transport routes to and from Ireland has substantial detrimental effects on competition.

Cristina Caffarra, Giulio Federico and Hugh Wills are advising Aer Lingus on the appeal. CRA also advised Aer Lingus throughout the Commission's investigation of the merger with Ryanair, which led to the original prohibition decision.

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.

CRA's international news

South Africa: Competition Tribunal approves Naspers acquisition—November 2007

The South African Competition Tribunal has unconditionally approved a transaction in which media company Naspers will purchase Johnnic Communication's 38% stake in pay television platforms M-Net and SuperSport. The acquisition will give Naspers full ownership of the pay television company. Other media companies had raised objections to the deal on fears that Naspers would now be in the position to 'bundle' advertising on its print and television platforms to the detriment of single-platform media rivals. The Tribunal, however, dismissed concerns that Naspers would appreciably harm competition in pursuing this type of strategy. Andrea Coscelli, Geoff Edwards and Grant Saggors from CRA's London office assisted Naspers.

US: United States Steel cleared to acquire Stelco—October 2007

In October, US and Canadian competition agencies approved United States Steel's \$1.2 billion (€830 million) acquisition of Canadian steelmaker Stelco, making the combined entity the world's fifth-largest steel producer. CRA's Andrew Dick and Namita Bhatia assisted counsel for United States Steel during both the US and Canadian merger review processes, including with the submission of economic white papers that explained why the transaction would not present coordinated effects concerns. With CRA's assistance, the merging parties were able to avoid an extended (Second Request) review by the Department of Justice, thus enabling the transaction to close on schedule.

Recent publications

Efficiency and Anticompetitive Effects of Tying

A paper by Andrea Coscelli and Geoff Edwards titled '*Efficiency and Anticompetitive Effects of Tying*' is to be published in the forthcoming volume of the *European Competition Law Annual 2007: A Reformed Approach to Article 82 EC*. The paper proposes a rule of reason framework for the analysis of tying cases under Article 82. The paper was presented by Andrea Coscelli earlier this year at the 2007 EU Competition Law and Policy Workshop of the Robert Schuman Centre for Advanced Studies at the European University Institute, and can be accessed at <http://www.crai.com/ecp/assets/200709-COMPed-Coscelli-Edwards.pdf>

Developments in the Economic Assessment of Transatlantic Mergers

Andrea Coscelli and Robert Levinson (a vice president in the Washington DC office) have written a short paper on differences in the use of economics between the European Commission and the US antitrust agencies in recent reviews of global merger cases. This is being published in *The International Comparative Legal Guide to Merger Control 2008* (Global Legal Group) and it is available at http://www.crai.com/ecp/assets/MC08_Chapter-6_CRA-International.pdf.

For more information, please go to <http://www.crai.com/ecp/>

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Economic Developments in European Competition Policy

Thursday, 13 December 2007

Conrad Hotel, Brussels

Conference Programme

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- 8.30–9.00 Registration and Breakfast
- 9.00 Welcome and Introduction
- 9.00–9.30 **Oligopolies—Developments and Recent Analyses**
- Damien Neven**
Chief Economist, DG Competition
- 9.30–11.15 **Hot Topics in Antitrust Part I: Update on Article 82**
- Chair: Robert Stillman**
CRA
- Steven Salop**
Georgetown University and CRA
- Paul Seabright**
University of Toulouse
- David Meyer**
Deputy Assistant Attorney General,
US Department of Justice
- Rafael Garcia-Valdecasas**
(formerly) CFI
- Philip Marsden**
Director, Competition Law Forum,
British Institute of International and
Comparative Law
- Comments: Damien Neven**
Chief Economist, DG Competition
- 11.15–11.30 Tea & Coffee Break
- 11.30–12.30 **Hot Topics in Antitrust Part II**
- Chair: Alan Overd**
CRA
- Peter Freeman**
Chairman, UK Competition Commission
- Bruno Lasserre**
President, Conseil de la Concurrence
- Comments: Philip Lowe**
Director General, DG Competition
- 12.30–13.00 **Keynote Speech: Making Markets Work Better: the Role of Competition Authorities**
- Philip Lowe**
Director General, DG Competition
- 13.00–14.00 Lunch

- 14.00–15.45 **New Developments in Merger Analysis and Policy**
- Chair: Cristina Caffarra**
CRA
- Nadia Calviño**
Deputy Director-General Mergers and
Antitrust, DG Competition
- Christian Ewald**
Head of Economics Unit,
Bundeskartellamt
- Bill Kovacic**
Commissioner, FTC
- Pierre Régibeau**
University of Essex and EACGP
- Melanie Aitken**
Senior Deputy Commissioner, Mergers
Branch, Canadian Competition Bureau
- 15.45–16.00 Tea & Coffee Break
- 16.00–17.30 **Fines and Antitrust Damages**
- Chair: Lorenzo Coppi**
CRA
- Massimo Motta**
European University Institute
- Ali Nikpay**
Senior Director, OFT
- Maarten Pieter Schinkel**
University of Amsterdam and CRA
- Comments: Wouter Wils**
Legal Service, European Commission
and King's College London
- 17.30 Cocktail Reception