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CRA Insights: Competition

CRA Charles River
Associates
CELEBRATING 50 YEARS

April 2016

A look back

As Charles River Associates celebrated its 50th anniversary in 2015, we reflect on the past year and wish to thank our clients for the opportunity to continue to assist them with many of the most important government and private antitrust suits on record.

Selected client work

CRA's Competition Practice in North America and Europe advised clients on a range of private and public antitrust and merger matters last year including: the three-part, \$23 billion merger of **Novartis with GSK**, which was reviewed in Europe and the US; **IAG's acquisition of Aer Lingus**, which ended a long-running battle for Aer Lingus that began with Ryanair's first takeover attempt in 2006; and the successful conclusion of the long-running **Apple/iTunes** antitrust litigation. To follow are additional highlights from the year.

Mergers – North America

CRA economists assisted clients in the newspaper, manufacturing, pharmaceutical, health care, lending, fertilizer, and online real estate listing industries, among many others. We assisted **Trulia** throughout a review by the Federal Trade Commission (FTC) of its proposed \$2.5 billion merger with **Zillow**. We advised counsel to **Norbord**, an oriented strand board manufacturer, throughout the Department of Justice (DOJ) review of its acquisition of **Ainsworth Lumber Co. Ltd**. The DOJ cleared the merger unconditionally, just a few months after announcing its intentions to challenge a similar transaction in the same industry.

CRA advised **Springleaf Holdings Inc.** on its acquisition of **OneMain Holdings**, part of Citi Holdings, creating the largest branch-based installment lender in the US. CRA advised **CF Industries**, the US producer of nitrogen-based fertilizer products on its acquisition of **OCI**, creating the largest publicly traded nitrogen company. OCI is a global distribution company based in the Netherlands. CRA provided detailed empirical analyses on competition in US fertilizer markets during the FTC investigation. In Canada, CRA economists assisted **Postmedia and Quebecor Media (QMI)** throughout a review by the Competition Bureau. The agency decided not to challenge Postmedia's \$305.5 million acquisition of QMI's English-language newspapers, noting it is unlikely to lessen competition for advertising or readership in areas of overlap.

We advised counsel to **Shire** on its acquisition of **Dyax**, a small pharmaceutical company with pipeline products to treat hereditary angioedema. The deal, reviewed by the FTC, closed with no divestitures. CRA economists advised on more than a dozen hospital mergers across the US last year. Our analyses involved using the statistical tools that the FTC relies on to assess the degree of competition between merging hospitals, as well as evaluating and demonstrating the pro-competitive benefits of the proposed transactions in the current “value-based care” competitive environment.

Mergers – Europe

In Europe we assisted clients in the telecoms, pharmaceutical, packaging, and food sectors, among many others. CRA economists assisted **Rexam PLC** in its merger with **Ball Corporation**. The US-based Ball is acquiring the assets of Rexam, a UK-based beverage can maker. Ball supplies packaging solutions for beverage, food and household products customers, among others. CRA has provided economic support to Rexam in the US and UK. We advised telecommunications service providers **Orange and Jazztel** on their merger in Spain. CRA provided economic advice to telecom-equipment provider **Commscope** on the acquisition of the Broadband Network Solutions business unit of **TE Connectivity Ltd** throughout the EU pre-notification phase and Phase I proceedings. We advised **Pork Farms** throughout a review by the Competition and Markets Authority of its acquisition of the chilled savory pastry business of **Kerry Foods**. CRA economists provided economic support to **Pfizer** during proceedings before the European Commission (EC) on its \$17 billion acquisition of **Hospira**. The Commission cleared the acquisition, subject to the divestment of some sterile injectable drugs and one biosimilar pipeline. We also provided economic support to **Mylan** in its antitrust defense before the EC against the attempted \$40 billion hostile takeover by **Teva Pharmaceuticals**. Teva ultimately withdrew its bid. Click [here](#) to read more about our work in Europe.

Litigation

CRA advised counsel to **Masimo** and offered testimony on economic analyses of liability and damages for antitrust counterclaims relating to a medical device. We also advised counsel to **Fresenius** on economic analyses of liability and damages issues in its successful effort to refute allegations of false claims relating to its use of pharmaceutical products in dialysis treatment. CRA advised counsel to **Teladoc** to prevent the Texas Medical Board from instituting a new rule that would have prevented doctors in Texas from writing prescriptions without an in-person examination. We worked with counsel to **Keurig** to win dismissal of a motion for preliminary injunction brought by competitors trying to prevent the release of a new brewing system. We advised counsel to **Verso** on economic analyses in the successful defense of an antitrust matter alleging a conspiracy to monopolize and seeking an injunction to prevent the closure of a paper mill. CRA also advised counsel to **West-Ward Pharmaceutical Corp.** in defeating a competitor’s temporary restraining order and proposed preliminary injunction that would have prevented its products from entering the market.

CRA advised **Google** in a matter heard by the Paris Court of Appeal which dismissed a damages claim by Evermaps alleging predatory pricing pertaining to Google Maps API. We provided testimony in *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela* in connection with the valuation of a gold mining project and deposits in Venezuela. CRA economists were also involved in a variety of major reimbursement disputes between health care providers and health plans, as well as in matters involving allegations of attempted monopolization or other anticompetitive behavior.

Regulatory investigations

The European Commission dropped its antitrust investigation into 13 investment banks suspected of anticompetitive conduct in the credit default swap market. CRA teams in the US and Europe assisted

Goldman Sachs and **Deutsche Bank** in addressing concerns regarding alleged coordination to foreclose from the **credit default swaps** market Deutsche Börse in 2007 and Chicago Mercantile Exchange in 2008. The DOJ required some divestitures of branches.

CRA economists continue to advise counsel to **Twentieth Century Fox** in the European Commission's investigation of alleged anticompetitive practices of several major US film studios and Sky UK regarding pay-TV licensing agreements that block consumer access to content, via satellite or online, outside the UK and Ireland.

Carl Shapiro testified for **Pandora** in a landmark Copyright Royalty Board proceeding in which the Board reduced royalty rates paid by webcasting services below levels set in prior proceedings.

Class certification

CRA consultants advised on several class certification matters including a “bellwether” case involving the rental of cable boxes to subscribers of premium cable services. We also advised counsel to **Deceuninck North America** on economic and statistical issues in its successful effort to defeat class certification in district court proceedings in a matter involving wood-plastic composite decking.

Selected publications

CRA economists and affiliated academics continue to publish research and articles in academic and industry journals as well as respected trade publications. Click [here](#) and [here](#) for a selection of published articles, papers, and newsletters. Below we highlight several publications.

[Jean Tirole's Nobel Prize in Economics: The Rigorous Foundations of Post-Chicago Antitrust Economics](#)

Steven C. Salop and Carl Shapiro, *Antitrust*

[St. Luke's-Saltzer: Where Does the Ninth Circuit Opinion Leave Quality-Enhancing Provider Integration in Allegedly Concentrated Markets?](#)

Monica Noether, *CPI Antitrust Chronicle*

[The law and economics of most-favoured nation clauses](#)

Matthew Bennett with Francisco Enrique González-Díaz, *Competition Law & Policy Debate*

[An economic perspective of standards and FRAND enforcement in China](#)

Elizabeth Xiao-Ru Wang and Harry Foster, *Journal of Antitrust Enforcement*

[The Evolution and Vitality of Merger Presumptions: A Decision-Theoretic Approach](#)

Steven C. Salop, *Antitrust Law Journal*

[Anti-Competitive Effects of Common Ownership](#)

José Azar, Martin C. Schmalz, and Isabel Tecu

[Standard Setting, Intellectual Property Rights, and the Role of Antitrust In Regulating Incomplete Contracts](#)

Joanna Tsai and Joshua D. Wright, *Antitrust Law Journal*

[An Analysis of the Federal Circuit's Decision in *Ericsson v. D-Link*](#)

Anne Layne-Farrar and Koren W. Wong-Ervin, *CPI Antitrust Chronicle*

Revising the US vertical merger guidelines: policy issues and an interim guide for practitioners

Steven C. Salop and Daniel P. Culley, *Journal of Antitrust Enforcement*

Selected speaking engagements and conferences

Tim Snail participated in a class certification panel discussion at the George Mason University Antitrust Law & Economics Institute for Judges. **Joanna Tsai** and **Peter Boberg** hosted workshop sessions on “Antitrust Fundamentals and Microeconomic Concepts for Lawyers” and “Regression Analysis and Other Basic Tools for Antitrust Practitioners” at the Fordham Competition Law Institute’s Annual International Antitrust Law and Policy Conference. **Anne Layne-Farrar** served on the Scientific Committee of the 2015 IP Statistics Decision Makers Conference, organized by the OECD and European Patent Office, and also spoke at the conference.

In December, our European Competition Practice hosted its annual Economic Developments in European Competition Policy conference in Brussels with more than 600 attendees, including lawyers, regulators, in-house counsel, and academics. The conference focused on nonstandard cases where dynamic effects and regulation play a key role. Click [here](#) for a conference summary.

Our academic affiliates and economists featured prominently at the 63rd Antitrust Spring Meeting in Washington, DC. Speaking at the conference were: Peter Boberg, Elizabeth Wang, Carl Shapiro, **Kai-Uwe Kühn**, Steven Salop, and Fiona Scott Morton. Click [here](#) for a list of our 2016 speakers.

New colleagues and promotion

We welcomed **Michelle Burtis**, an economic expert in antitrust litigation, damages analysis, and intellectual property matters who has testified in numerous direct and indirect purchaser class actions in federal and state courts. **Steven Tenn** joined the firm after 13 years as an economist at the Federal Trade Commission where he conducted economic and econometric analyses in merger investigations and other antitrust matters. **Joanna Tsai** rejoined CRA after working as economic advisor to Commissioner Joshua D. Wright at the FTC from 2013 to 2015. **Yianis Sarafidis**, an economist with specialized skills in economic modeling and econometrics, was promoted to Vice President.

Industry appointments and recognition

Raphaël De Coninck was elected to the executive committee of the Association of Competition Economics. **Stanley Besen** was appointed to the ICANN Competition, Consumer Trust and Consumer Choice Review Team. **Jeffrey Prisbrey** was named Assistant Editor of *Antitrust Magazine*. Joanna Tsai was appointed Co-Chair of the Economics Committee for the ABA Section of Antitrust. Anne Layne-Farrar was appointed Vice Chair of the Books and Treatises committee of the ABA Section of Antitrust. **Elizabeth Xiao-Ru Wang** was appointed Co-Chair of the China Committee and a Vice Chair of the International Antitrust Committee of the ABA’s International Law Section.

Antitrust Writing Awards

Fiona Scott Morton, **Carl Shapiro**, and **Sean Durkin** were recognized with 2015 Antitrust Writing Awards by the *Conurrences* Journal and George Washington University Competition Law Center. “**Strategic Patent Acquisitions**” by Professors Scott Morton and Shapiro examines the economic

effects of strategic patent acquisitions and discusses their antitrust implications. It was recognized as Best Intellectual Property Article in an academic publication. “[The Discount Attribution Test and the Competitive Effects of Loyalty Discounts](#),” by Dr. Durkin was recognized as Best Economics Article in the Business Articles category. Click [here](#) for the 2016 nominees.

Who’s Who

For the sixth consecutive year, CRA had the most competition economists and academic affiliates included in *The International Who’s Who of Competition Lawyers and Economists 2015*. Our Competition Practice also tops [the list](#) in 2016.

GCR Awards

Several of our client projects received top honors at the Global Competition Review (GCR) Awards 2015, including Matter of the Year for the GlaxoSmithKline/Novartis/Eli Lilly three-part deal; Litigation of the Year – Non-Cartel Defense for The Apple iPod/iTunes Antitrust Litigation; and Behavioral Matter of the Year – Europe for the Samsung SEP settlement.

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