

$$\sum_{k=K-j}^{\infty} \psi_k$$
$$\sum_{j=1}^L \pi_{j,i,u} \psi_{k-j}^*(s), 1 \leq k \leq L$$
$$\sum_{k=L-j}^{\infty} \pi_{j,i,u}^m$$

Meet the expert

Competition

CRA Charles River
Associates

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Gregory Vistnes

Gregory Vistnes has been with Charles River Associates for 10 years and has developed a broad antitrust practice that extends over a variety of different industries, including healthcare, high tech, and issues relating to electronic commerce, insurance and financial industries, manufacturing industries, and retail products. In addition to his merger-related work, he also works on non-merger cases both before the agencies and in private litigation involving issues of liability, damages, and class certification. Dr. Vistnes was previously deputy director for antitrust in the Federal Trade Commission's Bureau of Economics and also served as an assistant chief in the Economic Analysis Group of the Department of Justice's Antitrust Division.

How has your agency experience informed your work at CRA?

I was with the DOJ and the FTC for about 10 years—as long as I've been with CRA. My time there was invaluable—not just because it gave me a thorough understanding of the process involved in a government antitrust investigation and the best way to address government concerns, but also because it left me keenly aware of the high level of professionalism, dedication, and both legal and economic expertise at those agencies.

Have you had the opportunity to work on behalf of the government since joining CRA?

Yes. I've been retained on several occasions by the government. I served as the DOJ's expert witness in its multi-year litigation with the National Association of Realtors a couple of years ago—a case that settled just before trial was to begin. And more recently, I've been retained by the DOJ on other matters outside the real estate industry. I've also been retained on behalf of certain state attorneys general to help them assess competitive issues and to provide expert testimony.

How did your analysis affect the outcome of the NAR case?

The principal conduct at issue in that case involved restrictions on how real estate agents could use the Internet as a way of competing. CRA provided several analyses that I believe were very important in showing the anticompetitive effect of those restrictions. Perhaps the most interesting was an analysis showing how the productivity of agents was clearly increased by their use of the Internet. This provided an important basis to argue that the restrictions were impeding a more efficient form of competition.

Is it difficult to switch gears and act for the government on a particular matter and then work for a client trying to prove an economic point contrary to the government's view in another?

I really don't see any tension. An expert is hired based on their track record of credible and insightful analyses. Achieving that credibility means showing that the bases behind your arguments are sound. Once you have that sound basis for your arguments, you aren't an advocate of one side's or another's position—you are a neutral, although still persuasive, expert.

Do you have any recent examples of work in which you've served in the role of an expert when appearing before the government?

One recent example involves a merger case before the DOJ in which I presented what are commonly known as bid analyses. Here, the question was whether the two merging parties were frequently winning or losing customers to each other. Even though we had only limited traditional win/loss data, we were able to cross-link the merging parties' different databases so that we could track customer flows across time to measure diversion. Moreover, we were able to show that this result was quite robust—even when using different data or looking at different proxies for diversion, we ended up with substantially the same results. By showing that this diversion was quite limited, we were able to help convince the government to close their investigation into that aspect of the merger.

What about instances in which you've testified in court—has that been in bench trials or jury trials?

Most of my testimony to date has been in bench trials. But more recently, I had the opportunity to testify in front of a jury in an aftermarket case in which the jury came back with a favorable ruling. Here, my testimony helped convince jurors to find in favor of a narrow aftermarket product market in a case involving claims that Lexmark was monopolizing the market for replacement toner cartridges for its laser printers. Although many aspects of establishing the market definition were relatively technical and complex, I was able to present my analyses—and the economic intuition behind those findings—in a way that the jury ultimately found convincing.

Do you see a big difference between testifying in bench versus jury trials?

Not really. Both the court and a jury need to have the analysis explained in a way that makes intuitive sense to someone who is not an economist. The same principle applies when presenting evidence to the antitrust agencies—although the DOJ and FTC economists are always ready and willing to discuss the fun stuff associated with economic modeling, the agency lawyers represent a different audience to whom the intuition of the economic analyses needs to be emphasized. At the end of the day, most economics can be boiled down to something that should sound like common sense. And it's that common sense that an expert needs to be able to emphasize—whether to a judge, a jury, or anyone else who's interested in the economics of the conduct at issue.

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