



CRA Insights: Competition

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Charles River Associates is pleased to send another issue of CRA Insights. CRA Insights highlights recent cases and other noteworthy activities undertaken by members of our Competition Practice.

In North America

CRA files two FCC reports for Time Warner Cable

A CRA team led by Senior Consultant [Professor Steven Salop](#) (Georgetown University Law Center) and including [Tasneem Chifty](#), [Serge Moresi](#), [John Woodbury](#), and [Martino DeStefano](#) filed two reports with the Federal Communications Commission (FCC). The first report responded to claims that increases in the video programming fees paid by multichannel video program distributors (MVPDs) had not resulted in higher subscriber prices, showing instead that the failure to account for changes in relevant supply and demand factors had led to incorrect conclusions regarding the effects of programming cost increases on subscription prices. The second report analyzed bargaining among MVPDs and broadcasters in negotiating the fees paid to broadcasters for retransmission of their programs to MVPD subscribers. The analysis demonstrated that a number of economic factors (including the “must have” nature of broadcast network programming and the growing competition among MVPDs) likely give broadcasters a dominant bargaining position over MVPDs in retransmission fee negotiations. This dominant position permitted the broadcasters to seek higher fees by denying (or threatening to deny) MVPD subscribers access to highly popular programming, such as the World Series or the Oscar ceremonies. CRA also identified a number of policy changes that the FCC might consider to reduce consumer harm stemming from the broadcasters’ bargaining advantage and their “brinkmanship” tactics (including temporary blackouts).

CRA advises on Yellow Pages acquisition of Canpages

CRA’s [Margaret Sanderson](#), [Lilla Csorgo](#), [Doug Zona](#), and [Matthew Johnson](#) assisted Yellow Pages Income Fund (YPI) in its CAN\$225 million acquisition of Canadian Phone Directories Holdings, Inc. (Canpages). The merger combines two of Canada’s largest publishers of advertising directories and local web search engines. CRA assisted counsel to YPI in its submissions to the Competition Bureau. The analysis included an empirical examination of competition among conventional and online advertising services, and whether, in this competitive and rapidly evolving environment, Canpages had an important price constraining effect on Yellow Media’s print directory advertising rates. The Competition Bureau cleared the merger without conditions.

CRA advises on tariffs for music downloads

A CRA team led by [Tasneem Chipty](#) provided expert testimony and analysis on behalf of Apple Inc., Bell Canada Enterprises Incorporated, Rogers Communications Inc., Telus Communications Company and Videotron Ltd. with regard to reasonable tariff rates for the reproduction and communication of musical works to be levied in Canada on online music services such as iTunes. Dr. Chipty appeared before the Copyright Board of Canada in June 2010. She provided a critique of the economic testimony submitted on behalf of the Canadian copyright collectives representing the rights holders (CSI and SOCAN). She also provided a new approach, based on the Nash bargaining solution, to arrive at reasonable tariff rates. The decision in this matter is pending. The CRA team also included Arif Dhillia, [Serge Moresi](#), and [Elizabeth Wang](#).

In Europe

EC clears Procter & Gamble's acquisition of Sara Lee Air Care in Phase I

CRA advised Procter & Gamble during the European Commission's Phase I investigation of its acquisition of Sara Lee's air care business. The EC approved the acquisition without conditions. The Commission examined the effects of the acquisition in the home air freshener market, with a particular focus on horizontal overlaps in the supply of electrical air fresheners in Belgium and the UK. P&G manufactures air fresheners under the Febreze brand and Sara Lee Air Care manufactures the Ambi Pur brand. The Commission also investigated whether the proposed transaction would eliminate a potential competitor in the supply of car fresheners in Spain and Portugal or fabric fresheners in Germany and Portugal. The Commission's investigation found that the combined firm would continue to face several strong, effective competitors with significant market shares and concluded therefore that the transaction would not give rise to competition concerns. A team from CRA's London office including [Mike Walker](#) and [Adrien Cervera-Jackson](#) assisted Procter & Gamble throughout the proceedings.

General Court upholds prohibition of acquisition of Aer Lingus by Ryanair

On July 6, 2010, the General Court of the European Union upheld the European Commission's prohibition of the acquisition of Aer Lingus by Ryanair. The Commission had prohibited the takeover in 2007 on the grounds that the acquisition would have created a quasi-monopolist on a large number of short-haul routes out of Ireland. Ryanair appealed that decision to the General Court (formerly the Court of First Instance), arguing that the Commission's analysis, including its econometric assessment of the competitive interaction between the two carriers, was flawed. The General Court found that none of the arguments put forward by Ryanair were capable of calling the Commission's findings into question and dismissed the appeal in its entirety. A CRA team advised Aer Lingus throughout the Commission's investigation and the appeal proceedings. [Cristina Caffarra](#) presented at the General Court on behalf of Aer Lingus, explaining how CRA's analyses supported the Commission's findings. The CRA team also included [Giulio Federico](#) and [Hugh Wills](#).

Other news

Professor Steven C. Salop receives Antitrust Achievement Award

CRA Senior Consultant [Professor Steven C. Salop](#) has been awarded the American Antitrust Institute's 2010 Antitrust Achievement Award. Dr. Salop is Professor of Economics and Law at Georgetown University Law Center. [Click here](#) to read more.

Horizontal Merger Guidelines Review

CRA senior consultants [Professor Steven Salop](#), [Professor Aaron Edlin](#), and [Professor Joshua Wright](#) submitted comments to the US Department of Justice and the Federal Trade Commission with regard to the proposed revisions to the Horizontal Merger Guidelines. Their joint commentary focused on the use of price/cost margins in merger analysis. [Click here](#) to read their commentary. Professor Wright also submitted comments on accounting for out-of-market efficiencies. [Click here](#) to read Professor Wright's comments.

CRA's [Lilla Csorgo](#) and [Serge Moresi](#) submitted commentaries concerning the hypothetical monopolist test and mergers of competing buyers. [Click here](#) to read their comments. Their comments and those of other CRA economists can also be found on CRA's Horizontal Merger Guidelines Review webpage. Please [click here](#) to visit this webpage.

Publications

[Serge Moresi](#)'s "The Use of Upward Price Pressure Indices in Merger Analysis" appeared in the February edition of *The Antitrust Source*. [Click here](#) to read this article.

Two CRA economists contributed to the ABA's *Proving Antitrust Damages: Legal and Economic Issues, 2nd Edition*, which was published in April 2010. [Tim Snail](#) co-authored an article on the subject of Overcharges, while [Lorenzo Coppi](#) co-authored a chapter entitled "Proving Antitrust Damages from Exclusionary Conduct." [Click here](#) to learn more about this book.

An article by [Laurent Flochel](#) entitled "Efficiency Gains in Horizontal Merger Reviews" appeared in *Concurrences, No. 2-2010*, (May 24, 2010). [Click here](#) to read this article (in French).

"Non-Cooperative Entry Deterrence in License Auctions: Dynamic Versus Sealed Bid," by [Gopal Das Varma](#) and Giuseppe Lopomo, appeared in the June 2010 issue of *The Journal of Industrial Economics*.

Recent and upcoming speaking engagements

On May 17, [Robert Stillman](#) chaired a session entitled "Abuse of Dominance in IT Markets after the Microsoft and Intel Cases" at the British Institute of International and Comparative Law's conference on Antitrust and the Changing Landscape of the Information Technology Sector.

[Laurent Flochel](#) spoke at a session entitled, "The Application of the 30% Threshold to the Distributor's Market and its Practical Consequences—Active and Passive Sales" at the Annual Meeting of the International Distribution Institute on June 11 in Turin, Italy. On June 28, Dr. Flochel spoke at the annual conference of the French Franchise Federation on "The New Regulation on Vertical Restraint: the Role of Economic Analysis."

[Mike Walker](#) participated in a panel discussion on the challenges of international deals at the 5th annual EU Merger Control Forum in Brussels on June 16.

[Matthias Pflanz](#) spoke at a workshop on "Standards for Economic Evidence" organized by the German Federal Cartel Office and the Düsseldorf Institute for Competition Economics in Düsseldorf on June 17.

Lilla Csorgo spoke about Canadian competition policy at the 2nd Asian Competition Policy Workshop in Hong Kong on June 18. [Click here](#) for more information. Dr. Csorgo also presented a paper entitled “What the Canadian Criminal Conspiracy Amendments Mean for Buying-Side Agreements (Including Mergers with Buying-Side Effects)” at the Fifth International Annual Conference on Industrial Economics and Economic Theory on June 20-21 at Shandong University in Jinan, China. [Click here](#) for more information.

Lilla Csorgo also participated in an online panel discussion entitled “Competitor Collaboration Guidelines: Their Role in Antitrust Enforcement in the United States and Canada” on July 6. This program was presented by the Economics, International, and Joint Conduct committees of the ABA’s Section of Antitrust Law and the Economics and Law Committee of the Canadian Bar Associations’ National Competition Law Section.

Robert Maness spoke about “Recent Legal and Economic Developments in Antitrust Class Actions” at a meeting of the Antitrust & Trade Regulation Section of the Dallas Bar Association on July 20. [Click here](#) for more information.

Ian Small will speak at the EC Competition Law residential summer school in Cambridge, UK on August 12. His talk is entitled “The Economic Assessment of Mergers by the European Commission.”

For more information about CRA Insights, please contact the editor:

Robert J. Levinson

Vice President

+1-202-662-3881

rlevinson@crai.com

For more information about CRA’s Competition work, contact:

Margaret Sanderson

Vice President and Practice Leader – Competition

+1-416-413-4071

msanderson@crai.com

www.crai.com/antitrust



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