



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.

Live Nation/Ticketmaster merger

Charles River Associates assisted Live Nation Inc. in securing antitrust clearance from the US Department of Justice for its merger with Ticketmaster Entertainment, creating the world's largest live entertainment and event ticketing company. The merger was cleared subject to consent provisions that still allow the merged firm to focus on its goal of enhancing the live entertainment experience for consumers and artists. A team of CRA economists led by **Andrew Dick** combined rigorous theoretical analysis with innovative empirical studies to analyze competition in concert promotions, artist tour routing, venue selection, and other competitive issues in the live entertainment industry. Other team members assisting Live Nation included **John Woodbury**, **Serge Moresi**, and **Jeffrey Prisbrey**.

Panasonic acquires Sanyo

The acquisition of Sanyo by Panasonic, which was the subject of a Second Request in the United States and a Phase 1 investigation in Europe, was cleared in both jurisdictions following the acceptance of remedies that resolved horizontal overlaps in the production of certain portable batteries. The two agencies also investigated horizontal overlaps in the supply of other portable batteries and batteries for electric vehicles in particular, but found that the transaction would cause no serious competitive concerns with regard to such batteries. CRA advised Panasonic and Sanyo throughout the investigations by the US Federal Trade Commission and the European Commission. **Gary Roberts**, **Yianis Sarafidis**, and Fumino Tamaki of CRA's Washington, DC office advised the parties with regard to the US investigation. **Cristina Caffarra** and **Ian Small** advised the parties in connection with the European merger review.

CRA advises NHL on Phoenix Coyotes sale

CRA Senior Consultant **Franklin M. Fisher** testified on behalf of the National Hockey League (NHL) during bankruptcy proceedings for the Phoenix Coyotes. At issue was the proposed sale of the Coyotes without the NHL's approval and outside established rules governing the sale and relocation of NHL clubs. Professor Fisher testified that the NHL operates as a single economic entity and has a procompetitive interest in regulating ownership transfers and relocations of its member clubs. He explained that the League's rules help safeguard the quality of NHL hockey and promote the League's success in

competition against other professional sports and entertainment. Professor Fisher concluded that allowing the proposed sale of the Coyotes franchise without following the NHL's rules would harm consumers by weakening franchise stability, competitive balance and geographic diversity among teams, and community commitment to NHL clubs. The Court upheld the NHL's right to select the owners of its member clubs and to decide the home locations of those clubs. Professor Fisher was supported by a CRA team that included [Andrew Dick](#), [Jeffrey Prisbrey](#), and Matthew List.

CRA advises San Diego Convention Center on contractor cleaning dispute

[John Hayes](#) has been retained as an expert to testify on behalf of the San Diego Convention Center (SDCC) in a lawsuit brought by United National Maintenance (UNM), a firm that provides cleaning services for trade shows held at convention centers. In 2007, SDCC implemented a new policy requiring that all cleaning services at the center be performed by SDCC cleaning staff. UNM alleges that SDCC has attempted to monopolize a market for trade show cleaning services in San Diego by tying trade show cleaning services to use of the SDCC. Hayes and a CRA team including Bharati Mandapati, Tommy Drake, and Sharat Ganapati analyzed market power and pricing in the relevant markets. Hayes has produced an expert report, offered deposition testimony, and submitted a declaration with SDCC's motion for summary judgment.

EC approves Lloyds Banking Group restructuring

CRA advised Lloyds Banking Group (LBG) in obtaining approval from the European Commission for its restructuring plan. The plan addressed the £17 billion financial support package (which effectively gave the state a 43.5% stake in LBG) and additional state aid measures. The Commission found that the plan ensures a fair burden sharing of past losses and that the bank makes a significant contribution to the financing of the restructuring costs. As part of the agreement, the plan contained a divestment package in LBG's retail banking to limit potential distortions of competition created by the aid. The divested entity would have a 4.6% share of UK personal accounts through a network of at least 600 branches. A CRA team including [Alan Overd](#) and [Vicki Mertzani](#) advised LBG.

Other news

Pro-bono work

Working with counsel from the National Center for Law and Economic Justice and Kirkland & Ellis LLP, CRA's [Jeffrey Prisbrey](#) recently testified in a pro-bono case brought against the Secretary of the Maryland Department of Human Resources (DHR). The case was brought on behalf of Maryland residents who had applied for food stamps, temporary cash assistance, and Medicaid, but whose applications had not been acted upon in a timely manner. Dr. Prisbrey analyzed application data from DHR and presented that data to the court. The judge ruled in favor of the residents giving DHR 45 days to provide a plan to correct the problems and one year to be in full compliance with the laws.

58th Antitrust Law Spring Meeting

CRA economists will be featured on several panels at the ABA Antitrust Law 2010 Spring Meeting to be held from April 21 to 23 in Washington, DC. [Gary Roberts](#) will speak about the fundamentals of economics and econometrics. [Greg Vistnes](#) will be a panelist at a session entitled "When You Thought the Review was Done (or Wouldn't Begin): Investigations of Consummated and Non-reportable Mergers." CRA Senior Consultant [Professor Joshua Wright](#) will be the chair and moderator of a session entitled "Antitrust and Consumer Protection Fundamentals."

Merger Guidelines Review

CRA competition economists contributed to the DOJ/FTC Horizontal Merger Guidelines Review project. Several participated in the agencies' public workshops, including [Professor Steven Salop](#), [Monica Noether](#), [Douglas Zona](#), and [Professor Joshua Wright](#). In addition, Professor Salop, [Serge Moresi](#), [Gopal Das Varma](#), and [Yianis Sarafidis](#) submitted written responses to "Questions for Public Comment" posed by the FTC and DOJ. [Click here](#) to read more.

Senior hires

[Professor Joshua Wright](#) has joined CRA as a senior consultant. An associate professor at George Mason University School of Law, Wright also holds an appointment in the university's Department of Economics. He specializes in antitrust law and economics, intellectual property, the law and economics of contracts, empirical law and economics, and consumer protection.

[Lilla Csorgo](#) has joined CRA's Toronto office as a vice president. She has a comprehensive knowledge of the theory and application of industrial organization, including antitrust, regulation, damages, and intellectual property. She has also conducted quantitative and qualitative analyses in a wide array of industries, including software, telecommunications, broadcasting, movie exhibition and distribution, retail, banking, and media. Dr. Csorgo was most recently special economic advisor to the Commissioner of the Canadian Competition Bureau.

Recent publications

[Thomas Buettner](#), Andrea Coscelli, Thibaud Vergé and [Ralph Winter](#) published an article in the August 2009 edition of the *European Competition Journal* entitled "Selective Distribution by Luxury Goods Suppliers: A Response to Kinsella et al." [Click here](#) to read the article.

[Lorenzo Coppi](#) and Geert van der Kils co-authored an article entitled "Brussels Threatens Financial Stability; The EU Must Distinguish Between Good and Bad Aid" which appeared in the September 21, 2009, edition of *The Wall Street Journal*.

[Robert Maness](#) and Kristofer Buchan co-authored an article entitled "Thoratec-HeartWare and the Rebirth of Innovation Markets Analysis at the FTC," which appeared in the October 2009 issue of the *ABA Antitrust Health Care Chronicle*. [Click here](#) to read the article.

[Margaret Sanderson](#) and Donald Hawthorne co-authored an article published in the fall 2009 issue of *Antitrust* entitled "Rigorous Analysis of Economic Evidence on Class Certification in Antitrust Cases." [Click here](#) to read the article.

[Gopal Das Varma's](#) article, "Will Use of the Upward Pricing Pressure Test Lead to an Increase in the Level of Merger Enforcement?" appeared in the fall 2009 issue of *Antitrust*. [Click here](#) to read the article.

[Yianis Sarafidis](#), [Gopal Das Varma](#), and [Gary Roberts](#) published an article entitled "Evolution of Unilateral Effects Analysis and the Road Ahead" in *The Threshold*, the ABA M&A Committee fall newsletter. [Click here](#) to read the article. [Gary Roberts](#) and John Scribner co-authored an "Interview with Joseph Farrell," which appeared in the same issue of this newsletter. [Click here](#) to read the article.

In the December 2009 issue of *The Antitrust Source*, [John Woodbury](#) and [Peter Boberg](#) consider what role repositioning should play in the merger review process as the agencies begin the task of revising the Horizontal Merger Guidelines, and highlight the evidence of widespread repositioning in many consumer goods industries. [Click here](#) to read the article.

Gopal Das Varma and **Serge Moresi** published an article entitled “Horizontal Merger Guidelines Review: A Midterm Report” in the December 17 edition of *Competition Law*³⁶⁰. [Click here](#) to read the article.

Laurent Flochel's article, “Short Term Costs – Application to Predatory Prices” appeared in *Concurrences* (No. 1- 2010). [Click here](#) to read the article (in French).

Laurent Flochel and **Tim Wilsdon** jointly authored “Factors Affecting Generic Entry: the Role of Firms’ Strategies and Regulation,” which appears as a chapter of *Concurrence, santé publique, innovation et médicament*, LGDJ, 2010. Flochel and Oliver Freget co-authored another chapter in the same publication, entitled “Applications of Economic Tests of Anticompetitive Practices to the Pharmaceuticals Sector.”

Recent and upcoming speaking engagements

In North America

On December 15, **Tasneem Chipty** made a presentation before the Boston Bar Association on “Economic Analysis of Class Certification Before and After Hydrogen Peroxide.”

Thomas Overstreet, **Gopal Das Varma**, and **Yianis Sarafidis** gave a presentation on the Upward Pricing Pressure (UPP) test during the January 13 meeting of the New York City Bar Association’s Antitrust Committee.

On January 22, **Evan Hoffman Schouten** participated in a seminar hosted by the ABA Joint Conduct and the Economics Committee entitled “American Needle Amici: Economic Perspectives.” The seminar featured economists (including Ms. Hoffman Schouten) who developed amici briefs in the *American Needle v NFL* matter, which recently was heard by the Supreme Court. Ms. Hoffman Schouten also was a panelist in a session entitled “Take Me Out to the Bowl Game: Antitrust Issues in College Sports” at the New York State Bar Association Antitrust Section meeting on January 28.

Serge Moresi was a facilitator for a session about new merger analytical techniques and processes at the Competition Law & Policy Forum in Cambridge, Ontario, on February 4. **Margaret Sanderson** moderated a session on civil class actions on February 5 at the same conference.

On February 16, **Lilla Csorgo** presented “Price-Costs Tests: What are They Actually Telling Us?” at the Canadian Competition Bureau. On March 2, Dr. Csorgo will moderate a Canadian Bar Association brownbag session entitled, “Revisiting Market Definition: Canadian and US Perspectives.” **Ralph Winter** will be one of the session panelists.

In Europe

Matthias Pflanz spoke about “Recent Developments in Merger Control – Policy Developments and Emerging Trends in an Economic Downturn” at the Global Competition Review 2009 Competition Law Review on November 16 in Brussels.

Laurent Flochel, **Mike Walker**, **Giulio Federico**, and **William Bishop** participated in panel discussions at the Association for Competition Economics Conference in Berlin on November 26 and 27. Dr. Flochel chaired a session on information exchanges, while Dr. Walker spoke on telecommunications issues, Dr. Federico on the competitive implications of rebates, and Dr. Bishop on competitive issues surrounding media rights for sporting events.

Mike Walker chaired a session on the failing firm defense at the Premier Cercle/*Wall Street Journal* Competition Summit 2009 on December 3 in Brussels. On March 18, Dr. Walker will speak at the Competition Policy Forum at the University of Mannheim on the influence of economics in recent competition cases.

Cristina Caffarra participated in a panel entitled "Refusal to supply and deal" at the Global Competition Review Dominance and Unilateral Conduct Conference on February 9 in Brussels.

Robert Stillman participated in a roundtable discussion of economic issues raised when IP holders are obliged to license on Fair, Reasonable and Non-Discriminatory (FRAND) terms. This event took place at the Intellectual Property Rights (IPR) Legal Summit held at the GSMA Mobile World Congress in Barcelona on February 16. Dr. Stillman participated in "A debate on how best to solve Article 102 disputes" at the 14th annual Dominance & Pricing in Europe Conference in Brussels on February 25.

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