



CRA Insights Competition



Antitrust & Competition Year in Review

Dear Clients and Friends,

Thank you for your confidence in our team. Looking back on the challenges of 2022, I am grateful to our team of talented economists who worked hard to deliver creative and thoughtful analyses addressing a wide range of complex competition issues. The year 2022 saw an increase in our workload and growth in our personnel. We worked on even more mergers and litigation cases, and also brought economic insights to new areas in the competition space, covering artificial intelligence, cryptocurrency, and ESG. We remain a destination of choice for economic experts, with more people joining our team.

In this update, we briefly review some of our work across geographies and analyses. The sample of recent work displayed here encompasses our antitrust and competition economics offerings and highlights certain industries such as healthcare and technology.

We summarize several client engagements that brought about large successes for our clients and team. Such engagements included mergers and acquisitions, class action litigation, and expert testimony.

As ever, we remain at your service and look forward to working together to address your important and evolving needs.

Sincerely,

Margaret Sanderson

Vice President and Practice Leader

New expert colleagues

In January, CRA welcomed **Liz Bailey** as a vice president to the Antitrust & Competition Practice. Dr. Bailey specializes in antitrust, competition policy, and intellectual property issues and has consulted in a wide variety of matters across industries. She also has provided economic analysis on mergers and acquisitions in the United States, Canada, and Europe and has appeared before the US Department of Justice, the US Federal Trade Commission, and the Canadian Competition Bureau regarding numerous transactions.

In March, CRA welcomed **Joshua Gans** as a senior consultant to the Antitrust & Competition Practice. Professor Gans specializes in innovation competition, intellectual property, licensing, utility regulation, vertical mergers, digital economics, and recently, the economics of artificial intelligence and cryptocurrency. Professor Gans is a prolific author with an extensive publication record on the most topical technology and competition issues being currently debated in policy circles. He has testified in a wide range of regulatory and litigation matters before numerous bodies worldwide, including in Australia, Canada, Europe, and the United States.

Selected North American Competition Merger Cases

Liz Bailey testifies on behalf of Booz Allen Hamilton in Section 1 injunction hearing win

Dr. Elizabeth Bailey testified on behalf of Booz Allen Hamilton in the US District Court for the District of Maryland. The DOJ challenged the acquisition agreement between government contractors Booz Allen Hamilton and EverWatch Corporation and sought a preliminary injunction under Section 1 of the Sherman Act, arguing the agreement would eliminate competition for a single US government defense procurement contract relating to signals intelligence modeling and simulation services. Dr. Bailey provided economic analyses related to market definition and the alleged market power. Her findings were reflected in the judge's Decision. The CRA team supporting Dr. Bailey included **Matthew Johnson, Tanguy Brachet,** and **Duncan Graham**, along with many others. CRA's team worked closely with attorneys at Shearman & Sterling LLP, including Ryan Shores, Todd Stenerson, Adam Schwartz, and Ben Gris, who represented Booz Allen Hamilton.

CRA expert Joanna Tsai advises e-commerce platforms in successful merger

Joanna Tsai advised a global e-commerce leader in a \$300 million acquisition of a US-based specialized online platform. The transaction was announced and closed within three months, with no further questions raised by the US antitrust agencies after providing data and information to the agency's questions in the first 30 days. Dr. Tsai was retained by counsel for the acquirer prior to deal signing and assisted the merging parties in assessing the antitrust risk and identifying online and offline constraints faced by the parties on both sides of the platforms. CRA staff support was provided by **Yajing Jiang** and included **Ilton Soares, Duncan Graham,** and others.

Kevin Murphy testifies in successful healthcare technology merger

Kevin Murphy testified on behalf of UnitedHealth Group (UHG) and Change Healthcare (Change) in relation to the DOJ's investigation of their proposed merger. Professor Murphy demonstrated that the acquisition would likely not cause UHG to use rival insurers' claims data to harm competition and likely would not withhold future innovations from rival insurers. Judge Carl Nichols of the US District Court for the District of Columbia denied the DOJ's request to block the deal. Professor Murphy was supported by **Sean Durkin**, **Ioana Dan**, **Xiaowei Yu**, and others.

CRA experts advise on oncology, consumer health, and animal health transactions before FTC

Gary Roberts and **Yianis Sarafidis**, along with **Archan Ruparel** of the Life Sciences Practice, advised counsel and presented before the FTC on transactions involving Novartis's acquisition of cancer drugs from GlaxoSmithKline, GSK's joint venture with Novartis on consumer health, and Novartis's sale of Novartis Animal Health to Eli Lilly & Co. The deals ultimately went forward with certain divestitures.

Margaret Sanderson testifies for Parrish & Heimbecker in its merger win before the Canadian Competition Tribunal

CRA was retained by Parrish & Heimbecker (P&H) to address the competitive effects of P&H's grain elevator purchase on prices that grain merchants pay to wheat and canola farmers in southwestern Manitoba and southeastern Saskatchewan. **Margaret Sanderson**, supported by **Lisa Stockley**, advised counsel to P&H and testified before the Canadian Competition Tribunal (Tribunal). The Tribunal ruled in favor of P&H and dismissed the Canadian Commissioner of Competition's application challenging the acquisition. The Tribunal's conclusions on relevant product market definition, relevant geographic market definition, and competitive effects are consistent with Ms. Sanderson's expert economic opinion. Ms. Sanderson's evidence is referenced throughout the decision. The **Decision Summary** and **Full Decision** can be found on the Tribunal's website.

Selected North American Competition Litigation Cases

Dr. Timothy Snail engaged on behalf of nation's largest transportation companies in alleged no-poach class action litigation

Dr. Timothy Snail provided expert economic analysis of class certification and damages issues on behalf of a joint defense group and settled defendants, which are among the nation's largest transportation companies, in high-profile antitrust class action litigation. Plaintiffs sought more than \$100 million in antitrust damages before trebling. The CRA team's analyses showed that the foundation of plaintiffs' and their experts' class-wide theory of harm is false and individualized issues predominate over questions of law or fact common to class members. The team was led by **Jarrod Welch** and included **Jonathan Blumenstein**, **Ann McDermott**, **Kristopher Hult**, **Jeffrey Cisyk**, **Lisa Stockley**, **Assaf Zimring**, **Matthew Arck**, and **Alfia Karimova**.

Energy Services client granted motion for summary judgment in consumer class action

CRA's [Dr. Debra Aron](#) was retained by Agway Energy Services (Agway), the defendant in a consumer class action matter. Plaintiff alleged that Agway breached its contract with consumers and engaged in deceptive practices by charging introductory rates and then switching customers to a monthly variable price that was allegedly higher than the variable rates charged by the competing electric utilities and the competing ESCOs and that was “disconnected” from “true market-based” rates. Dr. Aron analyzed the market and the relevant regulatory structure to determine if there was evidence that the prices charged were inconsistent with the contractual language and/or inconsistent with competitive market prices. Dr. Aron was supported by [Olga Ukhaneva](#) in this engagement.

Expert report on supply chain, control rights, and social harm

Senior Consultant to CRA's Antitrust & Competition Practice [Thomas Hubbard](#) was retained by Wallace and Graham on behalf of the Plaintiffs—hundreds of individuals who claimed they had nuisance-related harms related to hog farms in eastern North Carolina—starting in October 2016. Dr. Hubbard submitted an expert report in January 2017. This report described how Smithfield's operations, in conjunction with those of hog growers, created economic value but potentially generated social harms as well. Along with developing the report, Dr. Hubbard advised the attorneys on these issues over the following months. Juries in five trials in 2018 and 2019 ruled for the Plaintiffs and awarded them nearly \$100 million in punitive damages; Plaintiffs in the remaining cases agreed to favorable private settlements with the defendants.

CRA experts testify in civil antitrust trial involving alleged tying of PICC lines and location devices

CRA experts testified on behalf of C.R. Bard in *AngioDynamics, Inc. v. C.R. Bard, Inc. et al.* in the Northern District of New York. AngioDynamics claimed that C.R. Bard had illegally tied its peripherally inserted central catheters (PICCs) to its leading PICC navigation and location (TLS) devices and thereby foreclosed AngioDynamics' PICCs from the market. [Fiona Scott Morton](#), Senior Consultant to CRA, testified about the merits of the claim, opining that Bard sold PICC products in a single market—a market for differentiated PICCs, some of which included TLS functionality—rather than products in separate PICC and TLS markets and that there were no anticompetitive effects associated with the tie. Fiona Scott Morton and [Gregory Bell](#) were supported by [Jeffrey Prisbrey](#) and [Justin Ho](#).

Selected European Competition Merger Cases

European Commission clears United Group/Wind Hellas

The European Commission cleared the acquisition of Wind Hellas (Wind) by United Group, without condition. Wind provides mobile, fixed, and internet services as well as retail pay-TV in Greece, where United Group is also active in fixed telephony and broadband as well as in pay-TV services via its subsidiary Nova (formerly Forthnet). The Commission concluded that the transaction would not lead to any horizontal concern due to the strong competition exerted by other players. Moreover, the Commission found that the deal would not create any vertical concern because the combined entity would not have the ability or the incentive to implement an input foreclosure strategy. A CRA team including [Raphaël De Coninck](#), [Benno Buehler](#), [Christoph von Muellern](#), and [Samuel Zimmermann](#) advised United Group for this transaction.

European Commission clears Biscuit International's expansion

The European Commission unconditionally cleared Biscuit International's acquisition of Continental Bakeries, which will strengthen its position as a leader for private label biscuits in Europe. After the transaction, the combined entity will employ over 4,500 people, with consolidated sales in excess of €900 million and production of over 300,000 tons of biscuits, waffles, and bread replacement products from 33 factories in Europe. The Commission concluded that the proposed transaction would not raise competition concerns given that the companies' activities are mostly complementary and that for those markets where the companies' activities overlap, enough alternative suppliers would remain after the transaction. A CRA team including [Raphaël De Coninck](#), [Saul Mendelsohn](#), [Areen Dakessian](#), and [Shuichi Chiba](#) advised Biscuit International for the European Commission proceedings.

European Commission clears acquisition of LeasePlan by ALD

The European Commission (EC) cleared the acquisition of LeasePlan by ALD, a subsidiary of Société Générale, subject to divestments in six European countries and behavioral commitments following a Phase I review. This decision followed previous unconditional clearance by several national competition authorities, including the Competition and Market Authority (CMA) and the Mexican Competition Authority (COFECE). The CRA team, including [Laurent Flochel](#), [Oliver Latham](#), [Romain Bizet](#), [Sylvestre Boittin-Duchesne](#), [Elina Teres](#), and [Shuichi Chiba](#), supported the parties and their counsel Darrois Villey Maillot Brochier and Linklaters through the transaction and the notification process before the EC, the CMA, and the COFECE.

Selected European Competition Litigation and Advisory Cases

Paris Court of Appeal substantially reduces fine on Apple and its wholesalers in France

On March 16, 2020, the French Competition Authority (AdIC) imposed a record EUR 1.1 billion fine on Apple and its wholesalers, considering that Apple and its wholesalers colluded to impose abusive terms and fix prices of some Apple electronic devices set by their resellers in France.

On October 6, 2022, the Paris Court of Appeal dismissed the retail price maintenance finding of the AdIC and reduced the duration of the practices sanctioned in the Decision. As a result, the Court reduced the fine initially imposed on Apple and its resellers by two thirds.

Laurent Flochel and **Romain Bizet** assisted Apple and its counsel in the preparation of the appeal. The CRA team provided analyses of intra-brand and inter-brand competition in the market for electronic devices in France.

The CMA concludes its independent study into the music streaming market

On 29 November 2022, the UK Competition Market Authority (CMA) concluded its independent study into the music streaming market. The CMA has decided to end the market study and concluded that, while many artists and songwriters across the UK reported to be struggling to make a decent living from these services, these are not the result of ineffective competition, and an intervention by the CMA would not release more money into the system that would help artists or songwriters. The CMA's analysis found that neither record labels nor streaming services are likely to be making significant excess profits that could be shared with creators. The CMA also acknowledged that consumers have benefited from digitalization and competition between music streaming services with prices for consumers in real terms falling between 2009 and 2021 and with average royalty rates in major deals with artists increasing between 2012 and 2021.

CRA consultants have advised Sony Music Entertainment throughout the CMA's market study process. A CRA team including **Mikaël Hervé**, **Matthew Bennett**, **Mariam Arutyunyan**, John Liu, and Caspar Mueller worked to provide economic support to Sony Music Entertainment and their legal counsel.

Investigation into a capacity sharing agreement between P&O Ferries and DFDS

The UK Competition and Markets Authority (CMA) accepted commitments from P&O Ferries Holdings Limited and DFDS A/S that address competition concerns raised by the CMA surrounding a ferry capacity sharing agreement between the parties in the English Channel (the "Agreement"). A CRA team including **Raphaël De Coninck**, **Mikaël Hervé**, and **Charlie Whitehead** advised DFDS during the proceedings. The CRA team's economic work involved an in-depth assessment of the efficiencies and customer benefits that could be expected from the Agreement, relying on a mix of modelling and quantitative approaches. It also considered the likely impact on competition within the Short Sea market, in particular relative to Eurotunnel.

ADLC accepts commitments from Meta

On 16 June 2022, the French Competition Authority (ADLC) accepted commitments from Meta (Facebook) to end practices likely to raise competition concerns in the markets for online display advertising.

The ADLC considered that Meta's practices were likely to distort competition between providers of online advertising services seeking to place ads on Meta's inventories and, in the context of an increased vertical integration of Meta, to foreclose or at least weaken the competitive pressure exerted by rival ad intermediaries.

A CRA team including [Laurent Flochel](#), [Romain Bizet](#), and Sylvestre Boittin-Duchesne advised the lead complainant, Criteo. The CRA team provided the ADLC with quantitative analyses of ad auctions in social and display advertising to inform its Decision.

Selected publications

Competition Practice economists and affiliated senior consultants continue to publish white papers and articles for our clients in academic and industry journals and trade publications and to produce *CRA Insights* pieces. [Click here for the full listing](#) of articles, papers, and newsletters from 2021, 2022, and our archive. Below, we highlight several publications from 2022.

[Rising to the challenge of competition enforcement in digital markets](#)

(*OECD “On the level” blog post*, February 2022)

Philip Marsden

[Can state price gouging laws be practically applied to long-run events?](#)

(The ABA’s Newsletter of the Pricing Conduct Committee, *The Price Point*, February 2022)

Joshua Sherman

[Entry deterrence, concentration, and merger policy](#)

(*Review of Industrial Organization*, March 2022)

Gopal Das Varma, Martino De Stefano

[What’s so special about hospitals? An examination and look into hospital merger review and analysis](#)

(The ABA’s Antitrust Law Section’s podcast, *Our Curious Amalgam*, March 2022)

Monica Noether

[ESG’s function in merger reviews is likely to grow](#)

(*Law360*, March 2022)

Matthew List

[The impact of the global methane pledge on the Brazilian beef industry](#)

(*Web Advocacy*, April 2022)

Marcio de Oliveira Junior

[The Media Show – Reporting on the Abuse of Power](#)

(*The Media Show*, May 2022)

Philip Marsden

[CRA Insights: Blockchain & Cryptocurrency](#)

Joshua Gans

[What Have We Learned From Empirical Studies? Potential Antitrust Concerns Arising From Common Ownership](#)

(The ABA’s Antitrust Law Section’s podcast, *Our Curious Amalgam*, August 2022)

Isabel Tecu

Exclusive dealings in multisided platform markets: The case of Gympass in Brazil

(*Web Advocacy*, August 2022)

Marcio de Oliveira Junior

Quis Custodiet Ipsos Custodes? Behavioral Public Choice Theory and the debate over antitrust reform

(*Competition Policy International*, October 2022)

Andrea Asoni

A critical review of 5G SEP studies

John Hayes, Assaf Zimring, Ben Ladabaum

Mergers and acquisitions in the tech industry: Are they different?

(*George Mason Law Review*, November 2022)

Andrea Asoni, Grace Luo

IP Literature Watch

IP Literature Watch contains an overview of recent publications concerning intellectual property issues. The abstracts included are as written by the author(s) and are unedited. January, February, March, April, May, June, July, August, September, October, November, December

Tolga Bilgicer, Arun Maganti

Speaking engagements and conferences

As we continue to balance in-person and virtual events, Competition Practice economists and experts were able to engage in conferences and seminars/webinars in 2022. We also hosted several events for clients and the antitrust and competition community. To read more about our conferences and speaking engagements from 2022 and our archive, [click here](#).

In January, multiple CRA experts were co-chairs and panelists at GCR Live: Law Leaders Global. [Margaret Sanderson](#) co-chaired the event and presented opening and closing remarks. [Matthew Bennett](#), [Oliver Latham](#), [Fiona Scott-Morton](#), [Elizabeth Bailey](#), [Joshua Sherman](#), [Raphaël De Coninck](#), and [Robert Town](#) were panelists in various sessions.

In February, [Debra Aron](#) was a panelist at Conference Board of Canada's Competition Within the Canadian Telecommunications Landscape conference.

At the George Mason Law Review 25th Annual Antitrust Symposium, [Fei Deng](#), [Joanna Tsai](#), and [Liz Bailey](#) spoke during panel discussions.

[Simon Chisholm](#) chaired and moderated sessions at the 2022 UK Competition Law Conference. The conference reviewed developments in enforcement by the CMA and sector regulators, the divergence of competition policy post-Brexit, merger control in dynamic markets, and more.

[Philip Marsden](#) was a panelist during OECD Competition Open Day on "Panel III – Regulation and Competition Enforcement in Digital Markets."

In March, at IDC Enhancing Case Decision-Making, **Philip Marsden** opened the debate with his thoughts on how administrative decision-making procedures should be bolstered before the waves of digital infringement cases arrive.

In April, at the ABA 2022 Antitrust Law Spring Meeting, **Liz Bailey** and **Joanna Tsai** were session speakers.

CRA and Geradin Partners cohosted the Conference on Ad Tech and Privacy Issues, during which **Mikaël Hervé** and **Oliver Latham** were panelists.

Oliver Latham was a panelist at the Concurrences 6th Innovation Economics Conference for Antitrust Lawyers.

In May, at the MaCCI Testing Conference, **Oliver Latham** was a panelist.

Margaret Sanderson spoke during the ABA “Mergers in the Hot Seat Webinar.”

During the European Competition Lawyers Association’s Stockholm 2022 seminar, **Philip Marsden** gave the keynote address.

Fei Deng was a panelist in the “Berkeley IP Tech and Law Month: China IP Law Year in Review” webinar.

At InformaConnect’s Advanced EU Competition Law, London conference, **Joshua Sherman** was a panelist.

Raphaël De Coninck was a panelist during Concurrences’ webinar “Non-poaching agreements: A new legal battlefield for antitrust in the EU & US labor markets.”

Debra Aron and **Geoff Edwards** presented their co-authored paper titled “Lessons from the Experience of Telecommunications Regulation for Regulation in the EU Package Delivery Industry, with Focus on Access Regulation” at EUI’s 30th Conference on Postal and Delivery Economics.

Joshua Sherman was a panel speaker at the ABA’s “Greening” Competition: A Global Perspective.

In June, **Carl Shapiro** and the European Commission’s Alberto Bacchiega spoke about competition law enforcement in the digital sector at the CRA & Skadden’s joint webinar, “Key Issues in Antitrust Enforcement in the Technology Sector.”

At the EUI’s Florence Competition Summer Conference – The Rise of Global Regulation of Online Platforms, **Philip Marsden** and **Fiona Scott-Morton** were panelists.

At the 4th Annual Berkeley-Tsinghua Conference on Transnational IP Litigation, **Fei Deng** was a commentator.

Joshua Sherman spoke during the Chicago Bar Association’s Antitrust Law Committee’s webinar “Sustainability and Antitrust: Europe is leading – will America follow?”

Raphaël De Coninck was a panelist at the Concurrences 13th New Frontiers of Antitrust Conference.

Philip Marsden spoke At ASCOLA 2022: 17th Annual Conference.

In July, during CRESSE's 16th International Conference on Competition and Regulation, **Serge Moresi** was a chairperson for a session, presented his paper "Product Innovation with Vertical Differentiation: Is a Monopolist's Incentive Weaker?" and was a discussant for a paper presentation.

Joshua Sherman was a panelist at InformaConnect's Antitrust Midwest conference in July.

At the Women's Antitrust Forum's panel discussion entitled "Persuasive Merger Analysis Before the Agencies: What Works Today?" in July, **Joanna Tsai** moderated the discussion.

In August at the ACCC/AER Regulatory Conference, **Joshua Gans**, **Carl Shapiro**, and **Philip Marsden** spoke at various sessions.

During InformaConnect's EU Competition Law Summer School, **Oliver Latham** presented a session.

In September at the Wiesn IP Forum 2022, **Benno Buehler** spoke on a panel.

Margaret Sanderson was a panelist at Canada Competition Bureau's Competition & Green Growth Summit.

Philip Marsden presented at the 6th International Congress on Compliance and Fight Against Corruption.

At the Concurrences 10th Global Antitrust Hot Topics: EU, US & Global Perspectives conference, **Raphaël De Coninck** presented during a session.

Olga Ukhaneva was a panelist at the World Arbitration Update Second Edition.

Oliver Latham spoke at InformaConnect's EU Merger Control conference.

In October at the Florence Seminar on Standard-Essential Patents, **Benno Buehler** spoke in a session.

Oliver Latham was a panelist in the webinar "Dark patterns: When nudge becomes sludge."

At the training course "Competition Policy for Economists," **Oliver Latham** presented on antitrust and regulatory issues in the technology sector.

Gopal Das Varma presented during the ABA's webinar "To Favor or Not to Favor MFNs."

At the conference Standard Essential Patent Licensing – Connectivity Take Off? **Benno Buehler** and **Carl Shapiro** spoke, and **Phillip Marsden** also presented.

During the GCR Live: Global Merger Control conference, **Liz Bailey** was a panelist.

Andy Baziliauskas presented at the CBA Competition Law Fall Conference.

At the ABA 2022 Antitrust Masters Course, **Liz Bailey** and **Laila Haider** presented.

Jim Kearl was a panel member at a symposium at the University of Utah, The New Roaring Twenties: The Progressive Agenda for Antitrust and Consumer Protection Law.

In November at the 2022 Golden State Antitrust and Unfair Competition Law Institute & Antitrust Lawyer of the Year Reception and Dinner, **Joshua Sherman** presented.

During the 2022 Annual ACE Conference in Lisbon, **Benno Buehler** chaired a session and **Oliver Latham** was a panelist in two sessions.

Dr. Monica Noether presented at the 40th Annual IAHA Health Law Symposium.

Raphaël De Coninck spoke at InformaConnect's 31st Annual Advanced EU Competition Law, Brussels.

During the European Data Summit 2022 – Sustainable Competition, **Philip Marsden** spoke.

In December at the George Washington University Competition Law Center and Crowell & Moring's Fourth Annual Antitrust and Tech Conference, **Liz Bailey** presented.

Marcio De Oliveira presented at Changes in Brazilian Competition Law – Trends and Perspectives in Antitrust.

About CRA's Antitrust & Competition Economics Practice

In 1965, CRA's founders envisioned a company that would apply the then-burgeoning area of quantitative methods in economics to real-world issues. Our ability to apply theoretical concepts and superior analytics to create meaningful solutions to client challenges has been a source of pride and differentiation since the founding of the firm. Our consultants and academic affiliates continue to lead the way in developing innovative economic concepts and applying sophisticated economic analysis to complex cases. Read more about the practice [here](#).

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