

# European Competition



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Charles River Associates is at the forefront of European competition economics. Based in London, Brussels and Paris, and working closely with our network of academic economists, we have advised many clients on a wide range of competition issues, including several milestone cases that have contributed to the development of competition policy in Europe. We are also closely integrated with CRA experts in our North American offices, drawing on each other's expertise and working together on transatlantic matters.

We can quickly mobilise our analytical and data-handling resources to help clients navigate the competition investigation process and make the best possible economic case. We focus on giving clear and accurate advice: getting meaningful evidence out of the available data; communicating clearly with the client; supporting the legal team in developing the key competition arguments; and engaging constructively on substance with the competition authorities.

To learn more visit us at [www.crai.com/ecp](http://www.crai.com/ecp)

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# The theory that fits the facts

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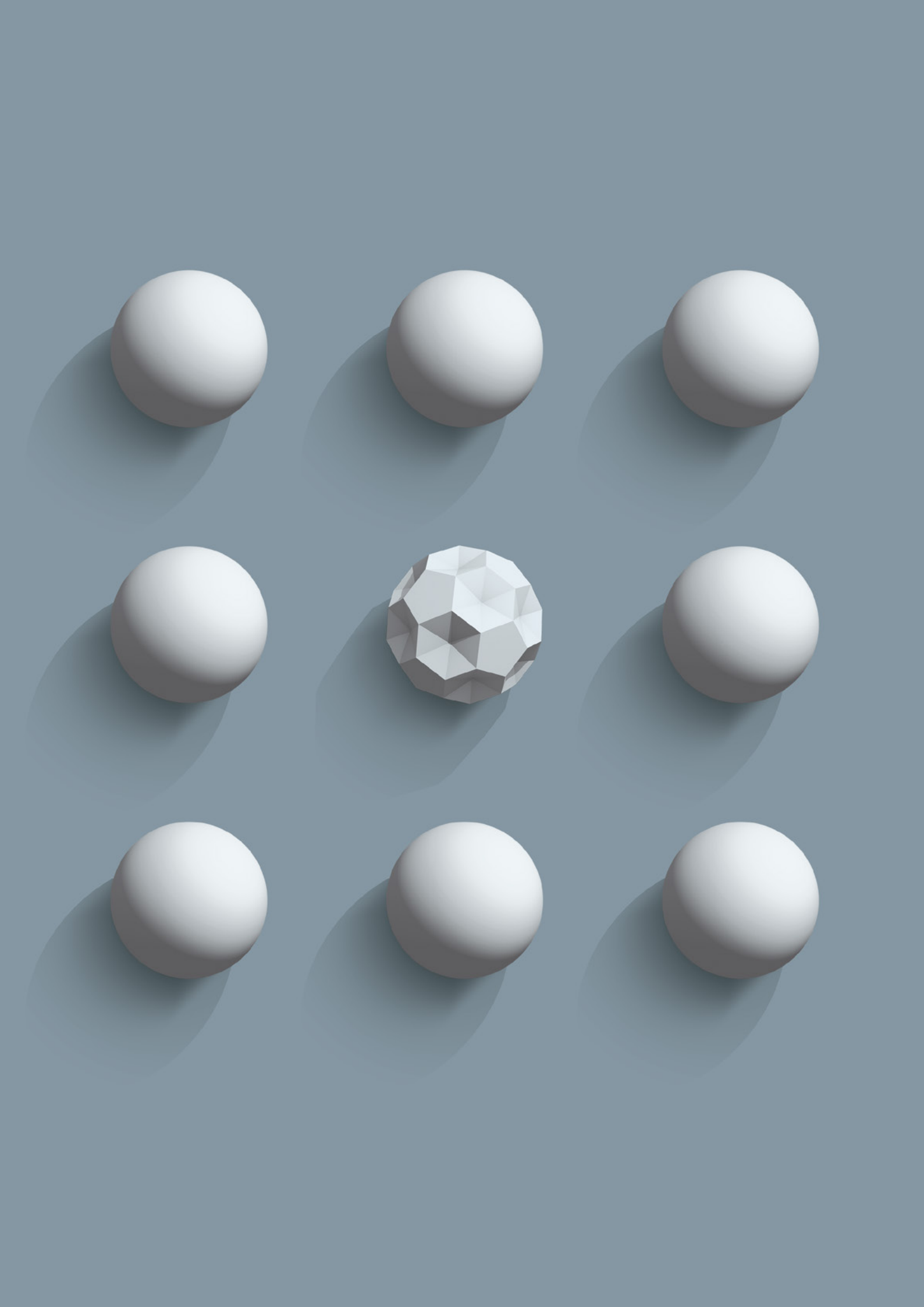
We combine technical economic expertise with an understanding of the practical drivers of business decisions. By translating the reality of our client's business environment into the economic framework used by competition authorities, we address the economic concerns put forward in the most effective way.

Dealing with competition issues is challenging: whether pursuing a merger with a rival, supplier or customer; facing allegations of abuse of a dominant position; defending against accusations of involvement in a cartel; or dealing with a damages claim. These challenges often involve high stakes and complex questions of law and economics that call for external advice and assistance.

This is where we can help. The 'theories of competitive harm' considered by competition authorities are often based on sophisticated economic analyses, making use of recent developments in economic theory as well as advanced econometric techniques. These theories may sometimes seem abstract or even far-fetched from a business perspective. We translate these theories into the real language of business and work with clients to respond to them. Liaising closely with the business and legal teams, we study the facts and examine the competition implications of business practices and market structures.

We provide the interface between business reality and the economic models of behaviour which underpin modern competition law.

Whether the client's business is in fast-moving consumer goods or energy, high-tech industries or commodities, construction or services, we have the skills and the experience to understand and explain how the competition faced by the client operates in an economic framework. We quickly deploy our resources and bring our energy and expertise to bear to identify and respond to the key issues in each case.



# Breadth of experience

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Our senior economists all have extensive experience advising on competition matters. We have provided support to leading businesses on hundreds of competition investigations, including some of the most influential cases of recent years. We use economic theory and empirical tools to analyse markets, identify the key questions, and formulate an engaging and persuasive economic response.

## **Mergers**

Empirical and theoretical analyses are now central to merger investigations. Theories of harm are carefully tested against economic theory and data, often including detailed transaction-level data, as well as against internal documents. Our advice is often sought at the planning stage of a transaction: to identify competition problems as early as possible and undertake pre-emptive work that can smooth and speed up the progress of the notification process. We have helped many clients gain approval in the first phase of an inquiry, thereby avoiding a full-scale investigation. We have been involved in many of the landmark cases that set the course of current merger control in Europe, as well as some of the most controversial European Commission and court cases of recent years.

## **Abuse of dominance**

The European Commission's Guidance paper has embraced a more economics-based approach to abuse of dominance, focusing on the *effect* rather than merely the *form* of behaviour. Practices such as bundling and discounts can strengthen rather than hinder competition, even when carried out by a dominant firm, so careful analysis of the effects of conduct is vital. We have worked on some of the most high-profile cases in recent years, including cases involving Tomra, Intel, Servier, Google and investigations on the enforcement of intellectual property rights in mobile standards. We also often advise on these issues outside the confines of an official investigation, working with the client's legal team to assess whether existing or planned conduct might constitute an abuse.

## **Vertical and horizontal agreements**

Effects-based analyses are also playing a much greater role in the assessment of agreements, whether vertical (between suppliers and customers, such as 'most-favoured-nation' clauses) or horizontal (including JVs and information exchanges). Vertical agreements often carry strong efficiency benefits, so that an effects-based economic analysis is crucial in distinguishing between problematic and beneficial cases. Similarly, economics plays a role in identifying whether an exchange of information had an adverse effect on competition in the market. Even in cartel cases economics is playing a greater role – especially in terms of assessing the effectiveness of the cartel, which can be an important element in negotiating a settlement with the authorities.



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### **Damages and competition litigation**

CRA economists have acted as expert witnesses in numerous litigation matters, presenting economic evidence and being cross-examined before courts and tribunals in a number of jurisdictions. An increasingly important area is the assessment of follow-on claims for damages arising from cartel behaviour, where the extent of the damage has to be estimated using economic analysis. CRA has played a leading role in numerous recent cartel damages cases.

Other competition litigation cases we have been involved in include abuse of dominance cases, anti-competitive agreements (and related damages), and regulatory disputes. As private damages litigation increases, we are also advising in more complex cases involving sophisticated analysis of the counterfactual: for example, litigation in the UK on the setting of interchange fees and competition issues arising from litigation on IP licensing.

### **Regulated industries and sector inquiries**

We have a very strong record advising clients on competition issues in regulated industries, with a particular focus on energy, telecoms, broadcasting, post and water. Mergers in regulated sectors have also attracted close scrutiny, with complex remedy packages designed to accelerate liberalisation. CRA combines strength in competition analysis with detailed knowledge of a broad range of regulated industries.

We have also acted for numerous clients in the context of sector inquiries, where authorities have a specific concern that competition is not working well in a given industry.

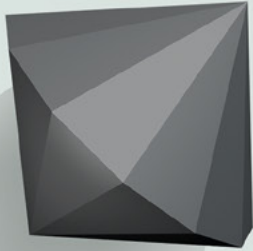
### **Intellectual property rights**

Recent years have seen an increase in the number of antitrust investigations of the behaviour of holders of important IPRs. The importance of IPRs in the assessment of horizontal mergers has also come to the fore in numerous cases. From investigations of standard-essential patent licensing to 'pay to delay' settlements, we have been deeply involved in the issues arising on the IP/competition policy interface. Our involvement reflects our unique ability to combine excellence in competition analysis with a deep and long-established understanding of IP issues on both sides of the Atlantic.

### **State aid**

State aid has become a central concern of the European Commission and this has coincided with a more economic approach to the assessment. State aid cases took on a new dimension in the wake of the 2008 financial crisis, as the unprecedented severity of the crisis resulted in significant amounts of State support being granted to financial institutions and other companies. We have advised on the terms of some of the most high-profile government interventions, such as the restructuring of the Irish banking sector.





# Depth of experience: mergers

Empirical and theoretical economic analyses are central to all competition investigations. CRA has advised on many of the most important competition cases of recent years before the European Commission, national European competition authorities and elsewhere.

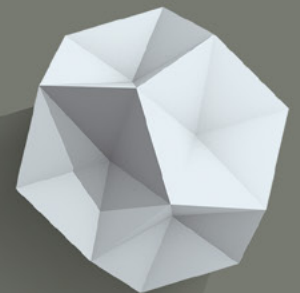
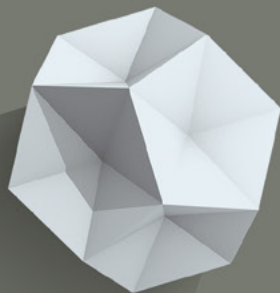
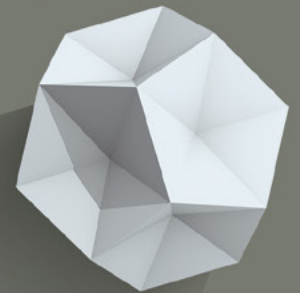
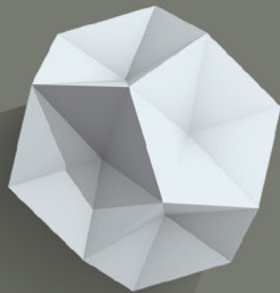
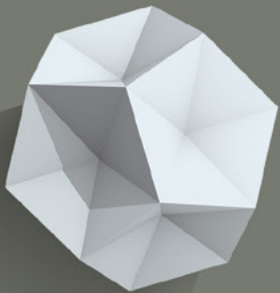
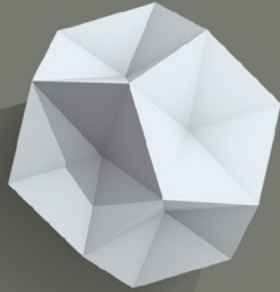
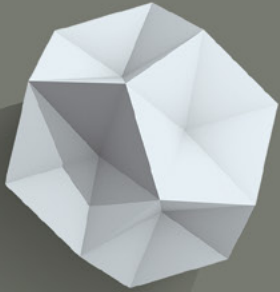
Italics indicate cases where we worked against the merger.

## European Commission

ChemChina/Syngenta	2016
Abbott/Alere	2016
Reichhold/Polynt	2016
<i>Hutchinson 3G Italy/Wind JV</i>	2016
<i>Deutsche Börse/LSE</i>	2016
Vodafone/Liberty Global Dutch JV	2016
Microsoft/LinkedIn	2016
Yahoo/Verizon	2016
International Paper/Weyerhaeuser Pulp	2016
Airbus Safran Launchers/ Arianespace	2015-16
Avago/Broadcom	2015
<i>Hutchinson 3G UK/Telefonica UK</i>	2015
Liberty Global/BASE Belgium	2015
<i>Halliburton/Baker Hughes</i>	2015
General Electric/Alstom (Power & Grid)	2015
IAG/Aer Lingus	2015
Orange/Jazztel	2015
Novartis/GSK	2015
Pfizer/Hospira	2015
Ball/Rexam	2015
<i>TEVA/Mylan</i>	2015
CommScope/TE Connectivity	2015
INEOS/Doeflex	2014-15
BP/Statoil Fuel and Retail Aviation	2014
Liberty Global/Ziggo	2014
Eli Lilly/Novartis Animal Health	2014
Alcoa/Firth Rixson	2014
Dolby/Doremi	2014
<i>Hutchison 3G UK/Telefonica Ireland</i>	2013-14
Hapag Lloyd/CSAV	2013-14
INEOS/Solvay	2013-14
INEOS/SSG	2013-14
Siemens/Invensys	2013
Baxter/Gambro	2012-13
Delta/Virgin Atlantic JV	2012-13
Ryanair/Aer Lingus	2012-13
Refresco/Gerber	2012
Schlumberger/Cameron	2012
UPS/TNT	2012
H3G/Orange Austria	2012
Outokumpu/Inoxum	2012
Universal/EMI	2011-12
UTC/Goodrich	2011
INEOS/Tessenderlo S-PVC Assets	2010-11
Südzucker/ED&F Man	2010
Linde/Air Products	2010
Cisco/NDS	2010
Caterpillar/MWM	2010
INEOS/BASF Styrolution JV	2010

## Other jurisdictions

VTech/LeapFrog	2016
<i>Fnac/Darty</i>	2016
Euro Car Parts/Andrew Page	2016
Cellcom/Golan	2016
Kineopolis/Utopolis	2016
Hain Frozen Foods/Orchard House	2016
Telkom/BCX	2016
Hammerson/Grand Central	2016
<i>ICE/Trayport</i>	2016
Whittan Intermediate/Masondixie	2016
Ladbroke/Coral	2015-16
Celesio/Sainsbury's Pharmacies	2015-16
Tullett Prebon/ICAP	2015-16
Ahold/Delhaize	2015-16
Whittan Intermediate/Apex Linvar	2015-16
AAH Pharmaceuticals/MASTA and Sangers	2015-16
BCA Marketplace/SMA Vehicle Remarketing	2015-16
PKP CARGO/ORLEN Koltrans	2015-16
<i>BT/EE</i>	2015-16
Nets/Nordea Merchant Acquiring	2015
Foxtel/Channel 10	2015
<i>Kingfisher/Mr Bricolage</i>	2015
GTCR/Gorkana	2015
Pork Farms Caspian/Kerry Foods	2015
Atos Medical/Countrywide Supplies	2015
Numericable/SFR	2014
Applied Materials/Tokyo Electron	2014
Continental/Veyance	2014
UnitedHealth Group/Espirito Santo	2014
Nocibé/Douglas	2014
Orlait/Terra Lacta	2014
WGSN/Stylesight	2014
IRI/Litmus	2013-14
Essilor/Transitions	2013-14
Auchan/Real	2013
Bauer/Absolute Radio	2013
AmeriGas/LPG	2013
AEG/Wembley Arena	2013
OUP/Nelson Thornes	2013
Thomson Reuters/PLC	2013
Fintrax/TFW	2013
Rexel/Wilts Wholesale Electrical Company	2012-13
Ryanair/Aer Lingus	2012-13
Global Radio/GMG	2012-13
Becton Dickinson/SSI	2012
VPS/SitexOrbis	2012
H.-H. Thiele/Vossloh	2012
ITI/Canal+	2012
CanalSatellite/TPS	2012





# Anti-competitive practices, litigation and sector inquiries

## Abuse of dominance

Fox Netherlands (TV distribution)	2016
<i>BT (Margin Squeeze)</i>	2016
Mobile call termination	2016
GSK (Seretide)	2016
Immoweb (MFNs)	2016
Flynn Pharma (Phenytoin Sodium)	2015-16
Unilever Italy (Rebates & Exclusivity)	2015-16
<i>Qualcomm (chipsets)</i>	2010-16
<i>Android</i>	2015
SFR (Telecoms)	2015
<i>Google</i>	2014-15
towerCast (TDF – Eiffel Tower)	2014-15
Janssen-Cilag (Durogesic)	2011-15
Media24	2013-14
Servier (Perindopril)	2011-14
Traction Energy (Deutsche Bahn)	2012-13
Samsung & Motorola (UMTS and GPRS Standard Essential Patents)	2012-13
AstraZeneca (Proton Pump Inhibitors)	2011-13
Douwe Egberts (Coffee Machines)	2011-13
SFR (On Net – Off Net)	2011-13
SNCF (Freight)	2011-13
Schering-Plough (Subutex)	2011-13
Thomson Reuters (RICs)	2009-13
BT (Wholesale Calls)	2009-13
Messageries Lyonnaises de Presse	2008-13
Telekom Slovenija	2011-12
TheMathWorks	2011-12
SRR (On Net – Off Net)	2011
Post Danmark	2010-11
Telkom South Africa	2009-11
Reckitt Benckiser (Gaviscon)	2008-11

## Sector inquiries

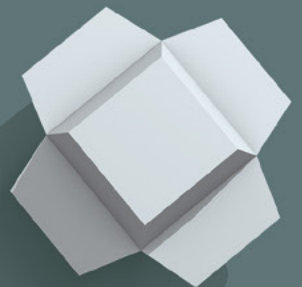
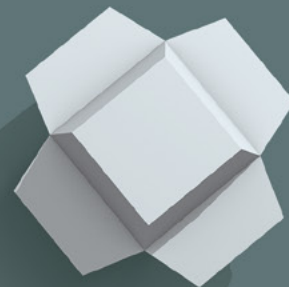
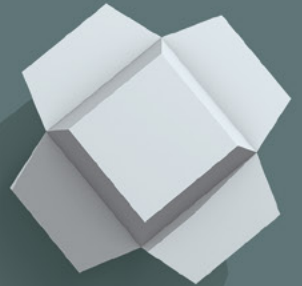
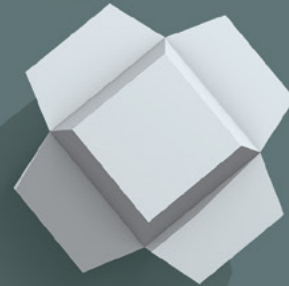
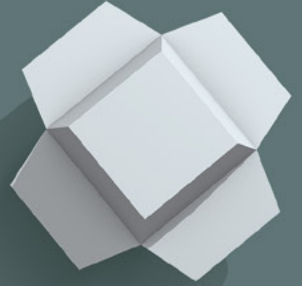
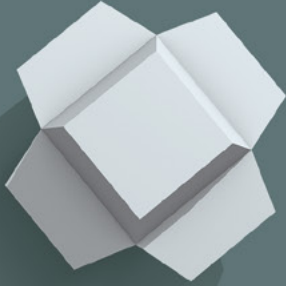
UK FCA Asset Management	2015-16
UK FCA Investment and Corporate Banking	2015-16
UK CMA SME and Current Accounts	2013-16
UK CMA/Ofgem Energy	2009-16
France Supermarkets	2015
UK FCA Credit Cards	2015
France Notaries	2014
UK Next Generation Access Broadband	2014
UK Petrol and Diesel	2012-13
UK Movies on Pay TV	2011-12
France Sport Betting	2011

## Restrictive agreements

Auction Services	2016
Light Fittings	2016
Cement	2016
Automotive Interior Products	2016
Heating Appliances	2015-16
Consumer Electronics	2015-16
Cathode Ray Tubes	2015-16
Pay TV Contracts	2015-16
Car Carriers	2014-16
Coffee	2014-16
Paroxetine	2012-16
Health Insurance	2015
Online Commerce	2015
Beer	2015
Rental Vehicles	2015
Computer Games	2014-15
Hotel Booking Platforms	2014-15
Precious Metals	2014-15
Parcel Services	2014-15
Liner Shipping	2014-15
Personal Care	2014-15
Trucks	2013-15
Dairy Products	2012-15
Pressure Washers	2014
Milling	2014
Container Shipping	2014
Foreign Exchange	2014
Sports Bras	2013-14
Credit Default Swaps	2013-14
Libor	2012-14
E-books	2010-14
German Supermarkets	2010-14
Personal Care and Detergents	2013
Wire Harnesses	2011-13
LCD Screens	2011-12
Car Glass	2010
South African Diesel	2010
Payment Cards	2009
Wheat Flour	2009
Luxury Goods	2008
Supermarkets	2008
Airfreight	2007-08
Waste Collection	2006-08
Mobile Phone Handsets	2006-08
Steel	2007
HGVs	2007
Tobacco	2007
Construction	2007
Bananas	2006-07
Dairy Products	2004-07
Jet Fuel	2003-07

## Litigation

SFR Group vs Orange (French commercial court, 2016)
Numericable vs Bouygues Telecom (French commercial court, 2016)
NRJ vs Fun Radio (French court, 2016)
National Grid Electricity Transmission PLC vs ABB et al (High Voltage Cables) (UK High Court, 2016)
Automotive OEMs and Tier 1 suppliers vs SKF and others (UK Competition Appeal Tribunal, UK High Court & others, 2016)
Follow-on damages actions from the German Wood-Based Products Cartel decision (German courts, 2015-)
Ioan and Viorel Micula and the Micula Companies vs Romania (ICSID 2015-)
Follow-on damages actions from the German Sugar Cartel decision (German courts, 2014-)
Various major UK retailers vs Visa Europe & Visa Inc (UK High Court, 2014-)
Emerald Supplies Limited & Ors vs British Airways and Air Canada & Ors (UK High Court 2013-)
The Minister for Finance and Ireland vs Aer Lingus Limited (Ireland High Court 2013-)
Follow-on damages actions from the EC Car Glass decision (UK/German courts, 2012-)
Google vs Bottin Carto (Cour d'appel de Paris, 2012-)
Deutsche Bahn vs rail track suppliers (German courts, 2011-)
Rory McIlroy vs Horizon Sports Management (Ireland High Court 2014-2015)
CDC & others vs Sasol Wax & others (Paraffin Wax) (UK High Court and Dutch courts, 2011-2015)
BT vs Ofcom (UK Competition Appeal Tribunal, 2014)
National Grid Electricity Transmission PLC vs ABB et al (Gas Insulated Switchgear) (UK High Court, 2012-14)
NHS + Others vs Reckitt Benckiser (UK High Court, 2011-14)
Dow Corporation vs Cooper et al (UK High Court, 2010-14)



# Shaping the economic arguments

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Our teams include PhD-qualified economists with the ability to use advanced economic modelling and econometric analyses. This includes developing economic models of firms' and consumers' behaviour, drawing on industrial organisation theories, bargaining and auction theories, and behavioural economics. In each case we assemble a team with the right expertise and experience to address the competition question in the most efficient and effective way.

## **Modelling how markets work**

We are at the forefront of developments in competition economics and use the most relevant economic tools to address the competition concern. Where appropriate, this includes using advanced economic theory to model how competition works in the market. This approach ensures the economic analyses we submit are persuasive and credible. It also means we contribute to the evolution of the agencies' thinking and practice. For instance, CRA economists have been heavily involved in the development and use of 'price pressure tests', which competition agencies in a number of jurisdictions are increasingly using to assess mergers. This puts us in a strong position to engage with the authorities when they put these new techniques into practice.

## **Empirical analysis**

Our reputation is for rigorous and innovative empirical analysis and careful attention to detail. While we benefit from a large and experienced team of econometric experts, all our analyses are rooted in a careful understanding of the realities of the client's business and of the available data. There are also many industries where a creative approach to data collection is necessary. Often the most interesting and insightful 'data' is the knowledge embedded in the client's financial and marketing teams, rather than in an existing database. We are experienced in gathering such information and presenting it in a meaningful way to competition authorities.

We also draw on the knowledge and experience of our wide network of academic associates, each a leading thinker in their field of expertise, and including two previous Chief Economists at the European Commission. We integrate rigorous analysis with practical support to clients and their legal advisors in drafting submissions and responding to information requests from the competition authorities. Such requests often require clients to extract, collate and format large volumes of data to meet the authorities' requirements within tight timescales. We work with clients and the economists in the authorities to make the process of responding to such requests as efficient as possible.





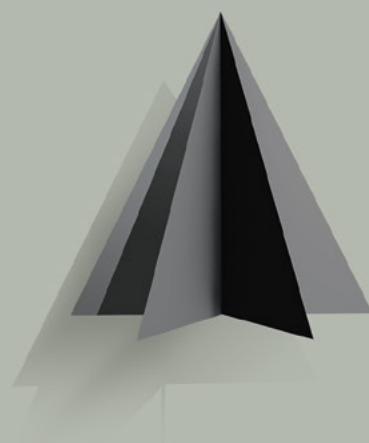
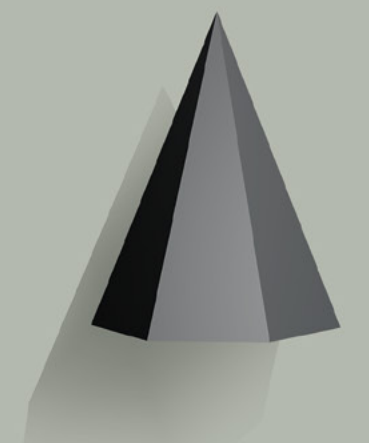
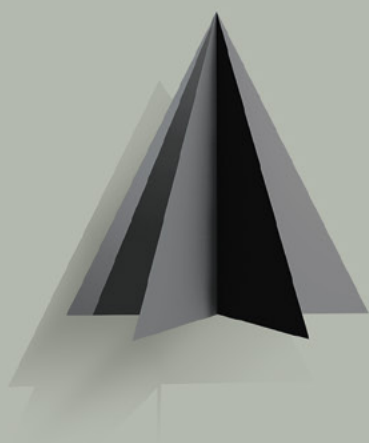
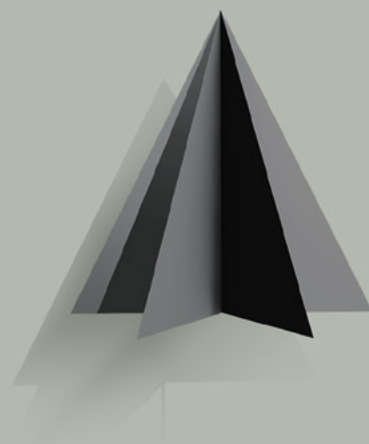
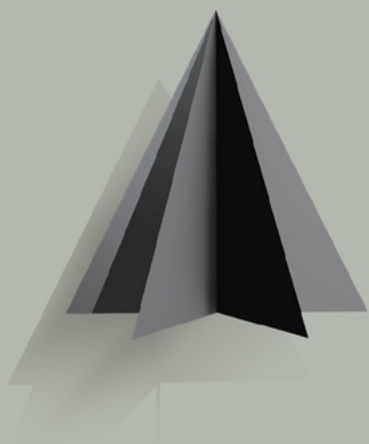
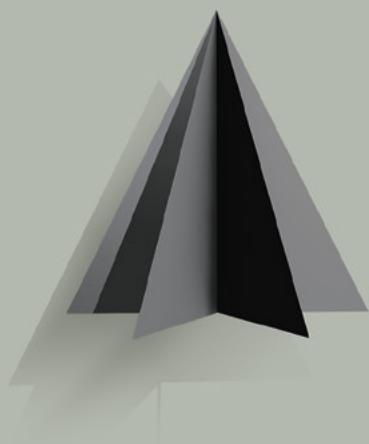
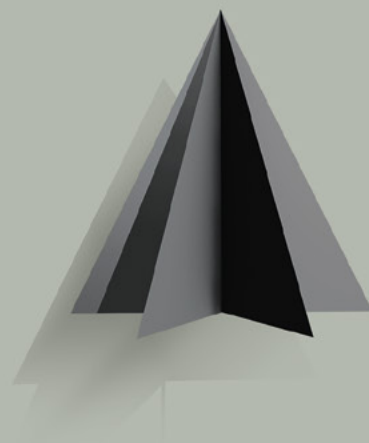
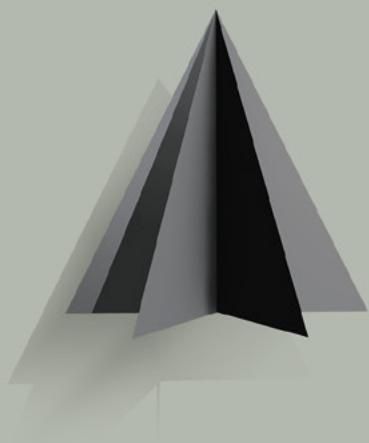
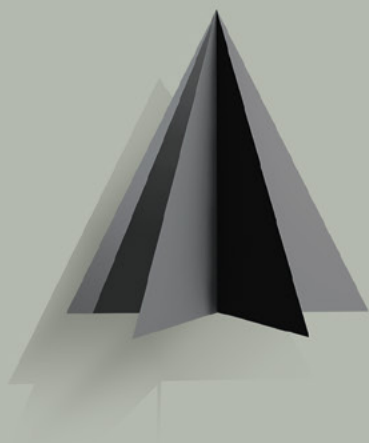
# Building the best case

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We put our reputation behind the arguments we present and are known for careful and rigorous analysis, ensuring that a CRA submission or testimony carries weight with competition authorities and courts around the world.

CRA senior staff members have acted as experts before the courts across Europe and the US, as well as before specialist tribunals such as the UK Competition Appeal Tribunal, the UK High Court, the Irish High Court, the South African Competition Tribunal and the International Court of Arbitration. Expert witness work requires the ability to defend the analysis undertaken in the face of cross-examination. Our experience and analytical rigour ensures a strong performance when working on these cases.

Even where expert testimony is not needed, we apply the same attention to detail and accuracy in our written reports. Working with clients and legal teams to develop evidence for key submissions, we are often asked to produce an economic report to shed light on certain key aspects of the competition argument. We have a strong reputation for the type of high-end, sophisticated modelling and quantitative analyses that are necessary to convince the technical specialists within the competition authorities, and are also highly skilled in making these concepts accessible to a non-technical audience.



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## Getting the right result

Bringing together our economic expertise with business knowledge and legal advisors' insights, we work as part of an integrated team. This allows us to communicate the competitive reality of your market to the authorities as effectively as possible, while minimising the inevitable burden on your internal resources.

Whether you are pursuing a merger or defending an abuse of dominance claim, facing damages litigation or interacting with your industry regulator, we will use our insight and energy to get to the bottom of the economic issues and find solutions: building the economic arguments to support your case and, where necessary, thinking creatively about remedies to resolve concerns.

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To learn more about our expertise and service offerings, contact our nearest regional office or visit us online at [www.crai.com/ecp](http://www.crai.com/ecp)

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**London**

Tel +44 (0)20 7664 3700  
8 Finsbury Circus  
London EC2M 7EA  
United Kingdom

**Brussels**

Tel +32 (0)2 627 1400  
143 Avenue Louise  
B-1050 Brussels  
Belgium

**Paris**

Tel +33 (0)1 70 38 52 78  
27 Avenue de l'Opéra  
75001 Paris  
France

**Munich**

Tel +49 89 20 18 36 36 0  
Palais Leopold  
Leopoldstrasse 8-12  
80802 München  
Germany

**Sydney**

Tel +61 (0)406 820 214  
Level 22, Tower 2  
101 Grafton Street  
Bondi Junction NSW 2022  
Australia

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**Headquarters Boston**

Tel +1 617 425 3000  
John Hancock Tower  
200 Clarendon Street  
Boston, MA 02116-5092  
USA