

GCR

GLOBAL COMPETITION REVIEW

1000

A GUIDE TO THE WORLD'S LEADING COMPETITION LAW AND ECONOMICS PRACTICES

17th annual edition – revised and updated

ECONOMICS 21

The role of economists may seem uncontroversial within the antitrust community, but can still raise questions outside it. After all, economics can determine how agencies and courts perceive the likelihood that a merger will hurt consumer welfare; how much and to whom cartelists caused damage; and whether a company's conduct was possible only because it dominated the market.

James Denvir, a longtime US antitrust attorney, recently said that “in front of the government, in many cases the most important advocate is the economist and lawyers come second”. He was quoted in an *ProPublica* article titled “These Professors Make More Than a Thousand Bucks an Hour Peddling Mega-Mergers”, which assailed economists who put their academic stature to work on behalf of corporate consolidation.

Of course, economists are not only on the side defending the merger, cartelists or dominant company. In addition to the competition authorities that employ economists – either full-time or as outside contractors – a host of plaintiffs and third parties also use economics to advance their own interests.

Battles between economists with differing views and clients have even gone from warring submissions on paper to occasional live debates, thanks to the growing popularity of “hot-tub” presentations in which judges can pit experts directly against each other who pick out the flaws and weaknesses of each other's claims.

As more competition matters go before non-specialist tribunals, the ability to translate numbers and equations into language that non-economists can understand has become ever more crucial – as has the ability to go beyond language. Shortly before leaving the Department of Justice's antitrust division, deputy for civil litigation David Gelfand advised economists to “use lots of charts and pictures when presenting to lawyers. Text slides, not so much.”

Many of the consultancies whose members' names commonly appear on white papers, witness lists and expert reports feature prominently in the Economics 21 – our annual list of the top economics practices around the world.

The Economics 21 is *GCR's* assessment of the world's leading economic consultancies. Each entrant qualifies for the list based on

factors including size of practice, reputation, work over the past year and number of nominations to our sister benchmarking publication, *Who's Who Legal: Competition*.

We asked the consultancies to provide details about the work they've done over the past year, including case-by-case breakdowns in mergers, cartels and behavioural matters. We also asked them to differentiate between their expert testimony work and their consulting practices, and say how their work helped drive the outcome of a case. We believe this information will give readers a better understanding of the 21 groups that appear in our listings.

The increase in deal litigations in the US has created opportunities for head-to-head clashes among several economists from these consultancies. For example, when the Department of Justice sought to prevent General Electric from selling its appliance business to Electrolux, the agency hired Michael Whinston of Bates White to explain to the court why competition from Asian manufacturers was not enough to prevent harm to consumers. Whether Judge Emmet Sullivan ultimately would have given more weight to Whinston's testimony or that of Electrolux's expert, Jonathan Orszag of Compass Lexecon, is unknown – GE dropped out of the deal in December 2015, before the trial ended. But even without a decision, the DOJ counted it as a victory.

Judge Sullivan did get to reach the end of trial when the Federal Trade Commission challenged the *Staples/Office Depot* tie-up, albeit without hearing the office supply companies present any witnesses. That meant the FTC could say that Charles River Associates senior consultant Carl Shapiro's testimony and analysis concerning the hypothetical monopolist test – in which he said Amazon.com would not prevent harm to corporate customers from the merger – “stands un rebutted. Defendants chose not to call their economic expert, Jonathan Orszag, in this proceeding.” (That Orszag was the defence expert in both litigations is not for lack of colleagues; Compass Lexecon counts 374 competition specialists, more than any other group in the Economics 21.)

The contributions of economists to competition matters sometimes become public even without a court proceeding. In ongoing

tussles about the level of competition in Australia’s telecommunications market, Economics 21 entrants NERA and Frontier Economics recently produced submissions on behalf of incumbent telecom Telstra and the Competitive Carriers’ Coalition, respectively. The UK’s Competition and Markets Authority commissioned Oxera to report in March 2016 on how vertical restraints affect small businesses.

Doors continued to revolve between competition authorities and private consultancies. Canada’s Competition Bureau appointed Bates White partner Paul Johnson as the TD MacDonald Chair in Industrial Economics. Copenhagen Economics hired Carsten Smidt, the deputy director general at the Danish Competition and Consumer Authority, and Emmi Martikainen from Finland’s Competition and Consumer Authority. John Davies, head of the Organisation for Economic Cooperation and Development’s competition division, joined Compass Lexecon, as did Xavier Boutin after spending seven years on the chief economist team at DG Comp. Charles River Associates hired Simon Chisholm and Francesca Sala from the UK’s Competition and Markets Authority.

In just a sample of the musical chairs within the Economics 21, Cornerstone Research hired Peter Davis, a former deputy chairman of the UK’s Competition Commission, and Boaz Moselle from Compass Lexecon. Former DG Comp chief economist Damien Neven joined Compass Lexecon’s Brussels office from Charles River Associates. Charles River Associates hired Lars Wiethaus from E.CA Economics.

Economic consultancies also expanded geographically. Compass Lexecon opened in Hong Kong with Derek Ritzmann, formerly chief economist at the Competition Commission of Hong Kong. CEG opened its new office in Düsseldorf.

Perhaps the most significant shift in the market came as *GCR 100* went to press, when Benelux competition policy and regulation consultancies Lexonomics and E.CA Economics merged, and Lexonomics founder Theon van Dijk became co-director of E.CA’s Brussels office.

A GUIDE TO THE ECONOMICS 21

Global head

This indicates the leader of each consultancy’s competition practice. In several instances, there is more than one individual listed.

Home jurisdiction

This indicates the country where the consultancy first operated.

Total size of the firm

This indicates the total number of economists at the consultancy.

Number of competition economists

This figure indicates the total number of economists specialising in competition economics. A specialist is someone who spends at least 50% of his or her billable time working on competition matters. Economic consultancies use different terms to refer to senior and junior specialists. As such, we have grouped the competition specialists at each consultancy in the same way.

- Group one: equivalent to a partner in a law firm, who leads major matters.
- Group two: equivalent to a non-equity partner in a law firm, who leads cases but is not in a top level position.
- Group three: equivalent to an associate with at least six years’ experience in a law firm, and who is on track for the second group.
- Group four: equivalent to an associate within a law firm, with less than six years’ experience.

Percentage of the firm specialised in competition

This figure indicates the ratio of economists at the consultancy who specialise in competition economics, compared with the firm as a whole.

Number of Who’s Who Legal: Competition nominees

This indicates the number of economists who appear in *GCR’s* sister publication, *Who’s Who Legal: Competition*.

Number of lateral hires

This figure indicates how many competition specialists joined the consultancy at group one or group two level between 31 July 2015 and 30 June 2016.

Number of departures

This figure indicates the number of group one or group two-level competition specialists who left the consultancy between 31 July 2015 and 30 June 2016. This does not specify the reason for leaving but does include retirement.

Number of internal promotions

This figure indicates how many competition specialists were promoted to group one between 31 July 2015 and 30 June 2016.

Commentary

This section provides a picture of the largest matters that each consultancy handled between 31 July 2015 and 30 June 2016, though we make every effort to include significant developments since the end of this period, in the interests of making the publication as relevant as possible. We asked every consultancy in the Economics 21 to tell us about their headline cases of the last year, as well as any other interesting work that did not attract as much press coverage.

	LATERAL HIRES	DEPARTURES	INTERNAL PROMOTIONS	WHO'S WHO LEGAL: COMPETITION NOMINEES
E.CA ECONOMICS	0	1	0	3

E.CA ECONOMICS

E.CA Economics is an entirely antitrust-dedicated firm with three *Who's Who Legal: Competition* nominees leading the team.

- 100% of team works on competition cases
- Handling more than 20 litigation cases across Europe
- Productive partnerships with European School of Management and Technology and Bates White

Global heads	Hans W Friederiszick, Rainer Nitsche
Home jurisdiction	Germany, Belgium
Total size of firm	24
Competition economists	24
% of firm specialised	100%
<i>Who's Who Legal: Competition</i> nominees	3
Group one	3
Group two	1
Group three	10
Group four	10
Lateral hires	0
Departures	1
Internal promotions	0

Hans W Friederiszick and Rainer Nitsche continue to lead E.CA Economics, which includes fellow *Who's Who Legal: Competition* nominee Vincent Verouden. The firm benefits from its partnerships with the European School of Management and Technology and US firm Bates White, and its team of 24 economists handle important cases for major clients out of Berlin and Brussels.

While many of E.CA's cases are confidential, the firm did notable work this past year on some public matters, such as winning approval of the *HeidelbergCement/Italcementi* tie-up from the European Commission; performing research for a leading German waste company on the determinants of privatisation and re-municipalisation in the industry; and standing in as the court expert in a major Austrian casino tie-up, leading to the merger's prohibition. In total, the firm worked on three Phase II mergers and two appeal cases.

The firm was very active in conduct matters this past year too, handling more than 20 cases across industries. E.CA worked on the air cargo cartel investigation, the damages claims involving Visa and Mastercard, and litigation in the bearings, beer, coffee, cold cuts, gas insulated switchgear, rail tracks, sugar, trucks and smart card chips industries. In many of those case, the team provided a quantification of damages – typically involving court testimony – in-depth settlement support, and a complex analysis of whether any higher prices had been passed on to the end consumer.