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Competition Economics

When hard evidence really matters

August 2019

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More than ever competition authorities are relying on economic analysis in their investigations and decision making.

Working alongside companies and legal counsels we develop sophisticated economic analysis to explain how competition works in different markets.

Our focus is on helping clients establish their case with the competition authorities in a clear, constructive, evidence-rich and decisive way.

We have represented clients on competition issues in front of:

- The Competition and Markets Authority (CMA) – formerly the Office of Fair Trading (OFT) and Competition Commission (CC);
- The European Commission the UK High Court;
- The UK Competition Appeal Tribunal (CAT);
- Several UK sectoral regulators such as the FCA, Ofcom;
- Monitor, Ofgem, ORR and Ofwat;
- Arbitrators and public enquiries; and
- Several national competition authorities and courts around the world (e.g. Italy, the Netherlands, South Africa, Australia).

Our economists help clients navigate all types of competition matters. We are there when hard evidence really matters.

“PricewaterhouseCoopers has an extraordinarily broad array of services under its roof. PwC is the only one of the ‘Big Four’ multi-national professional advisory service companies to be recognised in these rankings for its specialist competition economics group.”

– Global Competition Review, Economics 20

We serve clients globally with local knowledge

Our UK competition economists can draw on a wide network of competition experts across the world. As one of the largest professional services firms globally, we can mobilise economists and industry experts with in-depth local knowledge in any region of the globe.

Our competition specialists



We have worked in a large number of sectors

- Manufacturing
- Media and communications
- Financial services
- Oil and gas
- Utilities
- Retail
- Broadcasting and entertainment
- Health and pharma
- Professional services
- Transport and logistics

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Innovative and compelling economic evidence can make the difference between a merger or joint venture being approved, how it may be remedied or blocked. Our specialists have acted on landmark merger cases in the UK and Europe.

We help to:

- Assess, at an early stage, the likely competition risks and efficiencies stemming from a merger. This informs the transaction strategy – e.g. which issues to focus on from the outset and what commitments may be needed to secure approval
- Undertake detailed market definition, including using sophisticated econometric and survey techniques to identify the full set of substitutable products and geographies
- Evaluate and estimate the impact of the transaction on competition e.g. by modelling upward pressure on prices or undertaking merger simulations, assess the risk of foreclosure and examine the conditions for coordination
- Quantify the efficiencies from the merger to build a benefits case to counterbalance any competition concerns
- Prepare economic evidence for, and give oral evidence in front of, competition authorities; and
- Strengthen the case through insight from PwC's wide range of industry specialists

Relevant experience

Our economists have provided advice on a large number of cases:

- Ainscough/Nationwide
- Air Tours/First Choice
- Anglo/Lafarge
- AWS/McGill's
- British Airways/American Airlines
- Bucher Industries AG/Johnston Sweepers Ltd
- Carnival Corporation/P&O Princess
- Edmundson Electrical/Western Electrical
- Foxtel/Australis
- GE/Honeywell
- ICE/Trayport
- InBev/Anheuser Busch
- Ineos/Kerling
- Liberty Media/Casema
- Lloyds TSB/Abbey National
- NFA/Acorn
- NTL/Telewest
- Orange/T-Mobile
- Project Kangaroo
- Rank/Gala
- Saint-Gobain/Maxit
- Telia/Sonera
- Telia/Telenor
- Universal/BMG
- Vodafone AirTouch/Mannesmann
- Yara/Kemira Growhow

Market studies and investigations

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Market studies & investigations in the UK can be initiated by the CMA and sectoral regulators (e.g. FCA, Ofcom, Ofgem, ORR, CAA, Ofwat).

When a market is under the microscope, we use robust economics to break through the market noise in order to get to the key structures and dynamics of competition to inform the authorities' view from the early phases of an investigation. We have advised on many of the highest-profile market studies and investigations. We help to:

- Plan strategically for the lengthy and invasive market investigation process. We work with you to understand what matters to you within the scope of the investigation and to manage the risks;
- Identify the key issues and concerns to focus on and gather the right data, conduct thorough analysis, and present the best arguments in the most constructive way;
- Provide robust economic evidence to explain in simple terms how markets work and can deliver benefits to consumers. We use economic theory and empirical techniques such as econometrics to determine market definition, competitive Constraints, barriers to entry, firms' incentives and customers' behaviour;
- Assess a company's economic profitability (rather than accounting profits), often a key factor in determining outcomes of a number of recent investigations. Our specialists have extensive experience in analysing profits and valuing assets;
- Maximise engagement with the authority. Market studies and investigations typically involve formal hearings and informal meetings. We have extensive experience of appearing as expert economists at these hearings;
- Shape strategies to input into, or respond to, remedies set out by the competition authorities and regulators; and
- Appeal decisions to the CAT on the grounds of the economic evidence used or the disproportionate impact of the proposed remedies.

Relevant experience

We have advised companies at the OFT, CC, CMA and other sectoral regulators (e.g. FCA, Ofcom, Monitor, Ofgem, ORR and Ofwat) in many of the most high profile investigations in the UK. These include:

- Analysis of European parcel market (Ofcom)
- Audit services (OFT, CC and CMA)
- Aggregates, Cement and Ready-mix (CC)
- Private Healthcare (OFT and CC)
- Movies on Pay TV (Ofcom and CC)
- Unauthorised overdraft charges (OFT and High Court)
- Corporate insolvency practitioners (OFT)
- Payment Protection Insurance (CC)
- Personal current accounts (OFT)
- SME banking (CC)
- Mobile phones termination (Ofcom and CC)
- Rolling Stock (CC) New Cars (CC)
- Groceries (CC)
- Cash savings (FCA)
- Asset Management (FCA)

Abuse of dominance

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Economic analysis is a fundamental component in the assessment of abuse of dominance cases. The European Commission's 2009 Guidance on enforcement priorities confirms its intention to focus on the analysis of the effects of a particular conduct, and the Intel judgement by the EU Court of Justice of 2017 confirms this orientation.

A variety of practices such as loyalty rebates and discounts, bundling, or refusal to supply might be dictated by efficiency reasons and not necessarily result in harm to consumers. Others, such as predation, margin squeeze or foreclosure could only harm consumers if certain conditions are met. This has driven the need for sophisticated economic analysis to distinguish between pro-competitive and anti-competitive effects, and any impact on final consumers.

We help to:

- Define the relevant markets, assess whether a firm holds market power, and consider all relevant arguments and analysis, in addition to and beyond market shares, to determine whether a company could be found to hold a dominant position;
- Correctly frame the contested behaviour in the light of the appropriate theory of harm;
- Explain the alleged behaviour and its effects on consumers. This can include correctly applying price-cost test in predation or margins squeeze allegations, analysis of any potential Anticompetitive foreclosure of 'as efficient' competitors; and
- Determine the (actual or potential) effects of the alleged anticompetitive conduct on consumers.

Relevant experience

Our economists have worked on prominent abuse of dominance cases including European Commission's investigations in margin squeeze in telecoms, loyalty rebates in air transport, predation, and foreclosure of online markets. These include:

- Advice to major international airlines on the Structure of rebates offered to travel agents
- Assistance to a telecoms operator in the Context of the EU Commission's investigation of excessive prices in the UK wholesale international roaming market leading to the Commission's closing the file after a 5 year investigation
- Acting as expert witness in a public inquiry into the fee rates for a main British harbour
- Advice in relation to a landmark margin squeeze by European incumbent telecoms operator
- Assistance to major Pharma company to establish whether certain types of commercial conduct might give rise to potential abuse of dominance concerns
- Assistance to an Australian telecom operator on a large predation case including damages
- Advice on alleged foreclosure in online markets

Vertical agreements

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Vertical agreements between suppliers and distributors may take many forms, such as exclusive agreements or setting prices at which retailers can resell a product. Many of these agreements lead to efficiencies for the companies involved, ultimately resulting in better outcomes for consumers. However, in some cases, vertical agreements can give rise to anti-competitive effects, e.g. when they foreclose competitors.

European regulations identify cases in which individual exemption may be obtained. This requires detailed economic analysis assessing the effects of the agreement. Our economists help analyse the effects of vertical agreements to determine whether an agreement is, on balance, pro-competitive or anti-competitive. We also advise on the applicability of sector-specific block exemptions.

We assist companies to design contractual conditions with trading parties that are competition law compliant, and to explain the effects of an agreement in the course of competition authorities' investigations.



Relevant experience

Our economists have advised on the following vertical issues:

- The use of minimum price guarantees by an online market platform
- The effects of restrictions imposed by an airline on meta-search engines
- The foreclosing effects of beer ties agreements in the UK (the landmark case *Courage Ltd v Crehan*, and *Inntrepreneur Pub Company v Crehan*)
- The conditions that could be imposed by a broadcaster on the use of its content on video on demand platforms

Our economists have also produced a handbook for Competition Authorities in ASEAN, which explores the issues surrounding the use of vertical restraints in online markets.

Cartels and information exchange

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Cartels are being pursued aggressively across the world. We use economic analysis to assess whether there is any evidence of cartel effects, to quantify the impact of any anti-competitive practices as part of a mitigation strategy for fines, and/or for use as evidence in any subsequent appeals and/or damages litigation.

Our competition specialists use financial, statistical and econometric techniques to assess the impact on prices and market outcomes of the alleged coordination as compared to the relevant counterfactual (i.e. absent the alleged anti-competitive agreement).

Our competition specialists can be supported by forensic technology specialists who can quickly interrogate vast email and voice correspondence archives to determine whether existing evidence can corroborate a suspicion that a breach of competition law has taken place.



Relevant experience

We assisted a major international provider of professional services on their response to an investigation by the Italian Competition Authority into alleged bid rigging.

We assisted a large international financial institution in responding to the LIBOR fixing investigations in Europe and the US.

We supported an international building materials manufacturer in its response to allegations of collusion in its UK market.

We have also advised on the collective selling of horseracing data (before the CAT) and football rights (before the High Court).

Competition litigation and damages

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Our economists have helped several clients in private actions and follow on damages claims. We have provided robust expert testimony on the effects of the anticompetitive conduct, the relevant counterfactual absent the alleged anticompetitive behaviour, the quantification of any harm, and the extent to which claimants have passed on the harm (e.g. by means of higher prices) down the supply chain.

Where damages are being determined, accuracy, pace and agility are critical to success. Our economists can rely on the support of industry experts who can help construct relevant counterfactuals through their deep understanding of industry practice and behaviours, access data quickly, and assist in determining levels of pass-on of any damages.

Our economists can assist in proceedings in Courts, Tribunals (eg the CAT) as well as international arbitrations.



Relevant experience

We have provided expert witness testimony in the High Court on a damages litigation deriving from abuse of dominance for a major airline.

We helped one of the three leading financial institutions respond to OFT litigation in the UK High Court about the level of unauthorised overdraft charges.

We supported two motor manufacturers assess the damages each could claim from the car glass cartel investigated by the European Commission.

We provided expert testimony on behalf of the British Horseracing Board in defending the stand alone action brought by Attheraces through the UK High Court alleging excessive and discriminatory pricing and refusal to supply.

State aid

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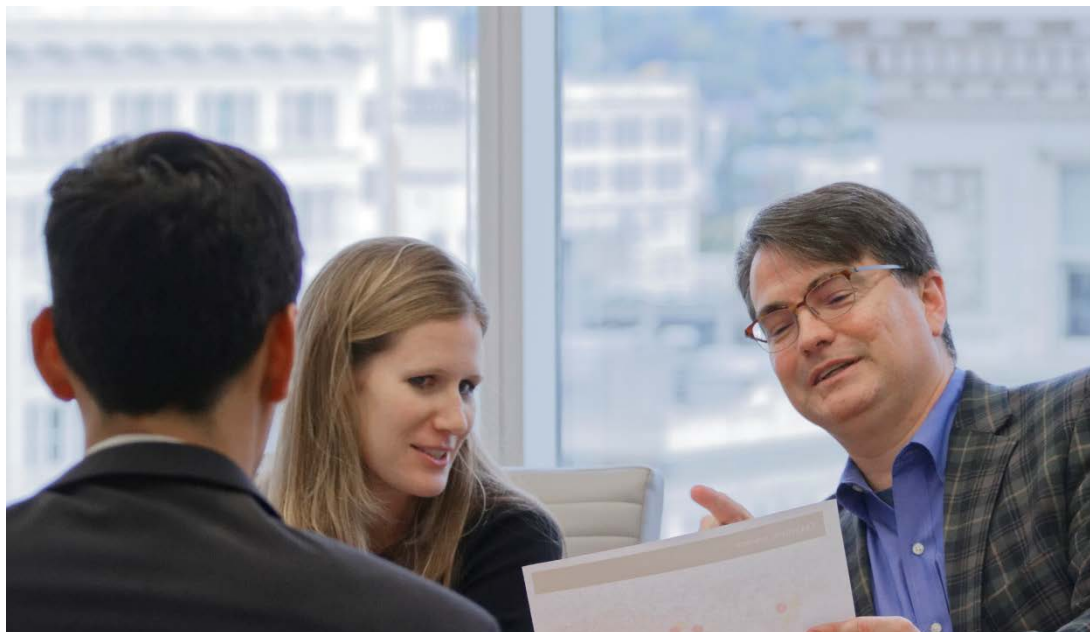
State aid

Our team

Analysing State aid requires a broad set of economic, financial, and accounting skills. It is also crucial to have an understanding of how the EU Commission's regulations and process work in order to maximise influence. Our team has supported a number of high profile cases navigate this complex area.

We help to:

- Prepare restructuring plans for cases in which failing firms need urgent rescue or restructuring aid;
- Produce Market Economy Investor Principle reports for cases where public funding is provided on commercial terms;
- Prepare regional and R&D investment aid applications; and
- Manage the many stakeholders within the EU Commission that must be influenced if the case is to reach a quick and successful outcome.



Relevant experience

We helped an international airline prepare a rescue and restructuring plan in order to obtain State aid clearance.

We assisted a major European steel manufacturer respond to a State aid investigation by the European Commission.

We advised a large international communications operator to gain State aid approval for a major restructuring of the business by providing economic arguments to explain why the aid did not distort competition.

We helped Greek and Irish banks prepare Restructuring Plans for the European Commission so that they could be recapitalised.

We have prepared analysis based on the Market Economy Investor Principle (MEIP) for a number of clients in different sectors including airports and public services.

We helped HM Treasury Solicitors with the notification of the Asset Protection Scheme to the European Commission.

We helped a public broadcaster determine whether new ventures are compliant with State aid principles.

Our competition economics team have experience in jurisdictions around the world

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Alastair is a partner in our economics practice. He specialises in the provision of regulatory policy, competition and strategic advice, with particular expertise in the telecoms and other regulated sectors. He has over 20 years experience working in over 40 countries. Alastair has acted as an expert in regulatory, competition, dispute and arbitration proceedings including at the UK Competition Commission, Competition Appeals Tribunal, European Commission DG Competition and the London Court of International Arbitration.



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Nick is the leader of the economics community of practice. He specialises in competition and regulatory assignments. He advises both regulated clients and regulators on issues such as tariffs, profitability, market power assessment, cost modelling, licensing and forecasting. He has worked on numerous competition and state aid assignments across sectors including mobile interconnection, overdraft fees, asset management, SME banking, broadcast transmission, payment protection insurance, aggregates, nuclear power, capital market trading and statutory audit.



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Saatvik is a Senior Associate in our Economics Consulting team. Saatvik has been with the firm for three and a half years and specialises in Competition and Regulatory Economics. Saatvik has worked on cases for both public and private sector clients in the Middle East, Europe, and Africa on a range of competition, regulatory and policy issues such as on-net/off net pricing, breaches of competition law and ex-ante regulation, regulatory consideration in relation to investments and state-aid guidance

Further information on our services is available at:

<http://www.pwc.co.uk/economic-services/competition-and-disputes.jhtml>

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