

## *Rainer Nitsche – ESMT Competition Analysis*

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### ***SUMMARY***

Dr Nitsche is an expert in providing economic advice in competition and litigation cases before the European Commission and national competition authorities in Germany, Austria, the UK and the Netherlands. He has 14 years' experience in supporting clients in all fields of competition policy enforcement, including cartel and abuse of a dominant position cases as well as merger control (Phase I and Phase II investigations). In addition, he has advised undertakings on a variety of regulation issues in network industries and several European national governments and State aid recipients in State aid control proceedings.

Prior to his work for ESMT Competition Analysis Dr. Nitsche was Vice President in the Competition Practice and Director of the Brussels office of CRA. Before his five years in Brussels he was an economic consultant at Price Waterhouse and Arthur Andersen in London and Berlin.

### ***RELEVANT EXPERIENCE***

#### ***Competition Policy***

Dr. Nitsche has advised law firms, corporate clients, and competition authorities on the abuse of dominant positions, the competitive effects of a merger, vertical restraints and state aid. Examples of his work include:

- He advised RWE in its proceedings with the Czech competition authority. The work involved an analysis of the relevant market for gas supply and flexibility services.
- Dr. Nitsche advised a large manufacturer of compressors on its acquisition of European rival. The merger was notified in several European jurisdictions, including Germany and Austria, and involved primarily unilateral effects concerns.
- He advised three large Austrian road construction companies, Strabag, Porr and Alpine on the effects of jointly owned asphalt mixing plants in the context of Article 81 EC. The work included an econometric analysis of the observed effect of these joint ventures on bids for road construction.

- In a recent merger of two manufacturers of waste incineration plants with a strong presence in Germany, Austria and Switzerland, Dr. Nitsche advised on the competitive effects of the transaction. The work included a bidding market analysis presented to the Bundeskartellamt.
- Dr. Nitsche was appointed as expert witness by the Austrian cartel court and he prepared an expert report relating to a merger in the Austrian cement industry. The judge commissioned Dr. Nitsche to define the relevant product and geographic market for the merger and to comment on its likely effects.
- Dr. Nitsche provided an Article 81 EC self assessment analysing the effect of horizontal and vertical agreements of construction materials manufacturers. The cooperation included production and distribution joint ventures, market sharing agreements and common branding.
- On behalf of a large British bank he analysed whether guarantees provided in the context of a credit agreement constituted State aid and whether the guarantees were compatible with the common market. This element of the case was settled.
- Dr. Nitsche advised T-Mobile on its acquisition of Austrian mobile telephony network operator tele.ring. Submissions during this Phase II EC merger investigation analysed the competitive effects of the merger covering potential coordinated and unilateral effects. Ultimately, the case became known as one of the first "gap cases" analysed under the new EC Merger Regulation and horizontal merger guidelines. (see CRA Competition Memo [http://www.crai.com/ecp/assets/Telering\\_Mobile.pdf](http://www.crai.com/ecp/assets/Telering_Mobile.pdf)).
- Dr. Nitsche advised the Hellenic Republic regarding State aid control in relation to a contribution to one of the major Greek incumbents in a network industry. The work involved an application of the market economy investor principle, an assessment of the advantage to the recipient, and an analysis of the impact of the contribution on competition and trade.
- In the context of the ongoing reform of EC state aid policy, Dr. Nitsche worked for the Directorate General for Economics and Financial Affairs to develop an analytical framework for evaluating the effect of state aid on competition and trade. The project developed an economics-based approach for analyzing the distortionary impact of state aid and, hence, for prioritizing EC state aid control (see Rainer Nitsche and Paul Heidhues: "Study on methods to analyse the impact of state aid on competition", EUROPEAN ECONOMY. ECONOMIC PAPERS. No. 244. February 2006. European Commission. Brussels. 190pp. Tab. Free.) KC-AI-06-244-EN-C; ISBN 92-79-01185-5; ISSN 1725-3187)
- In a merger of two European stevedorers Dr. Nitsche supported the merging firms in their analysis of the relevant markets using techniques developed in the analysis of the relevant market with regards to the services of HbR, the port authority of Port of Rotterdam (see below).
- In a cartel case in the chemicals industry Dr. Nitsche prepared an analysis of the effects of the cartel on the market price in order to assess the overcharge on the German market. This overcharge is used by the German Federal Cartel Office to calculate the fines. Using econometric techniques that controlled for significant cost increases and increases in the price of a relevant substitute during the cartel period, the report showed that the true overcharge was seven percent rather than a forty percent overcharge implied by a simple before and after comparison (that had been suggested by the Federal Cartel Office).
- Dr. Nitsche was appointed as expert witness by the Austrian cartel court and he prepared an expert report relating to a merger in the Austrian consumer goods industry. The merger involved the sale of the frozen pizza and frozen snacks business of Unilever, who owned one of three main brands in this market, to the owner of another main brand in this segment, Dr. Oetker. The Austrian competition authority had requested a court decision on whether the merger should be

allowed or not. The judge commissioned Dr. Nitsche to define the relevant product and geographic market for the merger and to comment on its likely effects. As a result of the expert report, the competition authority withdrew its request and the merger could be concluded.

- In a project for DG TREN, Dr. Nitsche led the CRA team in a consortium with Norton Rose and MPD. The consortium advised DG TREN on a methodology to identify unfair pricing practices of non-Community carriers in the context of Article 5 of Regulation 868/2004. The work resulted in a general paper on airline pricing and in a paper with a proposed methodology to identify unfair pricing practices and to calculate the injury and the duty under that Regulation.
- In a merger between two manufacturers of industrial vacuum pumps and blowers Dr. Nitsche assisted to develop a submission to the German Federal Cartel Authority. The merger was approved in Phase I despite high market shares in Germany and Europe.
- Dr. Nitsche directed a project related to sea transport. CRA was commissioned to support the Dutch competition authority, NMa, in its assessment of the market position of the largest European seaport, the port of Rotterdam. The task included market definition and the assessment of possible market power and it involved an extensive survey of port users and tenants. The report was published by the NMa: "Study on the Port of Rotterdam—Market Definition and Market Power", December 2004, available at [www.crai.com](http://www.crai.com)
- Dr. Nitsche advised the European Liner Affairs Association in the context of the reform of Regulation 4056/86. The advice resulted in a submission to the European Commission; "Competitive Impacts of Information Exchange" available at [http://europa.eu.int/comm/competition/antitrust/others/maritime/elaa\\_proposal/note\\_on\\_informati\\_on\\_exchange\\_en.pdf](http://europa.eu.int/comm/competition/antitrust/others/maritime/elaa_proposal/note_on_informati_on_exchange_en.pdf).
- Assistance to Merck, a leading supplier of laboratory supplies, in relation to the divestiture of its distribution arm VWR: economic analysis of the exclusivity agreement between VWR and Merck; competitive effects and efficiencies (Article 81 of the EC Treaty).
- As part of the planned acquisition of Beiersdorf by Procter & Gamble: market definition, investigation of competitive effects in consumer goods based on 15 interviews and internal and external studies; including analysis of switching studies, volumetric studies (concept testing), consumer segmentation studies, pricing studies, brand positioning.
- Advice to a major German electricity generator on the EC's and the German Federal Cartel Office's assessments of a proposed divestiture of generation assets to a large, vertically integrated rival: determination of the relevant market, analysis of the relevant contractual structure, cross-ownership issues, and collusive and noncollusive pricing effects of the proposed transaction.
- Advice to the European Commission on the abuse of a dominant position by a number of organizations in the media sector: cross-sectional and time-series analysis of pricing; analysis of costing methodologies (Article 81 of the EC Treaty).
- In a recent merger inquiry by the European Commission in the chemicals sector, Dr. Nitsche conducted a study on competition between plants and the likely effects of the merger. The merger was cleared in Phase I.
- During the flotation process of Deutsche Post AG, Dr. Nitsche advised the German Finance Ministry on competition and state aid inquiries by the European Commission (Articles 87 and 82 of the EC Treaty).

- In a competition inquiry, Dr. Nitsche assessed Deutsche Post's business plan regarding its parcel business on behalf of the Ministry of Postal Services and Telecommunication (Article 7 Gesetz über die Regulierung der Telekommunikation und des Postwesens).
- Competition advice to Belfast International Airport regarding a merger inquiry of the Monopolies and Mergers Commission with respect to the proposed takeover of Belfast City Airport.
- Dr. Nitsche was seconded to the Monopolies and Mergers Commission (MMC) and worked on a monopoly inquiry as well as on two merger inquiries in the local bus industry.

### *Market Design and Auctions*

Dr. Nitsche project experience in this area spans from comparative analysis of alternative auction mechanisms to option studies for local authorities that re-organize their network industries. His project experience includes:

- Auction design and implementation for an electricity procurement auction by a large electricity consumer, Egger.
- Auction design and implementation for RWE Power's Virtual Power Plant auction, including the development of auction design and rules; bidder information sessions; implementation of the auction.
- Auction design and implementation for Nuon's Virtual Power Plant auction (900MW capacity): development of auction design and rules; advice on the competition effects of the auction and alternative electricity contracts; bidder information sessions; implementation of the auction.
- Report on behalf of Veronica Radio BV on "Choosing an Allocation Mechanism for Unregulated FM Licenses in the Netherlands," with a particular focus on the suitability of alternative auction mechanisms.
- Analysis of the Turkish electricity sector and identification of options to structure unbundling and network access in this sector.
- Adviser to the German government regarding the unbundling (separation of rail track and rail operations) and privatization of Deutsche Bahn.
- Option study for the local authorities in Hameln-Pyrmont regarding the organization of local transport in the region: design of tendering system, tendering authority; unbundling of municipal transport company; privatization strategy.
- Adviser to Austrian State Industry Holding (ÖIAG) on options to unbundle and privatize one of the regional state owned rail companies, Graz-Köflacher Eisenbahn.
- Option study on setting up a postal operator in Liechtenstein and on its co-operation with Schweizer Post on behalf of Schweizer Post and the Government of Liechtenstein.
- Option study on alternative institutional designs for issuing stamps with particular focus on the impact on competition and philately. Expert opinion on behalf of the Ministry of Postal Services and Telecommunications.

- Design of an auction mechanism to allocate national wholesale licenses among the members of Inmarsat-P (a consortium for the development of global satellite services).

## ***Regulation***

Dr. Nitsche has been involved in a number of regulatory proceedings in network industries. Most of his regulatory projects were in the sectors of telecommunications, transport, and postal services.

- Dr. Nitsche advised T-Mobile Germany during the introduction of ex-ante regulation of mobile termination charges by the German regulator Bundesnetzagentur. This included reports on the regulatory cost accounting methodology, price benchmarking, cost of capital calculations, network externality mark-up calculations that were submitted to the Bundesnetzagentur.
- In an inquiry by the UK Competition Commission into the regulation of termination charges of mobile phone operators, Dr. Nitsche conducted for T-Mobile UK the modeling of network externalities, Ramsey pricing and conducted a cost benefit analysis of regulatory intervention.
- Dr. Nitsche prepared a report on the benefits that go along with a universal service obligation in the postal sector.
- During the flotation process of Deutsche Post AG, Dr. Nitsche advised the German Finance Ministry on various regulatory interventions proposed by the German regulatory RegTP.
- Analysis of regulatory and legal frameworks of the postal industry in several European countries on behalf of United States Postal Service.
- Advice to NTL, a British telecommunications operator (television and radio transmission) regarding their submission to the Office for Fair Trading in connection with a proposed takeover of BBC-Transmission.

## ***Impact and Market Studies***

Dr. Nitsche conducted a number of impact and market studies in various industries, including postal services, pharmaceuticals, and financial services. The studies included the analysis of tax changes, liberalization, innovation, and standardization. Impact studies covered the effects on competition, the fiscus, and the incumbent firms.

- Study for the Directorate General Enterprise to investigate, against the background of falling marketing authorization applications, whether there is a worldwide crisis in innovation in the pharmaceutical sector, the reasons behind this crisis, and the tools available to kick-start innovation. The project involves forecasting future authorization applications, an analysis of the Drivers of innovation and the development of recommendations for regulatory and governmental bodies on the level of the European Union or Member States as well as pharmaceutical and biotechnology companies. "Innovation in the pharmaceutical sector", November 2004, available at [www.crai.com](http://www.crai.com).
- On behalf of the Directorate General for Health and Consumer Protection, we considered the use of simplified products to enhance consumer welfare and cross-border trade: Analysis of the causes of market failures in financial services and the consumer detriment of such failures, both in theory and by examining the empirical evidence. Examination of how consumer detriment

can be reduced by the use of simplified products and the study of different types of simplification. "An assessment of the extent of an identified need for simplified, standard financial services products", December 2004, available at [http://europa.eu.int/comm/consumers/cons\\_int/fin\\_serv/cons\\_experiences/devlp\\_en.htm](http://europa.eu.int/comm/consumers/cons_int/fin_serv/cons_experiences/devlp_en.htm)

- Expert opinion on the impact of subjecting German postal services to VAT. Study on behalf of the Ministry of Postal Services and Telecommunications.
- Expert opinion on the impact of liberalization on employment in the European postal industry. Study on behalf of the European Commission.
- Assessment of the impact of a potential sale of Deutsche Postbank's shares to Deutsche Post on behalf of the Bundesanstalt für Post und Telekommunikation. Joint work with Schroders.
- Expert opinion on the impact of deregulation and privatization in the European postal industry on welfare and the quality of service. Study on behalf of the German Ministry of Postal Services and Telecommunications.

### ***Valuation and Privatization***

- Executive management training for DIE POST (Swiss postal service provider) Module: "Management Accounting Systems and Privatization."
- Valuation of Deutsche Postbank AG in connection with the privatization of a minority stake of the bank.
- Privatization of Berlin airports. Financial model of various privatization options. Joint work with CSFB.
- Adviser to the State Government of Northrhine-Westfalia on the privatization of Düsseldorf airport. Joint work with Investitionsbank NRW, WestLB.
- Valuation of DBKom, a part of Deutsche Bahn AG providing telecommunication services, on behalf of an investor. Joint work with Lehman Brothers.

### ***Strategy***

- Briefing of a document exchange provider regarding various strategies for entry into a major European market.
- Evaluation of the Swedish rail operator's business plan on behalf of the Swedish Government.
- Advice to an American investor, CableTel, regarding the takeover of NTL. Commercial Due Dilligence.
- Advice to a private delivery company regarding a proposed merger with another private delivery company in Germany. Proposal of organizational design for NewCo.
- Advice to Cable and Wireless on investment opportunities in Germany with a particular focus on corporate networks.

## ***PROFESSIONAL EXPERIENCE***

2002–2007 Principal and Vice President, Competition Practice, CRA International

1999–2002 Manager, Economic Analysis Group, Arthur Andersen

1994–1999 Manager, Economic Analysis Group, Price Waterhouse

Prior to 1994 Internships with A.T. Kearney GmbH, Deutsche Bundesbank, and Deutsches Institut für Wirtschaftsforschung (DIW).

## ***ACADEMIC EXPERIENCE***

Research position at WZB (Science Centre Berlin), 1998–2002.

Created and coordinated the Economic Policy Forum at the WZB 1999–2002.

“Mergers & Acquisitions,” Lecturer, Humboldt University Berlin, 2000.

Referee for “European Economic Review”, “International Journal of Industrial Organization”, and “Regional Science and Urban Economics.”

“Liberalization of Electricity Markets in Europe,” lecturer at the Free University Berlin, 1999.

Expert advisor to the German Bundestag. Expert opinion at a public hearing of the postal commission of the German Bundestag regarding the Draft postal act of the German Government—published as Minutes of the Hearing, 1997.

1993–1994 British Council Scholarship

1993–1994 Deutscher Akademischer Austauschdienst (DAAD)  
Scholarship

Student lecturer in macroeconomics at the Technische Universität Berlin.

## ***PUBLICATIONS and WORKING PAPERS***

“Comments on State Aid Reform – some Implications of an Effects-based Approach”, with Paul Heidhues, in: European State Aid Law Quarterly (forthcoming)

“Study on the Port of Rotterdam – Market Definition and Market Power”, CRA-Study for the Dutch competition authority (Nederlandse Mededingingsautoriteit, NMa), December 2004, available at [www.crai.com](http://www.crai.com)

“An assessment of the extent of an identified need for simplified, standard financial services products”, CRA-Study for the European Commission, DG Health and Consumer Protection, December 2004, available at [http://europa.eu.int/comm/consumers/cons\\_int/fina\\_serv/cons\\_experiences/devlp\\_en.htm](http://europa.eu.int/comm/consumers/cons_int/fina_serv/cons_experiences/devlp_en.htm)

“Competitive Impacts of Information Exchange” Paper written on behalf of the European Liner Affairs Association in the context of the reform of Regulation 4056/86; available at

[http://europa.eu.int/comm/competition/antitrust/others/maritime/elaa\\_proposal/note\\_on\\_information\\_exchange\\_en.pdf](http://europa.eu.int/comm/competition/antitrust/others/maritime/elaa_proposal/note_on_information_exchange_en.pdf).

"Innovation in the pharmaceutical sector", CRA-Study for the European Commission, DG Enterprise, November 2004, available at [www.crai.com](http://www.crai.com)

"Economics on the Advance—European Reform and German Competition Policy." With Julia Thielert. "Die ökonomische Analyse auf dem Vormarsch - Europäische Reform und deutsche Wettbewerbspolitik", in: *Wirtschaft und Wettbewerb* Vol 54, No 3, March 2004, pp. 250–258.

"Comments to the Draft Notice on Horizontal Merger Control." CRA submission to the European Commission, March 2003.

"Are Anti-Predation Rules in the Public Interest?" CRA Competition Policy Discussion Paper 5, Charles River Associates Limited, September 2002.

"Takeover Bids in a Merger Race," WZB Discussion Paper, 2004.

"On the Effectiveness of Anti-Predation Rules," WZB Discussion Paper, 2002.

"Incremental Mergers and Competition Policy in Multimarket Industries," WZB Discussion Paper. 2004.

"Liberalizing Network Industries. A Challenge for Competition Policy," in Lars-Hendrik Röller and Christian Wey (eds). *WZB-Jahrbuch* 2001.

"Competition after Liberalization," *WZB-Mitteilungen*, No 92, June 2001.

"Incentive to Grow: Multimarket Firms and Predation," WZB Discussion Paper FS IV00-19, December 2000.

"Liberalization and Privatization of London Transport," *DVG Schriftenreihe*, No B213, 1998.

## ***LANGUAGES***

German, English, French (not fluent)