

Rainer Nitsche – ESMT Competition Analysis

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SUMMARY

Dr Nitsche is a managing director of ESMT Competition Analysis and 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 15 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:

- Work as testifying expert on merger cases for the Austrian Cartel Court:
 - **Styria/Moser Holding II** (regional newspapers): market definition, competitive effects and media diversity.
 - **Strabag/Cemex** (cement, gravel): market definition and competitive effects.
 - **Scholz/Graz** (scrap): market definition and competitive effects.
 - **Styria/Moser Holding I** (free newspapers): market definition and competitive effects.
 - **Oetker/Unilever** (FMCG, frozen pizza): market definition and competitive effects.

- **Merger work for the merging parties:**
 - **Vattenfall/Nuon:** Market definition and competitive assessment in electricity retail markets.
 - **T-Mobile/tele.ring:** 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.
 - **Dr Oetker/Schwan:** Appraisal of potential anti-competitive effects of horizontal merger between Dr. Oetker and Schwan in the UK and German FMCG industries (frozen pizza).
 - **Atlas Copco/ABAC Aria Compressor:** Advised Atlas Copco, a large manufacturer of compressors, on its acquisition of a European rival. The merger was notified in several European jurisdictions, including Germany and Austria, and involved primarily unilateral effects concerns.
 - **Inova/von Roll:** In a 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.
 - **Locks:** Merger in the locking system industry. Analysed the competitive effects of a proposed merger between two suppliers of locking systems. As the Parties held strong positions in innovation and distribution, a detailed analysis of potential foreclosure effects was carried out.
 - **Steel:** Merger in the steel industry. He advised a top-five steel producer on the competitive effects of a potential merger (pre-notification stage). The geographic market definition involved descriptive and econometric analyses of price movements in different candidate markets, broken down by potentially relevant products markets. Efficiency effects were quantified. The Parties did not proceed with the merger.
 - **Copper:** Advised a large copper producer on the possibility of a merger with one or two competitors.
 - **TomTom/TeleAtlas:** He advised a competitor of TomTom in the recent acquisition of TeleAtlas by TomTom (Phase II).
 - **Office supply:** Planned merger in the office supply industry.
 - **REWE/Adeg** Merger in grocery retailing. Unlike in case precedents, the analysis of the European Commission case team in this case did not focus on the effects of increases in buyer power of the merged entity. This concern could be eliminated at an early stage among other things by a thorough quantitative analysis of the supplier structure at the two retailers and in particular of the supplier overlaps between the two companies. Instead the main theory of harm was based on regionally high concentration levels. The merger was cleared in phase I with regional divestiture remedies.

- **Electricity merger.** Market definition and competitive assessment of the German electricity retail sector.
- **Stevedorers:** In a merger of two European stevedores 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.
- **Vacuum pumps and blowers:** 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.
- **Procter&Gamble/Beiersdorf:** 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.
- **Electricity (generation):** 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.
- **Chemicals:** In a 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.
- **BIA/Belfast City Airport:** 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.
- **NTL/BBC-Transmission:** 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.
- **Abuse cases:**
 - Developed a **margin squeeze test** that allows for combinations of bundled and non-bundled offers in telecommunication services for an European incumbent.
 - **Market definition of broadband wholesale products.** Analysis whether low-speed and high-speed broadband wholesale products belong to the same relevant antitrust market.
 - Advice to one major German energy suppliers on **excessive pricing** allegations.
 - **Collective abuse of dominance** in grocery retailing in Austria.
 - Foreclosure in the fast moving consumer goods industry. Assessed the risk of anticompetitive effects of a **retroactive rebate scheme**.
 - 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**.

- 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.
- 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.
- 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://www.elaa.net/files/pdf/NoteonInformationExchange.pdf>.
- 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).
- 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**.
- **Product market definition in the car glass repair and replacement services industry** to assess dominance and pricing schemes.
- Cartel cases
 - Calculation of private damages for a defendant in a **commodity** market.
 - Expert for the defendant in a **LPG** market: Econometric overcharge estimation regarding a price fixing and market sharing cartel in the LPG market.
 - Expert for the defendant, a large producer of **plants**, in front of the Higher Regional Court Düsseldorf.
 - Detailed analysis of information exchange in an alleged cartel in the **FMCG industry**. The work focused on the analysis of the potential workings and effectiveness of the alleged cartel for the defendant.
 - Analysis of a bid rigging cartel in the **waste industry** (light weight packaging waste) and comments to the opinion of the court expert.
 - In a cartel case in the **chemicals industry** he prepared an analysis of the effects of the cartel on the market price. Expert reports were submitted to the Belgian and the German competition authorities.
- Vertical and horizontal agreements and assessment of dominance:

- Analysis of vertical agreements in the **automotive industry** and economic effects of possible legislation change.
- Article 81 and 82 case in a **chemical compound market**. Supported a downstream chemical compound producer in an arbitration related to a long term supply contract of some elemental chemical.
- Joint marketing and distribution in the **nutrition industry**. Two major companies operating in the sugar substitutes industry planned to establish a co-operation in the marketing and distribution of their product.
- 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.
- 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.
- 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).
- 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).
- Market entry in **energy retail** markets. Analysed institutional and structural entry barriers. Quantified the competitive effects of different entry strategies. Analysed competitive effects of horizontal and vertical restraints.
- Study on **electricity wholesale** markets. Analysed the extent of market integration of European wholesale markets, including price based indicators and a SSNIP-Test approach novel to electricity wholesale markets. Assessed market power of German electricity suppliers based on the evolution of wholesale supply and demand elasticities and price-cost-margins.
- **State aid:**
 - State aid case in the **airline catering** industry. Estimation of the abnormal costs of a voluntary retirement scheme as a reduction in work force was needed in order to adjust to the expected loss in business due to the privatisation the former mother company and principal customer. Assessed the resulting abnormal costs of the voluntary retirement scheme using simulation and benchmarking techniques. The State aid was approved.
 - Advised Leipzig **airport** and the State Government of Saxony in a State aid investigation of the European Commission.
 - He advised Progroup and the Federal Republic of Germany regarding State aid granted to Progroup for the construction of a **paper mill**. The work involved a

discussion on the scope of geographic market definition in markets with high transportation costs in a State aid control context.

- Dr Nitsche advised the Hellenic Republic regarding State aid control in relation to a contribution to OTE, the Greek **telecommunications** incumbent. 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.
- 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.
- 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 distortion 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).
- 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).

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.

- **Regulation and investment in telecommunications Next Generation Networks (NGN):** Developed a theoretical equilibrium model that analyses the effects of different regulatory access regimes on incentives to deploy NGN.
- 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 modelling 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.

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 tax authorities, 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.
- On behalf of the Directorate General for Health and Consumer Protection, we considered the use of **simplified financial 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://ec.europa.eu/consumers/cons_int/fina_serv/cons_experiences/cra-simplified-products-main-report.pdf.
- 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

- Advice to a major global energy enterprise on **potential entry into the German wholesale and retail gas markets**.
- 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

“NGA: Access Regulation, Investment, and Welfare. A Model Based Comparative Analysis” (with Lars Wiethaus), ESMT White Paper No. WP–110–02, 2010, available at <https://www.esmt.org/fm/312/WP-110-02.pdf>.

“Großhandelsmärkte für Strom – Marktintegration und Wettbewerb aus deutscher Perspektive” (with Axel Ockenfels, Lars-Hendrik Röller und Lars Wiethaus), in *Energiewirtschaftliche Tagesfragen*, 3-2010.

“The Electricity Wholesale Sector: Market Integration and Competition” (with Axel Ockenfels, Lars-Hendrik Röller, and Lars Wiethaus), ESMT White Paper No. WP–110–01, 2010, available at <http://www.esmt.org/fm/479/wp-110-01.pdf>.

„Access Regulation and Investment in Next Generation Networks: A Ranking of Regulatory Regimes” (with Lars Wiethaus), ESMT Working Paper No. 09–003, June 1, 2009, available at <http://www.esmt.org/fm/479/ESMT-09-003.pdf>.

“Screening and Merger Activity”, co-authored with Albert Banal-Estanol, Paul Heidhues, and Jo Seldeslachts, in: *Journal of Industrial Economics*, forthcoming.

“Comments on State Aid Reform – some Implications of an Effects-based Approach” (with Paul Heidhues), in *European State Aid Law Quarterly*, 2006, 5, pp. 23-34; reprinted in: *The More Economic Approach (Conference on New Political Economy 24)*, eds. D. Schmidtchen, M. Albert, and S. Voigt, 2007, pp. 321-344.

“Study on Methods to Analyse the Effects of State Aid on Competition” (with Paul Heidhues), *European Economy* No. 244, February 2006.

“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.

“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://ec.europa.eu/consumers/cons_int/fin_serv/cons_experiences/cra-simplified-products-main-report.pdf.

“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://www.elaa.net/files/pdf/NoteonInformationExchange.pdf>.

“Innovation in the pharmaceutical sector”, CRA-Study for the European Commission, DG Enterprise, November 2004.

“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." 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 FS IV 02-12, 2002.

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

"Liberalisierung von Netzökonomien. Herausforderung für die Wettbewerbspolitik" (Liberalizing Network Industries. A Challenge for Competition Policy), in: Lars-Hendrik Röller and Christian Wey (ed.) *die Soziale Marktwirtschaft in der neuen Weltwirtschaft*. WZB-Jahrbuch 2001. Berlin. 249-290.

"Nach der Liberalisierung. Eine Herausforderung für die Wettbewerbspolitik" (Competition after Liberalization. A challenge for competition policy), in *WZB-Mitteilungen*, No 92, June 2001, 12-15.

"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.

"Wege zur effizienten Organisation des öffentlichen Personennahverkehrs. Optionen für die kommunalen Gebietskörperschaften", *Price Waterhouse Broschüre*, 1996.

LANGUAGES

German, English, French (basic)