Services and Capabilities

Antitrust and Competition Policy Economics
Our team of experts offers an unmatched combination of economic credentials, industry expertise, and testifying experience.
Rigorous new enforcement policies, aggressive enforcement tactics, and unprecedented penalties—combined with a turbulent economic environment—have raised the stakes in antitrust and competition matters around the world. As the financial stakes continue to rise, so does the cost of being investigated for allegedly anticompetitive behavior.

For half a century, NERA experts have been central to client success in some of the world’s highest-profile cases related to litigation, regulation, and business challenges in antitrust and competition. NERA combines a rigorous economic approach to analysis of competition issues with creative thinking. Our economists employ economic theory and cutting-edge quantitative techniques, grounded in a thorough understanding of market facts, to provide practical approaches to, strategies for, and analyses of the antitrust and competition challenges facing our clients. Our expert insights build on experience gained in academia, business, and the regulatory agencies.

NERA economists go beyond abstract principles to analyze all available evidence before presenting their analyses in a clear, conclusive, and defensible manner. We take extraordinary measures to ensure the robustness of our work—our antitrust and competition analyses have been presented in hundreds of proceedings, and the testimony of NERA experts has withstood scrutiny in numerous forums around the world.
NERA’s Antitrust and Competition Practice

NERA has developed one of the largest in-house teams of economists in the economic consulting world. Our Global Antitrust Practice operates from over 25 offices in North America, Europe, Asia, and Australia. We are linked by an efficient firm-wide communications and computing network that makes us especially useful when document and data production and economic analyses require global coordination. Our excellence in data management and analysis makes the quantitative aspects of modern litigation manageable.

NERA’s antitrust experts employ a combination of economic theory and the latest quantitative techniques, grounded in a thorough understanding of market facts, to provide theoretical and empirical economic analysis and testimony in matters involving mergers and acquisitions, antitrust litigation, and competition policy. We analyze the entire range of economic issues that arise in antitrust cases, including market definition and market power, market structure and entry conditions, and pricing and other conduct affecting competition, profitability, and damages.

In matters involving litigation and other disputes, NERA economists provide objective analysis, expert testimony, and regulatory insight at all stages of the dispute resolution process, including pre-trial discovery, depositions, fact analysis, strategy planning, development of economic and financial damage models, critique of damage reports by opposing experts, and preparation of well-documented reports, exhibits, and testimony. Although our focus remains squarely on the economics, our experts have a solid understanding of antitrust and competition law—even the best analysis is of no use to a client if it does not comport with the applicable laws and regulations.
NERA economists are also highly skilled at using industry data to determine what’s really going on in the marketplace. We extract the most relevant information that will enable attorneys to give intelligent, sound advice to their clients and to litigate a case effectively. We know how to frame our analysis and present it in clear, understandable terms that resonate with our clients and in the courtroom. This rigorous approach reflects our focus on finding the right answer, no matter the circumstances.

In addition to our work involving disputes, NERA’s antitrust experts provide advisory services that help shape business strategies around the world. Clients recognize the high level of sophistication and accuracy for which our work, often perfected in a litigation setting, is known. We work closely with outside and in-house counsel to provide advice on competition-related matters including firms contemplating acquisitions as well as those seeking to be sold. Our economists also have extensive experience assessing the competitive significance of proposed actions and practices prior to implementation, and can assist counsel when advising companies regarding a government’s likely response to a particular practice, such as bundled pricing or exclusive distribution arrangements.

In matters involving litigation and other disputes, NERA economists provide objective analysis, expert testimony, and regulatory insight at all stages of the dispute resolution process.
Areas of Focus

In antitrust, as in all of NERA’s work, our experts focus on the key areas where the rigorous application of economics provides the most value to our clients. Without exception, our work in these areas is grounded in a set of core principles that have always guided our efforts: focus, independence, rigor, defensibility, and clarity.

Mergers and Joint Ventures
NERA economists have extensive experience in all phases of merger and joint venture analysis, including assessing the antitrust risks of a transaction; responding to requests from the US Department of Justice, the Federal Trade Commission, the European Commission, and competition authorities in other jurisdictions; explaining the likely competitive effects of a transaction before regulatory agencies around the world; and providing expert testimony in merger litigation. We recognize the vital importance of technical and quantitative rigor and, to that end, employ advanced approaches, such as econometric estimation of the relevant demand elasticities and merger simulation.

Cartels and Price Fixing
NERA experts have extensive experience in North America, Europe, Asia, and elsewhere in evaluating allegations of price fixing, bid rigging, customer allocation, buyer cartels, and other forms of collusive anticompetitive behavior. Our past assignments have involved analyses of allegedly anticompetitive agreements, including horizontal (between competitors) and vertical (between firms at different levels of the supply chain) agreements, and have included criminal investigations and civil matters. Our experts frequently conduct econometric analyses of detailed transaction or bidding data to obtain a clear picture of the effect, if any, of an alleged conspiracy. Using such data, our experts assess the volume of commerce affected by alleged conspiracies, calculate the associated pecuniary gains or losses, and evaluate the effective duration and impact of alleged conspiracies.

Class Certification in Antitrust
NERA experts provide rigorous economic analyses in the class certification phase of antitrust litigation. By combining economic theory, the characteristics of the product or market, and empirical analyses, we examine whether impact and damages can be proved on a classwide basis using common evidence. We work with our clients and counsel at all stages of the litigation and present our findings in a clear, credible, and accessible manner.

Monopolization, Abuse of Dominant Position, and Market Investigations
In the US, NERA’s antitrust experts work on matters involving alleged violations of Section 2 of the Sherman Act and Section 5 of the FTC Act. In these matters, we deliver advice to our clients and counsel throughout investigations of alleged predation, tying, foreclosure, price discrimination, refusals to deal, or other allegations of monopoly/monopsony behavior. We also assess proposed practices prior to implementation and offer advice regarding any potential government challenge. In Europe, NERA’s competition experts have advised on numerous abuse of dominance and monopoly investigations, including inquiries on foreclosure, excessive pricing, price discrimination, aftermarkets, refusal to supply, bundling and tying, essential facilities, and predatory pricing.
**Antitrust Damages and Litigation**

NERA experts apply microeconomic reasoning and econometric modeling techniques to real-world data to establish or refute a direct causal connection between the alleged antitrust violation and the injury claimed, as well as measure the amount of damages. Damages analyses prepared by NERA economists have been used to advise a company’s owners, management, or board of directors of the company’s potential exposure; to provide input to negotiations between companies and regulators throughout the world; to help parties negotiate settlements in civil litigation; and in testimony at trial.

**Antitrust and Intellectual Property**

NERA experts often work at the intersection of antitrust and intellectual property (IP) law issues. We understand the economic analyses required in applying IP and antitrust law and are adept at applying data analysis techniques and innovative econometric models to these complex legal issues. NERA experts have broad experience working in a wide range of industries and have contributed economic analyses to legal and regulatory matters involving the use and abuse of standard setting, licensing and patent extension, mergers, and damages assessments. We keep pace with the ever-changing business world, including the rapidly evolving developments in the pharmaceutical, medical equipment, computer hardware and software, e-commerce, and other high-technology sectors.

**Horizontal and Vertical Agreements**

NERA’s antitrust experts have assessed the economic rationales for and effects of horizontal and vertical agreements across the globe. In numerous industries in the US, NERA experts have analyzed the competitive impact of practices such as territorial exclusivity, cooperative advertising programs, exclusive dealing, and resale price maintenance. Our analyses have been presented to federal and state investigative agencies and in federal and state courts.

NERA’s European competition team is at the forefront of applying a more rigorous economic approach to the assessment of horizontal and vertical agreements. Our experts have analyzed the economic impact of numerous agreements between firms at different levels of the supply chain, including selective distribution, exclusive distribution, exclusive dealing, and the impact of recommended retail prices.

**Survey Research and Design**

NERA economists use quantitative research, choice models, and other survey techniques to reach conclusions in a range of disputed issues. Our expert statisticians and economists combine a deep knowledge of sampling techniques, survey administration, and analysis of complex sets of data with a firm grounding in econometric principles and practices. Our surveys can help identify how consumers choose among service or product configurations, which attributes sway purchase decisions, or whether certain names or designs have achieved meaning in the marketplace. Our work ranges from short-deadline sampling assignments and constructive critiques of existing surveys, to rigorous survey projects that successfully resolve multi-million-dollar lawsuits.
Case Profiles

NERA’s experts bring to bear a passion for finding the right answer. The following case profiles illustrate the breadth of our experience in the area of antitrust and competition.

**Google FTC Section 2 Investigation**
In 2011, the US Federal Trade Commission (FTC) opened a broad antitrust investigation into Google’s business practices. NERA was retained to consider a broad range of issues including the relevant product market, market shares and concentration, the potential for Google to harm competition, and the prospect that Google would be able to foreclose entry in online advertising. NERA experts submitted an analysis to the FTC on behalf of Google that examined the extent to which advertisers use both Google and competitors’ advertising platforms at the same time. They found that advertisers typically use multiple advertising platforms, and, therefore, Google did not limit advertisers’ ability to simultaneously use both Google and competitors’ advertising platforms. In January 2013, the Commissioners of the FTC voted 5-0 to close its investigation into Google’s business practices with Google agreeing to limited changes to its search and advertising businesses.

**Ardagh Group Acquisition of Saint-Gobain Containers, Inc.**
In 2013, Ardagh Group, S.A. announced a proposed $1.7 billion acquisition of a US division of Saint-Gobain Containers, Inc., a deal that would combine two of only three major glass container manufacturers in the US. The FTC filed suit against the two companies in federal district court to halt the proposed acquisition, alleging that not only would the proposed transaction “dramatically increase the ease and likelihood of coordination,” but that the industry participants had already coordinated to reduce excess capacity and raise prices. NERA experts utilized econometric analyses, game theoretic modeling, and other quantitative tests to examine empirically the competitive environment and to identify and measure market factors that constrain pricing for glass containers. The analyses showed there had been no coordination, and that capacity reductions were unilaterally rational in the face of declining demand for the product. A settlement was reached in 2014 allowing Ardagh to move forward pending the sale of a portion of its US manufacturing plants.

**Class Certification in a Gasoline Conspiracy Class Action**
Seven oil companies were alleged to have conspired to raise the price of gasoline to a proposed class of US consumers through a variety of mechanisms, including control of inventory, production, exports, supply, refinery closures, crude oil disruptions, and product diversions. NERA experts evaluated the claims of Plaintiffs’ experts that the allegations of anticompetitive conduct and damages arising from it could be addressed using class-wide evidence and methods. NERA testimony concluded that class-wide methods would be unreliable for assessing the existence and magnitude of impact from the actions, and that damages calculated using class-wide evidence and methods would be inaccurate. Class certification was denied.
The Men’s Wearhouse Acquisition of Jos. A. Bank
In 2014, The Men’s Wearhouse, Inc. announced an agreement to purchase rival Jos. A. Bank Clothiers, Inc. in a deal subject to a review of potential antitrust concerns by the FTC. NERA was retained by counsel for Men’s Wearhouse to conduct empirical analyses of the competitive environment for the sale of men’s suits and for tuxedo rentals, and to assess the likelihood of anticompetitive price effects resulting from the merger. NERA experts used transaction-level data from both parties to conduct econometric analyses to show that the two parties were not each other’s closest competitors and that the combined entity would still face significant competition from other brick-and-mortar stores. In May 2014, the FTC closed the investigation, noting that the merger was not likely to harm consumers because of significant competition from other men’s clothing retailers.

Intel Defense Against CCI Complaint
In 2011, an independent distributor in India filed a complaint with the Competition Commission of India (CCI) against global chip-maker Intel Corp and two related entities. The distributor alleged that Intel had violated several provisions of India’s competition laws, including, among others, provisions regarding resale price maintenance, tying arrangements, price discrimination, and potential foreclosure of rival manufacturers through the use of loyalty-enhancing incentives. NERA’s experts filed four written reports that included extensive analysis of the competitive effects of the incentive program that Intel offered its distributors, and gave an oral presentation to the Commission. NERA demonstrated that Intel’s incentive program did not foreclose rival manufacturers of microprocessors; indeed, the program was pro-competitive. In January 2014, CCI ruled in Intel’s favor and closed the proceedings, concluding that Intel had not abused its dominant position in the microprocessors market and had “not restricted and limited the market by foreclosing the distribution network to its competitors.”

Approval of Medco’s Acquisition by Express Scripts
In 2011, Express Scripts, Inc. announced plans to acquire Medco Health Solutions for $29 billion. The acquisition was a transaction between two of the three largest US pharmacy benefit managers (PBMs). After the acquisition was announced, the FTC opened an investigation to determine whether the acquisition would substantially reduce competition in violation of Section 7 of the Clayton Act. NERA’s experts analyzed a range of market data, including Medco’s historical sales and competitive bidding data, to assess the likely competitive effects of the transaction. As noted by the FTC, the bidding data produced by Medco, Express Scripts, and other third parties demonstrated that Medco and Express Scripts were not particularly close competitors and that other competitors have been successful in winning business away from the merging parties. These and other analyses were central to the FTC’s conclusion that the market for PBM services was competitive and that the transaction would not have an adverse effect on the competitive dynamics. On 2 April 2012, the FTC announced that it had approved the acquisition.

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About NERA

NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA’s economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world’s leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA’s clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world’s largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

For more information about our capabilities and services in Antitrust and Competition Policy Economics, please visit www.nera.com/antitrust.
Visit www.nera.com to learn more about our practice areas and global offices.