



## At A Glance Merger Control in Europe

### Overview

The 2004 revised EC Merger Regulation (ECMR) changed the substantive test from the “creation or strengthening of a dominant position” to “significant impediment to effective competition” (SIEC) and put economics at the core of merger control investigations. The European Commission has also issued guidelines on horizontal and non-horizontal mergers, which are applied by the Chief Economist and his team of specialists in microeconomics, industrial organisation, game theory, statistics, and econometrics. Economics has similarly become central to enforcement at the European member state level, with ever more authorities appointing chief economists and expert economic staff.

### NERA’s Experience

NERA has been involved in many of the most high profile merger inquiries of recent years, and we have advised on the full range of economic issues across the economy. The following examples from NERA’s case list illustrate how economic analysis has been used in European merger control.

#### Thomson/Reuters

This merger combined two leading global providers of financial information and desktop products. Given the many different bundles in which financial information is combined to address different users’ needs, the European Commission’s investigation focused in particular on market definition, as well as a series of horizontal and vertical issues. On the basis of its in-depth review, the Commission narrowed its initial concerns to the content sets of aftermarket research, estimates, fundamentals, and economic time series data. To remedy these concerns, the parties agreed to sell copies of the databases for the four content sets, together with relevant assets, personnel and customer base. As a result, the Commission did not issue a statement of objections, while also allowing the merged entity to retain ownership of the relevant databases and the right to continue using them. NERA advised Thomson.

#### Nokia/Siemens

This merger concerned the B2B provision of telecommunications equipment, in particular to mobile network operators. NERA investigated the closeness of competition between Nokia and Siemens by preparing a bidding study of win/loss data. This analysis showed that the merging parties were not close competitors, and identified a substantial constraint from market leader Ericsson and other rivals. Despite considerable market shares, the Commission cleared the merger unconditionally in phase I. NERA advised both Nokia and Siemens.

#### Universal/BMG

Universal, already the world’s largest player in music recording, proposed to acquire BMG’s music publishing activities, and thus become also the largest music publisher. During its in-depth investigation, the European Commission developed a theory of “control market shares” and focused on the concern that Universal could, either via its (fully or partly owned) music publishing copyrights or via its recorded music rights, exert control over the digital use of more than half of the chart hits in a number of member states. Based on the Commission’s theory of harm, Universal selected a divestment package that addressed the increment in “control market shares”, rather than “revenue market shares”. By not including those works in which Universal already had a partial publishing copyright and/or a recorded music right, the target revenues for the divestiture package were reduced by 55-65%. NERA advised Universal.

## DONG/Elsam/E2

In this transaction the Danish gas incumbent DONG acquired the two incumbent Danish electricity generators Elsam and Energi E2. The European Commission reviewed the merger against the backdrop of a related share-asset deal with the Swedish utility company Vattenfall, and the energy sector inquiry. After an in-depth phase II investigation the Commission abandoned all of its initial concerns in relation to electricity. With respect to the vertical aspects stemming from DONG's strong position in the gas market, the Commission accepted a remedy package consisting of a gas storage divestment and a gas release programme. NERA advised DONG.

## Syniverse/BSG

This transaction raised unilateral effects concerns as it amounted to a 3-to-2 merger in the European market for GSM roaming data clearing services. The European Commission opened an in-depth phase II investigation, and after detailed review of the evidence concluded that bidding data did not indicate close competition between the parties, the merged entity would continue to be subject to strong competition from market leader Mach, mobile network operators had substantial buyer power, and barriers to entry were low. The Commission did not issue a statement of objections and the merger was cleared without conditions. NERA advised both Syniverse and BSG.

## EDF/British Energy

This merger combined British Energy, the UK's largest power generator, and EDF, another significant UK electricity player with substantial coal- and gas-fired generation capacity. The European Commission conducted a very detailed review, including extensive iterations on capacity withdrawal modelling and liquidity simulations. To secure a phase I clearance, EDF successfully negotiated a package of structural and behavioural remedies to address the Commission's concerns. NERA advised British Energy.

Our other significant cases under the revised ECMR include the phase II investigations of *Inco/Falconbridge*, *Kronospan/Constantia*, and *ABF/GBI* for merging parties, as well as *GdF/Suez* and *BHP Billiton/Rio Tinto* for third parties. Recent phase I clearances for merging parties further comprise *Dow/Rohm & Haas* and *Invitrogen/Applied Biosystems*. At the member state level, we have worked across the major jurisdictions, on cases such as *InBev/Anheuser-Busch* (UK), *Staubsaugerbeutelmarkt II* (Germany), *Nuon/Reliant* (Netherlands), and *Universal/Vale Music* (Spain).

## How NERA Works

NERA's European Competition Policy practice has exceptional expertise in mergers at all stages of the approval process:

- *Target identification and pre-announcement deal analysis* – we are often engaged early on during the strategic evaluation of potential acquisition targets, to analyse risks, collect evidence, and develop contingency plans.
- *Preparation of the Form CO (or appropriate filing) and pre-notification discussions* – the requirements for a notification to be accepted as complete have intensified substantially, and pre-notification contacts can already involve sophisticated discussions on substantive analysis, appropriate assessment methodologies, and associated information requirements.
- *Phase I* – with adequate preparation and interaction with the case team, increasingly complex pieces of analysis can be presented during phase I to avoid the need for an in-depth investigation.
- *Phase II* – an in-depth investigation involves an even higher degree of scrutiny, typically requiring very detailed and extensive data submissions, highly sophisticated methodologies, and very intensive engagement with the case team.
- *Remedy analysis* – remedies are increasingly focused more closely on directly addressing the relevant theory of harm, and timely economic analysis can avoid unnecessary divestments and minimize the cost of undertakings.

## About NERA

NERA Economic Consulting ([www.nera.com](http://www.nera.com)) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For nearly 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. With its main office in New York City, NERA serves clients from over 20 offices across North America, Europe, and Asia Pacific.

## Contact

### Mark Williams

Director, European Competition Policy  
+44 20 7659 8764 or +32 2 282 4344  
[mark.williams@nera.com](mailto:mark.williams@nera.com)

