

Services and Capabilities

Economic Analyses and Allegations of Collusive Anticompetitive Activity: Cartels





Our team of experts offers an unmatched combination of economic credentials, industry expertise, and testifying experience.

Investigations of and litigation concerning alleged cartel activity may cross international borders and include multiple legal jurisdictions. In the United States, criminal enforcement by the US Department of Justice is vigorous, and the risks of civil litigation remain high. In Europe, fines by the European Commission (EC) for cartel infringements have risen sharply, and both the EC and national competition authorities are encouraging injured parties to seek damages from cartel participants. Government inquiries into alleged cartels have intensified in Asia and elsewhere, as the elimination of cartels is recognized as beneficial to local, national, regional, and global economic activity. This worldwide trend increases the need for disciplined, reliable, and independent economic analyses of allegations of collusion.

Scrutiny of alleged cartel activity is increasing around the world, and with it the need for robust economic analyses examining allegations of collusive anticompetitive behavior.

Who We Are



NERA has extensive international experience in evaluating allegations of collusive anticompetitive behavior. Our experts have worked in North America, Europe, Asia, and elsewhere on a broad variety of cartel cases, both criminal and civil, including investigations of or litigation alleging price fixing, customer and geographic allocation, bid rigging, and other forms of anticompetitive collusion.

In industries ranging from agricultural commodities and natural resources to capital equipment, and production inputs to durable and non-durable consumer goods and services, NERA has provided expert economic analysis that has been instrumental in advising companies about their potential exposure, negotiating with regulators and enforcement agencies, and reaching settlements in civil litigation. NERA experts also regularly testify in cartel-related court cases seeking civil damages or prosecuting alleged criminal activity, including testimony for individuals accused of criminal conduct.

Clients come to NERA because of our decades of experience dealing with antitrust and cartel issues, our experts' unparalleled depth of knowledge and experience—not only of industries and issues, but of technical skills and capabilities—and our commitment to deliver unbiased findings. NERA's reputation for independence and integrity gives our testimony substantial weight with regulators and in the courtroom.

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Our Capabilities

NERA's economists provide the full suite of capabilities and services needed to evaluate allegations of cartel activity and to address all aspects and phases of the regulatory, enforcement, and legal process that such allegations put into motion. Indeed, we are regularly engaged at the outset of an investigation into alleged cartel activities and work with inside and outside counsel over time—often years—until all aspects of the investigation are resolved.

Transaction Studies

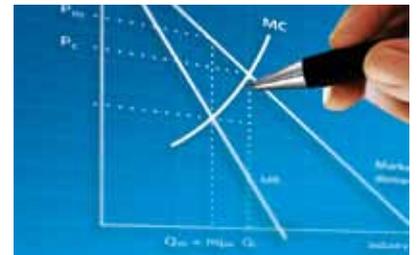
NERA's work in criminal and civil cartel engagements frequently involves the analysis of detailed transaction or bidding data to obtain a clear picture of the effect, if any, of an alleged conspiracy. This type of study can be a major element of an economic analysis of liability, impact, and damages in matters alleging collusive behavior, including pricing fixing and bid rigging. NERA uses this data to assess the volume of commerce affected by alleged conspiracies, to estimate the pecuniary gain or loss, and to evaluate the effective duration and impact of alleged conspiracies.

Application of Economic Theory

A wide range of economic analysis may be needed to answer the range of complex questions related to alleged cartel behavior. By answering questions such as whether a conspiracy could even function in given market conditions, whether the alleged business practice is consistent with rational economic behavior, and what range of factors are driving overall product demand, NERA economists can help companies and individuals accused of anticompetitive collusion evaluate their exposure in criminal or civil litigation, prepare their best defense, or even avoid criminal charges altogether.

Class Certification in Litigation

NERA conducts economic analyses that examine whether impact and damages may be proved on a class-wide basis using common proof, or must be determined customer by customer. If these analyses show that impact or damages cannot, in fact, be determined on a class-wide basis, proof of impact and damages must account for individual factors and cannot be reduced to a common set of facts or a single formula. These analyses may also be valuable in shaping a settlement in either a criminal investigation or a civil suit.





Expert Testimony

NERA economists have extensive experience providing expert testimony in cases involving alleged anticompetitive collusion. Our experts regularly appear before regulatory bodies and testify in the courtroom in both civil and criminal cases. We have a reputation for independence, a commitment to rigorous and unbiased economics, and compelling testimony that carries substantial weight with regulators, judges, and juries.

NERA's size and deep expertise allows us to give clients the option of using us in a consulting capacity and as testifying experts in the same litigation.

Industry Experience

NERA's experts have unparalleled experience working on anticompetitive cases involving a broad range of industries around the world. While many of our cases involve allegations of collusion surrounding markets for end products, we also have experience examining alleged collusion and manipulation affecting manufacturing inputs and even various commodities.

As a result, we have deep industry knowledge in areas including: agricultural and forestry products; mining, quarrying, and oil and gas extraction; utilities; construction; food and beverage manufacturing and distribution; tobacco products; textiles and apparel; wood and paper products; petroleum and chemical products; plastics and rubber products; mineral products; primary and fabricated metal products; machinery; computers, computer software, and other electronic products; electrical equipment and appliances; transportation equipment; furniture; wholesale trade (durable and nondurable goods); retail trade (durable and nondurable goods); transportation services; publishing and broadcasting; telecommunications; finance, insurance, and financial instruments; real estate; professional services; health care; arts, entertainment, and recreation; accommodation and food services; and other service industries.

Global Experience

NERA has been involved in cartel-related cases in regions throughout North America, Europe, and Asia Pacific, including:

- the United States
- Canada
- the European Union
- the United Kingdom
- Japan
- South Korea
- Australia
- New Zealand

Economists experienced with cartel investigations are located in most of our offices around the world, including Boston, White Plains, New York City, Philadelphia, Washington, San Francisco, and Los Angeles in the United States; London, Brussels, Madrid, and Rome in Europe; and Sydney, Melbourne, and Tokyo in the Asia-Pacific region.



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Case Profiles



United States v. David P. True

The government charged that Mr. True, president of a commercial explosives manufacturer, and competitors engaged in a continuing conspiracy over a five-year period to fix prices, rig bids, impose surcharges, and allocate customers for commercial explosives in Kentucky and two other states. Prior to Mr. True's trial, the government obtained guilty pleas from several corporations, including Mr. True's employer, and from individuals, several of whom then testified against him at trial. Relying on a bill of particulars obtained by Mr. True's counsel describing the alleged anticompetitive agreements reached among the competitors, NERA used the company's transaction data and other materials to examine if the prices and surcharges charged and customers served were consistent with the conspiracy alleged. We concluded that the data were not consistent with the conspiracy alleged by the government. In part because of this testimony, the jury found Mr. True not guilty.

Exhaust Unlimited, Inc. v. Cintas Corporation, et al.

Plaintiffs alleged that members of the nationwide textile linen supply industry entered into arrangements to reduce competition in the retail linen supply industry by imposing ancillary charges on invoices for linen services. These ancillary charges included "environmental charges" that were allegedly unrelated to the costs of complying with various environmental regulations facing suppliers of linen services. NERA was retained by counsel for the defendants to determine whether impact and injury could be determined by a class-wide method using evidence and information common to the class. The court, relying on NERA's analysis, denied plaintiffs' motion for class certification, finding that individual issues would predominate over common questions of law and fact. In particular, the court, referring to NERA, concluded that common proof was not sufficient to establish that every customer paying an environmental charge was injured as a result of the alleged conspiracy, and that individualized inquiry was needed to determine the price a customer would have paid in an unrestrained market.

Allegations of Cartel Activity in the Chemical Industry

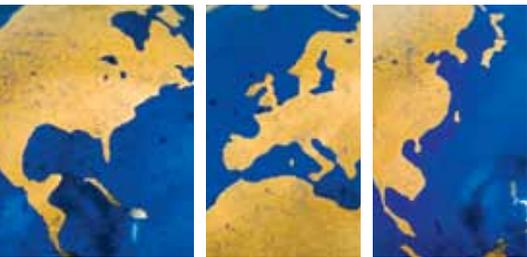
NERA has worked with counsel for several manufacturers of chemical and related products on multiple investigations of cartel activity involving different products. The work has included both consulting and testifying engagements on criminal and civil matters (including both direct and indirect purchaser class actions) involving courts, regulators, and enforcement agencies in the United States, Europe, Canada, Asia, and elsewhere. In these matters, NERA's economic and statistical analyses have been used to evaluate allegations of price fixing, bid rigging, and customer allocation; to determine the impact and duration of alleged cartel agreements; to calculate the volume of commerce affected by an alleged conspiracy and the resultant damages; to determine if common proof may be used to determine class-wide liability, impact, and damages; to negotiate with enforcement agencies (including convincing them to drop the investigation of a client); to settle with civil plaintiffs; and in testimony.



NERA's Antitrust Practice

NERA is recognized as a world leader in antitrust and competition economics. Our antitrust economists employ economic theory and quantitative methods, grounded in a thorough understanding of the market, to provide a full range of theoretical and empirical economic analysis and testimony in matters involving mergers and acquisitions, antitrust litigation, and competition policy. We advise companies and their attorneys, as well as governments and regulators throughout the world, on investigations of alleged monopolization, abuse of dominant position, and market power. We analyze the entire range of economic issues that arise in antitrust cases, including market definition and market power, market structure and entry conditions, pricing and other conduct affecting competition, profitability and damages, and the appropriateness of class certification. NERA's expertise includes assessing and, when appropriate, testifying to the economic merits of allegations of foreclosure and exclusionary conduct, tying and bundling, refusals to deal, vertical restraints, collusive behavior, essential facilities, and anticompetitive pricing behavior in the context of the facts relevant to particular matters.

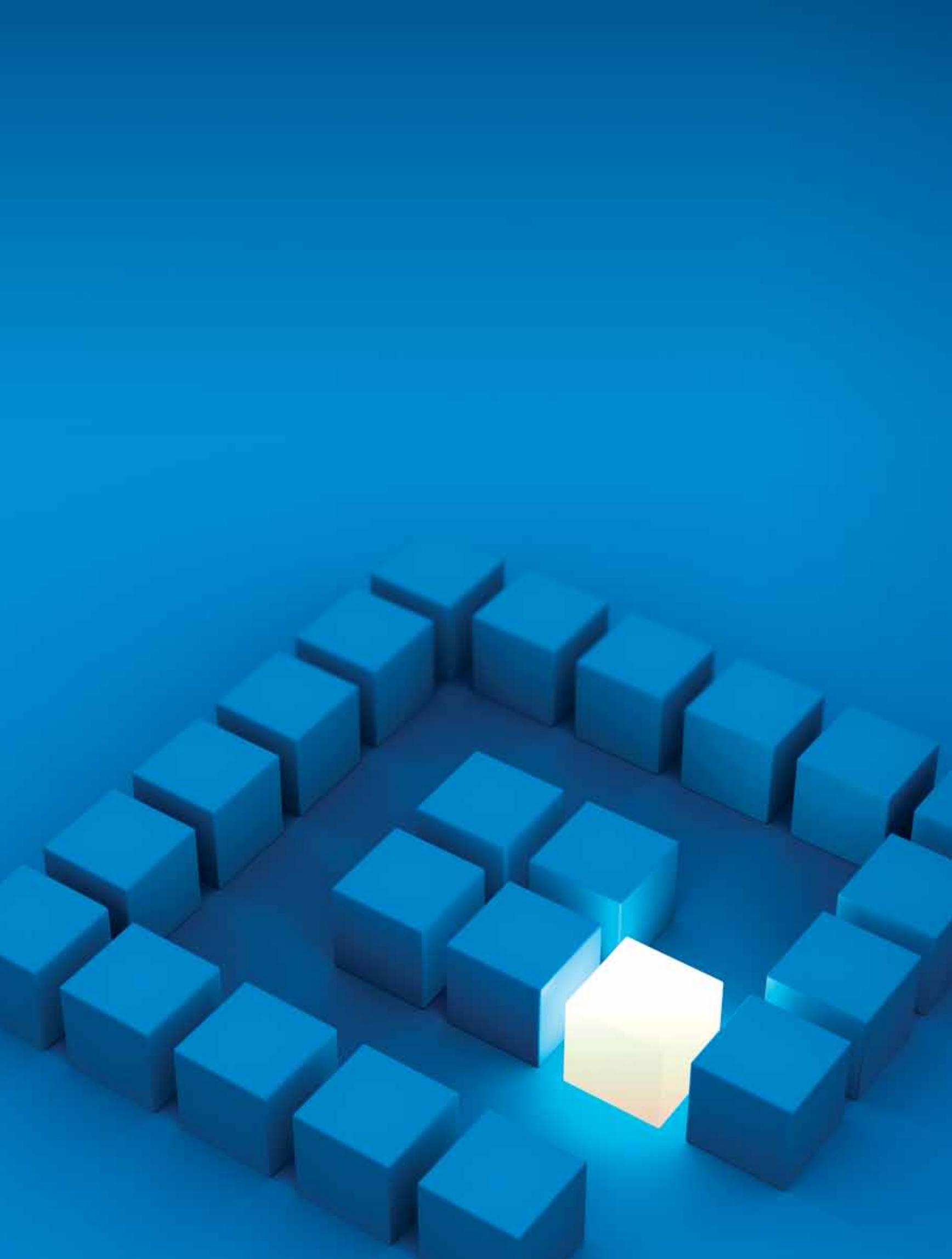
Clients value our reputation and experience in working closely with antitrust and competition authorities around the world. Our insights often build upon learning gained in academia, business, and enforcement agencies. With this experience comes a dedicated and disciplined approach to economic analysis. We understand the high stakes involved in our assignments and we take extraordinary measures to ensure our work is robust.



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 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 20 offices across North America, Europe, and Asia Pacific.





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