

Companies contemplating a merger or acquisition or facing antitrust concerns related to such transactions require bulletproof economic analysis of competitive factors across industries, markets, and geographies. Analysis Group provides innovative, effective analysis of market definition, competitive effects, divestiture, and efficiency gains associated with mergers, acquisitions, and joint ventures. We identify and assess potential antitrust risks in advance of a deal, and examine allegations of potential anticompetitive behavior and breach of contract in disputes emerging from merger and acquisition transactions.

Our professionals and academic affiliates have applied expertise in the economics of competition in high-profile matters, including multiple Microsoft antitrust litigations and mergers such as AOL/Time Warner and P&O Princess Cruises/Royal Caribbean Cruises. We have testified at deposition and trial and in front of government agencies within and beyond U.S. borders, including Canada and Europe, as well as before the International Trade Commission.

Mergers and Acquisitions

To an increasingly greater extent, enforcement agencies rely upon sophisticated models of price formation and innovation, and use more varied and complex quantitative methods with which to test these theories and the competitive implications of the transactions they review. In return, the parties involved are expected to present coherent, complex justifications for their transactions – well grounded in economic theory and affirmed with precise quantitative analyses.

In our M&A work, we combine excellence in economic theory and analysis, rigorous quantitative methods, and industry knowledge. In addition to addressing complex market definition issues, we examine unilateral and coordinated price effects; entry analysis; economic profits; pass-through of efficiency gains; and analysis related to divestitures. Over multiple years and case engagements, we have perfected our implementation of sophisticated demand models that can be used to predict prices and

volume impacts for various merger scenarios in different industries. Our flexible approach is based on proven state-of-the-art modeling methodology. Our models can incorporate random taste variation across consumers, unrestricted substitution patterns, and correlation in unobserved product characteristics over time. These demand models can easily be used in combination with the evidence on record to present robust scenarios.

We also analyze policies for reviewing merger applications and stock transaction data, and client and competitor research.

Antitrust

Our antitrust practice is distinguished by our ability to manage large-scale, complex cases, including high-profile anticompetitive litigation, often involving multiple plaintiffs and jurisdictions. We have developed expertise within industries that are frequently involved in antitrust litigation, including financial ser-

VICES, communications, health care, pharmaceuticals, software, agricultural products, branded consumer goods, semiconductors, transportation, and retail.

Our professional staff and academic affiliates have significant experience performing analyses and testifying at depositions, government agency hearings, and trials. Our practice has grown as cases have become more complex and as the need for both economic expertise and specific industry knowledge has become integral to litigation.

Related Litigation Issues

Clients also seek our services in determining damages in breach of contract and other commercial matters in the context of merger and acquisition transactions. We have, for example, worked on several high-profile matters related to failed transactions in which we have provided analyses of market conditions and industry dynamics as well as specific factors related to sales, supply contracts, joint agreements, and other contracts. In the dispute over the Rohm and Haas Co./Dow Chemical Co. merger, for example, we helped to evaluate the impact of the acquisition on Dow's credit rating. Our analyses in breach of contract matters typically involve gathering and organizing accounting and contract records; determining ex ante expectations; analyzing sales trends; assessing profitability and preparing projections; and analyzing changing market conditions. We have also examined these issues in purchase and merger agreements related to material adverse effects, such as in the *Sallie Mae v. J.C. Flowers II L.P., et al.* suit.

M&A Case Experience

Market Power Analyses

In a high-profile debate over the effects of market power in the online advertising market, Analysis Group examined the ways in which online search platforms compete for advertising, analyzed the online advertising auction pricing mechanism and the ability to exert monopoly power over pricing in the relevant market, and developed a framework to

assess the effects of monopoly power on consumer surplus, output, and quality. Analysis Group provided analytical and empirical support to academic affiliate Susan Athey, who testified before the Department of Justice on issues relating to competition among search advertising platforms.

NYSE/Archipelago Merger

An Analysis Group team supported academic affiliate Professor Robert S. Pindyck, who analyzed the competitive impacts of the proposed \$9 billion merger between the New York Stock Exchange (NYSE) and Archipelago Holdings, Inc., an operator of a fully electronic exchange for trading stocks and options. Professor Pindyck's analysis showed that anti-competitive objections to the merger should not come into play due to the overall competitiveness of the market. His analysis highlighted the sophistication of stock exchange customers and their ability both to compete with existing exchanges themselves (e.g., through order internalization) and to sponsor entry by new competitors. Professor Pindyck also identified the role of new regulation and technological advances in lowering barriers to entry and expansion by competitors. The Analysis Group team – including Managing Principal, President, and CEO Martha Samuelson, Managing Principal Rebecca Kirk Fair, and Vice President David Mishol – supported Professor Pindyck in his analyses, conducting research on customers, actual and potential competitors, and regulatory context, as well as analyzing stock transaction data.

VeriFone Holdings' Acquisition of Lipman Electronics Engineering

An Analysis Group team led by Managing Principal Laura Stamm and Vice President David Mishol supported our affiliate's analysis of market share, market entry, price and quality competition, and buyer power and vertical integration issues in the "point-of-sale" terminal industry. The complexities of this analysis required a fundamental understanding of the distribution structure within the electronic funds transfer industry, i.e., the interactions between terminal manufacturers, merchant processors,

acquirers, ISOs, and the merchant.

P&O Princess Cruises plc/Royal Caribbean Cruises, Ltd.

Analysis Group and academic affiliate Professor Robert S. Pindyck were retained on behalf of Princess Cruises to perform an economic analysis of the cruise industry and to evaluate the competitive effects of industry consolidation. We submitted a white paper to the Federal Trade Commission (FTC) and presented our analysis to senior FTC economists and attorneys. After a ten-month investigation, the FTC allowed both the transaction and an unsolicited bid for Princess Cruises by rival cruise line Carnival Corporation to proceed without challenge. According to the FTC, "The issues presented by these two transactions are highly complex and the ultimate decision depended on a close analysis of industry-specific facts." The case team was led by Analysis Group Vice President George Kosicki.

State of Nevada v. UnitedHealth Group and Sierra Health Services, Inc.

Analysis Group was retained by the Nevada Attorney General's Office to provide a representation in opposition to the proposed merger of UnitedHealth Group and Sierra Health Services. Managing Principals Bruce Strombom and Lau Christensen analyzed market power in local/regional markets.

RR Donnelley & Sons Co.'s. Acquisition of Von Hoffmann Holdings

An Analysis Group team led by Vice President David Mishol supported our academic affiliate in his examination of the educational textbook manufacturing industry, with a specific focus on issues related to recent and potential market entry, market shares, the economic cost of entry, and economic profitability.

MCI Worldcom/Sprint Merger

An Analysis Group team led by Managing Principal Jeffrey Malinak supported our academic affiliate Professor Robert Hall in conducting merger simulation analyses that were presented to regulatory authorities, including the U.S. Department of Justice.

We were asked to calculate the variable profit margins for different lines of business in the telecommunications industry, including internet backbone, wireless, and wireline long distance. This work involved using and understanding a variety of telecommunications accounting data and application of analytic techniques to those data.

Electric Utility Mergers and Acquisitions

Led by affiliate Rodney Frame, Analysis Group has provided competitive analyses for transactions including: Ameren's acquisition of Central Illinois Light Company; Ameren's acquisition of Illinois Power Company; Constellation's acquisition of the New York Ginna and Nine Mile Point stations; PSEG Power's acquisition of the Bridgeport Harbor and New Haven Harbor stations; Public Service Enterprise Group's proposed merger with Exelon; and Southern Power's proposed acquisition of the Florida Oleander station.

Related Case Experience

Rohm and Haas Co. v. The Dow Chemical Co., et al.

Analysis Group was retained by counsel for Rohm and Haas in a dispute related to its acquisition by Dow. An Analysis Group team led by Chairman Bruce Stangle, Managing Principal Maureen Chakraborty, and Vice President Michael Holland worked closely with our affiliate, a former Standard & Poor's executive, who analyzed the financial implications of the proposed merger on Dow's creditworthiness, liquidity, and ability to raise capital. Our expert also was scheduled to deliver expert testimony in Delaware Chancery Court, but the matter settled shortly before the trial was to begin.

SLM Corporation (Sallie Mae) v. J.C. Flowers II L.P., et. al.

An Analysis Group team led by Managing Principals Michael J. Quinn and Bruce Stangle, and Vice Presidents Gaurav Jetley and Michael Holland supported Professors R. Glenn Hubbard and Peter Tufano in a matter involving SLM Corporation (Sallie Mae) and its dropped lawsuit seeking a \$900 million termina-

tion fee from an investor group represented by Wachtell, Lipton, Rosen & Katz, a client of Analysis Group. Our team was in the midst of analyzing conditions in securities markets to determine whether the current credit crunch had a disproportionate impact on Sallie Mae's business and were planning for the preparation of expert reports on the results of the research when the case was settled.

Valassis Communications, Inc. v. ADVO, Inc.

Analysis Group was retained regarding litigation stemming from the attempted cancellation of the acquisition of client ADVO, Inc. by Valassis Communications, Inc. due to claims that ADVO had misrepresented its financial health. An Analysis Group team led by Principal Elizabeth Evans and including Vice President Kevin Gold and Consultant Kristen Willard supported our academic affiliate Professor Roman L. Weil. Professor Weil's analysis demonstrated that the financial results of ADVO's fiscal third and fourth quarters, announced after the signing of the merger agreement, did not reflect that ADVO made material misrepresentations to Valassis nor that a materially adverse change at ADVO had occurred. The merger prevailed.

PeopleSoft v. Oracle

Analysis Group supported attorneys representing PeopleSoft in a suit against Oracle alleging that Oracle's tender offer and subsequent actions were intended to drive down the value of PeopleSoft. Under the direction of academic affiliate Professor Robert Hall, our team undertook a comprehensive damages analysis, examining sales data to assess lost sales opportunities associated with Oracle's actions. We also developed projections of the future impact of Oracle's actions on PeopleSoft's sales related to both loss of current revenue streams and a decreasing customer base, and analyzed the impact of lost sales resulting from uncertainty in the marketplace. Oracle's attorneys' attempt to have Professor Hall's testimony excluded was denied. Ultimately, Oracle's tender offer was increased, the companies were merged, and the case was dropped.

Selected Academic Experts and Affiliates

Susan C. Athey

Professor of Economics, Harvard University

Rodney Frame

Affiliate, Analysis Group

Martin Gaynor

E. J. Barone Chair in Health Systems Management, Professor of Economics and Health Policy, Carnegie Mellon University

Robert E. Hall

Robert and Carole McNeil Hoover Senior Fellow and Professor of Economics, Stanford University

R. Glenn Hubbard

Dean, Columbia University's Graduate School of Business; Russell L. Carson Professor of Economics and Finance; Co-Director of Entrepreneurship Program, Columbia University

James A. Levinsohn

J. Ira and Nicki Harris Family Professor of Public Policy, University of Michigan

Robert S. Pindyck

Bank of Tokyo-Mitsubishi Professor of Economics and Finance, Massachusetts Institute of Technology

A. Mitchell Polinsky

Josephine Scott Crocker Professor of Law and Economics, Stanford Law School

Steven M. Shavell

Director, John M. Olin Center for Law, Economics, and Business; Samuel R. Rosenthal Professor of Law and Economics, Harvard Law School

Guhan Subramanian

Joseph Flom Professor of Law and Business, Harvard Law School; Douglas Weaver Professor of Business Law, Harvard Business School

Joel Waldfogel

Joel S. Ehrenkranz Family Professor, Professor of Business and Public Policy; Chairperson of Business and Public Policy Department, University of Pennsylvania

Mark Zupan

Dean and Professor of Economics and Public Policy, University of Rochester

Analysis Group has a broad range of experience in merger and acquisition engagements involving antitrust, securities, and commercial damages. For more information, case examples, and bios of professional staff, please visit our website, www.analysisgroup.com.