

A close-up portrait of Frank P. Maier-Rigaud, a man with short dark hair and a light beard, wearing a dark suit, white shirt, and a dark tie with a white floral pattern. He is smiling slightly and looking directly at the camera.

Frank P Maier-Rigaud

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Biography

Frank P Maier-Rigaud is an economics professor and leads NERA's European competition practice. He has over 20 years of experience representing clients in front of the EC and several other authorities within and outside the EU. He appeared as economic expert in numerous court and national and international arbitrations where he testified as economic expert in English, French and German. Besides his academic and consulting experience, he worked for the OECD and as an EU official in DG Competition.

What advice do you have for clients who need to engage a competition economist?

Economic consulting in our field requires a solid technical/academic background. Nevertheless, the ability to get the message across and have an impact is key. One of the big challenges in selecting the right team of economists is to distinguish between those presenting clearly because of simplistic approaches and those who can explain complex matters intuitively. Furthermore, it is not enough to have a person with a solid and credible background – a key aspect in front of judges, arbitration tribunals and authorities; you also need a team that is just as skilled in handling the theory, the econometrics and the challenges of processing large datasets.

What are the most challenging cases you've recently worked on?

The big challenges currently lie with innovation cases. We had our fair share of these, both in the context of mergers such as *Dow/DuPont* and regarding antitrust cases. In the EC's *Car Emissions* case, for example, the question is very much on how innovation should take place in an industry. The EC's *Network Sharing* case is framed as being about possible negative effects on innovation in mobile network rollout. Clearly the EC pushes the innovation issue across its different instruments and a lot is at stake. In the *Network Sharing* case nothing less than the deployment of 5G in Europe is affected. Of course, there is not only the EC. The French and German competition authorities have kept us busy in the digital domain.

What breadth of cases are you working on?

While we have worked on several phase I and II mergers, article 101/102 investigations – a specialty of mine dating back to my time in DG Competition – continue to be an important part of our work. Private enforcement litigation – notably in Germany, the UK and the Netherlands – is another growing part of the work.

An interesting development is the increasing number of arbitration cases requiring solid economic analysis. In a recent ICC arbitration, we saw substantial differences between our economic approach and the accounting approach followed by the other side. It can be a challenge if the other side does not speak the same language.

What impact do you think Brexit, trade tensions, the transformation due to the digital revolution, etc, are having on regulators and what can companies do in response?

I witnessed the financial crisis at the EC, and at the OECD it was also clear that competition enforcement does not occur in a vacuum. While the general economic climate is expected to influence merger activity, the real debate is on the various digital cases. Authorities are grappling with new concepts and the transformation resulting from the digital revolution does pose new questions and challenges. Despite the buzz around digital companies, however, the key to most of these cases remains rather traditional, turning for example on questions of market definition. One example is Google advertising, where the EC's finding of dominance rests on the finding of a

“general search” market instead of defining a relevant market for traffic origination.

How do you think competition policy should respond to the growing importance of digital firms?

While digital industries raise new questions regarding market design and information, such as the German *Facebook* case, the underlying economic analysis has conceptually not changed that much. In terms of tools, these cases allow for new methods that were not feasible in more traditional cases with a lower data frequency. Given billions of data points, the challenge is not only a conceptual one, but one of appropriate analytical tools. Whether right or wrong, authorities feel that they are on new, uncertain ground. There seems to be concern that action is needed as markets may tip and positions are cemented. Together with the high political visibility, this puts authorities under pressure. The recent emphasis on interim measures by the EC suggests that there is true concern of being too late. Similarly the FTC's approach in *Qualcomm* can be viewed as a sign of concern.

What is your advice to clients?

My advice – notably to large companies that are, and will likely continue to be, in the crosshairs of authorities – is to prepare. Given the novelty of some of the questions, especially in digital industries, there is a substantial amount of research to be done both internally and in terms of the underlying economic theory. A lot of the issues are or appear new to stakeholders, so there is a role for proactive advocacy.

WWL says: *Frank Maier-Rigaud is a prominent and “very active” name in the European competition market. He has over 20 years of experience as a competition economist across a broad spectrum of sectors.*