

# GCR AWARDS 2011



*In September 2010, Global Competition Review asked readers to nominate the landmark matters and the most outstanding individuals of the year. The response was fantastic. We received hundreds of nominations from firms, individuals and government agencies in almost every jurisdiction we cover.*

*The editorial team at GCR then spent weeks consulting widely and debating over which nominations should make it to the final cut.*

*In November, we posted a shortlist on the GCR website and asked readers to cast their votes online for which matters, firms and individuals they considered the best of the best. Again, the response was astonishing – more than 1,500 of the world's leading antitrust counsel, economists and academics took the time to cast their vote.*

*The winners were announced on 4 February at a charity dinner in South Beach, Miami, in conjunction with GCR's Antitrust Law Leaders Forum. All proceeds from the awards dinner were donated to the Swawou Layout Primary School for Girls in Sierra Leone, which is sponsored by GCR's parent company, Law Business Research.*

*In this special awards issue, we profile the award winners and take a look at the Miami event. We also profile the 10 recipients of the GCR Lifetime Achievement Award, all of whom have made outstanding contributions to the field of competition during their long and illustrious careers.*



(L-R) SIMON PRITCHARD, SCOTT SHER AND RAMSEY SHEHADEH

## MATTER OF THE YEAR

### *Winner*

Oracle/Sun Microsystems

### *Finalists*

American Airlines, British Airways and Iberia's Oneworld alliance

Oracle/Sun Microsystems

Ticketmaster/Live Nation

FOR Oracle Corporation, buying Sun Microsystems seemed like an extremely good idea. The deal, announced in 2009, would transform the company into an all-round technology powerhouse, able to produce computers and other hardware as well as the cutting-edge software that had made it one of the world's leading technology brands. What's more, the deal would also give Oracle control over Sun's market-leading Java software platform, its Solaris operating system and MySQL, a database software company that Sun had acquired the year before.

But at first glance the deal raised several problems for competition authorities on both sides of the Atlantic. Would Oracle raise prices on Java products? Oracle used the programme to build its Fusion Middleware – a portfolio of software used primarily by businesses to connect software components such as databases or web servers. Therefore,





MARK OPASHINOV



SUSANNE ZUEHLKE

reasoned some of its customers and competitors, it might be tempted to hike prices to companies already dependent on Java.

Concerns were also raised about MySQL, an open source database management system, that many considered a direct competitor to Oracle's proprietary system in several markets.

Before long, the US Department of Justice's antitrust division issued a second request. Oracle counsel Dorian Daley hired Dan Wall, Karen Silverman and Hanno Kaiser at Latham & Watkins LLP, while Sun hired technology specialist Scott Sher at Wilson Sonsini Goodrich & Rosati. Wall was clearly highly regarded at Oracle, having been instrumental in obtaining clearance for the company's controversial 2004 acquisition of PeopleSoft.

Within eight weeks the DoJ gave a green light to the deal. But trouble was brewing in Brussels, where Thomas Vinje at Clifford Chance LLP was leading the competition work for Oracle. Philip Mansfield at Allen & Overy LLP in London had been retained by Sun.

A fortnight after the deal was cleared in the US, the European Commission announced that it had serious concerns about the deal and was sending it to phase II. In particular, it was troubled by the

potential loss of a competitor to Oracle's database business. This seemed to fly in the face of the DoJ's findings that the deal would be unlikely to significantly harm competition.

The following months saw numerous skirmishes between the various interested parties: the DoJ issued a rare press release defending its decision (and implicitly criticising DG Comp's stance); Sun claimed delays in closing the deal was forcing it to axe thousands of jobs; Oracle founder Larry Ellison was very vocal in the press about his displeasure at the investigation; and 59 US senators petitioned DG Comp to drop the probe.

And then something extraordinary happened. DG Comp cleared the deal without conditions. It asked for no commitments, even though the month before, Oracle had pledged to invest heavily in the MySQL business, to maintain it as a "competitive force". In a statement, the then competition commissioner Neelie Kroes said she was "satisfied that competition and innovation will be preserved on all the markets concerned."

A global wrangle over a global deal involving cutting edge technology markets, Oracle/Sun is a deserving winner of GCR's Matter of the Year Award 2011.



JANUSZ ORDOVER

### **Counsel to Oracle**

#### **In house**

- Dorian Daley

#### **US**

- Latham & Watkins LLP  
Partners Daniel M Wall and Karen E Silverman in San Francisco

#### **EU**

- Clifford Chance LLP  
Partner Thomas C Vinje in Brussels, assisted by counsel Dieter Paemen and Dimos Dakanalis

#### **Canada**

- McMillan LLP  
Partner Mark Opashinov and associate Sorcha O'Carroll acted for both Oracle and Sun

#### **Economics**

- RBB Economics  
Andrea Lofaro, Jan Peter van der Veer and Vitaly Pruzhansky

#### **Compass Lexecon**

- Senior consultant Janusz A Ordovery in Washington, DC

### **Counsel to Sun Microsystems**

#### **US**

- Wilson Sonsini Goodrich & Rosati  
Partners Renata Hesse and Scott Sher in Washington, DC, and Charles E Biggio in New York

#### **EU**

- Allen & Overy LLP  
Partner Philip Mansfield in London, assisted by Alison Berridge and Dominic Long

#### **Economics**

- NERA Economic Consulting

#### **US**

- Senior Vice President Ramsey Shehadeh in New York

#### **Europe**

- Associate Director Paul Hofer and Director Mark Williams in London and Brussels

#### **Brazil (both parties)**

- Mattos Filho Veiga Filho Marrey Jr e Quiroga Advogados  
Partner Amadeu Ribeiro in Rio de Janeiro, assisted by Marcio Soares and Ana Bática



WILLIAM BLUMENTHAL

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