

## Kenneth C. Baseman

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### Professional History

- Principal, MiCRA: Microeconomic Consulting and Research Associates, Inc., 1991-present
- Vice President, ICF Consulting Associates, 1985-1991
- Antitrust Division, U.S. Justice Department 1975-1981 and 1983-1985
- Senior Economist, Economists, Inc. 1981-1983

### Education

- Ph.D. Candidate, Economics, Stanford University
- M.A., Economics, Stanford University
- B.A., Economics, *magna cum laude*, Carleton College

Ken Baseman is a Senior Expert with Navigant Economics in Washington, DC. Mr. Baseman began his career at the Antitrust Division, U.S. Department of Justice, where he worked for eight years. As a consultant, his practice focuses on antitrust and regulatory economics, and he has a broad background in several industries, including newspapers, broadcast and cable television, chemicals, international crude oil, tires, automobile components, aerospace, telecommunications, electric utilities, and various aspects of intellectual property. He is an expert witness on the economics of exclusionary practices.

Before joining Navigant Economics, Mr. Baseman was a Principal of Microeconomic Consulting and Research Associates, Inc. (MiCRA)<sup>1</sup>.

### Professional Experience

#### General Antitrust

- » Preparation of an expert report, deposition testimony and trial testimony on behalf of LePage's regarding 3M's exclusionary practices in the home and office tape business. (LePage's vs. 3M).
- » Expert report and deposition testimony on liability and damages on behalf of BoDeans in BoDeans vs. Norse Dairy Systems. BoDeans challenged Norse Dairy Systems exclusive contracts and its tie between equipment and consumables (cones and wafers).
- » Preparation and presentation to the FTC of economic analysis relating to Brunswick's market share discounts for stern drive marine engines.
- » Expert reports and deposition testimony on liability and damage issues on behalf of Vision-Ease in its antitrust lawsuit challenging Transitions Optical's exclusive and loyalty agreements with various downstream entities.
- » Expert report and deposition testimony on behalf of Mayer Laboratories in its antitrust lawsuit challenging Church & Dwight in its shelf space programs in the condom industry.

<sup>1</sup>Mr. Baseman presently continues as a Principal of MiCRA for purposes of winding down its business.

- » Expert report and deposition testimony on damages from the price-fixing of MCAA (monochloroacetic acid) on behalf of Hercules, Inc., a customer.
- » Preparation of analysis presented to the FTC regarding the implications of Buzzi Inicem's (River Cement) acquisition of Dyckerhoff (Lone Star Cement) on competition in the U.S. Cement industry.
- » Verified statement (co-authored with Frederick Warren-Boulton) on behalf of the Western Coal Transportation Association on competitive issues and regulatory alternatives in the market for railroad transportation of western coal.
- » Preparation (with Frederick Warren-Boulton) of analysis presented to DOJ regarding the effects of long term exclusive contracts for national radio advertising representation.
- » Preparation and presentation to DOJ of analysis regarding Motorola's acquisition of Vertex.
- » Preparation and presentation to the FTC of economic analysis regarding LaFarge's acquisition of Blue Circle's cement assets in the United States.
- » Preparation (along with Bruce Snapp and Frederick Warren-Boulton) of analysis presented to the German Cartel office on overcharges due to the German Cement cartel.
- » Preparation of an expert report and deposition testimony regarding Softspikes' exclusionary behavior in the non-metal golf cleat business, and the damages suffered by Greenskeeper, a competitor.
- » Expert reports and deposition testimony on market definition and market power in Z-Rock vs. Triathlon, an antitrust case involving the Spokane, Washington radio market.
- » Preparation of a report (co-authored with Robert Willig and Hal Van Gieson) submitted to the FTC on the effects of Barnes & Noble's proposed acquisition of Ingram.
- » Preparation of economic analysis regarding Outdoor Systems' acquisition of Gannett's Houston area billboard business.
- » Preparation and presentation to DOJ's Antitrust Division of economic analysis regarding Outdoor Systems' acquisition of 3M's billboard business.
- » Expert Declaration, expert report, and deposition testimony on behalf of Morris Communications in its antitrust lawsuit against the PGA Tour over the Tour's policies for press credentials.
- » Preparation and presentation of economic analysis to the Antitrust Division about Michelin's acquisition of Uniroyal Goodrich.

- » Preparation of a report, co-authored with Frederick Warren-Boulton, on the competitive effects of Microsoft's licensing practices for operating systems and complementary software.
- » Preparation and presentation of "disruptive buyer" analysis to the FTC on behalf of Brunswick regarding Brunswick's partial equity interest in and supply contract with Tracker.
- » Preparation of a report (co-authored with Steve Silberman) submitted to the FTC on the economic effects of Platinum's acquisition of Memco in the security software business.
- » Economic testimony on behalf of Trane on market power, market definition, and vertical restraint issues in Tarrant v. Trane.
- » Preparation and presentation of economic analysis to the FTC on St. Gobain's acquisition of Carborundum.
- » Affidavit and deposition testimony on both liability and damages on behalf of PMBR in its antitrust litigation with BAR/BRI.
- » Preparation and presentation of economic analysis to the FTC on First Data Corporation's proposed acquisition of Western Union.
- » Preparation and presentation of economic analysis to the FTC on Illinois Tools Works' acquisition of Cyklop.
- » Preparation of economic analysis submitted to the FTC on Brunswick's licensing and acquisition agreement with Perry-Austen.
- » Preparation and presentation of economic analysis to the FTC concerning Witco's acquisition of DeSoto.
- » Presentation of economic analysis and deposition testimony to the FTC involving a merger in the chemicals industry (Henkel Corp. acquisition of Parker Chemical).

#### Newspapers

- » Expert report for DOJ's Antitrust Division for its challenge to the restructuring of the JOA in Charleston, West Virginia.
- » Analysis presented on behalf of the Seattle Times to DOJ regarding its investigation of whether the Times was attempting to monopolize daily newspapers in Seattle.
- » Expert reports and deposition testimony on behalf of the Washington Post, the Gazette newspapers and the Washington Suburban Press Network in the case filed against them by owners of the Montgomery and Prince George's Sentinel and St. Mary's Today.

- » Deposition and trial testimony on behalf of the Antitrust Division in its lawsuit challenging the acquisition of the Northwest Arkansas Times by the owners of the Morning News of Northwest Arkansas.
- » Preparation and presentation to the Antitrust Division of economic analysis concerning the acquisition of Community Publishers by the Arkansas Democrat-Gazette.
- » Expert report and deposition testimony on behalf of a private challenge to Hearst's joint venture with and equity interest in Media News Group.
- » Economic analysis of the acquisition of weekly or community newspapers by daily newspapers:
  - Gannett's acquisition of Hometown Communications, owner of community newspaper chains in the Detroit, Cincinnati and Lansing areas. Gannett owns the Lansing State Journal, and is partial owner of JOAs in Detroit and Cincinnati.
  - Baltimore Sun and Patuxent Publishing.
  - Bergen Record and North Jersey Newspapers.
  - Milwaukee Journal-Sentinel and Community Newspapers Inc.
  - St. Louis Post-Dispatch and Suburban Weeklies.
  - Kansas City Star, and Olathe Daily News and affiliated weekly newspapers.
- » Expert Report on behalf of the Milwaukee Journal Sentinel in the antitrust litigation filed against it by the owners of the Waukesha Freeman.
- » Preparation of an affidavit filed on behalf of McClatchy Newspapers on the absence of any competitive effect of the purchase by McClatchy of the Raleigh News & Observer.
- » Economic testimony on behalf of the Antitrust Division in hearings on the proposed newspaper joint operating agreement in Detroit.

#### Telecommunications and FCC Issues

- » Written report (co-authored with Michael Pelcovits) filed ex parte at the FCC on the limitations of VOIP as a vehicle for competition in local telephony.
- » Affidavit testimony for MCI on the "public interest" issues regarding entry by the Bell Operating Companies into long distance service in Michigan, New York, New Jersey, Maryland, Ohio, Wisconsin, Georgia and South Carolina. The Michigan and South Carolina affidavits were co-authored with Frederick Warren-Boulton for submission to the FCC.
- » Direct and cross examination testimony for MCI on the "public interest" issues regarding entry by the Bell Operating Companies into long distance service in Ohio, Wisconsin, and Georgia.

- » Affidavit testimony (co-authored with Frederick Warren-Boulton) for MCI to the FCC on the “public interest” issues regarding entry by the Bell Operating Companies into long distance service in Michigan and South Carolina.
- » Affidavit testimony (co-authored with A. Daniel Kelley) on the economic effects of Southwestern Bell’s acquisition of Ameritech, and Bell Atlantic’s proposed acquisition of GTE.
- » Preparation of a report submitted to the FCC, co-authored with Frederick Warren-Boulton and Susan Woodward, on appropriate principles of depreciation and capital recovery under the 1996 Telecommunications Act.
- » Analysis for MCI and AT&T of various interconnection pricing and costing issues under the 1996 Telecommunications Act.
- » Preparation of a report submitted to the FCC, co-authored with Harold Van Gieson, on appropriate depreciation for local exchange carriers.
- » Preparation of a report submitted to the FCC on appropriate bidding restrictions to prevent anticompetitive pre-emption in spectrum auctions.
- » Preparation of an affidavit for MCI on the effects of expanded interconnection between local telephone companies and competing providers of access.
- » Preparation of several reports for MCI, some of which were co-authored with Stephen Silberman, on the effects of price cap regulation, especially as applied to the local exchange carriers. Presentation of the analysis to the FCC staff.
- » Preparation of a report for the National Cable Television Association on integration by local telephone companies into video programming markets.
- » Preparation of a report for MCI, co-authored with Stephen Silberman, on the economics of line-of-business restrictions.

#### Other Regulation

- » Testimony filed at the FERC on behalf of wholesale customers in litigation against Maine Public Service’s proposed tariff for transmission and ancillary service.
- » Preparation of an affidavit, co-authored with Robert J. Reynolds, on the market power issues in an FERC abandonment proceeding in the natural gas pipeline industry.
- » Preparation of a report, co-authored with John Woodbury, Frederick Warren-Boulton and Daniel Sherman, for the National Cable Television Association on the effects on consumers of cable deregulation.

- » The preparation of testimony to be presented by Mr. Baseman, on behalf of the U.S. Justice Department, in an electric utility monopolization case (U.S. v. Kentucky Utilities).

## **Publications**

- » “Exclusionary Behavior in the Market for Operating System Software: the Case of Microsoft,” in *Opening Networks to Competition: the Regulation and Pricing of Access*, David Gabel and David Weiman, eds.; Kluwer Press, 1996, with Frederick R. Warren-Boulton and Glenn Woroch.
- » “Microsoft Plays Hardball: Use of Exclusionary Pricing and Technical Incompatibility to Maintain Monopoly Power in Markets for Operating Software,” co-authored with Frederick R. Warren-Boulton and Glenn A. Woroch, *Antitrust Bulletin*, Summer 1995.
- » “The Economics of Intellectual Property Protection for Software: The Proper Role for Copyright,” co-authored with Frederick R. Warren-Boulton and Glenn A. Woroch, *Standard View*, June 1995.
- » “Copyright Protection of Software Can Make Economic Sense,” co-authored with Frederick R. Warren-Boulton and Glenn A. Woroch, *The Computer Lawyer*, February 1995.
- » “The Detroit Newspaper Joint Operating Agreement,” in Kwoka and White, eds., *The Antitrust Revolution*, Harper Collins (1993).
- » “Sustainability and the Entry Process,” *American Economic Review* (May 1981) pp. 272-277.
- » “Open Entry and Cross-Subsidization in Regulated Markets,” in Gary Fromm, ed., *Economics of Public Regulation*, National Bureau of Economic Research and M.I.T. Press, Cambridge, Massachusetts, 1981.

## **Other Papers**

- » “Depreciation Policy in the Telecommunications Industry: Implications for Cost Recovery by the Local Exchange Carriers,” co-authored with Harold Van Gieson, December 1995.
- » “Microsoft Plays Hardball: Use of Exclusionary Pricing and Technical Incompatibility to Maintain Monopoly Power in Markets for Operating Software,” co-authored with Frederick R. Warren-Boulton and Glenn A. Woroch, presented at Columbia University Institute for Tele-Information on Sustaining Competition in Network Industries through Regulating and Pricing Areas, November 1993.
- » “The Economics of Intellectual Property Protection for Software: The Proper Role for Copyright,” co-authored with Frederick R. Warren-Boulton and Glenn A. Woroch, presented at American Committee for Interoperable Systems, June 1994.

- » “The Effect of Deregulation on Cable Subscribers,” co-authored with John Woodbury, October 1990, presented at American Enterprise Institute conference, Policy Approaches to Deregulation of Network Industries.
- » “The Economics of Bell Operating Company Diversification in the Post-Divestiture Telecommunications Industry,” co-authored with Stephen Silberman, with the assistance of Roger Noll, ICF, Inc., September 1986.
- » “A Framework for Economic Analysis of Electronic Media Concentration Issues

### **Other Professional Experience**

- » Journal referee: International Economic Review, Journal of Industrial Economics, and International Journal of Industrial Organization.

### **Trial Testimony**

- » Testified on market definition; market power and exclusionary practices in *LePage’s v. Minnesota Mining and Manufacturing*, (September 1999).
- » Direct and cross examination testimony for MCI on the “public interest” issues regarding entry by the Bell Operating Companies into long distance service in Ohio, Wisconsin, and Georgia, (1996-97).
- » Testified on market definition and competitive effects of joint ownership of two competing daily newspapers in *U.S. vs. Nat, L.C. and D. R. Partners*, (May 1995).
- » Testified on market power, market definition and vertical restraint issues in *Tarrant v. Trane*, (November 1993).
- » Expert witness for the Antitrust Division on the Detroit Newspaper Joint Operating Agreement (August 1987). Testified that the Detroit Free Press was not a failing newspaper when it agreed to joint operations.

### **Deposition Testimony**

- » Church & Dwight, Inc., v. Mayer Laboratories, Inc., (January 2012)
- » Bo Deans Cone Company, L.L.C., et. al. v. Norse Dairy Systems, et. al. (August 2009)
- » Reilly v. Medianews Group, et. al., (March 2007)
- » Hercules v. Atofina, et. al., (December 2005)

- » Berlyn, Inc., et al. v. the Gazette Newspaper, Washington Post, and the Suburban Press Network (April 2002).
- » Morris Communications v. PGA Tour, (January 2002).
- » Z-Rock Communications et al. v. Triathlon Broadcasting et al., (December 2001).
- » LePages's v. 3M (Minnesota Mining and Manufacturing Company), (December 1998)
- » Green Keepers v. Softspikes, (April 1999).
- » U.S. vs Nat, L.C. and D. R. Partners, (April 1995).
- » PMBR v. Harcourt Brace Jovanovich, et al., (February 1994).
- » Deposited in Detroit JOA proceeding, (July 1987).
- » Deposited by the FTC concerning Henkel's acquisition of Parker Chemical, (January 1986).
- » U.S. v. Kentucky Utilities, (July 1985).

### **Expert Affidavits & Declarations**

- » Rocket Holding, Inc. v. McNeilus Truck and Manufacturing, (February 1993).
- » PMBR v. Harcourt Brace Jovanovich, et al., (February 1994).
- » AD/SAT v. McClatchy Newspapers, (July 1995).
- » Morris Communications v. PGA Tour, (Oct. 2000).
- » Jason Tesauro and Elizabeth Eley v. The Quigley Corporation (Feb. 2003).

### **Expert Statements Submitted to Regulatory Agencies**

- » Verified statement (co-authored with Frederick Warren-Boulton) for the Western Coal Transportation Association to the Surface Transportation Board on the absence of effective competition between railroads shipping coal to utilities from western coal fields, and on regulatory options for dealing with the problem. (April 2011).
- » Affidavit testimony for MCI on the "public interest" issues regarding entry by the Bell Operating Companies into long distance service in state regulatory hearings in New York, New Jersey, Maryland, Ohio, Wisconsin, Georgia and South Carolina, (1996-97).



- » Affidavit testimony (co-authored with Frederick Warren-Boulton) for MCI to the FCC on the “public interest” issues regarding entry by the Bell Operating Companies into long distance service in Michigan and South Carolina, (1997).
- » “The Economics of Bidding for Scarce Resources: The Lessons of Monopoly Preemption as Applied to FCC Auctions of LMDS Licenses,” August 1996, submitted on behalf of WebCel in FCC Docket No. 96-98.
- » “Depreciation and Capital Recovery Issues, A Response to Professor Hausman,” co-authored with Frederick Warren-Boulton and Susan Woodward, July 1996, submitted on behalf of MCI in FCC Docket No. 96-98.
- » Testimony in FERC Docket ER95-836-000 on behalf of wholesale customers, who were objecting to certain aspects of Maine Public Service’s transmission and ancillary service tariff, (August 1995).
- » A comment on the relationship between advertising and sales, January 1995, submitted on behalf of MCI in FCC Docket No. 92-77, concerning proposals for implementing billed party preference in the selection of long distance carriers.
- » Affidavit, co-authored with Robert J. Reynolds, concerning an FERC abandonment proceeding, October 1991, submitted on behalf of Sun Refining and Marketing Company in FERC Docket No. CP91-2819-000.
- » Affidavit concerning Expanded Interconnection with Local Telephone Company Facilities, September 1991, submitted on behalf of MCI in Federal Communications Commission Docket No. CC 91-41, ENF-87-14.
- » “The Economic Effects of Cable Deregulation,” co-authored with John Woodbury, Frederick Warren-Boulton and Daniel Sherman, May 1990, submitted on behalf of the National Cable Television Association in Federal Communications Commission MM Docket No. 90-4.
- » “The Economics of Local Telephone Company Integration into the Retailing of Video Programming,” December 1988, submitted on behalf of the National Cable Television Association in the Federal Communications Commission Docket No. CC 87-266.
- » “The Choice of Productivity Offsets for Rate Cap Regulation,” July 1988, submitted on behalf of MCI in Federal Communications Commission Docket No. CC 87-313.
- » “An Analysis of the Utility of Price Cap Regulation as Applied to the Local Exchange Carriers,” co-authored with Stephen Silberman, December 1987, submitted on behalf of MCI in Federal Communications Commission Docket No. CC 87-313.

- » “The Economics of Line of Business Restrictions and Structural Separations,” co-authored with Stephen Silberman, January 1986, submitted on behalf of MCI in Federal Communications Commission Docket No. CC 85-229.