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SUMMARY

Henry Kahwaty is an economist working out of Berkeley Research Group's Washington, DC office. His areas of expertise include microeconomics, industrial organization, antitrust economics, and econometrics. He has completed numerous antitrust reviews of mergers and horizontal and vertical contractual arrangements. He has also completed studies of monopolization and abuse of dominance in the context of government investigations and private litigation. His merger work includes studies in metals, solid waste, gasoline and diesel wholesaling and retailing, industrial products, computer hardware and software, defense electronics, pharmaceuticals, electricity, consumer goods, and telecommunication services and equipment. In addition, he has analyzed competition issues in the mining, luxury goods, banking, chemicals, software development tools, and hardware emulation industries. He has completed studies of vertical restraints and vertical integration, and the impact of such vertical relationships on competition. His work also includes the study of price fixing allegations, class certification, and antitrust damages.

In addition to antitrust and competition policy, Dr. Kahwaty has completed analyses of intellectual property damages and the economic impact of changes in government policy. Dr. Kahwaty's policy work includes the analysis of issues in healthcare, including the costs associated with changes in Medicare, Medicaid, and the availability of generic drugs and biologic medicines. He has also worked on small business issues.

Dr. Kahwaty has presented analyses to the Antitrust Division of the U.S. Department of Justice, the U.S. Federal Trade Commission, the Directorate-General for Competition of the European Commission, the Canadian Competition Bureau, the Competition Tribunal of Canada, the Centers for Medicare & Medicaid Services, the Congressional Budget Office, Congressional Committee Staff, the Medicare Payment Advisory Commission, the U.S. Federal Energy Regulatory Commission, the U.S. Small Business Administration, and the British Columbia Utilities Commission. Dr. Kahwaty started his career as an Economist with the Antitrust Division of the U.S. Department of Justice. At the Antitrust Division, he specialized in market power analysis for merger and monopolization cases with a focus on the computer software, banking, manufacturing, and defense industries. He spent 15 years as a Senior Economist, Principal, and Director with LECG working out of LECG's offices in Washington and London. He received his Ph.D. in Economics from the University of Pennsylvania in 1991. He was selected for inclusion in

the 2011 and 2013 – 2021 editions of The International Who's Who of Competition Lawyers & Economists and the 2021 edition for commercial litigation.

EDUCATION

Ph.D. (Economics), University of Pennsylvania, 1991

M.A. (Economics), University of Pennsylvania, 1988

B.A. (Economics and Mathematics), University of Pennsylvania, 1986

PRESENT EMPLOYMENT

Berkeley Research Group, LLC, Managing Director, 2011 – present

OTHER POSITIONS

Member, Board of Directors, Florida West Coast Symphony, Inc. (d/b/a Sarasota Orchestra),
2021 - present

PREVIOUS POSITIONS

Law & Economics Consulting Group, Inc. and LECG, LLC

Director, 2002 – 2010

Principal, 1999 – 2002

Senior Managing Economist, 1997 – 1999

Senior Economist, 1995 – 1996

U.S. Department of Justice, Antitrust Division, Economic Litigation Section

Economist, 1991 – 1995

- Prepared economic models and analysis for antitrust cases.
- Prepared antitrust investigation plans.
- Reviewed civil investigative demands, second requests, subpoenas, complaints, affidavits, and other documents.
- Assisted attorneys with gathering evidence, including conducting witness interviews and assisting with witness depositions.
- Recommended whether to initiate enforcement actions.

PROFESSIONAL EXPERIENCE

Consultant to Rational Software in proposed acquisition of Pure Atria, 1997.

Consultant to Aptix Corporation in Aptix Corporation v. Quickturn Design Systems, 1998.

Consultant to New England Electric System in proposed acquisition by National Grid Group plc, 1999.

Consultant to New England Electric System in proposed acquisition of Eastern Utilities Associates, 1999.

Consultant for third party in proposed acquisition of Reynolds Metals by Alcoa, 1999 – 2000.

Consultant to SmithKline Beecham in proposed merger with Glaxo Wellcome, 2000.

Consultant to De Beers in proposed acquisition of Ashton Mining, 2000.

Consultant to National Grid USA in proposed acquisition of Niagara Mohawk, 2000 – 2001.

Consultant to De Beers in proposed joint venture with LVMH Moët Hennessy - Louis Vuitton, 2001.

Consultant to Edison Electric Institute in Notice of Proposed Rulemaking on Standards of Conduct for Transmission Providers, 2001.

Consultant to De Beers in European Commission review of De Beers' Supplier of Choice strategy, 2001 – 2003.

Consultant to De Beers in European Commission review of proposed Trade Agreement with ALROSA, 2001 – 2004.

Consultant to BT Ignite in Public Consultation regarding Draft Recommendation on Relevant Product and Service Markets related to the European Commission's Guidelines on Market Analysis and the Assessment of Significant Market Power under the Community Regulatory Framework for Electronic Communications Networks and Services, 2002.

Consultant to Phelps Dodge in Phelps Dodge Corporation v. U.S. Energy Corporation, 2003.

Consultant to Alcoa Flexible Packaging in H.S. Crocker v. Alcoa Flexible Packaging, 2003 – 2004.

Consultant to the Competition Authority (Ireland) regarding its Study of Competition in the Irish Banking Sector, 2003 – 2004.

Consultant to Financial Services Authority (United Kingdom) regarding its approach to the implementation of the Capital Requirements Directive, 2004 – 2005.

Consultant to the Competition Authority (Ireland) regarding its Study of Competition in the Irish Insurance Sector, 2004 – 2005.

Consultant to De Beers in U.S gem diamond class action litigations, including Shawn Sullivan, et al. v. DB Investments, Inc., et al., 2005 – 2008.

Consultant to firm being investigated by the Antitrust Division of the U.S. Department of Justice regarding the domestic impact of alleged foreign price fixing, 2007.

Consultant to the Generic Pharmaceutical Association regarding the benefits of developing a pathway for generic biologics, 2007 – 2009.

Consultant to Tropitone Furniture in Energy Alternatives v. Tropitone Furniture, 2007 – 2008.

Consultant to the Generic Pharmaceutical Association regarding the costs associated with implementing e-pedigrees and serialization for the generic pharmaceutical industry, 2008.

Consultant to Republic Services in proposed acquisition of Allied Waste, 2008.

Consultant to Polypore International in Federal Trade Commission v. Polypore International, 2008 – 2010.

Consultant to Generic Pharmaceutical Association regarding Medicare and Medicaid reform, 2009 – 2010.

Consultant to EA Engineering, Science and Technology regarding small business size standards, 2009 – 2010.

Consultant to Watson Pharmaceuticals regarding Medicare reimbursements for certain products, 2010 – 2011.

Consultant to United HealthGroup Incorporated in United HealthGroup Incorporated v. Columbia Casualty Company, et al., 2011 – present.

Consultant to CCS Corporation, Complete Environmental Inc., and Babkirk Land Services Inc. in Commissioner of Competition v. CCS Corporation, et al., 2011 (Tervita).

Consultant to third party in various monopolization and abuse of dominance investigations of Google, 2011 – present.

Consultant to third party in investigation of the acquisition of certain assets of Viterra by CF Industries, 2012 – 2013.

Consultant to fitness benefit provider in antitrust review of issues related to the use of exclusive contracting in the provision of fitness benefits to Medicare Advantage plans, 2012 – 2013.

Consultant to Rockwell Collins in proposed acquisition of ARINC, 2013 – 2014.

Consultant to De Beers in Michelle Fairhurst v. De Beers Canada Inc., et al., 2013 – 2014.

Consultant to MedImpact Healthcare Systems, Inc. in Star Discount Pharmacy, Inc., et al. v. MedImpact Healthcare Systems, Inc., et al., 2014.

Consultant to De Beers in Daniel Ammazzini et al. v. Anglo American PLC, et al., 2014 – 2015.

Consultant to De Beers in Kirk Brant v. De Beers Canada Inc., et al., 2015.

Consultant to Parkland Industries in Commissioner of Competition v. Parkland Industries Ltd., et al., 2015 – 2016.

Consultant to AMC in Cobb Theatres III, LLC, et al. v. AMC Entertainment Holdings, Inc., et al., 2016.

Consultant to third party in investigation of Microsoft's proposed acquisition of LinkedIn, 2016.

Consultant to Chemtrade in proposed acquisition of Canexus, 2016 – 2017.

Consultant to AMC in iPic-Gold Class Entertainment, LLC, et al. v. Regal Entertainment Group, et al., 2016 – 2017.

Consultant to Parkland Industries in proposed acquisition of the majority of the Canadian CST assets from Couche-Tard, 2016 – 2017.

Consultant to Parkland Industries in proposed acquisition of Canadian refinery and downstream fuel business from Chevron, 2017.

Consultant to AMC in Viva Cinemas Theaters and Entertainment LLC d/b/a Viva Cinema v. America Multi-Cinema, Inc., 2018.

Consultant to EA Engineering, Science and Technology regarding small business size standards, 2018 - 2020.

Consultant to Aleris in proposed acquisition of Aleris by Novelis, 2018 – 2019.

Consultant to Parkland in An Inquiry into Gasoline and Diesel Prices in British Columbia, 2019.

Consultant to Compassion-First in proposed acquisition of National Veterinary Associates, 2019.

Consultant to Katzkin Leather, Inc., Clearlight Partners, LLC, and Clearlight Partners Management, LLC, in Classic Soft Trim, Inc. et al., v. Ross Albert, et al., 2020.

Consultant to Parkland Industries in Cayman Islands Fuel Sector Consultation, 2020.

Consultant to Republic Services in proposed acquisition of Santek Waste Services, 2020.

Consultant to Republic Services in proposed acquisition of Randy's Environmental Services, 2020.

Consultant to Telkom in Telkom SA SOC Ltd v. Vodacom (PTY) Ltd, et al., 2020 - present.

Consultant to Computer and Communications Industry Association in the European Commission's consultation on the Digital Markets Act, 2021.

Consultant to Telkom in Competition Commission investigation of agreements between Mobile Telephone Networks South Africa and Liquid Telecommunications South Africa, 2021.

Consultant to Telkom in complaint to the Competition Commission of South Africa regarding wholesale supply contracts in the South African mobile communications market.

Consultant to several pharmaceutical companies regarding potential exposure to patent damages from at-risk launches of generic products.

Consultant to parties regarding class certification, competitive effects, and damages estimates in private antitrust litigations including class action litigations.

Consultant to parties regarding private antitrust cases and intellectual property cases.

Consultant to parties regarding merger reviews and business practice investigations.

Testimony

Provided declaration relating to the acquisition of Niagara Mohawk by National Grid USA, Federal Energy Regulatory Commission, Docket No. EC01-63-000, 2001.

Provided hearing testimony before the Directorate-General for Competition of the European Commission in review of De Beers' proposed Trade Agreement with ALROSA, Case COMP/E-2/38.381 – De Beers-ALROSA and Case COMP/B-2/38.381 – De Beers, 2003.

Provided report and deposition testimony in H.S. Crocker, Inc. v. Alcoa Flexible Packing, No. 02 C 50010, U.S. District Court for the Northern District of Illinois (Western Division), 2004.

Provided statement and deposition testimony in Energy Alternatives, Inc. v. Tropitone Furniture Co., Inc., 06-CVS-8782, North Carolina General Court of Justice, Superior Court Division, 2008.

Provided report, deposition testimony, and trial testimony in Federal Trade Commission v. Polypore International, Docket No. 9327, 2009.

Provided report and deposition testimony in UnitedHealth Group, Inc. v. Columbia Casualty Company, et al., 05-CV-01289, U.S. District Court for the District of Minnesota, 2011.

Provided report addressing efficiencies, report addressing the analysis of competition issues, and trial testimony in The Commissioner of Competition v. CCS Corporation, et al., Competition Tribunal (Canada), CT-2011-002, 2011 (Tervita).

Provided two affidavits addressing class certification in Michelle Fairhurst v. De Beers Canada Inc., et al., The Supreme Court of British Columbia, Vancouver Registry, No. S-071209, 2013.

Provided report and deposition testimony in Star Discount Pharmacy, Inc., et al. v. MedImpact Healthcare Systems, Inc., et al., 5:11-cv-2206-AKK, U.S. District Court for the Northern District of Alabama (Northeastern Division), 2014.

Provided affidavit addressing class certification and testimony in Questioning in Daniel Ammazzini et al. v. Anglo American PLC, et al., Court of Queen's Bench for Saskatchewan, Judicial Centre of Saskatoon, Q.B. No. 877 of 2011, 2014.

Provided affidavit addressing class certification in Kirk Brant v. De Beers Canada Inc., et al., Ontario Superior Court of Justice, Judicial Centre of Ontario, 1399/10C, 2015.

Provided report analyzing competitive effects for mediation in Commissioner of Competition v. Parkland Industries Ltd., et al., Competition Tribunal (Canada), CT-2015-003, 2016.

Provided report and deposition testimony in Cobb Theatres III, LLC, et al. v. AMC Entertainment Holdings, Inc., et al., 1:14-CV-00182-ELR, U.S. District Court for the Northern District of Georgia (Atlanta Division), 2016.

Provided disclosure and deposition testimony in iPic-Gold Class Entertainment, LLC, et al. v. Regal Entertainment Group, et al., District Court for Harris County, Texas, 234th Judicial District, No. 2015-68745, 2017.

Provided report and deposition testimony in Viva Cinemas Theaters and Entertainment LLC d/b/a Viva Cinema v. America Multi-Cinema, Inc., 4:15-cv-01015, U.S. District Court for the Southern District of Texas (Houston Division), 2018.

Provided reports and hearing testimony in An Inquiry into Gasoline and Diesel Prices in British Columbia, Project No. 1599007, British Columbia Utilities Commission, 2019.

Provided report, deposition, and hearing testimony in Classic Soft Trim, Inc. et al., v. Ross Albert, et al., No. 6:18-cv-01237, U.S. District Court for the Middle District of Florida (Orlando Division), 2020.

Provided rebuttal report and deposition testimony in arbitration in the immunoassay industry, International Institute for Conflict Prevention & Resolution, 2021.

Provided report, supplemental report, and answering report in Telkom SA SOC Ltd v. Vodacom (PTY) Ltd, et al., CT Case No: FTN143OCT20, Competition Tribunal of South Africa, 2020 (joint with Kalyan Dasgupta and Phil Alves). Also provided submissions to the Competition Commission (joint with Kalyan Dasgupta, Phil Alves, and Justin Tonkin).

Reports

Provided report titled “Vertical Integration, Economic Efficiency, and Standards of Conduct Regulation of Electric and Natural Gas Transmission Providers.” Notice of Proposed Rulemaking on Standard of Conduct for Transmission Providers, Federal Energy Regulatory Commission, Docket No. RM01-10-000, 2001.

Provided report titled “Market Definition and Market Power Analysis: Public Consultation on a Draft Commission Recommendation,” European Commission, 2002 (joint with Richard Shin and Richard Levine).

Provided report titled “Study of Competition in the Provision of Non-investment Banking Services in Ireland: Phase 1 Report.” The Competition Authority (Ireland), 2003 (joint with Andy Baziliauskas and John Evans).

Provided report titled “The Proposed EC Technology Transfer Block Exemption Regulation: An Economic Assessment.” European Commission, 2003 (joint with Peter Grindley, Edward Sherry, and David Teece).

Provided report titled “Study of Competition in the Provision of Non-investment Banking Services in Ireland: Report and Recommendations.” The Competition Authority (Ireland), 2004 (joint with Andy Baziliauskas).

Provided report titled “Survey of the Impacts of CRD Implementation on the UK Financial Services Industry.” Financial Services Authority, 2005 (joint with Mark Tilden, Colin Lawrence, Thomas Ortenzi, and Karen Forseter).

Provided report titled “The Small Business Administration’s Size Standards Methodology and the Environmental Remediation Services Industry.” U.S. Small Business Administration, 2010.

Provided report titled “The Small Business Administration’s Size Standards Methodology and the Environmental Remediation Services Sub-industry.” U.S. Small Business Administration, 2018.

Provided report titled “Fuel Sector Consultation.” Cayman Islands Utility Regulation and Competition Office, 2020.

Provided Report titled “Is the Proposed Digital Markets Act the Cure for Europe’s Platform Ills? Evidence from the European Commission’s Impact Assessment.” European Commission, 2021.

Speeches and Conference Presentations

“Antitrust Damages,” Litigation Services Subcommittee of the Greater Washington Society of Certified Public Accountants, Washington, D.C., January 28, 1999.

“Unregulated Affiliates and the Market Power Problem,” Forum on Electric Power Market Restructuring, Washington, D.C., February 19, 1999.

“The Analysis of Market Power,” Deregulation Progress Report: Issues and Insights Conference, Vail, Colorado, August 4, 1999.

“Worldwide Convergence in Competition Enforcement,” XXXV International Association of Financial Executives Institutes World Congress, Florence, Italy, October 11, 2004.

“The Potential Savings from Biogenerics,” Generic Pharmaceutical Association Annual Policy Conference, Washington, D.C., September 17, 2009.

“Generic Substitution: The Savings,” Generic Pharmaceutical Association Governors’ Staff Briefing, March 9, 2011.

Mock Trial Testimony as Expert Witness for the Plaintiff, 2011 American Bar Association Antitrust Section Spring Meeting, Washington, D.C., March 31, 2011.

“Debating the Efficiencies Defence,” 2017 Canadian Bar Association Competition Law Fall Conference, Ottawa, Canada, October 26, 2017.

“High-Level Roundtable on Competition and Innovation: Why Europe Needs Dynamic Models in Digital Markets – and How Europe Can Build Them,” Lisbon Council, 2021.

“Antitrust Fundamentals and Dynamic Competition,” Platform Regulation Forum, Insights@Questrom Live Conference, 2021.

Papers and Publications

“United States: economist perspective,” *Enforcer Hub*, Global Competition Review, 2021 (joint with Cleve Tyler).

“Is the Proposed Digital Markets Act the Cure for Europe’s Platform Ills? Evidence from the European Commission’s Impact Assessment,” Lisbon Council, April 12, 2021 (Joint with David Teece).

“Rebooting Digital Market Power,” Competition Policy International, December 14, 2020 (joint with David Teece).

“United States Overview,” *Competition Economics Handbook 2021*, Global Competition Review, 2020 (joint with Cleve Tyler).

“United States Overview,” *Competition Economics Handbook 2020*, Global Competition Review, 2019 (joint with Cleve Tyler).

“United States Overview,” *The Handbook of Competition Economics 2018*, Global Competition Review, 2018 (joint with Cleve Tyler).

“United States Overview,” *The Handbook of Competition Economics 2017*, Global Competition Review, 2017 (joint with Cleve Tyler).

“United States Overview,” *The Handbook of Competition Economics 2016*, Global Competition Review, 2016 (joint with Cleve Tyler).

“Canada High Court Breathes New Life Into M&A Efficiencies,” *Law360*, February 6, 2015 (joint with Cleve Tyler).

“Market Definition - Achieving an Integrated Analysis,” *The Antitrust Bulletin*, 59 (3): 667-685, Fall 2014 (joint with Cleve Tyler).

“Analysis of Horizontal Market Power in Transactions under the Federal Power Act.” Federal Energy Regulatory Commission, 2011 (joint with Carl Danner, Keith Reuter, and Cleve Tyler).

“HHI Screening Thresholds and the U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines”, U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines Review Project, Project No. P092900, 2009.

“Merger Remedies and the U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines”, U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines Review Project, Project No. P092900, 2009.

“The Competition Authority’s Study of the Irish Banking Sector” (joint with John Evans), *International Antitrust Bulletin*, Summer/Fall 2005, 24-31.

“The Use of Econometrics by the European Commission and the U.S. Antitrust Agencies” (joint with Mary Coleman), *International Antitrust Bulletin*, Spring/Summer 2004, 35-40.

“The Proposed EC Technology Transfer Block Exemption Regulation: An Economic Assessment” (joint with Peter Grindley, Edward Sherry, and David Teece), 2003.

“Submission to the Commission of the European Communities on Green Paper on the Review of Council Regulation (EEC) No. 4064/89” (joint with R. Shyam Khemani, David Painter, Richard Shin, and Kamil Kiljanski), 2002.

“The Analysis of Market Concentration, Market Power and the Competitive Effects of Mergers in the Electricity Industry” (joint with Richard Gilbert), June 1997.

“Unregulated Affiliates and the Market Power Problem,” February 1999.

TEACHING EXPERIENCE

University of Pennsylvania, Philadelphia, Pennsylvania, 1988 – 1991

Course taught include Industrial Organization, Topics in Microeconomics, Topics in Macroeconomics, Intermediate Microeconomics, Introductory Microeconomics, Introductory Macroeconomics.

PROFESSIONAL MEMBERSHIPS

American Economic Association
American Bar Association (Associate Member)
Canadian Bar Association (Competition Law Section Affiliate)

November 2021