



North Coast Economics, LLC

Insightful & Expert Economic Analysis

James F. Nieberding, Ph.D.

NORTH COAST ECONOMICS, LLC

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PROFESSIONAL PROFILE

Dr. Nieberding is Founder and Principal of North Coast Economics, LLC. He previously was Principal in the *Global Competition Policy Group* at LECG (Washington DC office) from 1998 through 2010. North Coast Economics works with leading economic consulting firms as well as provides independent expert consulting and litigation support. Dr. Nieberding specializes in industrial organization, microeconomics, antitrust and competition policy, regulatory economics, data analytics, econometrics and statistical analysis. He provides economic consulting in the context of government investigations and private litigation involving antitrust and competition policy, horizontal and vertical arrangements, public policy and regulatory matters, merger reviews, intellectual property, economic damages in complex business litigation, and class certification.

Dr. Nieberding has worked on matters before the U.S. Federal Trade Commission, the U.S. Department of Justice (Antitrust Division), the U.S. International Trade Commission, the Directorate-General for Competition of the European Commission, the Taiwan FTC, the Competition Bureau of Canada, the Canadian Competition Tribunal, the German Federal Cartel Office, the Federal Energy Regulatory Commission, the U.S. EPA, the Ontario Energy Board, and various federal and state courts. He has analyzed various forms of business conduct, and analyzed economic damages in litigation involving a range of industries and a variety of claims. These include antitrust damages, unfair competition, lost profits, breach of contract, manufacturer-dealer relationships, market foreclosure, and intellectual property. He has worked extensively on matters involving issues related to price erosion due to patent infringement; the appropriateness of class certification involving direct and indirect purchasers; merger reviews; the analysis of antitrust liability and damages; and the estimation of overcharges in monopolization, conspiracy, price fixing, and abuse of dominance inquiries.

Dr. Nieberding has taught undergraduate, graduate, and MBA courses in economics, statistics, and business strategy. He has offered Continuing Legal Education training to attorneys, presented papers at conferences, and published articles in academic and professional journals pertaining to antitrust, industrial organization, international trade, economic damages, the estimation of lost profits, econometrics and statistics. Dr. Nieberding currently is a Lecturer in the Department of Economics at Cleveland State University. He has held academic appointments at The Johns Hopkins University (Graduate Part-Time Program in Engineering and Applied Science, Whiting School of Engineering, Washington, DC); University Of Notre Dame (Department of Finance and Business Economics, College of Business, South Bend, IN); Baldwin Wallace College (Department Of Economic, Berea, OH); and The Ohio State University (Department of Economics, Columbus, OH). Dr. Nieberding has been selected for inclusion in *The International Who's Who of Competition Lawyers & Economists* and featured in *Who's Who Legal: Competition Economists* (Global Competition Review).



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EDUCATION

PhD, Economics, The Ohio State University, Columbus, Ohio, 1994

MA, Economics, The Ohio State University, Columbus, Ohio, 1990

BA, University Scholar in Economics, Xavier University, Cincinnati, Ohio 1987

PRESENT POSITIONS

Principal, North Coast Economics, LLC, January 2011 – present

Lecturer, Cleveland State University, Department of Economics; MBA Program, Cleveland, Ohio, 2007 – present.

- Economic Analysis (MBA)
- Principles of Microeconomics
- Intermediate Microeconomics
- Intermediate Macroeconomics
- Industrial Organization (IO)
- Managerial Economics
- Economic Perspectives in Management (EMBA)
- Economic Concepts (EMBA)

PREVIOUS PROFESSIONAL POSITIONS

LECG, Global Competition Policy Group, Washington, DC, 1998 to 2011

- *Principal*, January 2008 – December 2010
- *Senior Managing Economist*, January 2003 – December 2008
- *Managing Economist*, July 2000 – January 2003
- *Senior Economist*, July 1998 – July 2000

Lecturer, Johns Hopkins University, Part-Time Program in Engineering and Applied Science, Whiting School of Engineering, Graduate Part-Time Program, Washington, DC, 2002 – 2004

- Economic Foundations for Public Decision Making

Visiting Assistant Professor, Cleveland State University, Department of Economics, Cleveland, Ohio, 1997 – 1998

- Economic Analysis (MBA)
- Intermediate Price Theory
- Intermediate Macroeconomics
- Managerial Economics for Engineers
- Advanced Mathematical Economics (MA Economics Program)
- Advanced Microeconomics II (MA Economics Program)
- Principles of Macroeconomics

Adjunct Assistant Professor, Baldwin Wallace College, Department Of Economics, Berea, Ohio, 1996 – 1997

- Statistics for Business & Economics



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Economist, Business Research Econometrics (*dba* Burke, Rosen & Associates), Cleveland, Ohio, 1995 – 1997

- Provided economic analysis for litigation support in commercial litigation, torts, and discrimination cases
- Performed statistical and econometric analyses in support of damage theories in commercial litigation cases:
 - Estimated product-specific cost function for a vertically-integrated U.S. steel manufacturer as a means to quantify the economic benefit gained due to rationalization of production within a multi-plant steel firm
 - Estimated hedonic model of housing prices to quantify the diminution of value due to alleged environmental contamination
 - Performed nonparametric statistical tests in alleged discrimination cases

Visiting Assistant Professor, University Of Notre Dame, Department of Finance and Business Economics, College of Business, Notre Dame, Indiana, 1994 – 1995

- Managerial Economics
- Business Conditions Analysis

Graduate Research Associate, The Ohio State University, Department of Economics, Columbus, Ohio, 1993 – 1994

- International Economics and Finance
- Economic Development

Graduate Teaching Associate, The Ohio State University, Department of Economics, Columbus, Ohio, 1989 – 1993

- Principles of Microeconomics
- Principles of Macroeconomics

Economic Analyst, Benefit Designs, Inc., Cincinnati, Ohio, 1986 – 1989

- Prepared economic loss analysis reports, and provided annuity financing of structured settlements under IRC 104(a)(2), in support of major medical malpractice/tort claims.

AREAS OF CONSULTING EXPERIENCE

Economic damages analysis

Exclusive dealing/refusal to deal

Resale price maintenance (RPM) and most-favored-nation (MFN) agreements

Vertical restraints (price and non-price), vertical integration and their competitive effects

Price-fixing/allegation of conspiracy

Economic analysis of pass-through

Merger review/analysis



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Monopolization/attempted monopolization

Monopsony

Market foreclosure (horizontal and vertical)

Market definition (geographic and product)

Antitrust counterclaims and Walker Process claims

Intellectual property claims

Antitrust liability and damages

Aftermarket analysis

Antitrust analysis in bidding markets

Antitrust issues related to standard-essential patents (SEPs) in the context of standard-setting organizations (SSOs) and standard-development organizations (SDOs)

Antitrust analysis in price discrimination markets; Robinson-Patman Act claims

Economic modeling, econometric analysis, and statistical methods

- Econometric analysis using time-series, cross-section, and panel data
- Estimation of systems of simultaneous equations and reduced-form models; analysis of survey data and estimation of limited dependent variable models (e.g., multinomial, conditional and nested logit models); development and estimation of models using nonlinear least squares; cointegration analysis; VARs and VECMs; error-correction models; forecasting
- Estimation of consumers' willingness-to-pay (WTP) for product characteristics in a differentiated-goods setting
- Economic modeling of industry behavior/structure to analyze competitive effects
- Analysis of issues pertaining to surveys, experimental design, and sampling techniques
- Estimation of industry-level and firm-level conduct parameters using NEIO techniques to test for changes in market power
- Economic and econometric analyses related to the energy industry:
 - Analyze the effect of proposed EPA sulfur content regulations on refiner costs and gasoline prices in a U.S. regulatory proceeding
 - Assess potential anticompetitive effects of proposed acquisitions involving petroleum refineries and NGL distributors for U.S. and non-U.S. merger reviews
 - Assess the likelihood of anticompetitive effects of a gasoline terminal acquisition (along with gasoline supply agreements)
 - Assess the economic implications of subsidized natural gas expansions in Ontario, Canada
 - Analyze the impact of vertical integration on a refiner's unilateral incentives to restrict output to independent gas stations
 - Estimate the effect of alleged market manipulation regarding Californian wholesale electricity prices



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- Analyze potential anticompetitive effects in the Canadian propane industry of a proposed acquisition
- Investigate whether Canadian NGL pipeline tolls reflect market power rather than cost-of-service principles
- Model and forecast the quantity (and price) of electricity produced at a gas-fired combined cycle electricity generating unit
- Provide forecast values of petroleum products to estimate economic damages
- Estimate lost profits in an international arbitration related to petroleum products
- Analyze economic issues for a petroleum firm in an international arbitration

Estimation of demand systems for the recovery of elasticity matrices for use in merger (and other) simulations; calculation of diversion ratios; estimation of demand using a random-utility and random-coefficients framework

Estimation of econometric models of overcharge due to alleged anticompetitive behavior (e.g., price-fixing, attempted monopolization, abuse of dominance, bid rigging)

Analysis of issues pertaining to patent and trademark claims and the estimation of damages due to the alleged misuse of intellectual property; analysis of antitrust claims and counterclaims embedded in intellectual property litigation; licensing issues; alleged anticompetitive withholding of intellectual property

Analysis of issues concerning class-certification regarding price fixing/conspiracy claims made by direct purchasers and indirect purchasers, as well as product liability matters; statistical and economic analysis related to class-certification

Analysis in complex business litigation concerning predatory pricing; disputes between licensors and licensees, franchisors and franchisees, and manufacturers and dealers; dealer termination, business interruption, tortious interference, breach of contract, lost profits, and price erosion

Analysis for a Sunset Review before the Department of Commerce's International Trade Administration and the US International Trade Commission of existing antidumping orders on brass sheet and strip products from the Netherlands

HONORS, AWARDS, AND MEMBERSHIPS

Featured in the Global Competition Review's *Who's Who Legal: Competition Economists* (Various Editions)

Selected for inclusion in *The International Who's Who of Competition Lawyers & Economists*

Awarded the *Abramson Scroll* in recognition of an outstanding feature article in *Business Economics*; presented at the Presidential Lunch, NABE's 2005 Annual Meeting, Chicago IL (September 25, 2005)

Excellence in Economic Instruction Teaching Award, Undergraduate Economics Society, The Ohio State University, Spring 1993



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President of the Economics Graduate Student Committee, The Ohio State University, 1993-94

Recipient of the Craig Menderson Memorial Economics Award, Xavier University, 1987

National Merit Scholar Finalist, 1983

Member, American Economic Association (AEA)

Member, Industrial Organization Society (IOS)

Member, National Association for Business Economics (NABE)

Member, Cleveland Association for Business Economics (CABE)

Associate Member, American Bar Association (ABA), Section of Antitrust Law

Member, ABA Pricing Conduct Committee Advisory Board, 2020

PUBLICATIONS

“How Willingness To Pay Informs Damages Methodology,” *Expert Analysis* in Law360, April 5, 2023.

“Event Studies and Geographic Market Definition,” Economics Committee Newsletter, American Bar Association, Section of Antitrust Law, Volume 20, Number 1, pp. 1-5, Winter 2020.

“Estimating Antitrust Impact, Damages Via Natural Experiments,” *Expert Analysis* in Law360, January 21, 2020.

“When is the ‘Kennedy Correction’ Appropriate in Estimating Overcharges?” in Healthcare Antitrust, Settlements, and the Federal Trade Commission, Research in Law and Economics (edited by James Langenfeld and Edwin Galeano), Vol. 28, 2018, pp. 423-431 (with Wenqing Li). An abbreviated version entitled “A Common Mistake In Estimating Price-Fixing Overcharges” appeared in Competition Law360 (Expert Analysis section), August 3, 2017.

“The Anticompetitive Potential of MFNs,” Competition Policy International (CPI) Antitrust Chronicle, Number 2, August 2014.

“Do Low-Price Guarantees Guarantee Low Prices?,” Cleveland Metropolitan Bar Journal, Volume 6, Number 3, pp. 9-10, November 2013.

“A Profitable Pricing Strategy for Tie-In Sales: A Look at *Webkinz*,” The Price Point, Newsletter of the ABA Section of Antitrust Law Pricing Conduct Committee, Volume 10, Number 3, Fall 2011, pp. 8-11.

“When to Involve Counsel and Consultants in Antitrust Matters,” Antitrust Compliance: Perspectives and Resources for Corporate Counselor, American Bar Association, Section of Antitrust Law, October 2010 (with Henry J. Kahwaty)

“The But-For Market, Economic Damages, and Elasticity Considerations,” Economics Committee Newsletter, American Bar Association, Section of Antitrust Law, Volume 9, Number 2, pp. 17-28, Fall 2009.

“*Leegin*, the Use of RPM, and Antitrust Liability,” Cleveland Metropolitan Bar Journal, Volume 1, Number 10, pp. 12-14, January 2009.



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- “Price Dispersion and Class Certification in Antitrust Cases: An Economic Analysis,” Journal of Legal Economics, Volume 14, Number 2, pp. 61-84, September 2007 (with Robin Cantor)
- “Estimating Overcharges in Antitrust Cases Using a Reduced-Form Approach: Methods and Issues,” Journal of Applied Economics, Volume IX, No. 2, pp. 361-380, November 2006.
- “Game Theory, Q & A on Economic Concepts: Free Lunch Column,” Antitrust Magazine, pp. 98-100, Spring 2006 (with David Weiskopf and Susan C. S. Lee)
- “The Benefits of Free Trade to US Consumers,” Business Economics (Journal of the National Association for Business Economics), pp. 41-51, July 2005 (with James Langenfeld)
- Book Review of Phillip I. Good and James W. Hardin (2003), Common Errors in Statistics (and How to Avoid Them). John Wiley & Sons, Inc. Published in Risk Analysis: An International Journal, 25(3), 773-775, June 2005.
- “Lost Profits and Price Erosion in Patent Infringement Cases: Implications of *Crystal Semiconductor*,” Journal of Forensic Economics, 16(1): pp. 37-49, July 2004.
- “Price Dispersion, the ‘Bogosian Short Cut,’ and Class Certification in Antitrust Cases,” Economics Committee Newsletter, distributed in the American Bar Association Antitrust Section Spring Meetings, March 31, 2004. (reprinted in Texas Business Litigation Quarterly, Spring 2005, pp. 23-25) (with Robin A. Cantor)
- “The Importance of Price Elasticity of Demand in Computing Total Lost Profits in Patent Infringement Cases: A Reminder From The CAFC,” Journal of the Patent and Trademark Office Society, 85(10): pp. 835-848, October 2003.
- “The Effect of Antidumping Law on Firms’ Price-Cost Margins: An Empirical Test,” Review of Industrial Organization, 14 (1): pp. 65-84, February 1999.
- “Firm Market Power and US Antidumping Law,” Ohio Journal of Economics and Politics, 12 (1): pp. 13–26, 1998.
- The Anticompetitive Nature and Political Economy Issues of US Antidumping Law. The Ohio State University. Ph.D. Dissertation. 1994.

PROFESSIONAL PRESENTATIONS AND ACTIVITIES

- Served as a judge to determine the recipients of the 2020 Vernon Jordan Fellowship Award and the Philip M. Dearborn Fellowship Award of the Economic Club of Washington, DC. These programs award \$10,000 stipends to doctoral-level students from Consortium institutions in the Washington, DC area. Performed this function each year, 2010-2020.
- Presented “Empirically Estimating Overcharges Due to Anti-Competitive Behavior” for Topics in Competition and Regulation Seminar, University of Cincinnati Department of Economics, February 11, 2019, April 6, 2020, March 15, 2021 and April 3, 2023.



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Fundamentals of Economic Damages: Re-creating the But-For Market While Obeying the Law of Demand. Presentation delivered before the Cleveland Metropolitan Bar Association, The Legal Eagles (CLE Session), December 6, 2014.

Class Certification in Antitrust Cases: Update and Evolving Standards. Presentation delivered before the Cleveland Metropolitan Bar Association, Legal Eagles (CLE Session), December 5, 2009.

Submitted Comment entitled “The Role of Price Tests in Market Definition” pertaining to the FTC's and DOJ's joint Horizontal Merger Guidelines Review Project, November 8, 2009.

“Price Tests and Geographic Market Definition,” Contribution to Mergers and Acquisitions: Understanding the Antitrust Issues, 3rd Edition, American Bar Association (2008).

Trying and Winning a Civil Antitrust Case, ALI-ABA (CLE Session), Washington DC, December 7–8, 2006. Participated as panelist/discussant.

“Issues in the Analysis of Vertical Restraints: Implications of *LePages’s* and *Dentsply*,” LECG Summer Seminar, July 16, 2005. Organized seminar; served as a panelist and discussant.

Participated in the preparation of Econometrics: Legal, Practical, and Technical Issues. American Bar Association Book, 2005.

Economic Analysis in Class Certification in Antitrust, Antitrust & Trade Regulation Section, Dallas Bar Association (CLE Session), September 21, 2004.

Estimating Overcharges in Price-Fixing Cases Using a Reduced-Form Approach, working paper presented at Contemporary Issues in Law, Economics, and Antitrust session, WEA International Conference, Vancouver, BC, July 2, 2004. Also served as a discussant.

The Implication of Price Variability on Class Certification in Antitrust Cases (with Robin A. Cantor), working paper presented at Empirical Topics in Antitrust session, WEA International Conference, Denver, CO, July 12, 2003.

LECG Summer Seminar Series: Daubert and Economic Experts, Mock *Daubert* hearing, July 2003; served as discussant.

Lost Profits and Price Erosion in Patent Infringement Cases: Implications of *Crystal Semiconductor*, working paper presented at Applied Topics in Law and Economics session, WEA International Conference, Seattle, WA, June 30, 2002. Served as a discussant.

Referee to the *Review of Industrial Organization*, *Journal of Legal Economics*, *Journal of Applied Economics*, and *Journal of Forensic Economics*.

WORKING PAPERS / MONOGRAPHS

The Impact of Mobile Technology on Economic Growth in Developed and Developing Economies
Event Studies and Geographic Market Definition

Implementing BLP (“Berry, Levinsohn and Pakes”) for Demand Estimation and Counterfactual Simulations



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Event Studies and Natural Experiments: An Example Using ‘Shocks’ in the Petroleum Industry
Pass-Through of Crude Oil Prices to California Gasoline Prices as a Way to Estimate the Elasticity of Supply Response

An Agreement in the Rough: A Modified Cournot Model Approach to Distribution Agreements

Patentee Risk Aversion and “Reverse Payments” in the Pharmaceutical Industry

Exclusive Dealing: Judicial Treatment, Competitive Effects, and Category Management

The Economics of Private Label versus Branded Goods

The Economics of Value-of-Life-Estimates, Hedonic Damages, and *Daubert*

The Political Economy of Protection under US Antidumping Law: An Empirical Analysis

TESTIMONY & EXPERT CONSULTING

Retained as Expert in a trademark infringement matter regarding lost profits (October 2021)

Submitted Expert Report in a commercial litigation regarding lost profits and statistical issues (August 2016); provided deposition testimony (October 2016)

Submitted written Expert Testimony before the Ontario Energy Board (OEB), “Comments on Economic Issues Raised in EB-2016-0004, Kalyan Dasgupta and James F. Nieberding, Ph.D.,” (March 2016); Testified in person at OEB Hearing (May 11, 2016)

Retained as Consulting Expert in a Robinson-Patman Act matter (May 2016)

Retained as Consulting Expert for a confidential merger assessment (March 2016)

Submitted analysis and Expert Declaration in a business litigation matter (December 2014).

Submitted Expert Affidavit relating to sampling and statistical issues in a class certification matter (February 2013)

Submitted Expert Declaration and provided deposition testimony regarding lost profits and price erosion claims in a patent damages matter (August 2012)

Retained as Consulting Expert by the Ohio Attorney General in a confidential antitrust matter (July 2012)

Retained as Consulting Expert for plaintiff in a false-claims matter (March 2012)

Retained as Consulting Expert for an opt-out defendant in an antitrust litigation (November 2011)

Submitted Expert Report in a matter regarding lost profits and survey issues (February 2011)

Submitted Expert Affidavit relating to survey/sampling issues in an antitrust matter (June 2009)

Submitted Expert Report and provided deposition testimony in a complex commercial damages matter involving breach of contract, lost profits damages and survey/sampling issues (March 2008)

Submitted Expert Report in a complex commercial damages matter (January 2006)

Provided Expert Affidavit in a patent damages matter (March 2004)



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REPORTS

Consumer Surplus and the Impact of Competition for Telecommunications Services in Bahrain: An Empirical Study and Literature Review, Prepared for the Telecommunications Regulatory Authority of Bahrain, 2016 (co-authored with Waverman, L., Dasgupta K., and Kirkpatrick, B.)

Confidential Whitepaper entitled “Price tests for geographic market definition: Cointegration analysis and Granger causality applied to VAM and acetic acid prices,” submitted before the European Commission. This Whitepaper concerned various price tests for geographic market definition regarding a proposed merger between two European firms; *Blackstone/Acetex* Case No COMP/M.3625, January 2005 (co-authored with James Langenfeld and Mary Coleman).

Economic experts’ report in the matter of Brass Sheet and Strip From the Netherlands – Sunset Review: Economic and Strategic Issues Regarding Revocation of the Existing Antidumping Duty Order and the Likelihood of Continuation or Recurrence of Material Injury (USITC Inv. No. 731-TA-380), submitted before the US International Trade Commission, March 23, 1999 (co-authored).

Economic experts’ report in the matter of Brass Sheet and Strip From the Netherlands – Sunset Review: Economic and Strategic Issues Regarding Revocation of the Existing Antidumping Duty Order and the Likelihood of a Resumption of LTNV Sales, International Trade Administration, US Department of Commerce, March 3, 1999 (co-authored).

PERSONAL

Birthplace: Cleveland, Ohio

Married, two children

Board Member, Vice-President (2020) and President (2021), Lakewood Charitable Assistance Corporation (LCAC), 2019-present

Volunteer, St. Luke Food Pantry Ministry, 2019-present

CYO Basketball Coach, 2016-2020

Lakewood Recreation Summer League Baseball Coach, 2011-2017