

**REBECCA KIRK FAIR**  
**Managing Principal**

Phone: 617 425 8256  
Fax: 617 425 8001  
rebecca.kirkfair@analysisgroup.com

111 Huntington Avenue  
14th Floor  
Boston, MA 02199

Ms. Kirk Fair has over 20 years of experience conducting economic analysis and managing case teams in a broad range of matters. These include major antitrust litigation, merger and agency competition review, intellectual property, false advertising, tax, and class certification. Ms. Kirk Fair specializes in applying market research to the evaluation of competition and substitution patterns to examine potential competitive effects in mergers and but-for outcomes in antitrust litigation. She has significant experience in cartel matters, in which she has analyzed economic and statistical issues, provided expert testimony, and supported academic experts in prominent cases involving technology, consumer products, and financial services.

Ms. Kirk Fair has conducted quantitative analysis and performed industry and market research to evaluate competition, pricing, and outputs in connection with merger investigations in the US, Canada, and the EU. In addition to having served as a compliance monitor for several years, she has also supported the US Department of Justice (DOJ), the Federal Trade Commission (FTC), and the Canadian Competition Bureau (CCB) in a variety of merger investigations. Ms. Kirk Fair regularly speaks and writes on the use of surveys in litigation. She has received numerous awards for her accomplishments, including the Women@ “40 in Their 40s: Notable Women Competition Professionals” and the Concurrences Antitrust Writing Award for her coauthored article “The Tyranny of Market Shares: Incorporating Survey-Based Evidence into Merger Analysis” (*Corporate Disputes*).

**EDUCATION**

M.B.A. MIT Sloan School of Management, Cambridge, MA  
B.A. Economics (with honors), Middlebury College, Middlebury, VT

**SELECTED EXPERT TESTIMONY**

- ***Kieran O’Hara, et al. v. Diageo-Guinness UAS Inc., et al.***  
*US District Court, District of Massachusetts*  
Expert witness on behalf of Diageo. Conducted a purchase intent survey and submitted an expert report analyzing the survey results and the heterogeneity in consumer beer purchasing decisions. Testified at deposition.
  
- ***Bond v. Berkshire Bank, et al.***  
*US District Court, District of Massachusetts, Western Division*  
Expert witness on behalf of Berkshire Bank. Conducted a survey and testified at deposition on banking consumers’ purchase decisions and heterogeneity in consumer banking behaviors, specifically with regard to overdraft services.

- ***YETI Coolers, LLC., v. RTIC Coolers, LLC***  
*US District Court, Western District of Texas*  
Testified at deposition on an experiment designed to evaluate the likelihood of confusion in the high-end cooler market.
- ***PersonalWeb Technologies LLC and Level 3 Communications, LLC. v. International Business Machines Corporation***  
*US District Court, Northern District of California*  
Expert witness on behalf of IBM in a patent infringement case. Conducted an online survey of IT professionals and analyzed the survey results in an affirmative report. Testified at deposition.
- ***United States of America and the States of California, Illinois, North Carolina, and Ohio v. DISH Network, LLC***  
*US District Court, Central District of Illinois*  
Expert witness on behalf of Dish. Submitted an expert report evaluating the sampling methodology and statistical analysis put forth by the plaintiffs' expert witness. Testified at deposition and at trial.
- ***Sterling Jewelers Inc. v. Artistry Ltd.***  
*US District Court, Northern District of Ohio, Eastern Division*  
Expert witness on behalf of Sterling Jewelers in a trademark infringement case. Assessed whether Artistry Ltd. suffered damages and determined whether Sterling had been enriched by the alleged infringement in an affirmative report. Testified at deposition.

## SELECTED CONSULTING EXPERIENCE

### Antitrust Litigation

- ***Watson v. Bank of America Corporation***  
*Supreme Court of British Columbia*  
Provided consulting support to several banks in a class action brought by merchants in British Columbia alleging that they were forced to pay excessive interchange fees because of anticompetitive agreements between Visa, MasterCard, and various banks.
- **Large price-fixing cases in airline travel industry**  
Worked with multiple airlines in a joint defense group to provide analytical support in litigation matters in which the plaintiffs claimed that the airlines conspired to limit domestic air travel capacity below competitive levels.
- ***In re: Transpacific Passenger Air Transportation Antitrust Litigation***  
*US District Court, Northern District of California*  
Assisted ANA and Japan Airlines International Co., in a class action in which ANA was accused of colluding with Japan Airlines to fix prices for flights and set fuel surcharges. Case settled favorably for defendant.
- ***Dahl, et al. v. Kohlberg Kravis Roberts & Co., et al.***  
*US District Court, District of Massachusetts*  
Worked with the joint defense group in support of numerous experts on issues of class certification and damages for group and individual private equity firms in a matter involving allegations of collusion.

- **Large price-fixing cases in IT manufacturing industries**  
Assisted in quantitative analysis and industry research to evaluate competition, pricing, and outputs in connection with two separate international price-fixing investigations in IT manufacturing industries.
- **Large price-fixing cases in various sectors of the financial service industry**  
Assisted in quantitative analysis and market research to examine consistency of plaintiffs in multiple class certification matters.
- ***GO Computer v. Microsoft***  
*Superior Court of California, County of San Francisco*  
Supported Professor Catherine Tucker of MIT in an analysis of competition among operating systems and computing platforms.
- **Microsoft litigations in various forums**  
Economic analysis on behalf of Microsoft in numerous competitor and consumer litigations on issues of competition, pricing, and damages. Supported survey design and research related to server software. Developed and critiqued damages models related to computer security, software pricing, and product development.

#### **Class Certification Litigation**

- ***Elizabeth A. Bally v. State Farm Life Insurance Company***  
*US District Court, Northern District of California*  
Served as expert witness on behalf of State Farm in a class certification matter. Submitted an expert report describing and evaluating the ways in which consumers make decisions to purchase life insurance policies.
- ***Kenneth Hobbs, et al. v. Brother International Corporation, et al.***  
*US District Court, Central District of California*  
Supported marketing expert Joel Steckel in a consumer class action regarding alleged misrepresentations in the marketing and sale of multi-function printers.
- ***State of Washington v. Comcast Corporation***  
*Superior Court of Washington, King County*  
Supported marketing expert John Hauser in a consumer class action in which Comcast was accused of violating the Consumer Protection Act.
- **Financial exchange cartel litigation**  
Supported multiple experts on issues of class certification, marketplace analyses, and damages models for the defendant in a matter alleging collusion related to a financial instrument exchange platform.
- **Air cargo litigations**  
Evaluated industry dynamics, transaction data, and damages exposure for several Air Cargo defendants, including an evaluation of impact of plea agreements. Marketplace analysis included comparison of pricing patterns in areas covered and excluded from plea agreements.
- **Antitrust litigation in the transportation sector**  
Casework included assisting with settlement negotiations and developing affirmative analyses in connection with ongoing class certification proceedings, on behalf of the defendants.

- **Auto parts litigation**  
Supported affirmative and rebuttal analyses for an indirect purchaser class action in an auto filters cartel case. Analyzed wholesale and retail transaction data, evaluated pass-through, and calculated firm and product profitability.
- **Light cigarettes marketing litigations**  
Worked with plaintiffs in class action lawsuits in California, Massachusetts, and Missouri filed against the makers of “light” cigarettes. Supported marketing expert Joel Steckel to conduct conjoint analyses of consumer preference of light tobacco and nicotine in connection with a damages analysis.
- **MasterCard litigations**  
Assisted in economic analysis on behalf of MasterCard in government and consumer litigations, including several class actions in the US and Canada. Supported design and analysis of consumer survey regarding the use of various payment methods. Supported counsel in all phases of trial, including the development of direct testimony, trial demonstratives, and cross-examination questions.

### Intellectual Property and Commercial Litigation

- **Major pandemic material adverse event (MAE) litigation**  
Supported industry expert Pat Moran to examine the appropriate industry definition to evaluate the economic performance of a commercial payments company per a merger agreement in the context of an MAE merger dispute.
- ***MillerCoors, LLC v. Anheuser-Busch Companies, LLC***  
*US District Court, Western District of Wisconsin*  
Supported survey expert John Hauser in designing and implementing a survey in a false advertising litigation in which MillerCoors alleged that TV advertisements by Anheuser-Busch violated the Lanham Act.
- ***TS Media, Inc., et al. v. Public Broadcasting Service***  
*Superior Court, District of Columbia*  
Supported expert Tülin Erdem in the determination of the importance of the PBS brand and the reputational harm that the network would likely suffer as a result of its association with Tavis Smiley’s alleged actions.
- ***Berlex Laboratories, Inc. v. Biogen, Inc.***  
*US District Court, District of Massachusetts*  
Supported an expert in the determination of a reasonable royalty-related damages claim in a patent infringement case in the pharmaceutical industry. Assisted in the design and analysis of a market research survey of multiple sclerosis patients for use in the damages model.
- ***MBIA Insurance v. Credit Suisse Securities***  
*Supreme Court of New York, New York County*  
Supported expert Antoinette Schoar in a rebuttal report of Joseph Stiglitz, evaluating the relationship between economic and contractual incentives in mortgage-backed securities. Supported expert Arnold Barnett in a rebuttal report evaluating the statistical relationship among a sample of loans on prediction of overall loan performance.

- **Front-Loading Washers**  
*Multiple jurisdictions*  
Supported conjoint study and economic analysis in support of multiple damages analyses in product defect litigations against several manufacturers of front-loading washing machines.
- **Burst.com v. Microsoft Corp.**  
*US District Court, District of Maryland*  
Assisted in an analysis of both patent and trade secrets damages and antitrust damages in a case involving software used for streaming media. Responded to the plaintiff's claim of lost profits damages and unjust enrichment arising from the misappropriation of trade secrets.

## Merger Analyses

- **AbbVie Inc. acquisition of Allergan PLC**  
Supported AbbVie in its acquisition of Allergan, as well as securing clearance for two distinct divestiture transactions of Allergan assets to Nestlé and AstraZeneca, by providing economic analyses to evaluate potential concerns that the transaction would stifle competition and increase prices. The client obtained unconditional clearance from the FTC.
- **PSAV acquisition of Encore Event Technologies**  
Supported Blackstone Capital Partners and its portfolio company, PSAV, in the acquisition of Encore Event Technologies by providing economic analysis to assess the competitive effects of the merger. The client obtained unconditional clearance from the FTC.
- **Merger of Chewy Inc. and PetSmart**  
Supported expert Edward Snyder in analyzing the potential competitive effects of the merger between Chewy, an online pet supply company, and PetSmart, a retail pet supply and services company. The client obtained unconditional clearance from the FTC.
- **WEX acquisition of EFS**  
Supported both parties through the second request and the FTC's inquiry into the potential unilateral and coordinated effects of the merger of two of the country's largest fleet card companies. The transaction was consummated.
- **Zimmer's acquisition of Biomet**  
Supported Biomet in its second request compliance and an analysis of product comparability, substitution rates, and customer loyalty using transaction and market data.
- **Archipelago/NYSE Merger**  
Supported Professor Robert Pindyck of MIT in his economic analysis on behalf of the parties, related to ease of entry, order internalization, and technological advancements. The transaction was consummated.
- **Cintas Corporation acquisition of G&K Services**  
Supported both parties through the second request phase of the FTC merger review process to evaluate the potential competitive effects of the acquisition. The transaction was consummated with no remedies or divestitures.

- **Discovery Communications acquisition of Scripps Networks**

Supported Scripps Networks in its acquisition by Discovery Communications to evaluate potential competitive concerns in negotiations with multichannel video programming distributors (MVPDs) for bundled programming. The transaction was consummated with no remedies or divestitures.

### Survey-Related Litigation

- ***Alcatel-Lucent USA, Inc. v. Amazon.com, et al.***

*US District Court, Eastern District of Texas*

Supported marketing expert John Hauser in the design, implementation, and analysis of a survey to demonstrate that patented technologies provided substantial value to online retailers.

- **Commercial litigation and damages case in online retail industry**

Assisted in the assessment of the impact on consumer purchase behavior and price recall of allegedly misleading measures, including advertising language, in a commercial litigation and damages case. Supported field experiments, lab experiments, and analysis to assess consumer interpretation of comparison pricing language.

- **Antitrust and intellectual property litigations on behalf of Microsoft**

Assisted Microsoft in various IP and antitrust matters in the assessment of the impact on consumer behavior, product adoptions, and functionality usage. Matters involved desktop media, browser, office productivity, and security software, as well as server software. Supported lab experiments, qualitative interviews, and web-scraping studies to assess consumer behavior and usage amongst end-customers and IT professionals.

- **Trademark infringement matter of athletic apparel company**

Supported marketing expert Joel Steckel in a trademark infringement case in which an athletic apparel company claimed that a sports drink maker infringed on its trademark and diluted its brand.

- **Trademark dispute in music services**

Developed, designed, and launched a pilot study in a trademark dispute to evaluate respondent perception by customer segment.

- **Trademark infringement matter of a candy company**

Supported marketing expert Joel Steckel in a trademark infringement case in front of the TTAB in which a candy company was trying to bar entry of a foreign competitor that had infringed on its trademark and may have diluted its brand.

- **Trademark infringement matter between two apparel companies**

Supported marketing expert Joel Steckel in designing and implementing a reverse confusion survey in a trademark infringement case in which an apparel company claimed that an athletic company infringed on its design mark.

- ***American Express v. Visa and MasterCard (and related litigation)***

Supported marketing expert John Hauser in rebutting an opposing expert's survey by showing that small methodological improvements to the original survey led to substantial differences in results, in a case involving credit card payment procedures.

- ***Fox Broadcasting Company, et al. v. DISH Network LLC, et al.***  
*US District Court, Central District of California*  
Supported marketing expert John Hauser in designing and implementing two surveys pertaining to use of television services, as well as in analyzing an array of industry data. After more than two years of litigation, a California federal judge found that Analysis Group client DISH's Hopper DVR does not infringe Fox's copyrights.
- **Trademark infringement matter in the food industry**  
Supported marketing expert Joel Steckel in designing a forward confusion and two reverse confusion surveys and implementing the forward confusion survey in a trademark infringement case in which an author / speaker claimed that the title of his book was inappropriately used in a TV commercial of a packaged food product.
- **Confusion matter in the entertainment industry**  
Supported marketing expert Joel Steckel in a trademark infringement case in which a TV company used a name for its show (and a company featured in the show) that was similar to the name of an existing company; assisted with design of forward and reverse confusion surveys.

#### **Transfer Pricing Litigation**

- ***Glaxo Americas, et al. v. Internal Revenue Service***  
*US Tax Court*  
Supported expert in econometric analysis and evaluation of pharmaceutical marketing in the pharmaceutical industry. Case settled.
- ***AstraZeneca, et al. v. Her Majesty's Revenue and Customs***  
*US Tax Court*  
Supported consulting expert team on pharmaceutical valuation and licensing issues. Case settled.

#### **SELECTED PRESENTATIONS AND SPEAKING ENGAGEMENTS**

- “The Future of Economics in Antitrust,” American Bar Association Virtual Fall Forum (November 12, 2020)
- “Are You Down with APP (Algorithmic Pricing)?” American Bar Association Pricing Conduct Committee/Cartel Committee Panel (November 3, 2020)
- “Market Research Methods in Litigation,” Consumer Class Action CLE webinar (May 19, 2020)
- “Fighting Unconscious Bias in the Quest for Authentic Leadership,” 2019 MIT Sloan Global Women's Conference (October 3, 2019)
- “Fall 2018 iLead Speaker Series: Analysis Group,” MIT Sloan School of Management and the MIT Leadership Center (September 7, 2018)
- “Antitrust in the Amazon World,” American Bar Association webinar (May 31, 2018)
- “Practical Issues in Counseling at the Intersection of IP and Antitrust,” New York State Bar Association Antitrust Law Section Meeting (January 25, 2018)

“Legal Challenges to State Laws Prohibiting Surcharges on Credit Card Transactions: Implications for the Industry,” American Bar Association (July 14, 2016)

“The Use of Survey Evidence in Class Litigation,” California Bar Association (May 25, 2016)

“The Next Frontiers: Social Media and Other Cutting Edge Issues in Advertising and Marketing,” Canadian Bar Association Competition Law Fall Conference (October 2, 2015)

“Is False Advertising Anticompetitive,” American Bar Association Antitrust Section Spring Meeting, Washington DC (April 17, 2015)

“Antitrust Enforcement and the Bazaarvoice Case,” New York State Bar Association Antitrust Law Section panel (May 21, 2014)

“Branding & Brands in Law, Accounting & Marketing,” The Kenan Institute, University of North Carolina (April 12, 2012)

“Reverse Payments – Balancing IP and Antitrust Concerns,” Boston Bar Association (May 20, 2009)

Discussion and guided case study analysis on strategic planning and financial analysis with an emphasis on the use of historical financial data in monitoring a public company, DirectWomen Board Institute (February 22, 2008)

“Survey Analysis Report,” First Annual Business Technology Outlook, North Dallas Chamber of Commerce (October 24, 2007)

“Patent Holding Company Panel,” Streaming Media East Show, New York City (May 15, 2007)

“Innovative Application of Economic Methods,” Analysis Group seminar on patent damages (March 2007)

“Data & Discovery – The Economist’s Perspective,” Analysis Group seminar (May 10, 2005)

## **PUBLICATIONS**

“Why Does the Consumer Welfare Standard Work? Matching Methods to Markets,” with James Bernard and D. Daniel Sokol, *Competition Policy International Antitrust Chronicle* (November 2019)

“Hilsley v. Ocean Spray Cranberries, Inc.,” with Rene Befurt, *Top Food and Drug Cases, 2018 & Cases to Watch, 2019*, ed. August T. Horvath (May 2019)

“United States – E-commerce Economics: Market Power and Enforcement in Vertical Markets,” with Nikita Piankov and Emmanuel Frot, chapter in *GCR Insights: E-Commerce Competition Enforcement Guide*, ed. Claire Jeffs (January 2019)

“The Ability to Achieve Lost Sales as a Consideration in Damages Analyses under Different Legal Frameworks,” with Aaron Yeater, *American Bar Association Section of Intellectual Property Law, Landslide*, Vol. 11 No. 2 (November/December 2018)

“Trademark Confusion And The Confusing Eveready Survey,” with Stephen Cacciola and Maggie Hadley, *Law360* (October 23, 2018)

“The Tyranny of Market Shares: Incorporating Survey-based Evidence into Merger Analysis,” with Rene Befurt and Emily Cotton, *Corporate Disputes* (July–September 2018)



“Singleton v. Fifth Generation, Inc.,” with August T. Horvath, chapter in *Top Food and Drug Cases, 2017, & Cases to Watch, 2018*, ed. August T. Horvath (May 2018)

“Avoiding bias: ensuring validity and admissibility of survey evidence in litigations,” with Laura O’Laughlin, chapter in *Handbook of Marketing Analytics*, eds. Natalie Mizik and Dominique M. Hanssens (April 2018)

“How To Interpret A Contract? Ask Those Who’d Sign It,” with Omri Ben-Shahar, Lior Strahilevitz, Duo Jiang, and Kristina Shampanier, *Law360* (March 21, 2018)

“Estimating Lost Sales Damages in Antitrust Cases: Can’t Count on Success,” with Aaron Yeater, *The Witness Chair*, Issue 71 (Winter 2018)

“The Ability to Achieve Lost Sales as a Consideration in Damages Analyses,” with Aaron Yeater, chapter in *Lost Profits Damages: Principles, Methods, and Applications*, eds. Everett P. Harry, III and Jeffrey H. Kinrich (2017)

“Managing Multiple Expert Witnesses: Best Practices and Pitfalls,” with Laura Comstock, Andrea Okie, and Carletta Wong, *American Bar Association Section of Litigation, The Woman Advocate* (August 17, 2017)

“Survey And Real-World Data: A Winning Combination,” with Peter Simon, Kristina Shampanier, and Riddhima Sharma, *Law360* (July 14, 2017)

“What Consumers Really Think About Reference Price Labels,” with Joel Steckel, Kristina Shampanier, Laura O’Laughlin, and Jesse Shea, *Law360* (March 21, 2017)

“Ensuring Validity and Admissibility of Consumer Surveys,” with Laura O’Laughlin, *American Bar Association Section of Litigation Consumer Litigation Newsletter* (Winter 2017)

“Antitrust Enforcement in Two-Sided Markets,” with Juliette Caminade, Federico Mantovanelli, and David Toniatti, *American Bar Association Section of Antitrust Law Economics Committee Newsletter* (Winter 2016)

“3 Questions to Ask When Using Surveys in Litigation,” with Laura O’Laughlin, *Law360* (May 15, 2015)

*Is It Worth Anything? Using Surveys in Intellectual Property Cases*, with Joel Steckel and Rene Befurt, white paper (2013)

“Tools for Handling Mortgage-Based FCA Claims,” with David Mishol, *Law360* (September 26, 2012)

“Digital Media Patents for Profit,” with Dan Rayburn and Almudena Arcelus, *Streaming Media Magazine: Industry Sourcebook 2007*

## PROFESSIONAL AFFILIATIONS AND AWARDS

### Affiliations

ABA (American Bar Association)

- Section of Antitrust Law
- Section of Intellectual Property Law

American Marketing Association (AMA)

Women’s Competition Network (WCN)

## Awards

### Concurrences

- Antitrust Writing Awards: Business Articles, Economics (2019)
  - For “The Tyranny of Market Shares: Incorporating Survey-Based Evidence into Merger Analysis” *Corporate Disputes Magazine*, July–September 2018

### W@Competition

- 40 in Their 40s – Notable Women Competition Professionals (2019)

### Who’s Who Legal

- Competition: Future Leaders – Economists (2018–2019)
- Consulting Experts: Future Leaders – Competition Economists (2018–2019)