

Antitrust

Antitrust enforcement by federal and state prosecutors – and private litigants -- continues without pause. New technology, new products, new ways of doing business all have introduced new risks that must be considered. No business can afford to ignore the antitrust laws no matter the size or industry.

We can assist companies in understanding their antitrust risks in every area. On the counseling side, we can help analyse business practices to minimize the antitrust risks. We can assist in every aspect of product distribution, including the development of business plans that protect the interests of manufacturers and distributors. If advertising or promotion programs are used, we can ensure that the complex price discrimination rules of the Robinson-Patman Act and other laws are followed. If structured improperly, the Clayton Act may prohibit exclusive dealing contracts, or marketing programs that tie the sale of one product to another. We have extensive experience in negotiating supply or distribution contracts that achieve business goals without violating the antitrust laws.

Companies face potential criminal antitrust liability under the Sherman Act any time they deal with competitors. Therefore, it is important to conduct an antitrust review before joining a trade association, or participating in an industry-wide activity. Any sort of joint selling or joint purchasing program may give rise to significant antitrust liability if handled improperly; but if structured to comply with the laws it can yield significant business benefits. Even activities like checking with competitors about salaries or exchanging price lists may be a serious antitrust violation, yet a simple review can eliminate the most significant risks.

Joint ventures, and acquisitions or divestitures of businesses may face antitrust restrictions depending on the size of the transaction and the geographic and product markets impacted. We have extensive experience in analysing the risks of such transactions, and structuring the transaction to have the greatest likelihood of success. We are also familiar with the regulatory process that requires premerger notification with the Federal Trade Commission and Department of Justice in the United States, and we work with our clients to expedite clearance through the review process wherever possible.

If a client faces a consent agreement or decree in the aftermath of an antitrust matter, we can assist in structuring a compliance program to satisfy government requirements. We have worked both as outside counsel and counsel to the government, and understand what programs actually work and what the government expects.

Our experience with antitrust litigation also provides benefits to clients who are either defending those types of cases or have an interest in filing their own claim as a victim of an antitrust violation, either by filing an independent law suit or opting-out of a class action. Both in litigation and regulatory

proceedings, we are experienced in working with industrial organization economists to present the most compelling case using state-of-the-art economic analysis tools, and managing damage claims to the maximum benefit of our clients.

Representative Matters by Lawyers in the Firm

- Antitrust litigation and counseling in a variety of industries, including consumer packaged goods, hospitality, vitamins, trade associations, food distribution, optical devices, dairy, chemicals, beer, electronics distribution, and insurance.
- Initiation of “opt-out” plaintiff cases in Corrugated Container, Folding Carton, Citric Acid, Vitamin, Liquid Carbon Dioxide antitrust and other cases, with recoveries far in excess of class amounts.
- Successful counseling of dozens of distributor terminations that resulted in recovery of balances due without significant business disruption or filing of litigation.
- Successful defense of challenge to acquisition of consumer appliance company through Court of Appeals affirmance.
- Successful defense to challenge to participation in state industry regulatory scheme through denial of certiorari.
- Successful management of acquisitions and divestitures through administrative review (including “Second Requests”) by the FTC and Department of Justice.
- Successful defense of purported class action under California state antitrust law alleging price fixing in dairy industry.
- Successful defense of purported class action under Sherman Act alleging price fixing in chemical industry.
- Support antitrust counsel for the acquired corporation in 280 million dollar acquisition, including assessment of anticompetitive effects, and management of HSR filing.
- Successful defense of case alleging illegal vertical restraints due to distribution restrictions.
- Successful defense of case alleging resale price maintenance based on pricing programs designed to respond to competitive bidding situations.
- Successful defense of cases alleging violation of Robinson-Patman Act (price discrimination) based on promotional programs for new dealers, meeting competitive offers, geographic pricing, and functional discounts.
- Counseling of clients to successfully develop purchasing consortia.

- Evaluated anti-competitive effects of a airline joint venture under Canadian Bill C-49 (Transportation Modernization Act).
- Conducting analysis for market research company to evaluate the anticompetitive effects of exclusive contracts.
- Developing antitrust compliance programs, including live training, computer-based training, podcasts, policy development, antitrust audits, social-networking tools, and risk assessment.
- Counseling trade associations on proper antitrust policies and procedures.
- Counseling consumer packaged goods companies on antitrust compliance for marketing, sales, promotion, and distribution programs.
- Counseling on creation of advertising and promotional programs under the Robinson-Patman Act.