



Mark B. Tobey

SENIOR COUNSEL

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OVERVIEW

Mark counsels food and agribusiness clients on antitrust and competition issues, helping them mitigate risk in an increasingly complex business and regulatory environment.

Mark brings more than three decades of experience to complex antitrust matters, with deep insight as to how the government analyzes acquisitions, joint ventures, exclusionary practices and trade association activities at both the state and federal level. Clients trust Mark's decade of experience at the U.S. Department of Justice (DOJ), Antitrust Division, as a senior policymaker and litigator helping to guide State Attorneys General relations, agriculture enforcement and public advocacy, and his work leading enforcement efforts across all industries at the Texas Attorney General's Antitrust Division. Drawing on knowledge gleaned from the year-long series of agricultural competition workshops he helped organize at DOJ, Mark has worked with agricultural producers and processors regarding regulation and rulemaking for cattle, poultry and dairy as well as chemicals, seeds and agricultural biotechnology. He also has significant antitrust experience in the healthcare, financial services and technology industries.

Mark's experience includes:

- Leading an interdisciplinary team assisting a food systems processing client in developing a comprehensive regulatory risk assessment spanning antitrust, Packers and Stockyards, Robinson-Patman, and state farming and animal confinement law compliance risks;

Industry

Food Systems

Services

Animal Health & Production

Antitrust & Competition

Antitrust Counseling & Compliance

Antitrust Litigation

Companion Animal Health

Corporate

Litigation & Alternative Dispute Resolution

Merger Clearance

Mergers & Acquisitions

Securities & Corporate Governance

State Attorneys General Practice

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- Assisting a branded food product manufacturer in navigating state price gouging laws in two states that prevented price increases during the lengthy pendency of the Covid emergency;
- Assisting two different consumer and animal food product manufacturers in assessing Robinson-Patman Act compliance issues arising out of recent company acquisitions;
- Assisting several Texas wholesale and retail grocery clients in responding to state consumer protection investigative subpoenas concerning the “cost-plus” method of retail grocery pricing.

Clients and legal teams also value Mark’s many years of developing and shaping a broad network of productive relationships at all levels of industry and government, including regional and national agricultural cooperative and advocacy groups, agriculture industry executives, think tanks and academics, as well as a bipartisan array of state and federal legislators, enforcers and regulators, including the U.S. Department of Agriculture (USDA) and the State Attorneys General.

As one of the foremost practitioners of agricultural antitrust law, Mark has written articles, spoken at conferences (including the AALA and ABA), and given webinars on new government efforts to regulate anticompetitive mergers and conduct and to stimulate new competition in agricultural processing markets.

Experience

- Led multistate Attorneys General antitrust investigation in coordination with Department of Justice (DOJ) in *United States v. Microsoft Corporation*.
- In addition to directing all Texas antitrust enforcement activities for more than 17 years, served as initial chief of ongoing Civil Medicaid Fraud Division, a Texas legislative initiative aimed at recovering fraud damages from health care providers through litigation.
- Organized, led and publicly reported on all aspects of first nationwide series of public workshops examining competition in agricultural markets, with participation by local farmers, state and federal legislators and regulators (including Congressional representatives, state legislators, Governors, U.S. Secretary of Agriculture and the U.S. Attorney General), academics, industry leaders and farm advocacy groups. Workshops were jointly sponsored and staffed by U.S. Department of Agriculture (USDA) and U.S. DOJ.

Experience

- Developed, led and implemented DOJ strategic plan to maximize state-federal cooperation in investigations and litigation. Helped coordinate and litigate merger and conduct matters involving states in agriculture, health care, health insurance, publishing, telecom and airlines.
- Routinely handled investigation and litigation of numerous high-profile merger, price-fixing and wage-fixing cases in healthcare, technology, telecom, media, finance and transportation.
- Led an interdisciplinary team assisting a food systems processing client in developing a comprehensive regulatory risk assessment spanning antitrust, Packers and Stockyards, Robinson-Patman, and state farming and animal confinement law compliance risks.
- Assisted a branded food product manufacturer in navigating state price gouging laws in two states that prevented price increases during the lengthy pendency of the Covid emergency.
- Assisted two different consumer and animal food product manufacturers in assessing Robinson-Patman Act compliance issues arising out of recent company acquisitions.
- Assisted several Texas wholesale and retail grocery clients in responding to state consumer protection investigative subpoenas concerning the "cost-plus" method of retail grocery pricing.

Recognition

- *Austin Monthly* magazine, Top Austin Attorney, Antitrust, 2021-2024

Education

- J.D., The George Washington University
- M.B.A., The George Washington University
 - Finance
- A.B., Northwestern University

Admissions

- Texas

Community Leadership

Mark is active in his local synagogue.



2023 Austin Monthly Top Attorneys