

## Regulatory and Government Affairs

---

### Antitrust

#### Contacts

Richard D. Gluck | 202.298.1786 | rgluck@gsblaw.com

Paul S. Hoff | 202.298.1790 | phoff@gsblaw.com

Alan P. Sherbrooke | 206.816.1311 | asherbrooke@gsblaw.com

As industries consolidate and the economy struggles, businesses are under increasing pressure to become more competitive and improve margins. But overly aggressive competition by a business can spawn antitrust problems. These may prevent a business from completing a planned transaction and make it vulnerable to antitrust litigation.

Garvey Schubert Barer advises clients on antitrust issues arising out of business activities in both regulated and unregulated industries. Our counseling includes advice on how to comply with antitrust laws, how to resolve antitrust issues so transactions go forward and how to avoid behavior that could lead to litigation. When necessary, we aggressively represent clients in federal and state civil and criminal antitrust litigation as well as in investigations by the U.S. Department of Justice, the Federal Trade Commission and state attorneys general.

Our clients include both large private companies as well as small public ones. Garvey Schubert Barer's track record and expertise is particularly notable in the transportation sector — air, water, rail and truck — and in the healthcare industry. For decades, we have represented transportation clients and healthcare entities and our substantive knowledge of these industries is unmatched. We also represent a broad range of other industries, among them

- ▶ Fishing
- ▶ Retail
- ▶ Technology

### Antitrust Litigation

Garvey Schubert Barer represents U.S. and international companies in all aspects of antitrust litigation. This representation includes allegations of

- ▶ Price-fixing
- ▶ Customer allocation
- ▶ Market division
- ▶ Price discrimination
- ▶ Tying or bundling related products and unfair or deceptive trade practices

Our team of experienced, highly sophisticated trial attorneys handles everything from complex class actions to multidistrict litigation and arbitration. When appropriate, our firm's antitrust attorneys collaborate with our white-collar defense and investigation attorneys. This collaboration enables Garvey Schubert Barer to bring extensive real-world experience in civil and criminal investigations and enforcement actions by the U.S. Department of Justice, the Federal Trade Commission and state attorneys general, as well as before grand juries.

The industries Garvey Schubert Barer represents in antitrust litigation include the following:

- ▶ Trucking and transportation
- ▶ Computer technology
- ▶ Home entertainment
- ▶ Healthcare
- ▶ Sporting goods

- ▶ Shipping
- ▶ Paper
- ▶ Fishing

## Compliance and Awareness

To help clients avoid antitrust problems, we prepare compliance programs and assist clients in implementing them. To keep clients informed and up-to-date about antitrust laws, Garvey Schubert Barer regularly presents client seminars covering the following:

- ▶ Basic principles of antitrust law
- ▶ Burdens of being involved in antitrust litigation
- ▶ Penalties for antitrust violations
- ▶ Strategies to identify and reduce the risk of potentially dangerous competitive situations and documents

We also draft and assist with the implementation of antitrust compliance plans.

## Dealer Relations

We advise clients how to legally structure, maintain and terminate dealer relationships, with particular attention to the risks of resale pricing; tying arrangements; price discrimination; patent licensing; vertical nonprice restraints such as exclusive territories and prohibitions against mail-order sales or other product "bootlegging"; and, when a client has market power, unreasonable restraints on competition among a client's dealers.

## Horizontal Restraints

We help clients avoid conduct suggesting a *per se* violation of the antitrust laws, especially conduct that could be construed as price-fixing and market allocation. Our lawyers also provide effective, pragmatic strategies to reduce the risk that trade association activities or casual and informal contacts with competitors become the basis for an alleged antitrust violation.

## Mergers, Acquisitions and Joint Ventures

Our lawyers evaluate the competitive impact of mergers and acquisitions, including the risk of Clayton Act challenges. When federal or state antitrust regulators raise issues about a business combination, we negotiate with the regulators to resolve these issues favorably for our client. We also prepare and file Hart-Scott-Rodino notifications.

Another service we provide is analyzing the competitive effects of a client's cooperative arrangement with competitors, the limits on joint activity and the scope of permissible ancillary restraints. As part of this counseling, we evaluate the likelihood that a joint venture among competitors will be challenged as an unlawful acquisition under Section 7 of the Clayton Act, an unlawful horizontal restraint under the rule of reason or *aper se* violation of the Sherman Act.

## Monopolization

Antitrust laws impose limits on aggressive competition. We make sure clients understand these limits and comply with them. We also document the legitimate business reasons for a client's business practices. Careful, comprehensive documentation strengthens a client's legal position that its practices are not predatory, exclusionary or otherwise anticompetitive.