

Calfee has long played a role in the field of antitrust law and trade regulation. We have represented clients on antitrust matters in every procedural context -- before the Federal Trade Commission, U.S. Department of Justice, and in state and federal courts on complex civil and criminal litigation. The industries in which we have helped our clients are as diverse as the firm's overall client base and include healthcare, real estate brokerage, software development, supermarkets, electric utilities, industrial coatings, consumer goods, mining, dairies, and automobile components. In general, we provide counseling and litigation services in competitor and customer relations, franchising, advertising, Hart-Scott-Rodino compliance and joint venture/acquisition analysis.

In the area of antitrust law, the questions often are not whether conduct is plainly legal or illegal, but the degree of risk of liability it may carry. Assessing that risk involves more than just questions of the application of the law. It also requires an experienced judgment of how a judge or jury will perceive the conduct, how state and federal antitrust enforcement authorities will view it, and a sensitivity for the particular client's business goals.

Representative Experience

Corporate Counseling

- > Merger and acquisition analysis
- > Hart-Scott-Rodino pre-merger notification
- > Joint venture evaluation and structuring
- > Consumer protection
- > Franchising
- > Intellectual property restrictions
- > Robinson-Patman Act
- > Unfair trade matters
- > Deceptive advertising claims
- > Department of Justice civil investigations
- > Federal merger investigations

Private Litigation

- > Price fixing
- > Monopolization
- > Discriminatory prices and promotions
- > Tying arrangements
- > Exclusive dealings
- > Refusals to deal and boycotts
- > Dealer terminations
- > Market allocations

Government Enforcement

- > Grand Jury investigations and criminal litigation
- > FTC enforcement proceedings
- > State enforcement proceedings

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What are the penalties for violating antitrust laws?

Penalties for violating the Sherman Act, the principal federal law, can reach up to a \$10 million fine for corporations and a \$350,000 fine for individuals, per violation, and under certain circumstances even higher. Prison terms up to three years are also possible.

What is Antitrust and Trade Regulation Law?

It is the label commonly used to describe a wide range of statutory, common law, and regulatory schemes designed to ensure that a free market economy operates without artificial restraints that impair economic efficiency and consumer welfare. The principal federal antitrust statutes are the Sherman Act, Clayton Act (including the Robinson-Patman Act), and FTC Act. Most states have statutes analogous to the Sherman Act, with most of these laws embodying a dual level of enforcement that allows for governmental and private causes of action. The agencies responsible for enforcing federal antitrust laws in the U.S. are the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice.

In the U.S., antitrust law recognizes two broad categories of conduct: (1) Per se offenses, and (2) conduct analyzed under a “rule of reason.” The per se offenses (such as horizontal price fixing, bid rigging, and market division) are most likely to result in criminal prosecution.

Do smaller or mid-size businesses really have Antitrust law issues?

Yes. There are many examples of businesses of all sizes either being harmed by or committing serious antitrust violations. Businesses of any size need to consider potential antitrust implications when making decisions regarding pricing and output, and in their relations with competitors, customers, and suppliers.

Representative Projects

Calfee’s Antitrust and Trade Regulation attorneys have been involved in a multitude of projects and cases. Summaries of some are listed here.

- > Through an eleven week trial, successfully defended a local brokerage in an action brought by the world’s largest real estate organization alleging violations of Sherman Act Sections 1 and 2.
- > Defending an incumbent local telephone exchange carrier against a competitor’s claims of monopolization and violation of the Telecommunications Act of 1996.
- > Counseled a nationally recognized manufacturer of luxury consumer goods in restructuring its marketing and distribution systems and cooperative advertising programs, and successfully defended the manufacturer in a Justice Department investigation of its programs.
- > Represented a nationally recognized manufacturer and retailer in connection with an industry-wide investigation of competitive effects on retail pricing of certain labeling practices.
- > Successfully defended a leading steel container manufacturer in multi-district, treble-damage price-fixing class actions, and in a parallel federal grand jury investigation based in Chicago.
- > Counseled a national manufacturer of hobby products regarding application of the Robinson-Patman Act to its marketing, promotional pricing programs.

- > Advised intellectual property clients with respect to possible antitrust implications of field-of-use restrictions in licensing agreements, as well as the antitrust implications of computer standard setting.
- > Represented the target of \$1 billion takeover in the Federal Trade Commission's investigation of the competitive effects of the transaction.
- > Successfully defended a first-tier supplier to the automobile manufacturing industry in a federal grand jury investigation of possible price fixing.
- > Routinely counsel clients on Hart-Scott-Rodino pre-merger notification requirements, prepare and administer filings, and present issues to the FTC and Justice Department enforcement staff in support of the transaction.

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