HUSCH BLACKWELL

Mark B. Tobey

SENIOR COUNSEL

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OVERVIEW

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

An experienced antitrust practitioner with both federal and state agency enforcement experience, Mark helps clients ensure that their business activities align with antitrust laws, whether that means representing merging parties before federal and state antitrust authorities, developing internal corporate antitrust compliance policies, advising on pricing or distribution strategy, or guiding clients through government investigations. When government agencies issue subpoenas or civil investigative demands, he steps in to help clients respond and aims to resolve matters before litigation is filed. When disputes do move forward, Mark zealously represents clients in court.

After more than 40 years practicing antitrust law, Mark remains an active, busy antitrust lawyer, offering a perspective shaped by decades of work on both sides of the regulatory process. He served as a senior policymaker and litigator at the U.S. Department of Justice's Antitrust Division for 10 years and spent 20 at the Texas Attorney General's Antitrust Division—a background that gives him deep insight into how the government analyzes acquisitions, joint ventures, exclusionary practices, and trade association activities at both the state and federal level. Mark's time in the government helps him easily spot client business conduct that may attract regulatory attention—and address it proactively.

Industries

Manufacturing

Technology

Transportation

Services

Animal Health & Production

Antitrust & Competition

Antitrust Counseling & Compliance

Antitrust Litigation

Companion Animal Health

Corporate

Litigation & Alternative Dispute Resolution

Merger Clearance

Securities & Corporate Governance

State Attorneys General Practice

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A small sampling of Mark's antitrust experience includes:

- Counseling a multinational manufacturer of safety equipment in developing new competitive bidding and quoting protocols integrating newly-acquired subsidiaries;
- Advising U.S. subsidiaries of European-based parent companies on multiple occasions on whether proposed pricing and distribution changes would violate U.S. antitrust laws;
- Assisting in defending a petrochemical industry client in a case in the new Texas Business Court centered on a contract dispute involving potential antitrust issues;
- Counseling a large technology company on the risks of employing algorithmic pricing systems in competitive bidding markets;
- Assisting community healthcare system in the Midwest in responding to and resolving multi-issue State AG antitrust investigation;
- 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.

Mark comes to the practice of law with an M.B.A. degree in addition to his J.D. He's long been fascinated by the intersection of law and economics that occurs in antitrust, and he thrives on the challenge of working in an area of law rooted in a statute from 1890 yet shaped by evolving court interpretations and the ever-changing views of regulators. Mark is enthusiastic about helping clients apply both historic and modern case law to new developments in technology, such as algorithmic pricing and artificial intelligence.

Clients place a high value on Mark's decades of experience: they know they're in the hands of a seasoned professional with well-honed judgment. Known for his patient explanations, Mark has a gift for putting complex laws into terms clients can readily understand. They also appreciate his many years of developing and shaping a broad network of productive relationships at all levels of industry and government, including regional and national advocacy groups, industry executives, think tanks, and academics, as well as a bipartisan array of state and federal legislators, enforcers, and regulators.

While he works with companies in a wide array of industries, Mark is particularly knowledgeable about food systems, agribusiness, healthcare, pharmaceuticals, and technology. He is one of the nation's foremost practitioners of agricultural antitrust law and 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.

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Experience

FOOD SYSTEMS AND AGRIBUSINESS

- 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.
- Assisted food client in preparing required HSR filings and responding to DOJ merger investigation in HSR-reportable merger.
- Trained senior executives and staff of food industry client in compliance with antitrust laws.

OTHER INDUSTRIES

- Served as lead counsel in plaintiff antitrust case in federal district court in Austin, challenging anticompetitive practices of a trade association.
- Counseled a multinational manufacturer of safety equipment in developing new competitive bidding and quoting protocols integrating newly-acquired subsidiaries.
- Advised U.S. subsidiaries of European-based parent companies on multiple occasions on whether proposed pricing and distribution changes would violate U.S. antitrust laws.
- Counseled daily fantasy sports company on antitrust guardrails for working through its trade association on anti-fraud initiatives.
- Assisted in defending a petrochemical industry client in a case in the new Texas Business Court centered on a contract dispute involving potential antitrust issues.

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Experience

- Counseled a large technology company on the risks of employing algorithmic pricing systems in competitive bidding markets.
- Assisted community healthcare system in the Midwest in responding to and resolving multi-issue State AG antitrust investigation.
- Assisted in defending real estate trade organization in antitrust class action alleging price-fixing of commissions.
- Advised clients in different industries, including food, software, and aerospace companies, concerning responding to predatory practices by larger rivals.
- Aided a professional sports franchise in responding to DOJ civil investigative demands and third-party subpoenas in joint federal-state monopolization prosecution.

WHILE IN GOVERNMENT

- 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.
- 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.

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Experience

- Routinely handled investigation and litigation of numerous high-profile merger, price-fixing and wage-fixing cases in healthcare, technology, telecom, media, finance and transportation.

Recognition

- *Austin Monthly* magazine, Top Austin Attorney, Antitrust, 2021-2026

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.

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2026 Austin Monthly Top Attorneys

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