

Editor's Introduction to the 2025-2026 edition

Corporate Counsel's Antitrust Deskbook will help refresh your memory about the antitrust laws. The book provides a basic understanding of antitrust law without all the extensive citations and complex discussion. You'll find landmark cases and recent interpretations plus a number of valuable topics and acts. Some of the important acts include The Sherman Act, The Robinson-Patman Act, The Federal Trade Commission Act, and The Clayton Act, along with topics such as premerger notification, antitrust and intellectual property, the antitrust aspects of distribution, antitrust leniency and sentencing, antitrust and employment, and antitrust compliance programs.

Highlights to the 2025-2026 edition include:

- Multiple new cases discussing direct evidence of price-fixing, including *Osterhaus Pharmacy, Inc. v. Express Scripts, Inc.*, where Pharmacies alleged that Express Scripts, Inc. (ESI) engaged in horizontal price-fixing by entering into network rental agreements with smaller pharmacy benefit managers (PBMs), which led to uniform increases in reimbursement rates and fees, and *In re Passenger Vehicle Replacement Tires Antitrust Litigation*, where Plaintiffs alleged that major tire manufacturers conspired to fix prices during the COVID-19 pandemic, using public earnings calls to signal future price increases and maintain inflated prices (§ 1:2).
- Expanded coverage on determining the sufficiency of complaint (§ 2:9).
- *In re Pork Antitrust Litigation*, a case on information exchange where Plaintiffs alleged that pork producers conspired to fix prices by restricting supply and exchanging sensitive market data through Agri Stats, violating § 1 of the Sherman Act. While the court acknowledged evidence of a hub-and-spoke arrangement, it found that without parallel conduct, the information exchange alone did not support a per se violation (§ 5:3)
- *Musk v. OpenAI, Inc.*, a case in which Elon Musk alleged that OpenAI's founders misled him into funding the venture under the guise of a nonprofit mission, while secretly building a for-profit enterprise with Microsoft. The complaint focused on alleged interlocking directorates between OpenAI and Microsoft, claiming violations of Section 8 of the Clayton Act (§ 11:8).

- Expanded coverage, including recent case developments, of the Foreign Trade Antitrust Improvements Act (FTAIA) (§ 12:1).
- New caselaw on the sham exception—*Navient Solutions, LLC v. Lohman & Relevant Group, LLC v. Nourmand*. In both cases, plaintiffs alleged that defendants engaged in sham litigation to obstruct legitimate business operations—Navient claimed TCPA lawsuits were manufactured to avoid loan repayment, while Relevant argued CEQA challenges were used to block hotel development. However, the courts found that the underlying legal actions pursued plausible claims and were not objectively baseless, thus protected under the Noerr–Pennington doctrine (§ 14:8).