



DAVID L. MEYER

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Innovative Antitrust and Rail Regulatory Solutions

EXPERIENCE

Morrison & Foerster LLP – 2009-2020

Partner and Co-Chair Global Antitrust Practice Group

Department of Justice Antitrust Division – 2006-2009

Deputy Assistant Attorney General for Civil Enforcement
Principal Deputy Assistant Attorney General

Covington & Burling LLP – 1989-2006

Partner and Vice Chair Antitrust and Consumer Protection Practice Group

Department of Justice Antitrust Division – 1987-1989

Special Assistant to the Assistant Attorney General

U.S. Court of Appeals for the Second Circuit – 1986-1987

Law Clerk to the Honorable Ralph K. Winter

Member of ABA Antitrust Section Leadership – 2004-present

Currently: Senior Editor Antitrust Law Journal
Member of Editorial Board for Antitrust Law Developments (Ninth Ed.)

EDUCATION

Yale Law School, JD 1986

Amherst College, BA 1983

Magna Cum Laude, Awarded James R. Nelson Prize in Economics

BAR ADMISSIONS

District of Columbia
Maryland
U.S. Supreme Court
U.S. District Court for the District of Columbia
U.S. District Court for the District of Maryland
Multiple U.S. Courts of Appeals

OTHER RECOGNITION

- Chambers USA, Antitrust/Washington, D.C.

*David is a “really smart, really strong lawyer” who
“understands the issues well and is well connected”*

*“[R]ecognized for his astute transactional antitrust counsel and his advice
on investigations as well as for his skills in litigation. He is particularly
highlighted for his expertise in cross-border clearance work”*

- Legal 500 U.S., Antitrust Merger Control

David exhibits a “deep expertise and a very strong intellect.”

- Global Competition Review’s Who’s Who of Competition Lawyers & Economists –
Recommended for Global Antitrust 2013-Present

*“David is ‘undeniably impressive’ and highly rated
‘by all who see his work.’”*

- Best Lawyers in America – Antitrust Litigation – 2007-2020
- SuperLawyers – Top Rated Antitrust Litigation Attorneys – 2014-2020
- Burton Distinguished Writing Award in Law – 2012

SELECTED ANTITRUST EXPERIENCE

Overview

A seasoned antitrust counselor, strategist, advocate, and litigator with high-level government enforcement experience, David helps clients navigate all manner of antitrust challenges.

- Strategic counseling to manage antitrust risks
- U.S. and multi-jurisdictional merger clearance
- DOJ, FTC, and state attorney general investigations

- Litigation strategy, dispositive motions practice, and trial advocacy

David's expertise likewise spans the gamut of substantive antitrust issues.

- Mergers and acquisitions, including minority investments and gun-jumping issues, under Sections 7 and 7A of the Clayton Act and Section 1 of the Sherman Act
- Monopolization/single-firm conduct issues under Section 2 of the Sherman Act
- Issues raised by trade associations, joint ventures and other competitor collaborations under Section 1 of the Sherman Act
- Issues at the IP/Antitrust interface
- Issues at the interface between antitrust and sector regulation, including antitrust immunity
- Issues raised by industry standard setting
- Complex distributional issues, including at the interface among Section 1, Section 2, and the Robinson-Patman Act
- The *Noerr-Pennington* doctrine
- Section 5 of the FTC Act
- Section 8 of the Clayton Act

As Deputy Assistant Attorney General for Civil Enforcement in DOJ's Antitrust Division, David took a hands-on approach to managing much of the Division's civil enforcement program, supervising investigations by all six of the Division's civil enforcement sections and playing an active role in steering investigations and litigation strategy. These matters spanned a wide range of industries, including technology, defense, media, telecommunications, financial services, and manufacturing, among others.

Representative Merger & Acquisition Experience

- Lead trial counsel for SoftBank Group Corp. in trial win and TRO victory allowing T-Mobile-Sprint merger to proceed; represented SoftBank and Sprint before DOJ, state attorneys general, FCC, and California PUC
- Represented Mobileye in obtaining FTC and multi-jurisdictional clearance for its acquisition by Intel
- Represented TDK in obtaining FTC and multi-jurisdictional clearance for its sale of the EPCOS business to Qualcomm
- Represented Sourcefire in obtaining DOJ and multi-jurisdictional clearance for its acquisition by Cisco Systems
- Represented SoftBank in obtaining DOJ clearance for its acquisition of a controlling interest in Sprint and Clearwire
- Represented Elpida Memory in obtaining FTC clearance for its acquisition by Micron Technology, Inc., a competing producer of DRAM

- Represented Terumo Corp. in obtaining FTC clearance for its acquisition of U.S. medical device company CaridianBCT
- Represented XL Foods in its sale of assets to JBS
- Represented Exxon in obtaining FTC clearance for its acquisition of Mobil, including principal responsibility for negotiating and implementing FTC consent decree
- Represented various clients in presenting their views on proposed mergers to the relevant enforcement agency and obtaining relief addressing their concerns
- At DOJ Antitrust Division, oversaw investigations and litigation relating to numerous transactions, including Microsemi/Semicoa (litigated), Monsanto/Delta & Pine Land (decree), Arcelor/Mittal (decree), CME/CBOT (cleared); Republic/Allied Waste (decree); Vulcan/Florida Rock (decree); XM/Sirius (cleared), Thomson/Reuters (cleared), and Charleston Daily Gazette/MediaNews Group (litigated), among many others

Representative Conduct Investigation Experience

- Represented Amadeus IT Group in connection with DOJ civil investigation of the airline global distribution systems industry; investigation concluded with no enforcement action
- Represented electric utility in DOJ civil monopolization investigation relating to company's positions in PJM capacity markets and wholesale and retail energy markets; investigation concluded with no enforcement action
- Represented railroad in DOJ civil Section 1 and Section 2 investigation relating to pricing in certain transportation markets; investigation concluded with no enforcement action
- Assisted various companies in connection with internet-focused antitrust investigations
- At DOJ Antitrust Division, oversaw numerous Section 1 and Section 2 investigations as, including the Google/Yahoo! search advertising agreement (challenged) and conduct in the real estate and financial services sectors, among many others

Representative Economic Litigation Experience

- Lead trial counsel for SoftBank (and co-counsel for Sprint) in *New York v. Deutsche Telekom* (SDNY) (judgment for defendants after trial on merits) and *Bratz v. T-Mobile US* (N.D. Cal.) (TRO denied)
- Lead trial counsel for plaintiffs in *PPL EnergyPlus v. Nazarian* (D. Md.), which enjoined a state energy subsidy program on preemption grounds and was affirmed by the Fourth Circuit and the U.S. Supreme Court in *Hughes v. Talen*.
- Represented Amadeus IT Group in *Gordon v. Amadeus IT Group* (SDNY), obtaining dismissal of all damages claims and favorable settlement of all injunctive claims
- Represented Union Pacific Railroad Company in a monopolization suit filed by Oxbow Minerals, obtaining grant of motion to dismiss against all claims

- Represented Seiko Epson in its defense of price-fixing allegations in the *TFT-LCD Antitrust Litigation* (N.D. Cal)
- Represented Boehringer Ingelheim in its defense of price fixing allegations in *Clayworth v. Pfizer, Inc.*, obtaining grant of two demurrers in California state court
- Represented Warner-Lambert Company in its defense of price fixing and price discrimination claims in *In re Brand Name Prescription Drug Antitrust Litigation*, obtaining favorable settlement of federal claims and success defeating class certification for related state indirect purchaser claims and/or successfully obtaining approval of favorable settlements in numerous state courts
- Represented defendant in *Utilimax.com, Inc. v. PPL EnergyPlus, Inc.*, obtaining dismissal of claims on filed-rate doctrine grounds
- Represented defendants in *Dial A Car v. Transportation, Inc.* (D.D.C. and D.C. Cir.), obtaining dismissal of monopolization claims

RAIL REGULATORY AND OTHER EXPERIENCE

Overview

David has decades of experience representing railroads in competition, economic-regulatory, and complex commercial matters, with a focus on advocacy before the Surface Transportation Board. His experience with issues involving railroad technology, operations, and commercial practices gives him unique ability to help clients solve problems, manage risk and achieve success.

Transactional Highlights

- Represented Norfolk Southern Ry. in connection with unsolicited acquisition effort by Canadian Pacific Ry.
- Represented TTX Company in successfully obtaining multiple STB reauthorizations of TTX Flatcar Pool
- Represented Union Pacific Railroad in obtaining STB approval for its acquisition of Southern Pacific Transportation Company

Other Regulatory Matters

- Represented multiple railroads in wide range of common control/merger matters, including UP/CNW, WC/FRVR/GBW, UP/SP, BNSF/CN, CSX/NS/Conrail, CN/IC, DME/ICE, CN/WC, KCS/TFM/TM, and CP/NS
- Represented two separate Class 1 railroads in disputes with Amtrak, including Norfolk Southern in Amtrak's on-time performance complaint and Union Pacific in a dispute over Amtrak's right to carry "express" on its passenger trains

- Represented Class 1 railroads in rate regulatory matters, including Union Pacific in defeating rate complaint brought by AEPCO
- Represented Class 1 railroad in trackage rights compensation disputes, including Union Pacific in *Arkansas & Missouri R.R v. Missouri Pacific R.R.*
- Represented TTX Company in pooling matters
- Represented Class 1 railroad in terminal trackage rights dispute
- Represented Class 1 railroads in STB Ex Parte regulatory proceedings concerning competition, rate regulation/revenue adequacy, demurrage, and common carrier obligation issues, among others
- Represented the Association of American Railroads (AAR) in *NAFCA v. AAR*, an unreasonable practice case relating to AAR mechanical standards
- Advised various entities on issues relating to the application of STB regulatory regime to their rail trackage/operations

Complex Contract Matters

- Lead counsel for Class 1 railroad in arbitration of dispute over breach of long-term supply arrangement
- Advised Class 1 railroad in renegotiation of long-term contracts relating to intermodal services
- Represented Class 1 railroad in multiple arbitrations addressing obligations under 1927 joint facility agreement
- Counsel for Penn Central Company in successful suit in Special Railroad Court to recover millions of dollars of advances paid to joint terminal company

RECENT PUBLICATIONS

- Philadelphia National Bank *Meets Wireless Telecom: Overcoming the Structural Presumption in T-Mobile/Sprint*, Antitrust, Vol. 34, No. 3 (Summer 2020)
- *Federal Antitrust Agencies Encourage Appropriate Competitor Collaboration to Address the COVID-19 Crisis*, Morrison & Foerster Client Alert (Mar. 25, 2020)
- *American Needle's Legacy Ten Years On: Darning the Section 1 Tapestry*, Antitrust, Vol. 34, No. 1 (Fall 2019)
- *See separate list for additional publications*