

contended, the state Act conflicted with the Sherman Act and, therefore, was unconstitutional.

The *Parker* Court rested its decision on two foundational blocks. One involved statutory interpretation. The U.S. Supreme Court found that the U.S. Congress did not intend the antitrust laws to reach legislative activity, but only to ban anticompetitive conduct by "business combinations". The U.S. Supreme Court said that "official action directed by a state" did grant immunity to private persons and *Parker* portended immunity for private parties, and not just the states themselves. Subsequently, the state action doctrine was expanded by the Local Government Antitrust Act of 1984, which protects municipalities against antitrust damage claims.⁹⁹ In essence, the state action defence in the U.S. is similar to the regulated industry defence in Canada. Note that exemptions are usually strictly construed by the courts and should not be confused with defences.

The second doctrine is that of "preemption", which involves principles of federalism and state sovereignty. The issue is whether a U.S. state statute that is inconsistent with U.S. federal antitrust laws will be invalid. The *Parker* Court found that the federal interests embodied in the federal antitrust laws did not always displace state laws. In this context, antitrust actions brought against a state directly also implicate the eleventh amendment of the U.S. constitution, which precludes U.S. citizens from suing a U.S. state.

Numerous groups and industries, and business activities and practices in the U.S. are currently immune from criminal and civil antitrust liabilities. The businesses, industries or groups that may be exempted under one or more statutes generally fall in the following categories:¹⁰⁰

- agricultural cooperatives and associations,
- banking,
- communications (radio, television, telephone, telegraph and newspapers),
- export trade associations,
- fisheries,
- insurance,

⁹⁹ The Local Government Antitrust Act of 1984 provides that "no damages, interest on damages, costs, or attorney's fees may be recovered under 4, 4A or 4C of the Clayton Act" for claims against local governments, their officials or employees acting in their official capacity, or any other person based upon an official action directed by a local government or by its official or employee acting in an official capacity. One implication of the 1984 Act is that it preempts treble damage actions by private parties against local governments.

¹⁰⁰ Source: Julian O. von Kalinowski, Peter Sullivan and Maureen McGuirl, *Antitrust Laws and Trade Regulation*, Volume 6, New York: Matthew Bender, 1994.