The state-action immunity doctrine of *Parker v. Brown* immunizes anticompetitive state regulations from preemption by federal antitrust law so long as the state takes conspicuous ownership of its anticompetitive policy. In its 1943 *Parker* decision, the Supreme Court justified this doctrine, observing that no evidence of a congressional will to preempt state law appears in the Sherman Act's legislative history or context. In addition, commentators generally assume that the New Deal court was anxious to avoid re-entangling the federal judiciary in *Lochner*-style substantive due process analysis. The Supreme Court has observed, without deciding, that the Federal Trade Commission might not be bound by the Parker doctrine but instead enjoys "superior preemption" authority under Section 5 of the FTC Act. Drawing on the FTC Act's legislative history and its institutional distinctiveness from Sherman Act enforcement, this Article makes an affirmative case for FTC super-preemption power over anticompetitive state laws. Click here to read the full article.

Authors

Adam G. Hester

Counsel
AHester@perkinscoie.com 650.838.4311