

ALERTS

Antitrust Law Alert - Supreme Court Denies Cert Petitions Regarding Scope Of FTAIA

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On June 15, the U.S. Supreme Court declined to accept a pair of certiorari petitions challenging two circuit court opinions interpreting restrictions the Foreign Trade Antitrust Improvement Act (FTAIA) places on Sherman Act claims. Both petitions involved claims based on alleged price-fixing activities in Taiwan regarding LCD panels. The questions centered on whether the cartel's actions outside the borders of the U.S. subjected it to claims in U.S. courts.

In the first case, the Seventh Circuit affirmed a determination that the FTAIA barred the majority of claims brought by Motorola Mobility. In the second case, the Ninth Circuit affirmed a criminal fine of \$500+ million obtained by the Department of Justice against one of members of the alleged price-fixing cartel (AU Optronics).

Motorola Mobility had argued that the Seventh Circuit ruling was directly contradicted by the Ninth Circuit ruling, and that the Supreme Court should clarify the application of the FTAIA. Likewise, AU Optronics, the defendant in the Ninth Circuit case, had argued that the Ninth Circuit decision could not be reconciled with Seventh Circuit and prior Supreme Court decision.

Amicus curiae submissions also were heavily in support of Supreme Court review. The National Association of Manufacturers contended that any uncertainty regarding the application of antitrust law exacted a substantial economic toll on both domestic and foreign companies importing goods into the U.S.

The Supreme Court's silence leaves both the Seventh and Ninth Circuit decisions standing as originally issued.

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