



Seventh Circuit Restricts the Reach of U.S. Antitrust Laws on Foreign Component Manufacturers

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In a precedent-setting antitrust decision, a federal appellate court handed a significant victory to Nossaman client AU Optronics in its years-long battle with Motorola Mobility LLC. The opinion by respected Seventh Circuit Justice Richard Posner will limit the overseas reach of U.S. antitrust law, in regard to foreign-based component manufacturers.

Motorola v. AUO Case Background

In its Sherman Act lawsuit, Motorola was seeking more than \$3 billion in damages from AUO and other suppliers that had allegedly fixed the prices of TFT-LCD panels used in cell phones manufactured by Motorola.

But, the Seventh Circuit Court of Appeals rejected Motorola's claims based on foreign component purchases, specifically those made in Asia by Motorola's Chinese and Singaporean subsidiaries. Pursuant to the Foreign Trade and Antitrust Improvements Act of 1982 ("FTAIA"), such foreign transactions are not within the scope of the Sherman Act, unless the plaintiff can bring its claims within the statute's exceptions.

Motorola argued that TFT-LCD panels purchased by its Asian affiliates satisfied the FTAIA's exception requiring that claims have a "direct, substantial, and reasonably foreseeable effect on domestic commerce." The Seventh Circuit refuted that argument, holding that no "direct" effect was present when allegedly price-fixed components were purchased abroad and assembled into finished products: "the effect of component price fixing on the price of a product of which it is a component is indirect." The fact that Motorola claimed to have negotiated prices in the United States was insufficient to satisfy the "direct" effect requirement.

The Court's Rationale - Important Practical and International Policy Implications

Moving beyond the statutory requirements of the FTAIA, the Court also considered the practical and international policy implications here. As the Court noted, "nothing is more common nowadays than for products imported to the United States to include components that the producers had bought from foreign manufacturers." Even if such purchasers were overcharged as a result of foreign price-fixing, the Court explained, that conduct was entirely beyond the reach of U.S. antitrust laws. In this case, there can be no denying that Motorola set up its affiliates to operate in foreign lands, to likely take advantage of the benefits of lower labor costs and taxation rates. Under the circumstances, to now argue that the corporate existence of these affiliates can set aside for its benefit - Motorola can't have its cake and eat it too.

In its decision, the Seventh Circuit reaffirmed that a key congressional purpose of the FTAIA was to prevent the expansion of U.S. antitrust law that would interfere in the affairs of foreign nations, a caution expressed by the United State Supreme Court in *F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 165 (2004). Finally, the decision may have further implications for indirect purchaser plaintiffs who purchased imported finished goods and are suing under state antitrust laws.