U.S. Supreme Court Docket Oct. 2014 Term – Antitrust and Trade Regulation Cases

Docket No.	Date filed	Opinions of the Court	Subject	Status	Questions Presented
13-1174	3/26/14	Gelboim v. Bank of America Corp. Cert. granted 6/30/14	Antitrust	1/21/15—Decided (Ginsburg, R.) 12/9/14—Oral Argument Transcript; Oral Argument Audio Merit Briefs: Petitioner Brief (8/29/14) Respondent Brief (10/15/14) Petitioner Reply Brief (11/14/14) Select Amicus Briefs: U.S. Chamber of Commerce; Mayor and City Council of Baltimore, et al. Supreme Court Docket	**Held:** the order dismissing the petitioners' case in its entirety removed the petitioners from the consolidated proceeding, thereby triggering their right to appeal under §1291. Because cases consolidated for multidistrict litigation pretrial proceedings ordinarily retain their separate identities, an order disposing of one of the discrete cases in its entirety should qualify under §1291 as an appealable final decision. Whether and in what circumstances is the dismissal of an action that has been consolidated with other suits immediately appealable? Second Circuit decision (10/30/13)
13-534	10/25/13	North Carolina State Board of Dental Examiners v. FTC Cert. granted 3/3/14	Antitrust	2/25/15—Decided (Kennedy, A.) 10/14/14—Oral Argument Transcript; Oral Argument Audio Merit Briefs: Petitioner Brief (5/23/14) Respondent Brief (7/30/14) Petitioner Reply Brief (8/29/14) Select Amicus Briefs: American Antitrust Institute; West Virginia; American Association of Nurse	**Held:** the North Carolina State Board of Dental Examiners was not immune under the state action doctrine for excluding non-dentist providers from the market for teeth whitening services in violation of Section 5 of the FTC Act because the Board's conduct was not actively supervised by the state. Whether, for purposes of the state-action exemption from federal antitrust law, an official state

				Anesthetists; Antitrust Scholars Supreme Court Docket	regulatory board created by state law may properly be treated as a "private" actor simply because, pursuant to state law, a majority of the board's members are also market participants who are elected to their official positions by other market participants Fourth Circuit decision (5/31/13)

Docket No.	Date filed	Granted Petitions	Subject	Status	Questions Presented
14-462	10/21/14	DIRECTV, Inc. v. Imburgia Cert. granted 3/23/15	Advertising	Respondent Brief (1/28/15) Petitioner Reply Brief (2/10/15) Supreme Court Docket	Whether the California Court of Appeal erred by holding, in direct conflict with the Ninth Circuit, that a reference to state law in an arbitration agreement governed by the Federal Arbitration Act requires the application of state law preempted by the Federal Arbitration Act. California Court of Appeal decision (4/7/14)
13-271	8/26/13	Oneok, Inc. v. Learjet, Inc. Cert. granted 7/1/14	Antitrust	1/12/15—Oral Argument Transcript; Oral Argument Audio Merit Briefs: Petitioner Brief (9/18/14) Respondent Brief (11/21/14) Petitioner Reply Brief (12/22/14) Select Amicus Briefs: United States; Interstate Natural Gas Assoc. of Am.; Noble Americas Energy Solutions; Washington Legal	Does the Natural Gas Act preempt state-law claims challenging industry practices that directly affect the wholesale natural gas market when those claims are asserted by litigants who purchased gas in retail transactions?

				Foundation; American Antitrust Institute Supreme Court Docket	Ninth Circuit decision (4/10/13)

Docket No.	Date filed	Pending Petitions	Subject	Status	Questions Presented
14-1194	3/27/15	The Harvard Drug Group, LLC v. Barr	Privacy	Response due 4/30/15 Supreme Court Docket	Whether a case becomes moot, and thus beyond the judicial power of Article III, when the plaintiff receives an offer of complete relief on his claim. Whether the answer to the first question is any different when the plaintiff has asserted a class claim under Federal Rule of Civil Procedure 23 and receives an offer of complete relief before any class is certified. Eleventh Circuit decision (1/29/15)
14-1122	3/16/15	Motorola Mobility LLC v. AU Optronics	Antitrust	Response due 5/18/15 Supreme Court Docket	Is a cartel's delivery of price fixed goods overseas for incorporation into finished products imported directly to the United States immune from private suit under U.S. antitrust law? Absent special circumstances, may a motions panel assign itself to decide the merits of a case? Seventh Circuit decision (11/26/14)
14-1121	3/16/15	Hsiung v. U.S.	Antitrust	Response due 5/15/15	Whether a foreign seller's conduct can involve "import trade or import commerce" even when the seller himself does not import any goods into the United States. Whether a foreign

				Supreme Court Docket	price fixing agreement can have an effect on U.S. commerce that is "direct" and "gives rise to" a Sherman Act claim even when the agreement fixes prices only in foreign sales. Whether foreign price fixing agreements should be condemned as *per se* unlawful, instead of evaluated on a case-by-case basis under the rule of reason. Ninth Circuit decision (7/10/14)
14-1091	3/9/15	The Dow Chemical Co. v. Industrial Polymers, Inc.	Antitrust	Response due 5/11/15 Supreme Court Docket	Whether, in certifying a class under Federal Rule of Civil Procedure 23(b)(3), courts may presume class-wide injury from an alleged price-fixing agreement, even when prices are individually negotiated and individual purchasers frequently succeed in negotiating away allegedly collusive overcharges. Whether a class may be certified or a class-wide damages judgment affirmed where plaintiffs' common "proof" of damages is a model that (a) does not purport to determine the actual damages of most class members, but instead applies an "average" overcharge estimated from a sample of transactions of very different purchasers, or (b) assumes that defendants engaged in multiple antitrust violations, even though plaintiffs attempted to prove only one violation at trial. Tenth Circuit decision (9/29/14)
14-1078	3/3/2015	National Milk Producers Federation v. Edwards	Antitrust	Response due 4/6/15 Respondent Waiver	Whether a court may certify a class action without fully determining

				Supreme Court Docket	whether the plaintiff class had introduced admissible evidence, including expert testimony, to show that the case is susceptible to finding injury and damages on a class-wide basis. Whether a court's express refusal to resolve factual issues relevant to certification and to consider defendants' evidence challenging the plaintiff class' ability to prove injury and damages on a class-wide basis contravenes this Court's decisions in *Wal-Mart* and *Comcast*. Ninth Circuit decision (12/3/14)
14-857	1/16/15	Campbell-Ewald Co. v. Gomez	Privacy	Respondent Brief (3/23/15) Petitioner Reply Brief (4/7/15) Supreme Court Docket	Whether a case becomes moot, and thus beyond judicial power of Article III, when the plaintiff receives an offer of complete relief on his claims. Whether the answer to the first question is any different when the plaintiff has asserted a class claim under Federal Rule of Civil Procedure 23, but receives an offer of complete relief before any class is certified. Whether the doctrine of derivative sovereign immunity recognized in *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940), for government contractors is restricted to claims arising out of property damage caused by public works projects. Ninth Circuit decision (9/19/14)
14-891	1/16/15	SuperValu Inc. v. D&G, Inc.	Antitrust	Respondent Waiver Response due 4/29/15	Whether, in an antitrust case, fact issues about the competitive nature and effects of an agreement preclude

				Supreme Court Docket	applying the rule of reason at summary judgment and require deferring the decision of whether the per se rule applies until after a jury trial. Whether, in a business acquisition, the seller's agreement not to compete in the geographic area where that business operated is per se unlawful under the Sherman Antitrust Act. Whether, in a challenge to a business acquisition, the antitrust statute of limitations begins anew each time the defendant uses its increased market power to sell goods at an inflated price. Eighth Circuit decision (5/21/14)
14-783	1/2/15	Wagner v. City of Garfield Heights, Ohio	Advertising	Respondent Brief (1/30/15) Supreme Court Docket	Whether the mere assertion by a government that its sign regulations lack a discriminatory motive renders such regulations to be content-neutral sign regulations notwithstanding the facially content-based aspects of such sign regulations? In order to constitutionally justify a content-neutral sign regulation under intermediate scrutiny, must a government establish with evidence that the specific sign regulation at issue actually advances a significant governmental interest and leaves open alternative channels of communication or may a government rely simply upon *ipse dixit* and general pronouncements in case law concerning different forms or media of communication in order to satisfy the requirements of intermediate scrutiny? Sixth Circuit decision (8/19/14)

14-762	12/22/14	ProMedica Health System, Inc. v. FTC	Acquisitions & Mergers	Respondent Brief (4/1/15) Supreme Court Docket	In defining the relevant product market for a merger analysis, is the FTC permitted to ignore the group of services that market participants actually negotiate for and purchase as a package, and instead define the product market based on supply-side considerations, thus allowing the FTC to gerrymander the product market to artificially inflate market shares? Where the FTC relies exclusively on a unilateral-effects theory in challenging a merger—a theory that turns on substitutability, not on market share—may a court nonetheless adopt a strong presumption of anticompetitive harm based solely on market-share statistics? Assuming that the FTC can rely on a strong presumption of harm based on market-share statistics in unilateral-effects cases, can it then separately rely on market-share statistics to preclude consideration of the merger target's financial weakness to rebut that presumption? Sixth Circuit decision (4/22/14)
14-1	6/30/14	AEP Energy Services v. Heartland Regional Medical Center	Antitrust	Wisconsin Respondents Brief (8/29/14) Missouri Respondents Brief (9/2/14) Petitioners Reply Brief (9/16/14)	Whether due process permits a court to exercise specific personal jurisdiction over non-consenting, out-of-state defendants based on the plaintiffs' bare allegation that the defendants engaged in a nationwide conspiracy outside the forum that had an intended effect inside the forum (as well as presumably in every other state). Whether due process permits a court to exercise specific personal

				Supreme Court Docket	jurisdiction over non-consenting, out-of-state defendants when the defendants' limited forum conduct bears no causal relationship to the plaintiffs' claims. Ninth Circuit decision (4/10/13)
13-1379	5/15/14	Athena Cosmetics, Inc. v. Allergan, Inc.	State Unfair Trade Practices	Respondent Brief (7/18/14) Petitioner Reply Brief (8/5/14) Solicitor General Invitation (10/6/14) Supreme Court Docket	Whether, under *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341 (2001), the Food, Drug, and Cosmetic Act impliedly preempts a private state-law claim for unfair competition premised on a party's purported failure to obtain FDA approval, where FDA itself has not imposed any such requirements. Federal Circuit decision (12/30/13)

Docket No.	Date filed	Denied Petitions	Subject	Status	Questions Presented
14-988	2/10/15	Emilio v. Sprint Spectrum L.P.	State Unfair Trade Practices	**Cert. denied 3/23/15** Respondent Waiver Response due 3/16/15 Supreme Court Docket	Once an arbitrator rules that the parties' arbitration agreement does not permit class arbitration and that the parties' intent was to preclude—not permit—class arbitration, can the arbitrator then refuse to compel bilateral arbitration, and instead provide a party to a binding arbitration agreement the right to abandon arbitration and pursue class action litigation? Second Circuit decision (11/11/14)

14-702	12/11/14	Straw v. Kloecker	RICO	**Cert. denied 1/20/15** Respondent Waiver Response due 1/15/15 Supreme Court Docket	Whether, as a matter of law under the civil provisions of the RICO Act, a law firm may demand from a disabled person, using threats, the private health information of the disabled person including access to the disabled person's private Medicare claims database information, with the express purpose of giving this health information to a newspaper publisher defamation defendant. Whether civil RICO's enterprise and racketeering requirements were met when defendants and their client worked together to demand the private health information, the threat letter was sent by U.S. Mail and Email, and the letter indicated that the newspaper would keep and use the health information indefinitely, with no Privacy Act notice or other guarantee of privacy of the information. Seventh Circuit decision (8/19/14)
14-641	12/1/14	SD-3C, LLC v. Oliver	Antitrust	**Cert. denied 4/6/15** Respondent Brief (2/27/15) Petitioners Reply Brief (3/17/15)	Whether the Ninth Circuit erred when it held that Petitioners are subject to antitrust suits seeking injunctive relief against the foundational terms of a decade-old standard setting and technology licensing arrangement for as long as third parties continue to make sales of goods embodying that technology? Whether the Ninth Circuit erred when it treated its statute of limitations analysis as dispositive on the issue of laches, without considering the broader equitable issues associated with permitting challenges to long-settled business

				Supreme Court Docket	arrangements? Ninth Circuit decision (5/14/14)
14-577	11/18/14	Carpenter Co. v. Ace Foam, Inc.	Antitrust	**Cert. denied 3/2/15** Respondent Brief (12/23/14) Petitioner Reply Brief (1/6/15) Petitioner Supp. Brief (1/29/15) Respondent Supp. Brief (2/3/15) Supreme Court Docket	Whether the standing requirements of Article III apply to all members of a class certified under Rule 23. Whether certifying a class under Rule 23(b)(3) is improper where individualized damages issues predominate, and where plaintiffs rely exclusively on aggregate damages models that calculate damages purportedly incurred by the class as a whole, rather than by individual class members. Sixth Circuit decision (9/29/14)
14-554	11/13/14	In re Managed Care Litigation	Antitrust	**Cert. denied 2/23/15** Respondent Brief (1/14/15) Petitioner Reply Brief (1/27/15) Select Amicus Briefs: American Medical Association Supreme Court Docket	May a settlement agreement in a class action waive all class members' rights to pursue statutory remedies for the defendant's future violations of the federal antitrust laws, as a divided panel of the Eleventh Circuit held, or is such a waiver void because it violates the antitrust laws or public policy, as the Third, Fifth, Sixth, and Eighth Circuits have held, and as this Court stated in dicta? Can a federal antitrust cause of action be asserted before the occurrence of the acts and injuries from which the cause of action arises, as a divided panel of the Eleventh Circuit held, or does the cause of action accrue when the plaintiff is injured, as this Court held? Eleventh Circuit decision (6/18/14)
14-540	11/12/14	Panasonic Corp. v. Samsung Electronics	Antitrust	**Cert. denied 1/20/15**	Whether public standard-setting and

		Co., Ltd.		Respondent Brief (12/15/14) Petitioner Reply Brief (12/29/14) Supreme Court Docket	patent-pool licensing agreements that long predate the Clayton Act's four-year limitations period may indefinitely be subjected to antitrust challenge based on the defendants' ongoing collection of royalties, where the plaintiff, a longtime licensee, delays filing suit to challenge those pre-limitations agreements until the market has come to depend upon the licensed technology. Ninth Circuit decision (4/4/14)
14-543	11/10/14	United National Maintenance, Inc. v. San Diego Convention Center, Inc.	Antitrust	**Cert. denied 1/12/15** Respondent Waiver Response due 12/15/14 Select Amicus Briefs: American Antitrust Institute Supreme Court Docket	Whether the clear-articulation test is satisfied here solely because, as the court of appeals held, the California legislature "authorized San Diego to create a commission that would 'manage the use' of the convention center." Whether San Diego Convention Center (SDC) is a "private" actor—and must therefore satisfy the active-supervision test—because its board of directors includes business leaders and SDC competes in the market for trade show cleaning services in San Diego. Ninth Circuit decision (8/15/14)
14-529	11/6/14	Infanti v. Scharpf	RICO	**Cert. denied 1/12/15** Respondent Brief (12/9/14)	Whether lost compensation, lost opportunity to consummate the settlement of a dispute that would have resolved a $15 million judgment, and the pecuniary loss associated with the repayment of a loan that petitioner personally guaranteed, constitute injury to "business or property" by reason of a violation of RICO, such that

				Supreme Court Docket	the petitioner would have standing to bring suit under 18 U.S.C. § 1964(c). Second Circuit decision (6/24/14)
14-190	8/14/14	Bertrand v. Mullin	Advertising	**Cert. denied 10/14/14** Respondent Brief (9/3/14) Supreme Court Docket	Whether the Iowa Supreme Court, in deciding whether a political campaign advertisement constituted actionable defamation by implication, erred by applying an unreasonably high legal standard when it found a lack of sufficient evidence of actual malice pursuant to *N.Y. Times v. Sullivan*, 376 U.S. 254, even though Petitioner informed Respondents several times of the false nature of the advertisement (1) at a meeting and (2) through a lawsuit which (a) sought immediate injunctive relief and (b) was accompanied by a sworn affidavit refuting the false implication. Supreme Court of Iowa decision (5/16/14)
14-110	8/1/14	Dean Foods Co. v. Food Lion, LLC	Antitrust	**Cert. denied 11/17/14** Respondent Brief (9/26/14) Petitioner Reply Brief (10/14/14) Supreme Court Docket	Whether, in antitrust or other cases in which the plaintiff must prove causation in fact as an element of the claim, a plaintiff must produce evidence of causation to defeat a motion for summary judgment, or whether a court may instead presume causation at summary judgment and permit the case to proceed to trial based on that presumption. Sixth Circuit decision (1/3/14)
14-77	7/23/14	Kolon Industries, Inc. v. E.I. Du Pont de Nemours & Co.	Antitrust	**Cert. denied 11/3/14**	Under 28 U.S.C. sec. 455(b), is a federal judge relieved of his mandatory

				Respondent Brief (8/25/14) Petitioner Reply Brief (10/7/14) Supreme Court Docket	statutory duty of self-disqualification, simply because neither party filed a timely motion to disqualify the judge? Fourth Circuit decision (4/3/14)
14-69	7/18/14	Taleff v. Southwest Airlines Co.	Acquisitions & Mergers	**Cert. denied 10/6/14** Response due 8/21/14 Supreme Court Docket	Whether the Supreme Court's decisions enjoining mergers under Sec. 7 of the Clayton Act, which have never been overruled and which have been interpreted by the 7th Circuit to collectively stand for the proposition that a nontrivial acquisition of a significant rival in an industry with a trend towards concentration is presumptively illegal, are still binding and viable since many of the lower courts have either ignored them completely or overruled them *de facto*? Ninth Circuit decision (2/4/14)
14-60	7/16/14	MiniFrame Ltd. v. Microsoft Corp.	Antitrust	**Cert. denied 10/6/14** Respondent Brief (8/26/14) Petitioner Reply Brief (8/29/14) Supreme Court Docket	Whether a cognizable claim can be stated for violation of Sec. 2 of the Sherman Act under the Supreme Court's decision in *United States v. Grinnell Corp.* 384 U.S. 536 (1966), where a monopolist used its market power in one market to prohibit consumers from purchasing a rival's product in a related market without a "superior product [in the related market], business acumen or historic accident" simply by incorporating that prohibition as a new license restriction for its dominant software product in the market it monopolizes. Second Circuit decision (12/23/13)

13-1494	6/13/14	Malaney v. UAL Corp.	Acquisitions & Mergers	**Cert. denied 10/6/14** Respondent Waiver Response due 7/17/14 Supreme Court Docket	For purposes of defining a relevant product market under Sec. 7 of the Clayton Act, is it erroneous to define a relevant market based on demand considerations alone? Is it a violation of Due Process when a lower court uses its application of standards for preliminary injunctive relief under Sec. 16 of the Clayton Act, to subsequently bind a litigant in a claim for damages under Sec. 4 of the Clayton Act? Whether the Supreme Court's decisions enjoining mergers under Sec. 7 of the Clayton Act, which have never been overruled and which have been interpreted by the Seventh Circuit to collectively stand for the proposition that a nontrivial acquisition of a significant rival in an industry with a trend towards concentration is presumptively illegal, are still binding and viable since many of the lower courts have either ignored them completely or overruled them de facto? Ninth Circuit decision (1/16/14)
14-69	5/27/14	Ross v. FTC	Consumer Protection	**Cert. denied 10/6/14** Respondent Brief (7/30/14) Petitioner Reply Brief (8/8/14) Supreme Court Docket	Whether, following the Supreme Court's decision in *Meghrig v. KFC Western, Inc.*, 516 U.S. 479 (1996), the presence of elaborate enforcement provisions authorizing monetary relief under Section 19 of the FTC Act, precludes interpreting monetary remedies into the purely injunctive language of Sec. 13(b). Fourth Circuit decision (2/25/14)

14-226	5/23/14	Ross v. Stooksbury	RICO	**Cert. denied 10/20/14** Respondent Brief (9/12/14) Petitioner Reply Brief (9/26/14) Supreme Court Docket	Is the standing requirement for civil RICO claims under 18 USC Sec. 1964(c) jurisdictional in nature under Article III of the United States Constitution, such that a RICO plaintiff must demonstrate both causation and injury under 18 USC Sec. 1964 in order to meet the threshold requirements of Article III? May a plaintiff assert a civil RICO claim based solely on a derivative injury as a minority shareholder in a limited liability company, where the LLC entity is not itself a party, and there is no direct injury to the plaintiff? Sixth Circuit decision (6/13/13)