

**U.S. Department of Justice**

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

May 19, 2014

Gino J. Agnello
Clerk of Court
U.S. Court of Appeals for the Seventh Circuit
Room 2722
219 S. Dearborn Street
Chicago, IL 60604

Re: *Motorola Mobility LLC v. AU Optronics Corp., et al.*, No. 14-8003

Dear Mr. Agnello:

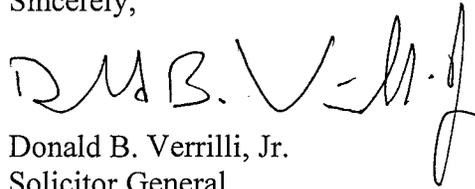
The United States thanks the Court for its invitation to “the United States Department of Commerce and the United States Department of State to file briefs as amici curiae with respect to the petition for rehearing en banc.” On April 24, 2014, the government submitted an amicus brief for the United States and the Federal Trade Commission, which stated in conclusion that this “Court should vacate the panel decision and order briefing and argument before the panel or *en banc* court.” Br. 15. I authorized that filing on behalf of the United States after appropriate consultation with interested components of the federal government, and it reflects the views of the United States on the matters expressed therein. See 28 C.F.R. 0.20(c). Neither the United States nor any of its departments plans to file an additional brief at this stage of the appeal.

The Court’s invitation expressed a “special interest” in the government’s “views on the potential effects on foreign relations resulting from the issues presented by this case.” As the government’s brief explains, the Foreign Trade Antitrust Improvements Act of 1982 reflects Congress’s continuing recognition that the Sherman Act’s prohibitions may appropriately be applied to conduct involving even wholly foreign commerce, so long as that conduct has a direct, substantial, and reasonably foreseeable effect on U.S. import or domestic commerce. Br. 2, 11. This “congressional determination ‘avoid[s] unreasonable interference with the sovereign authority of other nations’ because it is consistent with principles of prescriptive comity.” Br. 11 (quoting *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164 (2004)).

In the present case, Japan's Ministry of Economy, Trade and Industry submitted an amicus brief to the district court in October 2013. The United States has criminally prosecuted several foreign defendants for fixing the price of LCD panels manufactured abroad, some of which were incorporated into products imported and sold in the United States. We are not aware of any instance in which a foreign government has expressed disapproval of those prosecutions to any official of the United States. Although Motorola's ultimate right to recovery in this case depends in part on factual and legal issues that are distinct to private suits (see, *e.g.*, Br. 14-15), Motorola alleges substantially the same unlawful conduct as gave rise to those prosecutions.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D.B. Verrilli, Jr.", with a stylized flourish at the end.

Donald B. Verrilli, Jr.
Solicitor General

