

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

June 2, 2014

RICHARD A. POSNER, *Circuit Judge*

MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

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|------------------------------------|----|----------------------------|----------------------------|
| MOTOROLA MOBILITY LLC |] | Petition for Leave to Take | |
| <i>Plaintiff-Appellant,</i> |] | an Interlocutory Appeal | |
| |] | from the United States | |
| No. 14-8003 | v. |] | District Court for the |
| | |] | Northern District of |
| AU OPTRONICS CORP., <i>et al.,</i> | |] | Illinois, Eastern Division |
| <i>Defendants-Appellees,</i> | |] | |
| | |] | No. 09 C 6610 |
| | |] | |
| | |] | Joan B. Gottschall, |
| | |] | District Judge. |

On May 1 the panel to which the appeal in this case had been assigned invited, in a letter addressed to the Solicitor General of the United States, the United States Department of Commerce and the United States Department of State to file briefs as amicus curiae with respect to the petition for rehearing en banc. We said that "the Departments may address any aspect of the case in which they have an interest in expressing their views. The court has special interest, however, in the Departments' views on the potential effects on foreign relations resulting from the issues presented by this case."

Mr. Solicitor General, you responded to the court in a letter dated May 19 in which you stated that you had "authorized the filing [of the FTC-Antitrust Division amicus curiae brief] after consultation with interested components of the federal government, and it reflects the views of the United States on the matters expressed therein.... Neither the United States nor any of its departments plans to file an additional brief at this stage of the appeal." The components were not identified.

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Enclosed with the letter was an amicus curiae brief that the Japanese Ministry of Economy, Trade and Industry had submitted to the district court in this case last October. And attached to *that* brief was a brief filed by the U.K., Germany, Japan, Switzerland, and the Netherlands criticizing, in an earlier case, what the brief characterizes as overly aggressive extraterritorial enforcement of American antitrust law. Your letter did not comment on the significance of either brief for the present appeal. We ordered a further response from you but have withdrawn the order.

We remain interested in, and would be grateful to receive from you, some further information, whether in another letter from you or in a supplement to the amicus curiae brief filed by the Federal Trade Commission and the Antitrust Division of the Department of Justice, concerning the potential impact on U.S. foreign commercial relations, and on U.S. foreign relations more generally, of deciding the present appeal one way or another. The reason for this request is that one of the concerns expressed in the panel opinion sought to be reheard en banc is with the possible harm to U.S. foreign relations of extraterritorial enforcement (of U.S. antitrust law) that is perceived by foreign countries as an improper interference with their sovereign economic policies.

Although your letter did not characterize or comment on the Japanese brief or the briefs of the other countries (all friends of the United States) attached to that brief, all the briefs express great concern with such enforcement, and in the case of the Japanese brief the concern expressed is with specific reference to the present case. Furthermore, since our receipt of your letter, the Republic of Korea (i.e., South Korea) has filed without objection by any party an amicus curiae brief expressing concerns similar to those expressed in the other foreign briefs, and Taiwan has filed a statement in a similar vein. We would be grateful for your thoughts on the concerns expressed by the foreign governments.

We emphasize that, having withdrawn our order of May 22, we are merely requesting the above information. But we believe that a positive response will be helpful not only to the court, but also to the credibility of the amicus curiae brief filed with your approval by the FTC and the antitrust division.