No. 25-1358

In the Supreme Court of the United States

NHK SPRING CO., LTD.; NHK INTERNATIONAL CORPORATION; NHK SPRING (THAILAND) CO., LTD.; NAT PERIPHERAL (DONG GUAN) CO., LTD.; NAT PERIPHERAL (H.K.) CO., LTD.,

Petitioners,

v.

SEAGATE TECHNOLOGY LLC; SEAGATE TECHNOLOGY (THAILAND) LTD.; SEAGATE SINGAPORE INTERNATIONAL HEADQUARTERS PTE., LTD.; SEAGATE TECHNOLOGY INTERNATIONAL,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under the Foreign Trade and Antitrust Improvements Act (FTAIA), United States antitrust law applies to all non-export conduct that "has a direct, substantial, and reasonably foreseeable effect on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations," where "such effect gives rise to a claim under" the Sherman Act. 15 U.S.C. § 6a.

This case does not present the question asserted by petitioners, because nowhere did the court below hold that "domestic negotiations are sufficient" to trigger U.S. antitrust law. Pet. i. This case instead presents a very different question as to the subset of plaintiffs-respondents who are foreign purchasers:

Whether the Ninth Circuit correctly determined based on the facts of the case that foreign affiliates of a U.S. company may bring claims under U.S. antitrust law against suppliers whose criminal guilty plea admitted the conspiracy had a "direct, substantial, and reasonably foreseeable effect on interstate and import trade and . . . commerce" where the conspiracy fixed U.S. prices for suspension assemblies and where the foreign affiliates, no different from any U.S. purchaser, were contractually bound to pay those inflated U.S. prices.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Respondent Seagate Technology LLC is a subsidiary of Seagate Technology (US) Holdings, Inc., which is a subsidiary of Seagate Technology (Netherlands) B.V., which is a subsidiary of Seagate Singapore International Headquarters Pte. Ltd.

Respondents Seagate Technology (Thailand) Co., Ltd. and Seagate Singapore International Headquarters Pte. Ltd. are subsidiaries of Seagate Technology International.

Respondent Seagate Technology International is a subsidiary of Seagate Technology International [Cayman Islands], which is a subsidiary of Seagate HDD Cayman, which is a subsidiary of Seagate Data Storage Technology Pte. Ltd., which is a subsidiary of Seagate Technology Holdings plc, a publicly traded company (NYSE: STX).

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INTRODUCTION

NHK's petition rests entirely on the premise that the court of appeals held "*domestic negotiations are sufficient* to bring foreign injuries from allegedly price-fixed foreign transactions within the reach of the Sherman Act." Pet. i (Question Presented) (emphasis added). But that premise is false. The Ninth Circuit faithfully applied the FTAIA, properly focusing on the "domestic effects" of NHK's conduct, not the site of the negotiations. See Pet. App. 20a–26a. The Ninth Circuit did not adopt any sweeping situs-of-the-negotiations rule, as Petitioners claim, or anything like it. Therefore, there is no basis for review.

The FTAIA "place[s] all (nonimport) activity involving foreign commerce outside the Sherman Act's reach" and "then brings such conduct back within the Sherman Act's reach provided that the conduct" (i) has a "direct, substantial, and reasonably foreseeable" effect on domestic commerce that (ii) "gives rise to" a Sherman Act claim. *F. Hoffmann-La Roche Ltd.* v. *Empagran S.A.*, 542 U.S. 155, 162 (2004) (emphasis omitted); 15 U.S.C. § 6a(1)–(2).

The court below correctly applied that very test. See Pet. App. 19a–20a. As to the first prong, the court held that the criminal conspiracy to which NHK pleaded guilty fixed U.S. prices of suspension assemblies and thus had a direct, substantial, and reasonably foreseeable effect on U.S. commerce. *Id.* at 20a–22a. NHK's guilty plea in the United States District Court for the Eastern District of Michigan admitted as much. See *id.* at 9a, 21a. As to the second prong, the court chronicled Seagate's extensive evidence regarding whether that domestic effect "g[ave] rise to" the claims of the Seagate foreign affiliates who are among the plaintiffs here. The court recognized that the requisite causal showing was met because those price-fixed contracts "setting inflated U.S. prices" also "set and limited what the foreign [affiliates] could pay." *Id.* at 25a–26a; see also *id.* at 23a–26a. The court then remanded the issue for further proceedings on that "factual questio[n]." *Id.* at 26a.

Far from providing the rule of decision, the situs of the negotiations barely figured in the court's analysis. The court certainly did not hold the situs of negotiations sufficient to subject NHK's conduct to the Sherman Act. Indeed, the Ninth Circuit expressly *rejected* Seagate's alternative argument that the Sherman Act necessarily applies where "'some of the anticompetitive price-fixing conduct' . . . took place in *America*." Pet. App. 16a n.3 (quoting *Empagran*, 542 U.S. at 163, 165). NHK never mentions this.

The court instead stressed the direct connection between the U.S. *prices* fixed by NHK's conspiracy and the prices paid by Seagate's foreign affiliates. Specifically, the agreements dictated "the U.S. prices for suspension assemblies, which in turn set the prices of the foreign [purchases]." Pet. App. 24a. "[T]here only was *one* price, the U.S. and foreign prices being one and the same." *Id.* (emphasis original) (internal quotation marks omitted). The foreign entities making those purchases "lacked any authority over the price, quantity, or timing of their orders." *Id.* The "unique nature" of those agreements distinguishes the claims here from "[m]ost foreign injury claims," where "the link is too speculative or attenuated." *Id.* It also distinguishes this Court's *Empagran* decision, which bars claims alleging foreign injuries that are "*independent of* the domestic effect." 542 U.S. at 160 (emphasis added).

It thus turns out that NHK's "question presented" is not presented. Once this becomes clear, nothing remains of the petition—including the allegation of a circuit split.

According to NHK, the Ninth Circuit "reject[ed]" (Pet. 4) the Seventh Circuit's opinion in *Motorola Mobility LLC* v. *AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015) (Posner, J.). Yet the court below agreed with much of the legal analysis in *Motorola*, while finding both "the facts and context of [this] case" to be "significantly different." Pet. App. 27a.

To take an obvious difference, the alleged injury in *Motorola* occurred *before* the asserted domestic "effect." The alleged domestic effect was higher prices for finished cellphones imported into the United States, but that could not have caused the injury—i.e., the overcharges paid abroad for component parts. Here, by contrast, the alleged causal chain runs the right way: NHK's conspiracy produced agreements that first inflated U.S. prices for suspension assemblies, which in turn governed what Seagate's foreign affiliates paid. This is a paradigmatic form of proximate cause.

Beyond all that, this case is an especially poor vehicle to address the FTAIA's scope. The facts are "unique." Pet. App. 24a, 29a. Even setting that aside, nothing commends review in this interlocutory posture, where several independently dispositive issues have been remanded. See *id.* at 26a, 30a–31a. For example, the Ninth Circuit rejected the district court's conclusion that U.S.-based Seagate Technology LLC could not raise the same U.S. antitrust claims as its foreign affiliates because it had not adequately pleaded its high degree of control over its foreign affiliates under the control exception to the general rule against indirect purchaser claims of *Illinois Brick Co.* v. *Illinois*, 431 U.S. 720 (1977). Thus, the appeals court directed the district court to look at that domestic plaintiff's antitrust claim, to which the FTAIA is immaterial. Pet. App. 30a–31a. Petitioners do not challenge that ruling. Furthermore, the district court has yet to apply the causation standard established by the court below to the foreign purchasers' claims. See *id.* at 26a. And the Ninth Circuit also had no occasion to reach the FTAIA's import effects exception, which independently supports the ruling below. Finally, NHK's guilty plea both admitted the factual predicates for applying the FTAIA's exceptions and allowed NHK to avoid criminal restitution precisely because "civil remedies would be available" to its private victims. *Id.* at 8a–9a, 21a–22a, 29a.

In sum, the Ninth Circuit correctly applied the FTAIA and this Court's precedents, recognizing that the Act's exceptions are "strict by design" and that "there is good reason to be circumspect when it comes to the Sherman Act's territorial scope." Pet. App. 20a, 15a. Its decision on this unique record is not remotely going to "open[] U.S. courts to a flood of lawsuits from suppliers overseas." *Id.* at 29a. NHK fixed prices in the United States, directly injuring Respondents. It is time for NHK to be held accountable for its egregious misconduct.

The Court should deny review.

STATEMENT

1. California-based Seagate Technology LLC[1] manufactures hard disk drives (HDDs) for many types of

[1] Unless otherwise noted, "Seagate" refers to all Respondents, collectively; "Seagate Thailand" refers to Seagate Technology (Thailand) Ltd; and "Seagate Singapore" refers to Seagate Singapore International Headquarters Pte. Ltd. Because the differences between Petitioner entities are not relevant to this dispute, "NHK" may refer to all Petitioners or any individually.

consumer electronic devices. One critical component of these hard drives is the suspension assembly. A hard drive stores data on rapidly spinning platters, and a suspension assembly holds the recording head just nanometers above those platters while they rotate at extraordinary speeds. Pet. App. 6a–7a. At all relevant times, Seagate sourced its suspension assemblies from three main suppliers, one of which is NHK Spring Co., Ltd., a Japanese company.

It is undisputed that NHK and its supposed competitors conspired to fix prices of suspension assemblies for nearly a decade. Pet. App. 8a. NHK admitted as much in pleading guilty to a federal crime. *Id.* at 5a, 8a.

To fully appreciate the operation of NHK's conspiracy, one first must understand the nature of Seagate's process for acquiring suspension assemblies. That process followed the terms of the Product Supply Agreement, a long-term master agreement between NHK and Seagate Technology LLC governed by the "laws of the State of California." That agreement permitted prices to be updated each quarter, and contemplated that Seagate's affiliates, whether controlled by Seagate Technology LLC or under common control with it, would issue regular purchase orders to NHK. ER-890–903[2]; see also Pet. App. 6a, 9a, 24a.

The Product Supply Agreement left "no uncertainty as to the price and allocation or other supply terms" regarding suspension assemblies—it was "the 'bible' of the [parties'] relationship." ER-1132–33. Pursuant to that agreement, Seagate Technology LLC's Commodities Management Team in Minnesota operated a

[2] References to "ER" are to the Appellants' Excerpts of Record filed in the Ninth Circuit.

quarterly "Request for Quotation" ("RFQ") process, asking suspension-assembly suppliers to bid along several dimensions, including "prototypes, mass-production price, model, volume band, and program." Pet. App. 9a. The Commodities Management Team then negotiated with suppliers on the basis of these bids, culminating in agreements on prices and purchase volumes for the applicable fiscal quarter. *Id.* at 9a–10a. Some suspension assemblies were to be imported directly into the United States, but most were received in the first instance by Seagate Thailand or Seagate Singapore and were manufactured into hard drives before being imported into the United States. *Id.* at 7a–8a.

NHK now attempts to portray the individual purchase orders exchanged overseas as the critical "transactions." *E.g.*, Pet. i, 4–5, 8–9. But NHK admitted that prices were negotiated quarterly, "not per transaction." Pet. App. 24a. Indeed, it was the master agreement and its quarterly RFQ process that set all key terms, including "pricing, volume/allocation, shipment and delivery, product warranty, choice of law, and other[s]." ER-1132; ER-27. And the terms of the master Product Supply Agreement "take precedence" over "the terms of any purchase order." ER-891. Seagate's foreign affiliates therefore "lacked any authority to decide on any terms of purchase, whether price, quantity, or even the timing of their orders" and instead "simply entered orders into their purchase order systems at precisely the times, rates, and prices that [the Commodities Management Team] instructed them to enter." Pet. App. 9a.

NHK and its should-have-been competitors rigged Seagate's bidding process and the bidding processes of other hard drive manufacturers by exchanging and fixing prices. See Pet. App. 8a–9a.

2. NHK pleaded guilty to criminal price-fixing under Section 1 of the Sherman Act. Pet. App. 8a. NHK's plea admitted that, from mid-2008 through at least April 2016, it joined a conspiracy whose "primary purpose" was to "'fix the prices of [hard disk drive] suspension assemblies sold in the United States and elsewhere.'" *Id.* at 9a (alteration original). NHK admitted it "'exchanged suspension assembly pricing information, including anticipated pricing quotes,' with its competitors and 'used the exchanged information to inform their negotiations with U.S. and foreign customers that purchased HDD suspension assemblies.'" *Id.* at 21a (cleaned up); see also *id.* at 10a (describing how NHK rigged bids). Its plea further acknowledged that the conspiracy had a "direct, substantial, and reasonably foreseeable effect" on interstate and import commerce. *Id.* NHK agreed not to contradict these admissions in future litigation. See ER-307–331. Two NHK executives were also indicted for their role in the criminal conspiracy. Pet. App. 10a.

The Department of Justice sought, and the Eastern District of Michigan imposed, a $28.5 million criminal fine. Pet. App. 8a. The government did not seek restitution, however, because NHK agreed that "'civil causes of action'" were available to right its wrongs. *Id.*; see ER-342 ("The parties have agreed that, in light of the availability of civil causes of action, which potentially provide for a recovery of a multiple of actual damages, the recommended sentence does not include an order of restitution.") (Sentencing Mem., citing Plea Agreement).

3. Shortly after NHK entered its guilty plea, Seagate (including Seagate Thailand and Seagate Singapore) brought the very causes of action contemplated by the prosecutors and NHK. Seagate alleged,

among other things, that NHK and its coconspirators[3] violated the Sherman Act and state antitrust statutes. Pet. App. 10a.

NHK moved for partial summary judgment on claims arising from suspension assemblies billed and shipped to Seagate Thailand and Seagate Singapore. See Pet. App. 11a. The district court initially granted the motion only in part, holding that claims involving products that never entered the United States were not subject to the FTAIA's domestic effects exception, *id.* at 46a–48a, but that claims involving products that were incorporated into finished hard drives later shipped to the United States could proceed, *id.* at 43a–46a. See also *id.* at 11a.

On reconsideration, however, the district court changed course on the latter. It concluded that the FTAIA's exception for "import commerce" required direct importation of the price-fixed assemblies by defendants themselves. Pet. App. 54a–58a; see also *id.* at 12a. The court further concluded that Seagate's operative complaint contained no allegations to support that either Seagate Technology LLC or Seagate Technology International was an indirect purchaser of price-fixed suspension assemblies with standing to seek damages. It also denied leave to amend to add such claims. *Id.* at 12a, 59a–62a.

4. Seagate obtained interlocutory review of the district court's orders. Pet. App. 12a. The Ninth Circuit then vacated, remanding for further proceedings.

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[3] NHK's coconspirators have since settled the civil claims. See Respondents' C.A. Br. 17, *Seagate Technology LLC* v. *NHK Spring Co., Ltd.*, No. 24-4470 (9th Cir. filed Oct. 29, 2024), ECF No. 15.

After rejecting Seagate's arguments that the Sherman Act necessarily applied because "'some of the anticompetitive price-fixing conduct alleged . . . took place in *America*," Pet. App. 16a n.3 (citation omitted) (emphasis original), and that the FTAIA's exception for "import commerce" allowed roughly one-third of plaintiffs' claims to proceed, *id.* at 16a–19a, the Ninth Circuit turned to the FTAIA's domestic effects exception. It held that the exception's first prong (effect on domestic commerce) was met and that the district court also erred in applying its second prong (causation). *Id.* at 20a–26a; see also *id.* at 26a–30a. The appeals court thus remanded for the district court to consider, under the proper legal standard, whether "Seagate has adduced enough evidence of a direct, proximate relationship to pass summary judgment," *id.* at 26a, and Seagate Technology LLC's claims as an indirect purchaser, *id.* at 30a–31a.

In addressing the domestic effects exception, the Ninth Circuit recognized that NHK's plea agreement itself supported the conclusion that its conduct had "a direct, substantial, and reasonably foreseeable effect" on domestic commerce that in turn gave rise to Seagate Thailand and Seagate Singapore's antitrust claims. Pet. App. 21a; see 15 U.S.C. § 6a(1)(A), (2). The court below highlighted NHK's admissions that (i) its agreement was to fix prices of "suspension assemblies to be sold in the United States and elsewhere"; (ii) it used the exchange of information to inform "negotiations with U.S. and foreign customers that purchased [hard disk drive] suspension assemblies"; and (iii) "[d]uring the relevant period, the conspiracy . . . had a direct, substantial, and reasonably foreseeable effect on interstate and import trade [and] commerce." Pet. App. 21a. In finding the requisite effect on domestic commerce, the court explained that NHK's price-fixing conduct "had a significant and direct impact on domestic commerce because companies (other than Seagate Technology LLC) overpaid for the suspension assemblies bought here in the states." *Id.* at 22a. As the court held, "NHK's actions had a direct, substantial, and reasonably foreseeable effect on domestic commerce by fixing prices of suspension assemblies sold here." *Id.* at 23a.

Turning to the second prong—whether the effect "gives rise to" a Sherman Act claim, 15 U.S.C. § 6a(2)—the Ninth Circuit applied the proximate cause standard that it and other circuits have adopted post-*Empagran*. It stated: "Seagate must show that the harm of NHK's conduct on U.S. domestic commerce directly caused Seagate Thailand's and Seagate Singapore's respective overcharge claims." Pet. App. 23a–24a. While acknowledging that "[m]ost foreign injury claims fail at this step" because the connection between domestic effects and foreign overcharges is usually "too speculative or attenuated," the appeals court concluded that, taking the facts in the light most favorable to Seagate (the non-movant), the "unique nature" of Seagate's claims likely satisfied the FTAIA. *Id.* at 24a.

Specifically, given the master agreement between Seagate Technology LLC and NHK and that Seagate Thailand and Seagate Singapore "lacked any authority over the price, quantity, or timing of their orders" and "had to follow the lead" of the U.S.-based Seagate Technology LLC, "the higher U.S. prices for suspension assemblies resulting from NHK's price-fixing would have directly caused Seagate's foreign subsidiaries to overpay." Pet. App. 24a; see also *id.* (observing "there only was *one* price, the U.S. and foreign prices being one and the same" (emphasis original) (internal quotation marks omitted)); *id.* at 25a

("Seagate's theory . . . is rooted in the certainty of binding pricing contracts."); *id.* at 6a, 9a, 20a–21a (discussing the master agreement).

The district court had thus erred in concluding, among other things, "that rigged U.S. prices cannot proximately cause injuries abroad." Pet. App. 25a. And because it applied the wrong analysis, the district court had failed to address "factual questions . . . about whether the post-RFQ prices truly set and limited what the foreign subsidiaries could pay." *Id.* at 26a. Thus, while the Ninth Circuit stated, after reviewing Seagate's extensive evidence, that it "*suspect*[*ed*] Seagate has adduced enough evidence of a direct, proximate relationship," the appeals court ultimately remanded for the district court to consider the issue further. *Id.* (emphasis added).

The Ninth Circuit also carefully analyzed the Seventh Circuit's decision in *Motorola*, 775 F.3d 816, which "held that Motorola's parent entity—Motorola Mobility LLC—could not sue on its subsidiaries' behalf for the injuries the subsidiaries suffered abroad." Pet. App. 27a. The court explained that it agreed with several aspects of the *Motorola* decision, but ultimately distinguished *Motorola* on the ground that both its "facts and context" were "significantly different." *Id.*

As an initial matter, *Motorola*'s "holding was based on standing for a derivative buyer, not the FTAIA," which both distinguished it from this case and limited the potential significance of the Seventh Circuit's concerns about "the practical problems of redressing wholly foreign injuries in American courts." Pet. App. 26a–27a. *Motorola* had posited, seemingly for policy reasons (and in conflict with *Empagran* and the governing statutes) "that American courts should not entertain Sherman Act claims based on foreign injuries." *Id.* at 27a. As the court below recognized, the FTAIA's test does not reach so far. Indeed, *Empagran* confirmed that "'Congress [did not] place the relevant words "gives rise to a claim" in the FTAIA to suggest any geographical limitation.'" *Id.* at 27a–28a (quoting *Empagran*, 542 U.S. at 174) (alteration original).

The Ninth Circuit also emphasized that Seagate Thailand and Seagate Singapore had not suffered "typical foreign injur[ies]," but rather asserted claims "suffused with domestic elements." Pet. App. 28a. "Seagate Singapore and Seagate Thailand suffered injuries because of the price-fixing first inflicted on U.S. *soil* and suffered by *Americans*." *Id.* (emphasis original). The same was not true in *Motorola*. There, only the domestic entity sued. It sought to recover for the purported injuries of its foreign subsidiaries, and its claims were based on alleged effects in U.S. commerce occurring *after* the subsidiaries were overcharged. The court here observed that "[n]early all [of NHK's] misconduct . . . either targeted or centered on the United States because fixing U.S. commercial activity meant inflating the price of suspension assemblies everywhere" ameliorated the "comity concerns" identified in *Motorola*. *Id.* at 28a–29a.

Finally, the Ninth Circuit addressed Seagate's argument that Seagate Technology LLC had plausible indirect purchaser claims under a settled exception to the rule of *Illinois Brick Co.* v. *Illinois*, 431 U.S. 720 (1977). Explaining that there is no "magic words" requirement for indirect purchaser theories, the Ninth Circuit rejected the district court's conclusion that the operative complaint contained no such allegations. Pet. App. 30a. It was enough that the complaint "repeatedly alleges that Seagate Technology LLC bought suspension assemblies"—purchases that were necessarily indirect. *Id.* The appeals court thus concluded that "Seagate Technology LLC may be entitled to test whether its alleged high degree of control over Seagate Thailand and Seagate Singapore gives it standing to sue as an indirect purchaser of price-fixed suspension assemblies" and so remanded that issue as well. *Id.*

REASONS FOR DENYING THE PETITION

NHK's petition should be denied for four independent reasons. First, the "question presented" is not in fact presented by the ruling below (nor, for that matter, by the Seventh Circuit's decision in *Motorola*). The Ninth Circuit did not hold that domestic negotiations, standing alone, bring foreign transactions within the Sherman Act. Second, there is otherwise no conflict with *Motorola*, which involved a different theory of causation, a different asserted domestic effect, and standing problems absent here. Third, by requiring both a direct domestic effect and proximate cause, the court below correctly applied both the FTAIA's text and this Court's decision in *Empagran*. Fourth, this interlocutory, fact-bound case is a poor vehicle to address the FTAIA's scope. Among other things: the "unique nature" of the record limits the case's significance (Pet. App. 24a); still other alternative bases for relief remain unresolved, including the claims of a domestic plaintiff unaffected by the FTAIA; and NHK's guilty plea admits not only criminal price-fixing but also the factual predicates for applying the FTAIA's exceptions and the propriety of civil relief in lieu of criminal restitution.

Certiorari should be denied.

I. This Case Does Not Raise Petitioners' "Question Presented" (and Neither Did *Motorola*).

A. NHK's entire petition rests on the premise that the court below is "the first court in history to hold that foreign defendants can be held liable to foreign purchasers for foreign transactions *based solely on the fact that those transactions were negotiated in part in the United States*." Pet. i (emphasis added). But the Ninth Circuit did *not* hold that domestic negotiations are sufficient to bring a price-fixing claim within the ambit of the Sherman Act. It held that NHK's conduct fixed the prices of suspension assemblies in the United States, and that Seagate's foreign affiliates' injuries arose from those fixed U.S. prices. Pet. App. 6a.

More specifically, the Ninth Circuit explained that the FTAIA's "domestic effects" prong was met because NHK's conduct led directly to higher prices for suspension assemblies in the United States. Pet. App. 20a–23a; *id.* at 6a. Throughout its opinion, the court consistently characterized the relevant domestic effects necessary for application of the Sherman Act under the FTAIA:

- "[T]he first prong of the domestic effects exception still has been met because NHK admitted in its plea deal that it 'fix[ed] the prices' of 'suspension assemblies to be *sold in the United States* and elsewhere.'" Pet. App. 22a (emphasis original).
- "NHK's price-fixing apparently had a significant and direct impact on domestic commerce because companies (other than Seagate Technology LLC) overpaid for the suspension assemblies bought here in the states." *Id.*

- "NHK's actions had a direct, substantial, and reasonably foreseeable effect on domestic commerce by fixing prices of suspension assemblies sold here." *Id.* at 23a.
- "Put another way, NHK's price-fixing in the U.S. led to domestic harm (*i.e.*, higher prices for the suspension assemblies in the United States) . . . ." *Id.* at 6a.

The court was equally consistent when, in discussing the FTAIA's second prong, it described the "harmful effect on U.S. domestic commerce [that] proximately caused the foreign antitrust injury." *Id.* at 24a; see, *e.g.*, *id.* (domestic effect was "higher U.S. prices for suspension assemblies"); *id.* at 26a ("inflated U.S. prices"); *id.* at 28a ("higher U.S. prices"); *id.* ("price-fixing first inflicted *on U.S. soil* and suffered by *Americans*") (emphasis original).

Under the Ninth Circuit's reasoning, the direct, substantial, and reasonably foreseeable effect of NHK's criminal conspiracy on U.S. prices for suspension assemblies was necessary to the application of the Sherman Act. Even assuming, arguendo, that the presence of domestic negotiations was a *necessary* condition for the court's decision, the situs of the negotiations clearly was not *sufficient*.[4]

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[4] The brief of NHK's lone amicus rests on the same false premise that this case involves "the mere domestic negotiation of parts of contracts for foreign transactions between foreign companies performed in their entirety outside the United States." Amicus Br. of ICLE i; see also, *e.g.*, *id.* at 2 (criticizing the court below for "allowing the mere location of some parties to price negotiations in U.S. territory to trigger Sherman Act exposure for wholly foreign transactions"); *id.* at 4 ("The Ninth Circuit's negotiation-situs rule"); *id.* at 6, 7–8, 10–12, 14, 20–22, 24–25 (similar).

If any doubt remained, it would be dispelled by the Ninth Circuit's rejection of a distinct point pressed by Seagate below. Seagate argued that the Sherman Act necessarily applies "when some of the challenged conduct takes place in the United States." Respondents' C.A. Br. 33, *Seagate Technology LLC* v. *NHK Spring Co., Ltd.*, No. 24-4470 (9th Cir. filed Oct. 29, 2024), ECF No. 15 (citing Fed. Trade Comm'n & U.S. Dep't of Justice, *Antitrust Guidelines for International Enforcement and Cooperation*, at 17 n.80 (Jan. 13, 2017)). But the Ninth Circuit dispensed with that position in a footnote. The court reasoned that this Court had already rejected such a rule in *Empagran*, by applying the FTAIA test "even though 'some of the anticompetitive price-fixing conduct alleged . . . took place in *America*.'" Pet. App. 16a n.3 (quoting *Empagran*, 542 U.S. at 163, 165) (emphasis original). In short, the decision below did not turn on the extent to which NHK conducted negotiations in the United States, but instead on the domestic price effects of NHK's entire course of conduct.

NHK's suggestion that this case presents the question "whether domestic negotiations are sufficient to bring foreign injuries from allegedly price-fixed foreign transactions within the reach of the Sherman Act," Pet. i, is thus wrong. And to state the obvious, that the putative question presented rests "upon a wholly unsubstantial and nonexisting ground" is more than sufficient reason to deny review. *Tyrrell* v. *District of Columbia*, 243 U.S. 1, 4 (1917); see also, *e.g.*, *Lee* v. *Poudre Sch. Dist. R-1*, 146 S. Ct. 26 (2025) (Alito, J., concurring) (concurring in denial of petition "because petitioners do not challenge the ground for the ruling below"); cf., *e.g.*, *Facebook, Inc.* v. *Amalgamated Bank*, 604 U.S. 4 (2024) (per curiam) (dismiss-ing writ as improvidently granted after questions surfaced about the basis for the ruling below).

B. Making matters worse, the Seventh Circuit's decision in *Motorola* also did not pose the question that NHK attempts to present. As discussed *infra* (see Part II), the asserted circuit split is illusory for many reasons. For present purposes, however, it suffices to note that *Motorola* (i) barely mentioned "negotiations," (ii) never mentioned where the negotiations occurred, and (iii) never addressed any argument that the Sherman Act applied because of where those negotiations took place. *Motorola*'s sole mention of "negotiations" was in the context of rejecting a different argument: whether being the ultimate "target" of the anticompetitive conduct endowed the plaintiff with standing, irrespective of the FTAIA or *Illinois Brick*. See 775 F.3d at 822. The Seventh Circuit said it did not—a point that Seagate does not contest (and does not need to contest).

II. The Seventh Circuit's Decision in *Motorola* Rests on Markedly Different Facts and Theories, and Thus Provides No Basis for Review.

A. Beyond the fact that the "question presented" is not actually presented by the ruling below or by *Motorola*, Petitioners' argument that the Ninth Circuit split from *Motorola* provides no basis for review. As the Ninth Circuit explained, "the facts and context of [this] case are significantly different" from those in *Motorola*, and the court there answered a different set of questions. Pet. App. 27a.

The plaintiff in *Motorola* (the domestic Motorola parent entity) argued that the price-fixing of LCD panels had the domestic effect of increasing the prices of the "U.S.-bound cellphones" into which those panels were incorporated, and that this effect in turn gave rise to the antitrust injuries of Motorola's foreign subsidiaries, who acquired the price-fixed LCDs "upstream." Motorola's Br. 18–19, *Motorola Mobility LLC* v. *AU Optronics Corp.*, No. 14-8003 (7th Cir. filed Aug. 29, 2014), ECF No. 86; Motorola's Reply Br. 11, 16–18, *Motorola Mobility LLC* v. *AU Optronics Corp.*, No. 14-8003 (7th Cir. filed Oct. 21, 2014), ECF No. 123; see *Motorola*, 775 F.3d at 817 ("[P]anels were bought by the subsidiaries and incorporated by them into cellphones that the subsidiaries then sold to and shipped to Motorola for resale in the United States."); *id.* at 819 ("The conduct increased the cost to Motorola of the cellphones that it bought from its foreign subsidiaries . . . ."). The Seventh Circuit accepted the contention that the domestic effects exception's first prong was met because the price-fixed LCD panels eventually made their way into the United States as components of (supracompetitively priced) *cellphones*, but disagreed that such an effect "gave rise to" the asserted claims. 775 F.3d at 819. Cellphones come *after* the component panels in the supply chain, so any effect on cellphone prices could not give rise to an overcharge for panels.

Seagate's case rests on a distinct theory: NHK's price-fixing caused an effect in the United States (setting a U.S. price) that then, because of the governing agreements and close control between the U.S. affiliates and the foreign affiliates, proximately caused the foreign subsidiary plaintiffs to pay the same supracompetitive price. As the court below explained, those agreements dictated "the U.S. prices for suspension assemblies, which in turn set the prices of the foreign [purchases]." Pet. App. 24a. Indeed, "there only was *one* price"; the "U.S. and foreign prices" negotiated by the parties were "'one and the same.'" *Id.*

That is unlike the causation theory rejected in *Motorola*, as NHK recognizes. See Pet. 26 ("Respondents have not argued that higher prices of *HDDs* in the United States gave rise to the higher prices that Seagate Thailand and Seagate Singapore paid for SAs abroad. And for good reason. As the Seventh Circuit recognized in *Motorola*, the higher price of finished products in the United States is a result of higher prices paid abroad for components at earlier stages of the supply chain, rather than the other way around.").

Motorola is distinct in other ways too. The court there was troubled that, had the Motorola parent been able to sue for harm to its affiliates, it could have recovered for conduct from which it ultimately *profited*. Motorola's own damages expert opined that "the company raised the price of its cellphones in the United States by *more* than the increased price charged to it by its foreign subsidiaries." *Motorola*, 775 F.3d at 819 (emphasis original). "Perhaps because Motorola may actually have profited from the price fixing . . . , it has waived any claim that the price fixing affected the price that Motorola's foreign subsidiaries charged . . . ." *Id.* at 819–20; see *id.* at 823–24 ("[Motorola] argued only that its foreign subsidiaries overpaid for the LCD panels."). Nothing remotely analogous exists here.

Petitioners ignore all of these differences, while criticizing the Ninth Circuit for another way in which it distinguished *Motorola*: "because its holding was based on standing for a derivative buyer, not the FTAIA." Pet. App. 27a; see Pet. 20. But the Seventh Circuit *was* acutely concerned with standing questions absent here. The Seventh Circuit determined that the U.S. parent company (the only plaintiff) was an indirect purchaser that lacked standing to seek damages under *Illinois Brick*, leaving the parent with only the claims of its foreign subsidiaries. *Motorola*, 775 F.3d at 821–23. In other words, the U.S. parent's claim was solely one of "derivative injury," akin to the injury suffered by investors when the companies in which they invest suffer an antitrust injury—a claim rarely cognizable. *Id.* at 820–21; see also *id.* at 824 (declining "to give Motorola rights to take the place of its foreign companies and sue on their behalf under U.S. antitrust law"). Here, by contrast, the injured direct purchasers (Seagate Thailand and Seagate Singapore) are plaintiffs, and the distinct relationship between Seagate's affiliates means that Seagate Technology LLC may well have indirect purchaser standing under *Illinois Brick*'s control exception. See Pet. App. 30a–31a.

B. Despite all these differences, the Ninth Circuit found much to agree with in *Motorola*'s *dicta*. Judge Posner's opinion "offers valid reasons to tread cautiously in the realm of extraterritorial jurisdiction." Pet. App. 26a. Yet, as the Ninth Circuit recognized, those policy considerations have little application here because the facts are so different and the FTAIA itself "imposes very stringent" threshold requirements that combine to stanch "a flood of lawsuits from overseas suppliers." *Id.* at 29a. Among other things, because NHK admits that the purpose of its conspiracy was to "fix the prices . . . of suspension assemblies to be sold in the United States," antitrust liability would have a "deterrent effect on future anti-competitive behavior" injuring Americans. *Id.* at 28a–29a n.6.

Of course, the Ninth Circuit did criticize *Motorola*'s atextual comment that "U.S. antitrust laws are not to be used for injury to foreign customers." 775 F.3d at

820 (internal quotation marks omitted).[5] And for several good reasons.

First, numerous passages in *Empagran* confirm that foreign plaintiffs can invoke the Sherman Act, *provided* they are not alleging foreign injuries that are "*independent of* the domestic effect." 542 U.S. at 160 (emphasis added).[6] Indeed, had *Empagran* categorically barred foreign parties from invoking the Sherman Act, the decision would not have filled 20 pages of the U.S. Reports.

Second, this Court has long held that "a foreign corporation is entitled to sue" under the Sherman and Clayton Acts. *Pfizer Inc.* v. *Gov't of India*, 434 U.S. 308, 313 (1978) (emphasis omitted). Congress was careful to preserve that understanding in adopting the FTAIA. See H.R. Rep. No. 97-686, at 10 (1982) (The FTAIA would "not exclude all persons injured abroad from recovering under the antitrust laws of the United States" and what matters is whether the

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[5] The Seventh Circuit partially quoted dicta from *Minn-Chem, Inc.* v. *Agrium*, 683 F.3d 845, 858 (7th Cir. 2012) (en banc), for that proposition. *Minn-Chem* also had no such holding; the case involved only "U.S. Purchasers" harmed by foreign conduct. *Id.* at 854; see *id.* at 848. And *Motorola* took its quotation out of context. The quote comes from a concessive clause that preceded the court's invocation of the "well-established principle that the U.S. antitrust laws reach foreign conduct that harms U.S. commerce." *Id.* at 858.

[6] See 542 U.S. at 159 (the Sherman Act does not reach conduct having a domestic effect "where the plaintiff's claim rests solely on [an] independent foreign harm"); *id.* at 166 (the FTAIA excludes "conduct [that] causes foreign harm" unless "that conduct also causes domestic harm"); see also *Empagran S.A.* v. *F. Hoffman-LaRoche Ltd.*, 417 F.3d 1267, 1269 (D.C. Cir. 2005) ("FTAIA's 'domestic effects' requirement 'does not exclude all persons injured abroad from recovering under [U.S.] antitrust laws'").

anticompetitive "conduct has the requisite effects within the United States, even if some purchasers take title abroad or suffer economic injury abroad."). Rather than limit the Sherman Act to certain persons, the FTAIA's limits depend on "conduct" and "effects," with no strict territorial limit on where the claim arises.

Third, not surprisingly given this Court's precedents, in proceedings below NHK "(correctly) agree[d] that the FTAIA does not bar foreign injuries from relief under that statute so long as the required domestic effect and proximate cause are shown." Pet. App. 28a. Any argument to the contrary has thus been waived.

III. The Ninth Circuit Faithfully Applied This Court's Decision in *Empagran*.

NHK also seeks to justify review by contending that this Court's decision in *Empagran* rejects the proposition that "the mere presence of negotiations in the United States is . . . sufficient to trigger application of U.S. antitrust law to sales abroad between a foreign seller and a foreign buyer." Pet. 21. As explained *supra* (see Part I), however, the Ninth Circuit held no such thing. The court's decision is entirely "consistent with . . . *Empagran*," Pet. App. 27a, and NHK identifies no post-*Empagran* circuit split or anything else in the decision that supports review.

Empagran held that the FTAIA's "gives rise to" prong bars Sherman Act claims where the alleged foreign injury is "independent" of the alleged domestic effects. 542 U.S. at 159–61, 164. The court below faithfully applied that rule. It noted that this Court's opinion in *Empagran* "used the word 'independent' 35 times." Pet. App. 25a–26a n.5. It then credited Seagate's "evidence that its foreign injuries are not independent of the conspiracy's domestic effects." *Id.* Even if that conclusion were incorrect, review would not be warranted to address any such "misapplication of a properly stated rule of law." Sup. Ct. R. 10. And the court did not err.

Rather, as the court below recognized, the higher U.S. price (the domestic effect) and the overcharge paid by Seagate Thailand and Seagate Singapore (the foreign injury) were "'intertwined'" or, put another way, had "a direct, proximate relationship." Pet. App. 26a, 28a.[7] That proximate relationship between effect and injury follows directly from the governing agreements, under which "the U.S. prices for suspension assemblies . . . in turn set the prices of the foreign [purchases]." *Id.* at 24a; accord *id.* at 26a. In short, Seagate's foreign subsidiaries have no discretion to negotiate prices different from those specified in the California law–governed master agreement, which resulted from NHK's criminal cartel and binds Seagate Technology LLC and NHK. See *id.* at 6a, 9a, 20a–21a.

Seagate's causation theory is a far cry from that pressed in *Empagran*. The plaintiffs there asserted (and on remand the D.C. Circuit rejected) an indirect "arbitrage theory"—i.e., that the price-fixers "were able to *sustain* super-competitive prices abroad only by maintaining super-competitive prices in the United States as well." *Empagran*, 417 F.3d at 1271 (em-

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[7] Post-*Empagran*, in determining what kind of connection between the domestic effect and the foreign injury satisfies the FTAIA, the lower courts have consistently applied the proximate cause standard. See *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981, 987 (9th Cir. 2008); *Lotes Co.* v. *Hon Hai Precision Indus. Co.*, 753 F.3d 395, 414 (2d Cir. 2014); *In re Monosodium Glutamate Antitrust Litig.*, 477 F.3d 535, 538 (8th Cir. 2007); *Empagran*, 417 F.3d at 1271.

phasis added). Seagate alleges no arbitrage theory, as the court below recognized. Pet. App. 25a. Rather, Seagate's claim "is rooted in the certainty of binding pricing contracts—not the complex vagaries of the global pricing market" or "the alleged equivalence of prices across global trading markets that many courts have rejected." *Id.* (citing cases).

For example, Seagate Thailand does not claim to have been injured by higher U.S. prices because, in a dynamic global market, sustaining higher prices in Thailand may depend on ensuring that U.S. prices do not undercut Thai prices. Rather, it was injured because, "as a matter of company policy and contractual requirements," the (rigged) U.S. price and quantity terms governed the sales to Seagate Thailand and Seagate Singapore. Pet. App. 26a. The link is direct and causal. "[T]he Sherman Act very much was intended to cover harm like this." *Id.* at 28a.

NHK's objection seems to be that "the negotiations resulting in the quarterly RFQs" are "conduct" and not "effects" under the framework of the FTAIA. Pet. 23. That is beside the point, as the Ninth Circuit held that the relevant domestic effect was the *outcomes* of those negotiations, i.e., contracts with higher U.S. (fixed) prices for suspension assemblies.

That objection also sidesteps the actual anticompetitive conduct at issue here: a conspiracy between competitors to rig bidding and raise prices, involving countless communications and other coordinating activities. See Pet. App. 22a ("[T]he actual 'stuff' of NHK's conspiracy (illicit meetings, illegal bids, and so on) count as conduct . . . ."). Given that is the relevant conduct, a distorted bidding process and the resulting contract with Seagate *are* effects and could serve as an alternative basis for applying the Sherman Act here. NHK's proposed rule that a "contract" is always conduct and is never an "effect" giving rise to an antitrust claim, see Pet. 23–24, is incompatible with longstanding antitrust law that, because price fixing always "directly interfer[es] with the free play of market forces," price-fixed contracts are *per se* illegal even if prices "are fixed at the fair going market price." *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 221, 223 (1940); see also *N. Pac. Ry. Co.* v. *United States*, 356 U.S. 1, 5 (1958) (noting category of "certain agreements or practices" that "are conclusively presumed to be . . . illegal"). *Empagran* does not suggest otherwise.

IV. This Case Is a Poor Vehicle for Interpreting the FTAIA.

In a petition full of overstatements, the single greatest may well be the claim that this is "an ideal vehicle" for deciding how U.S. antitrust law applies "to sales between foreign companies." Pet. 5. Beyond the fundamental problem that this case does not in fact present the question that NHK identifies, the petition is plagued with at least four other serious vehicle problems.

First, the extent to which the FTAIA is even relevant to the resolution of Seagate's claims depends on the district court's now-vacated conclusion that Seagate Technology LLC had not pleaded an indirect purchaser claim. Although *Illinois Brick* generally allows only direct purchasers to sue for damages, the Court recognized an exception for cases where "the direct purchaser is owned or controlled by" the plaintiff. 431 U.S. at 736 n.16. The Ninth Circuit rejected the district court's conclusion that this exception was not pleaded, directing the district court to reconsider Seagate's indirect purchaser claim upon remand. See Pet. App. 30a–31a. NHK (unsurprisingly) does not seek review of that fact-bound ruling.

That is significant because if Seagate Technology LLC, a domestic plaintiff, has standing to sue as an indirect purchaser of the price-fixed suspension assemblies, there is no dispute that the Sherman Act applies to a substantial portion of the commerce at issue: NHK sold the price-fixed suspension assemblies into the U.S. market to a U.S. buyer who, in all relevant senses, paid a supracompetitive price and suffered antitrust injury. The resolution of the indirect purchaser question will thus determine whether the FTAIA even remains relevant to a substantial portion of the commerce, and it makes little sense for the Court to take up the Act's scope in a case where its applicability is contingent on the outcome of the remand.

Second, even putting aside the domestic plaintiff, the FTAIA's application to this case depends on a series of "unique" facts having little in common with those in the vast majority of antitrust cases concerning international supply chains. That review is inappropriate is especially clear in that the case comes to the Court at summary judgment, where the facts have not yet been finally determined and all factual disputes and inferences must be resolved *against* NHK.

The Ninth Circuit repeatedly explained that Seagate's claim is unlike "[m]ost foreign injury claims." Pet. App. 24a. For most foreign injury claims, the link between the "harmful effect[s] on U.S. domestic commerce" and the claimed "foreign antitrust injury" is "too speculative or attenuated." *Id.* Seagate's claim by contrast rests on the "unique nature" of its bidding process and the price-fixed contracts that also govern its relationships with its foreign affiliates. *Id.*; see also *id.* at 20a–21a. As the court put it, Seagate does not assert "a typical foreign injury" but rather "a case suffused with domestic elements," where NHK admits "conspir[ing] to 'fix the prices of . . . suspension assemblies to be sold *in the United States* and elsewhere" and "[n]early all of the misconduct . . . either targeted or centered on the United States." *Id.* at 28a (emphasis original). This case thus calls to mind the adage that "[i]f bad facts make bad law, then 'unusual facts' inspire unusual decisions." *Tharpe* v. *Sellers*, 583 U.S. 33, 35 (2018) (Thomas, J., dissenting).

Third, neither the district court nor the Ninth Circuit has yet reached whether a subset of the suspension-assembly purchases is subject to the Sherman Act by virtue of what is known as the FTAIA's "import effects" exception. Under this alternative basis for applying the Sherman Act, foreign anticompetitive conduct comes within the ambit of the Sherman Act where it "has a direct, substantial, and reasonably foreseeable effect . . . on *import* trade or *import* commerce." 15 U.S.C. § 6a(1) (emphasis added).[8] In analyzing the conspiracy's "direct, substantial, and reasonably foreseeable effects," the court below analyzed only effects on *domestic* commerce, leaving the import-effects question unresolved. But the plain text of that exception further supports the result below, as NHK's conspiracy alternatively had direct, substan-

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[8] This provision of the FTAIA is distinct from the "'import commerce' exclusion" that the Ninth Circuit did consider. Pet. App. 16a–19a. "'Import commerce' exclusion" or "import exclusion" refers to the conduct left subject to the Sherman Act by the first sentence of the FTAIA, which says that U.S. antitrust laws "shall not apply to conduct involving trade or commerce (*other than import trade or import commerce*) with foreign nations." 15 U.S.C. § 6a (emphasis added). At the risk of oversimplifying, the exclusion refers to conduct *involving* import commerce and the exception refers to conduct *affecting* import commerce.

tial, and reasonably foreseeable effects on import commerce.

Finally, the equities here powerfully disfavor review. NHK is an admitted criminal antitrust violator. Its guilty plea forthrightly admitted not only conspiring to fix the prices of suspension assemblies sold "in the United States and elsewhere," but also that its actions had a "direct, substantial, and reasonably foreseeable effect" on U.S. commerce—the predicate for applying the FTAIA's domestic effects exception. Pet. App. 8a–9a, 21a–22a.

Worse, the government allowed NHK to avoid restitution precisely because NHK represented that civil remedies, including antitrust treble damages, were available for Seagate and other victims. See ER-307–331. And NHK agreed not to contradict its admissions in future litigation. See *id.* After reiterating that this case was suffused with "the domestic harm that is properly the province of our courts," Pet. App. 28a, the court below emphasized that U.S. courts "can and must allow civil claimants to claim damages, *especially given the government's decision not to seek restitution in its criminal prosecution because of its assumption that civil remedies would be available to private parties*," *id.* at 29a (emphasis added). NHK's petition is an attempt to evade precisely the civil consequences it accepted in its guilty plea.[9] This

[9] NHK cannot avoid this problem by pointing to the pending consumer class actions. See Pet. 10, 14. Seagate is the more immediate victim, with a stronger case for recovery—something NHK has acknowledged in seeking to dismiss those cases. See Defs.' Mot. to Dismiss End-User Pls.' Second Am. Consol. Class Action Compl. & Reseller Pls.' Second Am. Consol. Class Action Compl. 5–67, *In re Hard Disk Drive Suspension Assemblies Antitrust Litig.*, No. 3:19-md-02918-MMC, ECF No. 319 (N.D. Cal. Jan. 29, 2021) ("[T]he alleged chain of commerce involves the

Court should not rescue NHK from its own choices and the expected repercussions of its admittedly criminal conduct.

CONCLUSION

For the foregoing reasons, the Court should deny the petition.

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independent purchase and pricing decisions of . . . an HDD manufacturer, an OEM, and a distributor and/or reseller" before purchase by end-users.).