No. 14-891

IN THE

Supreme Court of the United States

SUPERVALU INC. AND
C&S WHOLESALE GROCERS, INC.,

Petitioners,

v.

D&G, INC., D/B/A GARY'S FOODS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF *AMICUS CURIAE* OF THE FOOD MARKETING INSTITUTE IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The Food Marketing Institute ("FMI") proudly advocates on behalf of the food retail industry. FMI's U.S. members operate nearly 40,000 retail food stores and 25,000 pharmacies, representing a combined annual sales volume of almost $770 billion. Through programs in public affairs, food safety, research, education and industry relations, FMI offers resources and provides valuable benefits to more than 1,225 food retail and wholesale member companies in the United States and around the world. FMI membership covers the spectrum of diverse venues where food is sold, including single owner grocery stores, large multi-store supermarket chains, and mixed retail stores.

This case directly impacts the interests of FMI and its members. The central issue in this case is the legality of geographic noncompetition provisions entered into in connection with the acquisition of a business or its assets. Geographic competition provisions are commonplace in the wholesale grocery industry—as in many other industries—because they ensure that the buyer of a business is able to realize the value of the acquired entity. Precisely for that reason, courts have long considered such provisions to be procompetitive. The Eighth Circuit's decision to single out this kind of contractual provision for *per se* condemnation under federal antitrust laws is thus

1. Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* FMI certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amicus curiae* or its counsel has made a monetary contribution to the preparation or submission of this brief. Both parties have consented to the filing of this brief.

a significant issue. If left uncorrected, the decision below will cause substantial harm to FMI and its members.

INTRODUCTION & SUMMARY OF ARGUMENT

This case concerns a run-of-the-mill asset exchange agreement between two grocery wholesalers—Petitioners SuperValu and C&S Wholesale Grocers, Inc.—in which each acquired certain regional assets of the other. Under the Asset Exchange Agreement ("AEA"), C&S acquired SuperValu's New England wholesale grocery business. In exchange, SuperValu acquired the Midwest portion of a wholesale grocery business C&S had in turn acquired in the bankruptcy sale of Fleming Companies, Inc. To protect the value of these businesses and assets, the companies agreed to noncompetition provisions that prohibited each company from supplying the customers of the business it had just sold for two years and from soliciting those customers for five years. The AEA's written terms did not otherwise restrict competition. Before signing the AEA, Petitioners "submitted it for examination by the Federal Trade Commission and the Antitrust Division of the Department of Justice. Neither raised any flags before the Hart Scott Rodino Act, 15 U.S.C. § 18a (2006), waiting period expired." App. 46a.

More than five years after the AEA's formation, Respondent D&G, Inc. d/b/a Gary's Foods challenged the transaction in federal district court as violating the Sherman Act. According to the complaint, the AEA enabled SuperValu to raise wholesale grocery prices throughout the Midwest. The complaint further alleged that, in connection with the AEA, Petitioners secretly agreed that each would refrain from competing in the market of the divested entity for a specified period of time.

The district court recognized that, even assuming Petitioners entered into an allegedly unwritten geographic noncompetition provision, such provisions generally are procompetitive because they enhance the marketability of the businesses being sold and protect the value of their intangible assets, including goodwill. *See, e.g.*, *Lektro-Vend Corp. v. Vendo Co.*,660 F.2d 255, 265 (7th Cir. 1981) ("[T]he most valuable asset of a business might be the good will …. [T]he owner could not get a price reflecting the asset of good will or the true going concern value of his business unless he could promise the purchaser not to return to compete with the business sold." (quoting Robert H. Bork, *Ancillary Restraints & the Sherman Act*, ABA Section of Antitrust Law Proceedings, 211, 213 (1959))). Moreover, Petitioners provided the district court with evidence demonstrating that the manner in which they integrated the acquired assets into their respective businesses was intended to create efficiencies of scale in warehousing and distribution. App. 41a.

Naturally, then, in evaluating the challenge to the transaction on cross-motions for summary judgment, the district court applied the antitrust Rule of Reason. The district court determined that the Rule of Reason applied because Petitioners "offered plausible, procompetitive justifications for pursuing the AEA and the non-compete provisions contained therein, creating a factual dispute which precludes a finding of presumptive anti-competition." App. 42a. The district court further held that Respondent failed to define or show competitive harm in the relevant market and likewise failed to show evidence of antitrust injury. App. 42a-48a. Accordingly, the district court granted summary judgment to Petitioners.[2]

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2. While this action was proceeding through the district court, and in connection with this litigation, the FTC launched

The Eighth Circuit reversed. According to the court, summary judgment was inappropriate because a factual dispute existed over whether Petitioners had agreed to the alleged unwritten geographic noncompetition provision. The Eighth Circuit held that, had Petitioners agreed not to compete in the geographic markets they exited by virtue of their transaction, such an agreement would be a *per se* antitrust violation. App. 12a. On that reasoning, the court held that the district court erroneously applied the Rule of Reason at summary judgment and remanded the case for a jury trial on the disputed factual question. The Eighth Circuit further held that the Clayton Act's four-year limitations period, 15 U.S.C. § 15b, reset each time SuperValu allegedly charged supra-competitive prices. App. 16a-17a. As a result, the court authorized a challenge to the transaction more than four years after it was executed. App. 17a.

The Court should grant the petition. As Petitioners have explained, the Eighth Circuit's decision created three circuit splits on important federal antitrust issues: "(1) Do fact issues about the competitive nature and effects

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an "investigation to determine whether SuperValu, Inc., C&S Wholesale Grocers, Inc., or any other unnamed persons, partnerships, or corporations have engaged or are engaging in any unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, by agreeing to divide markets, allocate customers, or otherwise eliminate competition in the wholesale grocery industry." *See* FTC Enforcement, SuperValu, Inc./C&S Wholesale Grocers, Inc., Closing Letters and Other Public Statements, *available at* http://www.ftc.gov/enforcement/cases-proceedings/closingletters/supervalu-inccs-wholesale-grocers-inc. The FTC closed that investigation without taking any action. *See id.*

of an agreement preclude 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?; (2) does the *per se* rule apply to a business acquisition in which the seller agrees not to compete in the geographic area where that business operated?; and (3) in a challenge to a business acquisition, does the antitrust statute of limitations begin anew each time the defendant uses its increased market power to sell goods at an inflated price?" Pet. 2-3. The Eighth Circuit's decision thus has created both "procedural and substantive confusion surrounding a common transaction in the American economy: an acquisition with an accompanying noncompetition provision to protect the value of the business being acquired." Pet. 4-5.

FMI agrees that review is warranted to answer each of these questions, and writes separately to explain why the type of geographic noncompetition restriction Respondent alleges to exist here is unsuited for *per se* condemnation. This type of reasonable restraint has for centuries been understood as a generally procompetitive and legitimate means of protecting the value in an acquired business. Accordingly, the Eighth Circuit should have applied the Rule of Reason.

If left undisturbed, the decision below is likely to chill companies' willingness to enter transactions where a geographic noncompetition provision is necessary "security against a losing bargain." *Cincinnati Packet Co. v. Bay*, 200 U.S. 179, 209 (1906). Geographic noncompetition provisions are important to a broad variety of businesses, indeed virtually any business that needs to protect customer and client lists or trade secrets in order to

compete successfully. *See Lektro-Vend Corp.*, 660 F.2d at 266. They also are particularly important in industries like the wholesale grocery industry where a key driver of value is "goodwill," *id.*, that is, "the expectancy of continued patronage," *Newark Morning Ledger Co. v. United States*, 507 U.S. 546, 555 (1993). Given the role of goodwill in this industry, the seller of a business is uniquely positioned to undermine the value of the business sold by obtaining warehouse space and competing customers in the very market it just departed.

The consumer suffers in the form of higher prices when fewer of these transactions occur. Because wholesale grocery businesses have significant fixed overhead costs, success in the market depends on volume and high-capacity utilization. Often, consolidation is essential to achieve economies of scale and deliver lower prices to retail buyers. *See* App 77a ("[I]f … the acquisition of the distribution facilities and the customer contracts allowed [SuperValu and C&S] to serve more retail grocers through fewer, more efficient distribution facilities, there would be a procompetitive benefit to the transaction. And ensuring that the additional customers would continue to be served through those facilities by executing the non-compete provisions seems reasonably necessary to realize the procompetitive benefit of increased efficiency."). The chilling effect of the decision below thus warrants review by this Court.

ARGUMENT

I. The Eighth Circuit's *Per Se* Condemnation Of Geographic Noncompetition Provisions Conflicts With The Settled Understanding That They Are Generally Procompetitive.

For centuries, geographic noncompetition provisions have been recognized as generally procompetitive because they foster the marketability and transferability of a business by protecting the value and goodwill of the transferred entity. Such provisions were first endorsed by English courts in the early eighteenth century. Since then, leading contract law treatises have highlighted their pedigree, American courts have routinely enforced them, and the federal antirust regulators at the Department of Justice ("DOJ") and Federal Trade Commission ("FTC") have endorsed them. Not surprisingly, then, geographic noncompetition provisions have become commonplace in the transfer of businesses.

In 1711, the Queen's Bench upheld a geographic noncompetition provision accompanying the transfer of a business in *Mitchel v. Reynolds*, 1 P. Wms. 181 (1711). In *Mitchel*, the defendant had transferred to the plaintiff a bakeshop he owned in St. Andrew's parish in Holborn. In connection with this transfer, the defendant covenanted that he would not compete with the plaintiff within the parish for a five-year period; the defendant owed the plaintiff a sum of 50 pounds if he failed to comply. When the defendant re-entered the baking business, plaintiff sued him for that amount.

Evaluating the parties' geographic noncompetition provision, the court noted that such covenants had long been considered unlawful as they improperly deprived the grantor of "his livelihood, and the subsistence of his family" and improperly deprived the public of the fruits of his competition. *Id.* at 190. In what is generally viewed as the earliest application of the Rule of Reason, however, the court endorsed this geographic noncompetition covenant because it "was for a limited time and applied only to the area in which the bakery had operated," notwithstanding the fact that "it deprived the public of the benefit of potential competition. The long-run benefit of enhancing the marketability of the business itself—and thereby providing incentives to develop such an enterprise—outweighed the temporary and limited loss of competition." *Nat'l Soc. of Prof'l Engineers v. United States*, 435 U.S. 679, 688-89 (1978) (discussing *Mitchel v. Reynolds*).[3]

Following the path marked by English common law, and often expressly relying on *Mitchel*, this Court and other federal courts have recognized the procompetitive benefits of geographic noncompetition provisions entered into in connection with the acquisition of a business. These decisions therefore have analyzed such provisions

3. In 1843, in another prominent noncompetition case, the Court of Exchequer again confirmed that this type of restraint is "perfectly consistent with public convenience and the general interest." *Mallan v. May*, 11 Mees. & W. 652 (1843). That geographic noncompetition provision protected "'the sale of a good will, and offers an encouragement to trade by allowing a party to dispose of all the fruits of his industry.'" *United States v. Addyston Pipe & Steel Co.*, 85 F. 271, 281 (6th Cir. 1898) (quoting *Mallan v. May*, 11 Mees. & W. 652 (1843)).

under the Rule of Reason. For example, this Court has explained that "[t]he Rule of Reason suggested by *Mitchel v. Reynolds* has been regarded as a standard for testing the enforceability of covenants in restraint of trade which are ancillary to a legitimate transaction, such as an employment contract or the sale of a going business." *Nat'l Soc. of Prof'l Engineers,* 435 U.S. at 688-89; *see also Nat'l Football League v. N. Am. Soccer League*, 459 U.S. 1074, 1078 (1982) (Rehnquist, J., dissenting from denial of certiorari) ("[T]his Court has noted that the Rule of Reason does not prohibit a seller of a business from contracting not to compete with the buyer in a reasonable geographic area for a reasonable time *after* he has terminated his relationship with the business.") (citing *Nat'l Soc. of Prof'l Engineers,* 435 U.S. at 688-89).

The Court has characterized "an agreement by the seller of a business not to compete within the market" as the "classic" ancillary restraint that "merely enhances the value of the contract, or permits the enjoyment of [its] fruits." *Bus. Elecs. Corp. v. Sharp Elecs. Corp.*, 485 U.S. 717, 729 n.3, 730 (1988) (quotation omitted). Further, the Court, per Justice Holmes, has suggested that such an agreement "made as part of the sale of a business" does not even fall within "the letter or spirit of the [Sherman Act]." *Cincinnati Packet Co. v. Bay*, 200 U.S. 179, 210 (1906); *id.* at 209 ("The withdrawal of the vendors from opposition for five years is the ordinary incident of the sale of a business and good will" and "security against a losing bargain.").

Perhaps most notably, then-Circuit Judge Taft, in his famous exposition of the Rule of Reason in *United States v. Addyston Pipe & Steel Co.*, emphasized that the Rule

applies to "agreements … by the seller of property or business not to compete with the buyer in such a way as to derogate from the value of the property or business sold." 85 F. 271, 281 (6th Cir. 1898). As Judge Taft explained, "covenants not to compete in a particular business, for a certain period of time, within a defined geographical area, had always been considered reasonable when necessary to carry out otherwise procompetitive contracts, such as the sale of a business." *Id.* at 280-82.[4]

Numerous other courts have followed the same approach, reasoning "that the seller of a business 'could not get a price reflecting the asset of good will or the true going concern value of his business unless he could promise the purchaser not to return to compete with the business sold." *Lektro-Vend Corp.*, 660 F.2d at 265; *see also Ticor Title Ins. Co. v. Cohen*, 173 F.3d 63, 69 (2d Cir. 1999) (discussing *Mitchel* and evaluating a geographic noncompetition provision in light of the reasonableness of its temporal and geographic scope); *Bus. Records Corp. v. Lueth*, 981 F.2d 957, 960 (7th Cir. 1992) (citing *Mitchel* and highlighting "the catalytic role such covenants play in promoting the transferability of property, thus enhancing trade and competition"); *id.* ("[A] covenant ancillary to the sale of a business ensures the buyer that the former owner will not walk away from the sale with the company's customers and goodwill, leaving the buyer with an acquisition that turns out to be only chimerical.").

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4. Judge Taft's opinion in *Addyston Pipe & Steel* is "universally accepted as authoritative," *Bus. Electronics Corp.*, 485 U.S. at 738-39, and has been celebrated as "one of the greatest, if not the greatest, antitrust opinions in the history of the law," Robert H. Bork, The Antitrust Paradox 26 (1978).

The DOJ and the FTC—the primary enforcers of federal antitrust law—likewise recognize the benefits of geographic noncompetition provisions associated with the acquisition of a business. Indeed, both agencies employ geographic noncompetition provisions in consent decrees to protect the value of divested business operations. For instance, in a consent decree approving the sale of Continental Grain Company's commodity marketing business to Cargill, Inc., the DOJ concluded that a three-year noncompete between Continental and Cargill was reasonably necessary to ensure that Cargill would obtain the loyalty of former Continental customers. *See* Final Judgment, *United States v. Cargill, Inc.*, No. 1:99-cv-01875 (June 30, 2000), *available at* http://www.justice.gov/atr/cases/f2500/2552.htm. Similarly, the FTC issued a consent order in *In re Ciba Geigy* requiring a newly merged entity to refrain from entering the North American market for six years. Decision and Order, *In re Ciba-Geigy Ltd.*, No. C-3725, 1997 FTC LEXIS 85 (F.T.C. Mar. 24, 1997).

Accordingly, there can be no doubt that a geographic noncompetition provision formed in connection with the acquisition of a business is a centuries-old contract term that has gained widespread acceptance in the law. *See* Corbin on Contracts Ch. 80.8 ("For centuries the sale of a business as a going concern has been one of the common transactions of life."). As this leading treatise highlights, "[w]hen a buyer purchases the business of another as a going concern, the buyer … wishes to step into the seller's shoes and to enjoy the same business relations the seller has had with customers and the market for whatever the business offers," but "the seller cannot simply assign these business relations and friendly feelings to the buyer." *Id.* What the parties can do, however, is transfer "the business

with its good will," coupled with "the seller's promise not to enter the market in competition with the business the seller sold to the buyer." *Id.* Corbin has therefore emphasized that courts "readily recognize the interest of buyers in protecting the good will purchased and frequently enforce covenants not to compete accompanying the sale of a business," noting that some courts have even recognized an "implied covenant" where none is expressed in the terms of the agreement. *Id.*; *see also id.* Ch. 80.6 ("[Courts] recognize that the good will of the business is part of what the purchaser received and a restraint may be necessary to protect that good will from usurpation by the seller of the business."); *id.* Ch. 80.7 ("Courts have long recognized that the purchase of a business is a valid transaction such that a restraint accompanying the purchase survives the test of ancillarity.").

Not surprisingly, then, geographic noncompetition provisions have become commonplace in connection with the transfer of business entities and assets. In fact, the ABA has drafted a Model Asset Purchase Agreement that includes a geographic noncompetition provision. *See* ABA, Committee on Negotiated Acquisitions, Model Asset Purchase Agreement with Commentary, § 10.8a (2001) ("Noncompetition. For a period of _____ (__) years after the Closing Date, Seller shall not, anywhere in _______, directly or indirectly invest in, own, manage, operate, finance, control, advise, render services to or guarantee the obligations of any Person engaged in or planning to become engaged in the ________ business ('Competing Business').").

Until the Eighth Circuit's decision, there was no suggestion that geographic noncompetition provisions

such as the one at issue here were problematic—let alone *per se* anticompetitive—under federal antitrust law. The Rule of Reason is the default rule for "testing whether a practice restrains trade in violation of [the Sherman Act]." *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 885 (2007); *see also Texaco, Inc. v. Dagher*, 547 U.S. 1, 5 (2006) (explaining that the Rule of Reason "presumptively applies" to all restraints of trade). *Per se* condemnation is a narrow exception to this default rule; it applies only to those types of transactions that are "'plainly anticompetitive.'" *Texaco*, 547 U.S. at 5 (quoting *Nat'l Soc'y of Prof'l Eng'rs*, 435 U.S. at 692). As this Court has explained, only where "courts have had considerable experience with the type of restraint at issue" and "can predict with confidence that it would be invalidated in all or almost all instances under the rule of reason," *Leegin*, 551 U.S. at 886-87, is a type of restraint singled out for *per se* condemnation.

Thus, as Petitioners rightly emphasize, this Court has "[t]ime and again … selected the rule of reason when faced with the question whether the per se rule applies." Pet. 10. Indeed, the *per se* exception to the Rule of Reason has only narrowed in scope over time. *See Leegin*, 551 U.S. at 907 (overruling *Dr. Miles Medical Co. v. John D. Park & Sons Co.,* 220 U.S. 373 (1911), and the application of the *per se* exception to the practice of minimum resale price maintenance); *State Oil Co. v. Khan*, 522 U.S. 3, 7 (1997) (overruling *Albrecht v. Herald Co.,* 390 U.S. 145 (1968), and the application of the *per se* exception to the practice of vertical maximum price fixing).

As explained above, for centuries both English and American courts have acknowledged the procompetitive

benefits of geographic noncompetition provisions ancillary to acquisition agreements. *See supra* 7-8. Especially given this Court's recognition of the procompetitive benefits of such provisions, *see supra* 8-9, it certainly cannot be said "with confidence" that geographic noncompetition provisions ancillary to acquisition agreements "would be invalidated in all or almost all instances under the rule of reason," *Leegin*, 551 U.S. at 886-87. Indeed, to single out such provisions for *per se* condemnation would amount to an about-face on 300 years of precedent underscoring their procompetitive benefits.

In this regard, it is worth emphasizing that the Rule of Reason is generally understood to have first been adopted in *Mitchel v. Reynolds*, and as explained above was applied in that very case to uphold a geographic noncompetition provision in connection with the lease of a bakeshop. *See Bus. Electronics Corp.*, 485 U.S. at 737 ("The Rule of Reason suggested by *Mitchel v. Reynolds* has been regarded as a standard for testing the enforceability of covenants in restraint of trade which are ancillary to a legitimate transaction, such as an employment contract or the sale of a going business."). This serves only to highlight the sharp turnabout in treatment effected by the decision below.

II. Subjecting Geographic Noncompetition Provisions To The Threat Of *Per Se* Condemnation Will Chill Companies' Willingness To Enter Into Procompetitive Transactions.

The Court has cautiously applied the *per se* exception out of the very real concern that over-enforcement of the Sherman Act may "chill the very conduct the antitrust

laws are designed to protect." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 593-94 (1986). By departing from the historical treatment of geographic noncompetition restrictions under the Rule of Reason, the Eighth Circuit threatens to do just that. If such agreements are *per se* unlawful, businesses quite logically will refrain from entering into acquisitions that require geographic noncompetition restrictions to be economically viable. But even if a court were to rest the selection of the Rule of Reason or the *per se* exception on jury findings (as the court below ordered), the damage would already be done. *See Matsushita*, 475 U.S. at 593-594 ("[P]ermit[ting] factfinders to infer" too much can chill procompetitive conduct.)

This chilling effect would be especially pronounced in the wholesale grocery industry. The industry is marked by high competition and low margins. Because wholesale grocery businesses have significant fixed overhead costs, high capacity utilization and throughput are critically important to success. Consolidation is often key to the kind of growth that achieves the economies of scale that tend to maximize efficiencies and result in lower prices for retail buyers. Indeed, this was the point of the transaction at issue here. *See* Declaration of David L. Boehnen in Opp. to Pls.' Mot. for Partial Summ. J., *In re Wholesale Grocery Products Antitrust Litig.*, MDL Docket No. 2090 (D. Minn. filed Oct. 10, 2012) (explaining that the purpose of Supervalu's acquisition of the Fleming Midwest operations from C&S was to consolidate the acquired sales volume mostly within SuperValu's existing distribution centers and channels in order to achieve economies of scale that would result in greater efficiencies and lower costs); App. 41a ("Defendants provided affidavits and documentation

of SuperValu's and C&S's independent decision-making processes and demonstrated the efficiencies each created by integrating assets acquired in the AEA.").

Because the value of a grocery wholesaler is principally in the goodwill of the public and in customer lists and trade names associated with the business, sellers are uniquely positioned to undermine the value of the business sold by competing for their former customers and new customers in the same geographic market. Geographic noncompetition provisions are thus quite common in this industry and are in fact necessary in many instances to preserve the value of the acquisition. *See, e.g.*, Asset Purchase Agreement Between Roundy's Inc. and Nash Finch Company, § 5.06 (Feb. 4, 2005), *available at* http://www.sec.gov/Archives/edgar/data/69671/000110465905008600/a05-4254_1ex2d1.htm; *see also Di Giorgio Corp. v. Fleming Cos.*, No. 02-2887 (D.N.J. Apr. 1, 2003) (granting preliminary injunction enforcing a noncompetition provision that precluded the defendant from engaging in the wholesale distribution of certain food products in Connecticut, New York, and parts of New Jersey for a period of ten years following the sale of the defendant's Royal Foods Division to the plaintiff).

Leaving the decision below uncorrected will expose geographic noncompetition provisions to invalidity and the companies who utilize them to antitrust liability. This will naturally leave wholesale grocers fearful of entering into any transaction that would otherwise carry the promise of lower prices to retail buyers. As a result, the decision will chill the very conduct the antitrust laws are designed to protect.[5] Even if confined to the Eighth

5. As Petitioners explain, the Eighth Circuit's ruling that the Clayton's Act's four-year limitations period begins anew

Circuit, this chilling effect alone is sufficient to warrant review and correction by this Court. But the decision below is much broader in practical effect in light of the Clayton Act's venue provision that permits suit "against a corporation … not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business." 15 U.S.C. § 22.[6] The magnifying effect of this venue provision only compounds the urgent need for the Court's review.

"each time a defendant uses its illegally obtained market power to make a sale at a higher price, subjecting a business acquisition to potential antitrust litigation many years after the fact," Pet. 4, only exacerbates the problem by exposing the transacting parties to the risk of liability for a much longer period than contemplated by the Act.

6. This special venue provision is "extremely broad," *Thill Sec. Corp. v. New York Stock Exch.*, 283 F. Supp. 239, 245 (E.D. Wis. 1968), and has been interpreted by this Court "to aid plaintiffs by giving them a wider choice of venues, and … more convenient, enforcement of antitrust prohibitions," *United States v. Nat'l City Lines*, 334 U.S. 573, 586 (1948).

CONCLUSION

Amicus curiae respectfully requests that the Court grant the petition for certiorari.

Respectfully submitted,

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