



Supreme Court of the
United States, 1997.
522 U.S. 3,
118 S.Ct. 275,
139 L.Ed.2d 199.
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cascode/supreme.html](http://www.findlaw.com/cascode/supreme.html)^a

State Oil Co. v. Khan

BACKGROUND AND FACTS *Barkat Khan leased a gas station under a contract with State Oil Company, which also agreed to supply gas to Khan for resale. Under the contract, State Oil would set a suggested retail price and sell gas to Khan for 3.25 cents per gallon less than that price. Khan could sell the gas at a higher price, but he would then be required to pay State Oil the difference (which would equal the entire profit Khan realized from raising the price). Khan failed to pay some of the rent due under the lease, and State Oil terminated the contract. Khan filed a suit in a federal district court against State Oil, alleging, among other things, price fixing in violation of the Sherman Act. The court granted summary judgment for State Oil. Khan appealed. The U.S. Court of Appeals for the Seventh Circuit reversed this judgment, and State Oil appealed to the United States Supreme Court.*

IN THE LANGUAGE OF THE COURT



Justice O'CONNOR delivered the opinion of the Court.

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* * * Our analysis is * * * guided by our general view that the primary purpose of the antitrust laws is to protect interbrand competition. * * * [C]ondemnation of practices resulting in lower prices to consumers is especially costly because cutting prices in order to increase business often is the very essence of competition.

* * * [W]e find it difficult to maintain that vertically imposed maximum prices could harm consumers or competition to the extent necessary to justify their *per se* invalidation.

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* * * [T]he *per se* rule * * * could in fact exacerbate problems related to the unrestrained exercise of market power by monopolist-dealers. Indeed, both courts and antitrust scholars have noted that [the *per se*] rule may actually harm consumers and manufacturers. * * * [Emphasis added.]

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* * * [V]ertical maximum price fixing, like the majority of commercial arrangements subject to the antitrust laws, should be evaluated under the rule of reason. In our view, rule-of-reason analysis can effectively identify those situations in which vertical maximum price fixing amounts to anticompetitive conduct.

DECISION AND REMEDY *The United States Supreme Court vacated the decision of the appellate court and remanded the case. The Supreme Court held that vertical price fixing is not a per se violation of the Sherman Act but should be evaluated under the rule of reason.*

WHAT IF THE FACTS WERE DIFFERENT? *Suppose that the distributor's price setting had had the effect of undercutting competition. Would this have affected the result in this case?*

INTERNATIONAL CONSIDERATIONS Regulation in Other Countries *Other countries have begun to adopt their own versions of U.S. antitrust laws. For example, the Japan Fair Trade Commission has adopted a set of guidelines to reduce anticompetitive practices by*

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Japanese companies. Under the guidelines, manufacturers are prohibited from terminating dealers who sell their products for prices below those suggested by the manufacturers. The European Court of Justice has upheld a fine levied against a Dutch company for threatening to engage in below-cost pricing to force a British competitor out of a particular market.^b And now independent republics that were once part of the Soviet Union have sought the assistance of U.S. economic and technical experts in revamping their centrally planned economies.

b. *AKZO Chemie BV v. Commission of the European Community*, E.C.Ct.Jus., No. C-62/86, July 3, 1991. (The European Community is now called the European Union, or EU.)