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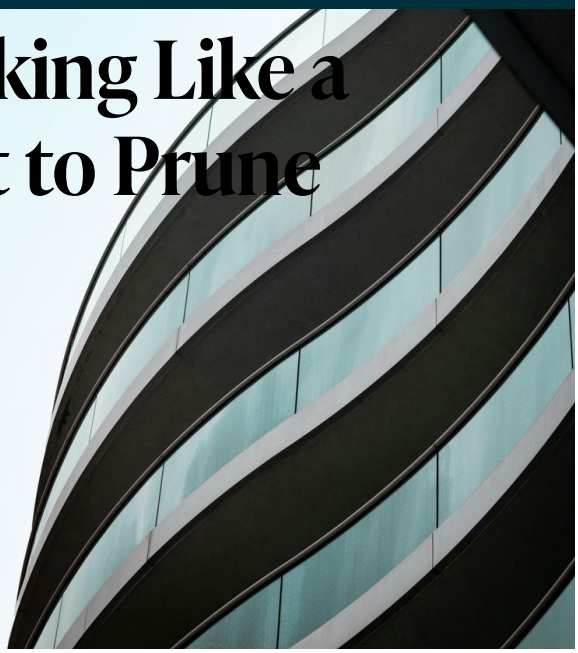
# Soccer Antitrust Case Looking Like a Vehicle for Supreme Court to Prune Section 1 Antitrust Cases



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The U.S. Supreme Court is signaling its interest in a cert petition by U.S. Soccer by asking the DOJ to weigh in on whether to take up the case. Such requests often precede the grant of cert. This is a really interesting and important issue to the business community because it could answer the question of whether a trade association's members can be sued for entering a Sherman Act Section 1 "agreement" merely by joining an association that has adopted (or later adopts) an anti-competitive rule.

The case revolves around whether U.S. Soccer – by way of its 100-year membership in FIFA (the world soccer organizing body that sponsors the World Cup) – can be found to have entered into Section 1 "agreement" with other FIFA members so that it can be sued over an allegedly anti-competitive FIFA rule. In this case, a Spanish promoter tried to stage an official Spanish professional league (La Liga) game in Miami, but FIFA denied the request to do so because FIFA's rules require that a league's official games take place within the territory of the league. (So La Liga games must occur in Spain, Barclays Premier League games must take place in the UK, Major League Soccer games must take place in the U.S., and so on.)

The Second Circuit held that U.S. Soccer's membership in FIFA was enough to meet the "agreement" requirement of a Section 1 claim. Other Circuits have held to the contrary in cases involving credit card associations of banks and standard-setting bodies involving saw safety,

among others – that association membership alone is not enough. So we have a full-fledged circuit split.

As the U.S. Soccer cert petition ably notes, trade associations and other professional membership associations are ubiquitous in the U.S. Because associations often have pro-competitive aims, their rules are usually judged under the "rule of reason," not the "per se" standard. But under the Second Circuit's standard, an association member would need to find another pleading defect to avoid years of expensive antitrust litigation.

So what might the Court do? It would be one thing to expect that before joining an association a business engages in reasonable diligence to ensure it is not joining a naked cartel. But beyond that, expecting that members scrutinize all of an association's existing rules that might arguably be anti-competitive under the rule of reason – and to monitor all rules that may be adopted in the future – will unnecessarily chill membership participation.

> **The bottom-line result is that, in the Second Circuit, any association member is at constant and inherent risk of becoming a Sherman Act violator the moment its association adopts an anticompetitive rule – regardless of whether they had a thing to do with its promulgation," U.S. Soccer argued in its petition.**
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