OneOK, Inc. v. Learjet, Inc., No. 13–271

The Natural Gas Act, 15 U.S.C. § 717 *et seq.*, grants the Federal Energy Regulatory Commission exclusive authority to regulate certain segments of the natural-gas market. The statute draws a line between different kinds of natural-gas sales: FERC has exclusive authority to regulate wholesale sales of natural gas, but retail purchases of natural gas fall outside of FERC's jurisdiction. Today, in *OneOK, Inc. v. Learjet, Inc.*, No. 13-271, the Supreme Court held that the Natural Gas Act does not preempt state-law antitrust claims asserted by litigants that purchased natural gas in retail transactions even when those claims challenge industry practices that also affect the wholesale natural-gas market.

Respondents were retail purchasers of natural gas during the energy crisis of 2000–2002. They sued petitioners, which were natural-gas traders during that period. The complaint alleged that petitioners manipulated the retail price of natural gas by reporting false information to price indices published in trade publications and by engaging in "wash sales," which are prearranged sales in which traders execute a trade on an electronic platform and then immediately offset that trade by executing an equal and opposite trade. Petitioners moved for summary judgment on preemption grounds, and the district court granted the motion. The Ninth Circuit reversed, holding that the Natural Gas Act does not preempt respondents' state-law antitrust claims.

The Supreme Court affirmed the Ninth Circuit. In an opinion written by Justice Breyer, the majority explained that the state-law antitrust claims at issue were not "within the field that the Natural Gas Act pre-empts." The majority noted that the Natural Gas Act "was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way." The Court further explained that "where (as here) a state law can be applied to [retail] as well as [wholesale] sales, we must proceed cautiously, finding pre-emption only where detailed examination convinces us that a matter falls within the pre-empted field as defined by our precedents." In the majority's view, that requires consideration of "the *target* at which the state law *aims* in determining whether [the state] law is pre-empted." Because state antitrust laws are laws of broad application and states have a long history of regulating monopolies and unfair business practices, the majority deemed it insufficient for purposes of field preemption that the challenged practices, in addition to affecting retail prices, also would affect wholesale prices. Rather, it was enough to avoid preemption that the "lawsuits are directed at practices affecting *retail* rates—which are firmly on the States' side of th[e] dividing line." Finally, the majority noted that the parties in the case had not argued the issue of conflict preemption (nor had the United States, which supported petitioners), and the Court therefore left it to the lower courts to resolve in the first instance any conflict-preemption questions.

Justice Thomas concurred in part and concurred in the judgment. He wrote separately to reiterate his position that "implied pre-emption doctrines that wander far from the statutory text are inconsistent with the Constitution," explaining that he therefore has doubts about the correctness of the Court's prior precedents concerning the preemptive scope of the Natural Gas Act. But because the challenged state-law antitrust claims fell outside of the preempted field "even under those precedents," he concurred in the Court's judgment and most of its opinion.

Justice Scalia wrote a dissenting opinion, joined by Chief Justice Roberts. The dissent emphasized the need for a clear line between national and state authority over the natural-gas industry and accused the majority of smudging that line by focusing on the purpose of the state law rather than whether the conduct being affected by that law is regulated by FERC. In the dissent's view, FERC has exclusive authority to regulate not just wholesale rates, but also "background practices affecting such rates"—which would include the practices challenged in this case. And because FERC "may regulate the practices alleged in this case," according to the dissent, "the States therefore may not."

The Supreme Court's decision is of significant interest to all participants in natural-gas markets because it determines that retail purchasers of natural gas may bring state-law claims alleging anticompetitive conduct by businesses engaged in the transportation, marketing, or sale of natural gas even if the challenged conduct also affects wholesale sales. The conclusion that such state-law claims may coexist with the federal regulatory scheme—at least for purposes of field preemption—is of particular importance to businesses whose practices are regulated by FERC under the Natural Gas Act.

Any questions about the case should be directed to C.J. Summers (+1 202 263 3247) in our Washington office.