Intel Corporation v. Advanced Micro Devices, Inc.

UNITED STATES SUPREME COURT
542 U.S. 241, 124 S.Ct. 2466, 159 L.Ed.2d 355 (2004)

Author's Note: In a principal case in textbook §3.4 (*European Commission v. Microsoft Corporation*), Microsoft was fined by the European Commission for antitrust violations affecting Europe. In this case–filed in the same European venue as the *Microsoft* case–both parties were US companies headquartered in California. The plaintiff, Advanced Micro Devices (AMD), herein sought the help of a California federal court, where both parties resided for purposes of the statute being interpreted in this case. AMD wanted documents that were on file In Alabama because of prior litigation against Intel in an Alabama federal court.

Court's Majority Opinion:

Justice GINSBURG delivered the opinion of the Court.

This case concerns the authority of federal district courts to assist in the production of evidence for use in a foreign or international tribunal. In the matter before us, respondent Advanced Micro Devices, Inc. (AMD) filed an antitrust complaint against petitioner Intel Corporation (Intel) with the Directorate-General for Competition of the Commission of the European Communities (European Commission or Commission). In pursuit of that complaint, AMD applied to the United States District Court for the Northern District of California, invoking 28 U.S.C. § 1782(a), for an order requiring Intel to produce potentially relevant documents. Section 1782(a) provides that a federal district court "may order" a person "resid[ing]" or "found" in the district to give testimony or produce documents "for use in a proceeding in a foreign or international tribunal ... upon the application of any interested person."

Concluding that § 1782(a) did not authorize the requested discovery, the District Court denied AMD's application. The Court of Appeals for the Ninth Circuit reversed that determination and remanded the case, instructing the District Court to rule on the merits of AMD's application. In accord with the Court of Appeals, we hold that the District Court had authority under § 1782(a) to entertain AMD's discovery request. The statute, we rule, does not categorically bar the assistance AMD seeks: (1) A complainant before the European Commission, such as AMD, qualifies as an "interested person" within § 1782(a)'s compass; (2) the Commission is a § 1782(a) "tribunal" when it acts as a first-instance decisionmaker; (3) the "proceeding" for which discovery is sought under § 1782(a) must be in reasonable contemplation, but need not be "pending" or "imminent"; and (4) § 1782(a) contains no threshold requirement that evidence sought from a federal district court would be discoverable under the law governing the foreign proceeding. We caution, however, that § 1782(a) authorizes, but does not require, a federal district court to provide judicial assistance to foreign or international tribunals or to "interested person[s]" in proceedings abroad. Whether such assistance is appropriate in this case is a question yet unresolved. To guide the District Court on remand, we suggest considerations relevant to the disposition of that question.

I
A

Section 1782 is the product of congressional efforts, over the span of nearly 150 years, to provide federal-court assistance in gathering evidence for use in foreign tribunals. Congress first provided for federal-court aid to foreign tribunals in 1855; requests for aid took the form of letters rogatory forwarded through diplomatic channels . . . (circuit court may appoint "a United States commissioner designated ... to make the examination of witnesses" on receipt of a letter rogatory from a foreign court); (authorizing district courts to respond to letters rogatory by compelling witnesses here to provide testimony for use abroad in "suit[s] for the recovery of money or property").[1] In 1948, Congress substantially broadened the scope of assistance federal courts could provide for foreign proceedings. That legislation, codified as § 1782, eliminated the prior requirement that the government of a foreign country be a party or have an interest in the proceeding. The measure allowed district courts to designate persons to preside at depositions "to be used in *any civil* action pending in any court in a foreign country with which the United States is at peace" (emphasis added). The next year, Congress deleted "civil action" from § 1782's text and inserted "judicial proceeding." See generally, Jones, International Judicial Assistance: Procedural Chaos and a Program for Reform, 62 Yale L.J. 515 (1953).

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Section 1782(a)'s current text reads:

> The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person .... The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing ... [or may be] the Federal Rules of Civil Procedure.
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> A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

[1] "[A] letter rogatory is the request by a domestic court to a foreign court to take evidence from a certain witness." Jones, International Judicial Assistance: Procedural Chaos and a Program for Reform, 62 Yale L.J. 515, 519 (1953). See Smit, International Litigation under the United States Code, 65 Colum. L.Rev. 1015, 1027 (1965) (hereinafter Smit, International Litigation) (noting foreign courts' use of letters rogatory to request evidence- gathering aid from United States courts).

B

AMD and Intel are "worldwide competitors in the microprocessor industry." In October 2000, AMD filed an antitrust complaint with the Directorate-General for Competition (DG-Competition) of the European Commission. "The European Commission is the executive and administrative organ of the European Communities." The Commission exercises responsibility over the wide range of subject areas covered by the European Union treaty; those areas include the treaty provisions, and regulations thereunder, governing competition. The DG-Competition, operating under the Commission's aegis, is the European Union's primary antitrust law enforcer. Within the DG-Competition's domain are anti-competitive agreements (Art. 81) and abuse of dominant market position (Art. 82) [the subject of the Microsoft case in text §3.4].

. . . AMD recommended that the DG-Competition seek discovery of documents Intel had produced in a private antitrust suit . . . . After the DG-Competition declined to seek judicial assistance in the United States, AMD, pursuant to § 1782(a), petitioned the District Court for the Northern District of California for an order directing Intel to produce documents discovered in the *Intergraph* litigation and on file in the federal court in Alabama. AMD asserted that it sought the materials in connection with the complaint it had filed with the European Commission.[6]

The District Court denied the application as "[un]supported by applicable authority." Reversing that determination, the Court of Appeals for the Ninth Circuit remanded the case for disposition on the merits. . . .

The Court of Appeals rejected Intel's argument that § 1782(a) called for a threshold showing that the documents AMD sought in the California federal court would have been *discoverable* by AMD in the European Commission investigation had those documents been located within the Union [italics added]. . . .

We granted certiorari, in view of the division among the Circuits on the question whether § 1782(a) contains a foreign-discoverability requirement. We now hold that § 1782(a) does not impose such a requirement. We also granted review on two other questions. First, does § 1782(a) make discovery available to complainants, such as AMD, who do not have the status of private "litigants" and are not sovereign agents? Second, must a "proceeding" before a foreign "tribunal" be "pending" or at least "imminent" for an applicant to invoke § 1782(a) successfully?

II

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If the DG-Competition decides to pursue the complaint, it typically serves the target of the investigation with a formal "statement of objections" and advises the target of its intention to recommend a decision finding that the target has violated European competition law. The target is entitled to a hearing before an independent officer, who

[6] AMD's complaint to the Commission alleges, inter alia, "that Intel has monopolized the worldwide market for Windows-capable i.e. x86, microprocessors." The documents from the Intergraph litigation relate to: "(a) the market within which Intel x86 microprocessors compete; (b) the power that Intel enjoys within that market; (c) actions taken by Intel to preserve and enhance its position in the market; and (d) the impact of the actions taken by Intel to preserve and enhance its market position."

provides a report to the DG-Competition. Once the DG-Competition has made its recommendation, the European Commission may "dismis[s] the complaint, or issu[e] a decision finding infringement and imposing penalties." The Commission's final action dismissing the complaint or holding the target liable is subject to review in the Court of First Instance and the European Court of Justice.

Although lacking formal "party" or "litigant" status in Commission proceedings, the complainant has significant procedural rights. Most prominently, the complainant may submit to the DG-Competition information in support of its allegations, and may seek judicial review of the Commission's disposition of a complaint.

III

. . . The language of § 1782(a), confirmed by its context, [which] our examination satisfies us, warrants this conclusion: The statute authorizes, but does not require, a federal district court to provide assistance to a complainant in a European Commission proceeding that leads to a dispositive ruling, *i.e*., a final administrative action both responsive to the complaint and reviewable in court.[9] Accordingly, we reject the categorical limitations Intel would place on the statute's reach.

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We next consider whether the assistance in obtaining documents here sought by an "interested person" meets the specification "for use in a foreign or international tribunal."

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We have no warrant to exclude the European Commission, to the extent that it acts as a first-instance decisionmaker, from § 1782(a)'s ambit.

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In 1996, Congress amended § 1782(a) to clarify that the statute covers "criminal investigations conducted before formal accusation." Nothing suggests that this amendment was an endeavor to rein in, rather than to confirm, by way of example, the broad range of discovery authorized in 1964. ("[T]he [district] court[s] have discretion to grant assistance when proceedings are pending before investigating magistrates in foreign countries.").

In short, we reject the view, expressed in *In re Ishihara Chemical Co.*, that § 1782 comes into play only when adjudicative proceedings are "pending" or "imminent." See 251 F.3d, at 125 (proceeding must be "imminent–very likely to occur and very soon to occur" (internal quotation marks omitted)). Instead, we hold that § 1782(a) requires only that a dispositive ruling by the Commission, reviewable by the European courts, be within reasonable contemplation. Smit, International Litigation 1026 ("It is not necessary ... for the [adjudicative] proceeding to be pending at the time the evidence is sought, but only that the evidence is eventually to be used in such a proceeding.").

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[9] The dissent suggests that the Commission "more closely resembles a prosecuting authority, say, the Department of Justice's Antitrust Division, than an administrative agency that adjudicates cases, say, the Federal Trade Commission." Post, at 2486. That is a questionable suggestion in view of the European Commission's authority to determine liability and impose penalties, dispositions that will remain final unless overturned by the European courts.

D

We take up next the foreign-discoverability rule on which lower courts have divided: Does § 1782(a) categorically bar a district court from ordering production of documents when the foreign tribunal or the "interested person" would not be able to obtain the documents if they were located in the foreign jurisdiction? . . . Beyond shielding material safeguarded by an applicable privilege, however, nothing in the text of § 1782 limits a district court's production-order authority to materials that could be discovered in the foreign jurisdiction if the materials were located there. "If Congress had intended to impose such a sweeping restriction on the district court's discretion, at a time when it was enacting liberalizing amendments to the statute, it would have included statutory language to that effect."[11]

Nor does § 1782(a)'s legislative history suggest that Congress intended to impose a blanket foreign-discoverability rule on the provision of assistance under § 1782(a). The Senate Report observes in this regard that § 1782(a) "leaves the issuance of an appropriate order to the discretion of the court which, in proper cases, may refuse to issue an order or may impose conditions it deems desirable."

. . .

We question [Intel's assertion] whether foreign governments would in fact be offended by a domestic prescription permitting, but not requiring, judicial assistance. A foreign nation may limit discovery within its domain for reasons peculiar to its own legal practices, culture, or traditions–reasons that do not necessarily signal objection to aid from United States federal courts. ("[T]here is no reason to assume that because a country has not adopted a particular discovery procedure, it would take offense at its use.")[12]

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We also reject Intel's suggestion that a § 1782(a) applicant must show that United States law would allow discovery in domestic litigation analogous to the foreign proceeding. Brief for Petitioner 19-20 ("[I]f AMD were pursuing this matter in the United States, U.S. law would preclude it from obtaining discovery of Intel's documents."). Section 1782 is a provision for assistance to tribunals abroad. It does not direct United

[11] Section § 1782(a) instructs that a district court's discovery order "may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing ... [or may be] the Federal Rules of Civil Procedure." This mode-of-proof-taking instruction imposes no substantive limitation on the discovery to be had.

[12] .Most civil-law systems lack procedures analogous to the pretrial discovery regime operative under the Federal Rules of Civil Procedure. See ALI, ALI/Unidroit Principles and Rules of Transnational Civil Procedure, Proposed Final Draft, Rule 22, Comment R-22E (2004) ("Disclosure and exchange of evidence under the civil-law systems are generally more restricted, or nonexistent."). See also Smit . . . ("The drafters [of § 1782] were quite aware of the circumstance that civil law systems generally do not have American type pretrial discovery, and do not compel the production of documentary evidence.").

States courts to engage in comparative analysis to determine whether analogous proceedings exist here. Comparisons of that order can be fraught with danger.[15] . . .

IV

As earlier emphasized, a district court is not required to grant a § 1782(a) discovery application simply because it has the authority to do so. See United Kingdom v. United States, 238 F.3d 1312, 1319 (C.A.11 2001) ("a district court's compliance with a § 1782 request is not mandatory"). We note below factors that bear consideration in ruling on a § 1782(a) request.

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Second, as the 1964 Senate Report suggests, a court presented with a § 1782(a) request may take into account the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance.

. . .

On the merits, this case bears closer scrutiny than it has received to date. Having held that § 1782(a) authorizes, but does not require, discovery assistance, we leave it to the courts below to assure an airing adequate to determine what, if any, assistance is appropriate.

For the reasons stated, the judgment of the Court of Appeals for the Ninth Circuit is
Affirmed.

Justice BREYER, dissenting.

The Court reads the scope of 28 U.S.C. § 1782 to extend beyond what I believe Congress might reasonably have intended. Some countries allow a private citizen to ask a court to review a criminal prosecutor's decision not to prosecute. On the majority's reading, that foreign private citizen could ask an American court to help the citizen obtain information, even if the foreign prosecutor were indifferent or unreceptive. . . .

One might ask why it is wrong to read the statute as permitting the use of America's court processes to obtain information in such circumstances. One might also ask why American courts should not deal *case by case* with any problems of the sort mentioned. The answer to both of these questions is that discovery and discovery-related judicial proceedings take time, they are expensive, and cost and delay, or threats of cost and delay, can themselves force parties to settle underlying disputes. . . . To the extent that expensive, time-consuming battles about discovery proliferate, they deflect the

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[15] Among its proposed rules, the dissent would exclude from § 1782(a)'s reach discovery not available "under foreign law" and "under domestic law in analogous circumstances." Because comparison of systems is slippery business, the dissent's rule is infinitely easier to state than to apply. As the dissent's examples tellingly reveal, see post, at 2485-2486, a foreign proceeding may have no direct analogue in our legal system. In light of the variety of foreign proceedings resistant to ready classification in domestic terms, Congress left unbounded by categorical rules the determination whether a matter is proceeding "in a foreign or international tribunal." While we reject the rules the dissent would inject into the statute, we do suggest guides for the exercise of district-court discretion.

attention of foreign authorities from other matters those authorities consider more important; they can lead to results contrary to those that foreign authorities desire; and they can promote disharmony among national and international authorities, rather than the harmony that § 1782 seeks to achieve. They also use up domestic judicial resources and crowd our dockets.

That is why I believe the statute, while granting district courts broad authority to order discovery, nonetheless must be read as subject to some categorical limits, at least at the outer bounds–a matter that today's decision makes even more important. Those limits should rule out instances in which it is virtually certain that discovery (if considered case by case) would prove unjustified [*e.g.*, abusive discovery].

This case does not require us to find a comprehensive set of limits. But it does suggest two categorical limitations, which I would adopt. First, when a foreign entity possesses few tribunal-like characteristics, so that the applicability of the statute's word "tribunal" is in serious doubt, then a court should pay close attention to the foreign entity's own view of its "tribunal"-like or non-"tribunal"-like status. By paying particular attention to the views of the very foreign nations that Congress sought to help, courts would better achieve Congress' basic cooperative objectives in enacting the statute. See Act of Sept. 2, 1958, Pub.L. 85-906, § 2, 72 Stat. 1743 (creating Commission on International Rules of Judicial Procedure to investigate and improve judicial "cooperation" between the United States and other countries).

. . .

Second, a court should not permit discovery where both of the following are true: (1) A private person seeking discovery would not be entitled to that discovery under foreign law, and (2) the discovery would not be available under domestic law in analogous circumstances. The Federal Rules of Civil Procedure, for example, make only limited provisions for nonlitigants to obtain certain discovery. The limitations contained in the Rules help to avoid discovery battles launched by firms simply seeking information from competitors.

Application of either of these limiting principles would require dismissal of this discovery proceeding. First, the Commission of the European Communities' (Commission) antitrust authority's status as a "tribunal" is questionable. . . .

The second limiting factor is also present. Neither AMD nor any comparable private party would be able to obtain the kind of discovery AMD seeks, either in Europe or in the United States. In respect to Europe, the Commission has told us that any person in the world is free to file a complaint with the Commission, but it is the Commission that then investigates. The private complainant lacks any authority to obtain discovery of business secrets and commercial information. In respect to the United States, AMD is a nonlitigant, apart from this discovery proceeding. Conditions under which a nonlitigant may obtain discovery are limited. AMD does not suggest that it meets those conditions, or that it is comparable in any other way to one who might obtain discovery under roughly analogous circumstances. In addition, the material it seeks is under a protective order.

I respectfully dissent from the Court's contrary determination.

[see p. 8]

, ***Notes and Questions***

1. What information did AMD want from Intel? What issue did that present to the Supreme Court? How was it resolved?

2. There were at least three ways the Supreme Court could have ruled in this case. What were they?

3. Justice Breyer points out that AMD would not be able to obtain the information it sought in the US, and the EC investigative entity in this case already declined to order that it be provided for the European proceedings. When then, is the majority's rationale for requiring the trial court to review its own prior denial? Does the majority's reasoning make more sense than that of Justice Breyer?

4. Regarding discovery abuse, and the difference between Civil Law and Common Law rules as mentioned, a number of European countries have "blocking statutes." They prohibit their citizens and courts from responding to discovery requests initiated under the Federal Rules of Civil Procedure.