

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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TEXACO INC. *v.* DAGHER ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 04–805. Argued January 10, 2006—Decided February 28, 2006*

Petitioners, Texaco Inc. and Shell Oil Co., collaborated in a joint venture, Equilon Enterprises, to refine and sell gasoline in the western United States under the two companies' original brand names. After Equilon set a single price for both brands, respondents, Texaco and Shell Oil service station owners, brought suit alleging that, by unifying gas prices under the two brands, petitioners had violated the *per se* rule against price fixing long recognized under §1 of the Sherman Act, see, e.g., *Catalano, Inc. v. Target Sales, Inc.*, 446 U. S. 643, 647. Granting petitioners summary judgment, the District Court determined that the rule of reason, rather than a *per se* rule, governs respondents' claim, and that, by eschewing rule of reason analysis, respondents had failed to raise a triable issue of fact. The Ninth Circuit reversed, characterizing petitioners' position as a request for an exception to the *per se* price-fixing prohibition, and rejecting that request.

Held: It is not *per se* illegal under §1 of the Sherman Act for a lawful, economically integrated joint venture to set the prices at which it sells its products. Although §1 prohibits “[e]very contract [or] combination . . . in restraint of trade,” 15 U. S. C. §1, this Court has not taken a literal approach to that language, recognizing, instead, that Congress intended to outlaw only *unreasonable* restraints, e.g., *State Oil Co. v. Khan*, 522 U. S. 3, 10. Under rule of reason analysis, anti-trust plaintiffs must demonstrate that a particular contract or combination is in fact unreasonable and anticompetitive. See, e.g., *id.*, at 10–19. *Per se* liability is reserved for “plainly anticompetitive” agree-

*Together with No. 04–814, *Shell Oil Co. v. Dagher et al.*, also on certiorari to the same court.

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ments. *National Soc. of Professional Engineers v. United States*, 435 U. S. 679, 692. While “horizontal” price-fixing agreements between two or more competitors are *per se* unlawful, see, e.g., *Catalano, supra*, at 647, this case does not present such an agreement, because Texaco and Shell Oil did not compete with one another in the relevant market—*i.e.*, gasoline sales to western service stations—but instead participated in that market jointly through Equilon. When those who would otherwise be competitors pool their capital and share the risks of loss and opportunities for profit, they are regarded as a single firm competing with other sellers in the market. *Arizona v. Maricopa County Medical Soc.*, 457 U. S. 332, 356. As such, Equilon’s pricing policy may be price fixing in a literal sense, but it is not price fixing in the antitrust sense. The court below erred in reaching the opposite conclusion under the ancillary restraints doctrine, which governs the validity of restrictions imposed by a legitimate joint venture on nonventure activities. That doctrine has no application here, where the challenged business practice involves the core activity of the joint venture itself—the pricing of the very goods produced and sold by Equilon. Pp. 3–6.

369 F. 3d 1108, reversed.

THOMAS, J., delivered the opinion of the Court, in which all other Members joined, except ALITO, J., who took no part in the consideration or decision of the cases.