NO. 25-1243

In the
# Supreme Court of the United States

NEXSTAR MEDIA GROUP, INC.,
MISSION BROADCASTING, INC., AND
WHITE KNIGHT BROADCASTING, INC.,
*Petitioners*,

v.

DIRECTV, LLC,
*Respondent*.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

## BRIEF IN OPPOSITION


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## QUESTION PRESENTED

There is no circuit split. Contrary to Petitioners' characterization (at i), no court has held that a plaintiff who is unable to purchase a product as a result of a price-fixing scheme is "necessarily" barred from invoking the antitrust laws. While the Ninth and Tenth Circuits denied antitrust standing to nonpurchasers in two specific cases, both courts held that factors not present in those cases, such as a history of dealing between the parties, could support antitrust standing for priced-out nonpurchasers. The Second Circuit applied the same approach and held that DIRECTV had antitrust standing under the particular facts of this case, where Petitioners' scheme was aimed solely at DIRECTV and disrupted the parties' long-established course of dealing.

The question presented is:

Whether a plaintiff who is the sole target of a price-fixing scheme that prevents it from renewing an existing multi-year contract is categorically barred from suing under the antitrust laws.

## CORPORATE DISCLOSURE STATEMENT

DIRECTV, LLC is a wholly owned subsidiary of DIRECTV Holdings LLC, which is a wholly owned subsidiary of DIRECTV Financing, LLC, which is a wholly owned subsidiary of DIRECTV Financing Holdco, LLC, which is a wholly owned subsidiary of DIRECTV Entertainment Holdings LLC, which is owned by Merlin MVPD Holdings LLC (70.09%) and TPG VIII Merlin Investment Holdings, L.P. (29.91%). Merlin MVPD Holdings LLC is a privately owned limited liability company. TPG VIII Merlin Investment Holdings, L.P. is a privately held limited partnership.

**TABLE OF CONTENTS**

## TABLE OF AUTHORITIES

### Cases

## INTRODUCTION

Although a "literal reading" of the antitrust laws would allow anyone injured by an antitrust violation to sue, this Court created the doctrine of "antitrust standing" to determine "whether [a] plaintiff is a proper party to bring a private antitrust action," even assuming the plaintiff was injured by the violation. *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 529, 535 & n.31 (1983). Based on the facts alleged in DIRECTV's complaint, the Second Circuit held that DIRECTV is a proper plaintiff to sue under the antitrust laws. That decision is correct and does not create or implicate any circuit split.

DIRECTV has historically licensed the right to retransmit Petitioners' television channels to DIRECTV's subscribers, through agreements separately negotiated with each Petitioner. In 2022, Petitioners threw a wrench into the parties' relationships by conspiring to demand supracompetitive prices from DIRECTV in violation of the antitrust laws. As a result, DIRECTV failed to renew its existing licensing agreements and suffered losses, just as Petitioners anticipated. The Second Circuit held that DIRECTV is a proper plaintiff "because it was the direct target of the defendants' purported price-fixing conspiracy and it has a longstanding history of reaching agreements with the defendants." App.5a.

To overcome that reasonable ruling, Petitioners ask this Court to adopt a bright-line rule that "a plaintiff who did not purchase from an alleged price-fixing conspiracy" can never have antitrust standing. Pet.14. According to Petitioners, the only way a plaintiff can have standing to challenge a price-fixing scheme is if it surrenders to the conspirators and pays the supracompetitive prices they demand.

No court of appeals has ever adopted Petitioners' rule. Petitioners try to conjure a split with the Ninth and Tenth Circuits, but in reality, those circuits reject Petitioners' categorical approach in favor of a more nuanced inquiry that depends on the facts of each case. While the Tenth Circuit denied standing to a nonpurchaser that had "no prior course of dealing with any defendant," it was careful to note that "[w]hen [a] nonpurchaser can show a regular course of dealing with the conspirators, [its] injury may not be inherently speculative." *Montreal Trading Ltd. v. Amax Inc.*, 661 F.2d 864, 868 (10th Cir. 1981). The Ninth Circuit similarly declined to "adopt a bright-line rule precluding nonpurchasers who have been priced out of a market from establishing antitrust standing" and held only that the plaintiff in that case lacked standing where it could not "establish a *regular* course of dealing" with defendants. *City of Oakland v. Oakland Raiders*, 20 F.4th 441, 459–60 & n.11 (9th Cir. 2021). In addition, both the Ninth and Tenth Circuits gave weight to the fact that in those cases, "actual purchasers exist[ed] who were more directly injured by the conspiracy." *Montreal Trading*, 661 F.2d at 868; *see also City of Oakland*, 20 F.4th at 459.

In the decision below, the Second Circuit did not breathe a word of disagreement with the Ninth and Tenth Circuits' legal analyses. It instead concluded that, on the facts here, "[t]his case does not resemble those in which courts have rejected nonpurchaser claims." App.27a. Unlike in those prior cases, "the allegations here reflect a preexisting business relationship with the defendants and a distinct measure of damages." App.27a. The allegations also show that "DIRECTV was the sole target of the conspiracy" alleged in the complaint, there are "no more direct victims of the defendants' alleged anticompetitive conduct," and DIRECTV "can identify concrete losses of subscribers and profits during the blackout periods that occurred" as a result of that conduct. App.25a–27a.[1]

With the circuits in agreement about the relevant legal rules, Petitioners' quibbles with how the Second Circuit weighed DIRECTV's allegations in this case are unpersuasive and, in any event, amount to nothing more than a request for factbound error correction. This Court should deny the petition.

## STATEMENT OF THE CASE

### A. Factual Background

1. This case concerns the market for television retransmission rights. The sellers in this market are broadcast station groups, like Petitioners, that own affiliates of popular television networks in local markets across the country. App.5a. The buyers are multichannel video programming distributors ("MVPDs"), like DIRECTV, that provide consumers with satellite and streaming access to broadcast television programming. To provide that service, MVPDs license retransmission rights from multiple broadcasters and bundle

[1] Where Respondent's name appears as DirecTV in quoted text, it appears in this brief as DIRECTV, its official spelling, without annotation noting the altered capitalization.

the channels together into subscription packages that they sell to consumers. App.5a–6a.

Broadcasters and MVPDs negotiate retransmission consent agreements, in which the MVPD pays the broadcaster a fee in exchange for the right to transmit the broadcaster's stations to the MVPD's subscribers. App.6a. These agreements typically last three or four years before they must be renegotiated and renewed. Compl. ¶ 60 (Dist. Ct. Dkt. 1). If negotiations fail and the parties cannot agree on a new deal before the existing deal expires, the broadcaster's stations are "blacked out" for that MVPD, meaning the MVPD's subscribers can no longer access those channels through their subscription. App.6a (quoting Compl. ¶ 62). Unsurprisingly, when MVPDs face blackouts—especially of the most popular networks—they lose subscribers, as consumers are less likely to pay for television packages that do not include their favorite channels. App.6a.

The market for retransmission rights is highly regulated. Unlike sellers in many other markets, broadcasters cannot just pick and choose which buyers they want to deal with. Instead, federal law provides that "[t]elevision broadcast stations and multichannel video programming distributors shall negotiate in good faith the terms and conditions of retransmission consent agreements." 47 C.F.R. § 76.65(a); *see* 47 U.S.C. § 325(b)(3)(C) (directing the FCC to issue regulations that "prohibit a television broadcast station that provides retransmission consent from … failing to negotiate in good faith"). So broadcasters like Petitioners cannot simply refuse to come to the bargaining table with MVPDs like DIRECTV.

Federal law also regulates how Petitioners interact with one another. Nexstar is "the largest American broadcaster, with 200 owned or operated stations in 116 American markets." App.7a. Mission and White Knight are smaller broadcasters known in the industry as Nexstar's "sidecars." App.6a–7a. Sidecars are created to avoid the harm to competition that would result from having one entity own multiple "Big-4" stations (that is, affiliates of ABC, CBS, NBC, or Fox) within a single local television market. App.6a–7a. In keeping with that purpose, federal law "require[s] the sidecar to remain independent" from the larger broadcast group "in key respects." App.7a. In particular, "the sidecar must negotiate its own [retransmission consent agreements] with MVPDs over Big-4 stations in … markets where both the sidecar and the large broadcast group own a Big-4 station." App.7a.

2. The events that gave rise to this lawsuit took place in 2022. At that time, DIRECTV already had an established course of dealing with Mission and White Knight. Most recently, in 2019, it had entered into three-year retransmission consent agreements with both entities. Compl. ¶ 90. DIRECTV started negotiations to renew the agreements in June 2022. App.8a.

Despite federal law requiring Mission and White Knight to conduct those negotiations independently, it quickly became clear that Nexstar was pulling the strings. When DIRECTV tried to negotiate with the management teams at Mission and White Knight, it was told that all negotiations with either entity had to proceed through a single, supposedly independent "consultant" named Eric Sahl. App.8a. Sahl, however, "did not conduct independent negotiations for each of the companies.” App.8a. Instead, he “referenced non-public information about Nexstar’s business strategies,” “coordinated contractual terms in order to serve Nexstar’s interests,” and “made demands that undermined Mission’s and White Knight’s independent economic interests but benefited Nexstar.” App.8a–9a. Chief among those demands was Sahl’s insistence on supracompetitive fee increases that were “radically disproportionate to the number of stations owned by White Knight and Mission.” Compl. ¶ 97.

In short, Nexstar, Mission, and White Knight entered into a horizontal price-fixing agreement—with Nexstar at the helm—“to raise prices and extract supracompetitive retransmission consent fees from” DIRECTV. App.8a (quoting Compl. ¶ 9). Nexstar stood to benefit from this conspiracy in at least two ways. First, because Nexstar received all of Mission’s and White Knight’s profits, it would benefit from any supracompetitive prices that could be extracted from DIRECTV. App.9a. And second, even without an agreement between DIRECTV and the sidecars, Nexstar would benefit in its own contract renewal negotiations with DIRECTV by shifting the baseline and making it easier for Nexstar to demand similarly inflated rates. App.9a.

Ultimately, DIRECTV did not succumb to the sidecars’ supracompetitive price demands. Its agreements with Mission and White Knight therefore expired, and in October 2022, stations owned by Mission and White Knight were blacked out for nearly one million DIRECTV subscribers. App.9a. As a direct and predictable result of the blackouts, thousands of

DIRECTV subscribers cancelled their subscriptions. App.10a.[2]

### B. Procedural History

1. DIRECTV sued Nexstar, Mission, and White Knight in federal court in the Southern District of New York. It asserted federal antitrust claims as well as state-law claims for breach of contract and tortious interference. *See* Compl. ¶¶ 152–225.

The district court dismissed the complaint. It held that DIRECTV lacked antitrust standing, and it declined to exercise supplemental jurisdiction over the state-law claims. App.56a. The court first held that DIRECTV did not have an "antitrust injury" because its losses did not "flow from that which makes [Petitioners'] price-fixing illegal." App.51a–52a. The court then held that even if DIRECTV had an antitrust injury, it was not an "efficient enforcer"—*i.e.*, a proper plaintiff to sue under the antitrust laws—because its damages were "too indirect and speculative" and there were "more direct victims" of the price-fixing scheme. App.53a–55a.

2. DIRECTV appealed, and the United States filed an amicus brief in which it "urge[d the Second Circuit] to correct the district court's erroneous holding … that the sole type of injury for which a private consumer plaintiff can recover in a price-fixing case is the payment of supracompetitive prices." U.S. *Amicus* Brief at 1 (Ct. App. Dkt. 54). The government's brief

[2] The full scope of DIRECTV's injury and damages from Petitioners' price-fixing scheme is the subject of ongoing discovery in the district court.

explained that DIRECTV's loss of retransmission rights constituted an "output reduction result[ing] from the alleged price-fixing," which "can constitute antitrust injury." *Id.* at 19. It further explained that "just because a plaintiff is a non-purchaser does not mean that its injuries are indirect or uncertain." *Id.* at 21. The government noted that in addressing this issue, the Ninth and Tenth Circuits "did not view non-purchaser status as a categorical bar." *Id.* at 22. Instead, those courts recognized—and the United States agreed—that "[n]on-purchaser plaintiffs may be able to establish that they are efficient enforcers where they have a prior course of dealing with the conspirators, such that the potential for a purchase but for the conspiracy is not unduly speculative." *Id.* at 21–22.

3. The Second Circuit agreed with DIRECTV and the United States and reversed.

As to antitrust injury, the Second Circuit "conclude[d] that the district court erred by limiting the cognizable antitrust injury to the payment of supracompetitive prices." App.18a. Instead, the court held that horizontal price-fixing harms competition in at least two distinct ways: "[p]rice is higher and output lower than they would otherwise be." App.18a (alteration in original) (quoting *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 107 (1984)). The "blacked-out stations" that resulted from Petitioners' price-fixing represented precisely the "artificial suppression of output 'below levels dictated by consumer demand'" that "the antitrust laws aim to prevent." App.19a (quoting *City of Oakland*, 20 F.4th at 457). DIRECTV had thus plausibly alleged an antitrust injury.

App.19a. Petitioners do not address this portion of the Second Circuit's ruling.

The Second Circuit then applied its longstanding four-factor test for determining whether a plaintiff is an "efficient enforcer" of the antitrust laws and concluded that each factor favored DIRECTV. First, DIRECTV's injury was a direct result of the antitrust violation because "[t]he reduced output—and the associated loss of profits—was not a 'remote' consequence of the alleged antitrust violation but a direct result of the conspiracy to fix the prices." App.21a. Second, there were "no more direct victims" of the violation because "the allegations here indicate that DIRECTV was the sole target of the conspiracy." App.25a. Third, DIRECTV's injury was not speculative because its "prior course of dealing" with Mission and White Knight "provides a benchmark for assessing the effect of the alleged conspiracy." App.27a. Fourth, there was no risk of duplicative recovery because DIRECTV "was the target of the conspiracy and no other MVPDs have brought similar antitrust claims against the defendants." App.28a.

Based on this analysis, the Second Circuit concluded that DIRECTV was a proper plaintiff to enforce the antitrust laws. It acknowledged the Ninth and Tenth Circuit cases on which Petitioners rely here, but it concluded that its analysis of the efficient-enforcer factors demonstrated that "[t]his case does not resemble those in which courts have rejected nonpurchaser claims based on concerns about unlimited liability or speculative damages." App.27a.

Judge Sullivan dissented. Without addressing antitrust injury, he argued that DIRECTV had not adequately pled that it was an efficient enforcer. App.30a. He "agree[d] with the majority's assessment of the second and fourth factors," *i.e.*, that there were no more direct victims and no risk of duplicative recovery. App.31a. But his assessment of the allegations in this case led him to conclude that DIRECTV's injuries were "indirect and speculative," so he would have affirmed the district court on that basis. App.31a, 38a.

4. Petitioners sought rehearing en banc, which the Second Circuit denied without noted dissent. App.58a. The case was thus remanded to the district court.

On remand, the district court reviewed and rejected Petitioners' additional arguments for dismissal. Dist. Ct. Dkt. 116. Among other things, the court concluded that DIRECTV "plausibly allege[d] an agreement among defendants to fix and raise the retransmission fees they demanded in their negotiations with DIRECTV." *Id.* at 3. Discovery in the district court is currently ongoing.

**REASONS FOR DENYING THE PETITION**

Petitioners ask this Court to resolve a split that does not exist. Like both the Ninth and Tenth Circuits, the Second Circuit rejected any categorical rule regarding nonpurchaser antitrust standing and instead took a fact-specific approach to determine whether DIRECTV was a proper plaintiff to enforce the antitrust laws. Based on the particular circumstances of this case—including circumstances that the Ninth and Tenth Circuits identified as highly relevant—the Second Circuit reached the correct result. The factbound question presented by the petition does not warrant this Court's review.

## I. There is no circuit split.

In an effort to tee up a clean legal issue rather than a fact-specific dispute, Petitioners advance a bright-line rule that a priced-out nonpurchaser can *never* have antitrust standing. They claim that there is a 2–1 circuit split "over whether a nonpurchaser has antitrust standing to assert a price-fixing claim when it did not pay any alleged supracompetitive prices." Pet.12. There is no such split. Every court to consider this issue has taken a nuanced, multi-factor approach and expressly rejected Petitioners' bright-line rule.

1. Petitioners claim that the decision below diverged from the Tenth Circuit's decision in *Montreal Trading* and the Ninth Circuit's decision in *City of Oakland*. But the purported split does not withstand even minimal scrutiny of those cases. Contrary to Petitioners' characterization, neither case adopted a categorical rule "that a nonpurchaser lacks antitrust standing to bring a claim based on alleged price-fixing." Pet.14–15. Instead, the Ninth and Tenth Circuits held only that the specific nonpurchasers in those cases lacked antitrust standing. In doing so, both courts *rejected* Petitioners' bright-line rule and highlighted the same factors on which the Second Circuit relied to reach a different outcome on the different facts of this case.

Consider first the Tenth Circuit's 1981 decision in *Montreal Trading*, which addressed an alleged price-fixing conspiracy in the potash industry.[3] The

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[3] The term "potash" refers to mined and manufactured salts that contain potassium in water-soluble form, used primarily as

plaintiff, Montreal Trading, was a Canadian corporation that wanted to purchase potash from U.S. miners and export the product to North Korea, potentially in violation of federal law. *Montreal Trading*, 661 F.2d at 865–66. Before this endeavor, Montreal Trading had "never purchased potash." *Id.* at 866. The Tenth Circuit held that Montreal Trading lacked antitrust standing because it had "no prior course of dealing with any defendant," which made its alleged injury "speculative," and because "actual purchasers exist[ed] who were more directly injured by the conspiracy and who could be expected to police the conspiracy as 'private attorneys general.'" *Id.* at 868.

The Tenth Circuit did not, however, adopt a categorical rule that would deny standing to all priced-out nonpurchasers. Far from it. The court was concerned that "[i]f nonpurchasers who have never dealt with a defendant could recover, a seemingly unlimited number of plaintiffs could assert a virtually unlimited quantity of lost purchases, perhaps exceeding the potential output of the entire industry." *Id.* at 867–68. But it acknowledged that "[w]hen [a] nonpurchaser can show a regular course of dealing with the conspirators, injury may not be inherently speculative." *Id.* It therefore expressly limited its holding, stating: "[W]e believe nonpurchasers should be denied standing to sue, *at least when they lack a past course of dealing with the conspirators*." *Id.* at 868 (emphasis added).

When the Ninth Circuit revisited the issue forty years later in *City of Oakland*, it took a similar

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a fertilizer. *See Potash*, Britannica (Aug. 4, 2026), https://www.britannica.com/science/potash.

approach. That case involved an unusual set of facts. The plaintiff, the City of Oakland, alleged that "the market for hosting NFL teams" was and had always been "anticompetitive because the NFL limits both the number of teams and the freedom of teams to relocate." 20 F.4th at 450 (quotation marks omitted). The Ninth Circuit held that, while the city had adequately alleged antitrust injury, it was not a proper plaintiff because its injuries were "less direct than those of actual purchasers, such as the cities of Las Vegas and Los Angeles, each of which [had] recently acquired NFL teams, presumably by agreeing to supracompetitive prices," and because the city's "contention that, in the absence of Defendants' challenged practices, it would have retained the Raiders (or acquired another team) [was] too speculative." *Id.* at 459.

Like the Tenth Circuit, the Ninth Circuit conducted a fact-specific analysis and did not adopt the categorical rule that Petitioners advance. The court could hardly have been clearer: "The Tenth Circuit [in *Montreal Trading*] did not adopt a bright-line rule precluding nonpurchasers who have been priced out of a market from establishing antitrust standing. We agree." *Id.* at 459 n.11 (citation omitted). The Ninth Circuit simply "require[d] a reasonable level of certainty before [it would] confer antitrust standing on such consumers." *Id.* at 460. Citing the Tenth Circuit, it suggested that a "regular course of dealing" could provide the requisite level of certainty. *Id.* (quoting *Montreal Trading*, 661 F.2d at 868). But it held that past dealings between Oakland and the Raiders were not relevant because, according to the city's own allegations, those dealings "occurred in an anticompetitive market" and thus did not shed any light on what would have happened "in a competitive market." *Id.*[4]

2. The decision below fits comfortably with *Montreal Trading* and *City of Oakland*. The Second Circuit cited both of those decisions and did not indicate any disagreement with their reasoning. Instead, it concluded that the particular facts at issue here "do[] not resemble" those that led the Ninth and Tenth Circuits to deny antitrust standing and do not raise the same concerns "about unlimited liability or speculative damages." App.27a. And the factors on which the Ninth and Tenth Circuits focused are the same ones that led the Second Circuit to hold that DIRECTV has antitrust standing on the materially different facts alleged here.

*First*, the Second Circuit relied on a key factor that both *Montreal Trading* and *City of Oakland* explained could have changed the outcome in those cases: an established course of dealing between the plaintiffs and the defendants in a competitive market, which eliminates the need to speculate about whether the parties would have reached an agreement absent

[4] If further proof were needed that the Ninth Circuit did not categorically rule out antitrust standing for nonpurchasers, a district court in that circuit has distinguished *City of Oakland* and held that a priced-out nonpurchaser had antitrust standing because it sufficiently "allege[d] links in the chain of causation that [were] not speculative." *In re Pandora Media, LLC*, 2022 WL 19299126, at *7 (C.D. Cal. Oct. 26, 2022); *see id.* at *6 ("[T]he Ninth Circuit declined to 'adopt a bright-line rule precluding nonpurchasers who have been priced out of the market from establishing antitrust standing.'" (quoting *City of Oakland*, 20 F.4th at 459 n.11)).

the conspiracy. As the court explained, DIRECTV "alleges a prior course of dealing in which the parties had a longstanding history of reaching agreements every three years." App.27a (quotation marks omitted). That course of dealing established "a baseline" for "assessing the effect of the alleged conspiracy" and calculating "concrete losses." App.26a–27a. In other words, "[u]nlike cases involving parties who never dealt with the defendants" or who did so only under anticompetitive conditions, "the allegations here reflect a preexisting business relationship with the defendants and a distinct measure of damages." App.27a.

*Second*, unlike in *Montreal Trading* and *City of Oakland*, where the courts reasoned that there were other known victims of the conspiracy who had purchased at supracompetitive prices and would be more efficient enforcers of the antitrust laws than non-purchasers, here the Second Circuit stressed that "the complaint does not allege that the defendants targeted other MVPDs or that other MVPDs paid fixed prices." App.24a–25a. This was another important basis for distinguishing the Ninth and Tenth Circuit decisions: whereas in those cases "the plaintiffs had a more remote connection to the anticompetitive conduct than other potential or actual plaintiffs," "the allegations here indicate that DIRECTV was the sole target of the conspiracy." App.25a. That the Second Circuit could "identify no more direct victims of the defendants' alleged anticompetitive conduct" was a consideration "favor[ing] antitrust standing." App.25a

The Second Circuit's reliance on this factor undermines Petitioners' portrayal of the opinion as holding that "*any* prior business dealings with the seller" automatically give a nonpurchaser standing. Pet.25 (emphasis added); *see also* Pet.18 ("By contrast, the Second Circuit now permits nonpurchasers to bring claims rooted in speculative damages, so long as they can allege *any* 'preexisting business relationship' with the defendants." (emphasis added)). On the contrary, the Second Circuit—like the Ninth and Tenth Circuits—considered prior dealings as one of several factors relevant to the antitrust standing inquiry.

3. Petitioners briefly allude to two other circuits that they suggest support their bright-line rule against antitrust standing for nonpurchasers, but they do not include those circuits in the purported "2–1 circuit split." Pet.20. For good reason: neither court has come close to adopting Petitioners' rule.

*First*, Petitioners cite (at 17–18) a passing dictum from the Sixth Circuit suggesting that "potential purchasers who do not buy at a cartel price but who would have bought at the market price" lack antitrust standing. *Acad. of Allergy & Asthma in Primary Care v. Amerigroup Tenn., Inc.*, 155 F.4th 795, 814 (6th Cir. 2025) (emphasis omitted), *pet. for cert. filed sub nom. United Biologics, LLC v. Amerigroup Tenn., Inc.*, No. 25-1388 (U.S. June 12, 2026). The nonpurchaser-standing issue was not presented in that case, which instead applied the rule—which no one contends is applicable here—"that *indirect* purchasers who are two or more steps removed from [an antitrust] violator in a distribution chain may not sue." *Id.* at 802 (alteration in original) (quoting *Apple Inc. v. Pepper*, 587 U.S. 273, 279 (2019)). And the Sixth Circuit's dictum about nonpurchasers cited only *Montreal Trading* (and secondary sources describing *Montreal Trading*), which, as explained above, *rejected* Petitioners' bright-line rule.

*Second*, Petitioners cite a Third Circuit decision they claim is "in tension" with the decision below. Pet.24 n.3 (citing *Host Int'l Inc. v. MarketPlace, PHL, LLC*, 32 F.4th 242 (3d Cir. 2022)). There is no tension. *Host* was not a price-fixing case at all, but a challenge to a proposed term in an airport-restaurant lease agreement that would have required the would-be lessee to use Pepsi as its exclusive beverage supplier. 32 F.4th at 247. The court held that the prospective lessee had not alleged antitrust injury from the exclusivity provisions because it had not explained "how they [were] unreasonable restraints" on trade or how they would "reduce output or raise prices to consumers in the relevant market." *Id.* at 250–52 (quotation marks omitted). That is not the case here, where DIRECTV plausibly alleged "that Defendants have engaged in a horizontal price-fixing conspiracy, which is a *per se* antitrust violation," App.50a, and that its "injury flowed directly from an anticompetitive effect that the antitrust laws aim to prevent: the artificial suppression of output," App.19a.

4. To sum up: The Ninth and Tenth Circuits expressly rejected Petitioners' bright-line rule in favor of a fact-intensive, multi-factor analysis. Far from disagreeing with those circuits, the Second Circuit likewise applied a fact-intensive, multi-factor analysis. It reached a different result because two factors the Ninth and Tenth Circuits deemed important—whether the parties had a prior course of dealing, and whether there were more direct victims of the alleged conspiracy—pointed in the opposite direction here.

That is not a circuit split; it is the application of the same legal standard to markedly different facts.

**II. The decision below is correct.**

Review is also unwarranted because the decision below is entirely correct. There is no basis in antitrust law for a bright-line rule barring all nonpurchasers from suing to challenge anticompetitive pricing without regard to particular facts. And even if this Court were interested in doing factbound error correction as to the application of the multi-factor approach, this case would be a bad candidate because there is no error to correct. The unusual facts here mean that DIRECTV is not just *a* proper plaintiff, it is the *only* private plaintiff in a position to enforce the antitrust laws against Petitioners' price-fixing scheme.

1. Petitioners never actually defend their categorical rule against nonpurchaser standing in price-fixing cases. Instead, tellingly, the section of their brief arguing that the decision below is wrong focuses on the specific facts of this case and eschews any broader arguments about the law or in favor of Petitioners' invented rule. *See* Pet.20–24.

That is not surprising, as no statute, court decision, or policy argument supports Petitioners' bright-line rule. On the contrary, Petitioners recognize that whether a plaintiff is an "efficient enforcer" of the antitrust laws "depends on *several factors*, including analyzing whether the injury was direct and non-speculative." Pet.5 (emphasis added). In applying this fact-specific standard, this Court has explained that "the infinite variety of claims that may arise make it virtually impossible to announce a black-letter rule that will dictate the result in every case." *Associated Gen. Contractors*, 459 U.S. at 536. By advancing such a black-letter rule, it is Petitioners, not DIRECTV, who seek an "exception to … bedrock antitrust standing principles." Pet.19.

Even the dissent below did not advance an absolute bright-line rule. Judge Sullivan argued only that nonpurchasers "will struggle to show a direct injury," not that they will never be able to do so. App.32a; *see also* App.37a–38a (arguing that DIRECTV's allegations regarding its prior course of dealing with Petitioners were "conclusory" but not that more detailed allegations would have failed to state a claim). Likewise, Petitioners' favored treatise says only that "courts are *likely* to find that the claims of those who refused to purchase at the cartel price are speculative," not that such a finding is *always* appropriate. 2A Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law: An Analysis of Antitrust Principles and Their Application ¶ 391b1 (2025) ("Areeda & Hovenkamp") (emphasis altered).

In its amicus brief supporting reversal of the district court's judgment, the United States explained why a "blanket prohibition" on antitrust standing for nonpurchasers "would be contrary to sound antitrust policy." U.S. *Amicus* Brief at 20. As the government recognized, "price-fixing conspiracies … can result in multiple anticompetitive effects—not just the payment of supracompetitive prices," and "[t]hese effects can, in certain instances, result in antitrust injury and antitrust standing for non-purchasers." *Id.* at 10. "[J]ust because a plaintiff is a non-purchaser does not mean that its injuries are indirect or uncertain," and nonpurchasers "may be able to establish that they are efficient enforcers where," as here, "they have a prior course of dealing with the conspirators." *Id.* at 21. Petitioners' bright-line rule thus rests on an "unduly narrow understanding of the injuries that can result from price-fixing agreements." *Id.* at 8.

Moreover, there is nothing anomalous about allowing nonpurchasers to sue for antitrust violations. On the contrary, nonpurchasers are routinely recognized as proper plaintiffs in other kinds of antitrust cases. For example, nonpurchasers have antitrust standing to challenge group boycotts in certain circumstances. *See, e.g.*, *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 212–13 (1959); *Full Draw Prods. v. Easton Sports, Inc.*, 182 F.3d 745, 750–55 (10th Cir. 1999); *PLS.com, LLC v. Nat'l Ass'n of Realtors*, 32 F.4th 824, 834–36 (9th Cir. 2022). And as Petitioners conceded below, "lost profits may be recoverable by a company whose competitors fixed prices to exclude it from the market." Appellee Brief at 10 (Ct. App. Dkt. 77) (emphasis omitted). It would make little sense to adopt a rigid rule barring all nonpurchasers from suing in one antitrust context when no such rule exists in other, related contexts.

In short, there is no sound reason for this Court to adopt a novel, categorical bar against nonpurchaser standing in price-fixing cases, and Petitioners make no real effort to justify such a bar.

2. Rather than defend their preferred legal rule, Petitioners devote the merits section of their petition to arguing that DIRECTV's specific allegations in this case are insufficient to support standing. Pet.20–24. In reality, the facts of this case provide an unusually

strong basis for affording antitrust standing to a priced-out nonpurchaser.[5]

*First*, DIRECTV "was the specific and direct target of the defendants' price-fixing conspiracy"; indeed, it was "the *sole* target of the conspiracy" alleged in the complaint. App.24a–25a (emphasis added). This is not like a case where defendants conspired to fix the price of a product sold on supermarket shelves to many consumers, arguably rendering the purchasers of that product more efficient enforcers than nonpurchasers. Instead, Petitioners here conspired to fix prices in connection with "retransmission consent negotiations *with DIRECTV*," not with MVPDs more generally. Compl. ¶ 89 (emphasis added). And "the conspiracy specifically aimed to establish high pricing benchmarks for Nexstar's upcoming renewal negotiations *with DIRECTV*." App.25a. This makes sense given the market's dynamics: Retransmission consent rates are typically set through individualized negotiations rather than at uniform rates that apply to all of a broadcaster's MVPD customers, and the alleged conspiracy specifically targeted those individualized negotiations with DIRECTV. App.6a.

Because "the complaint does not allege that the defendants targeted other MVPDs or that other MVPDs paid fixed prices," App.24a–25a, there is no reason to believe that there exists a more efficient enforcer than DIRECTV, or even any other potential enforcer at all. So if DIRECTV were not a proper

[5] Because this case comes to the Court at the motion-to-dismiss stage, DIRECTV's well-pleaded factual allegations are taken as true. *NRA v. Vullo*, 602 U.S. 175, 181 (2024).

plaintiff, then Petitioners' price-fixing scheme would be completely insulated from private antitrust litigation. That distinguishes this case from the Ninth and Tenth Circuit cases, where "actual purchasers exist[ed] who were more directly injured by the conspiracy and who could be expected to police the conspiracy as 'private attorneys general.'" *Montreal Trading*, 661 F.2d at 868; *see City of Oakland*, 20 F.4th at 459 (identifying other cities as "actual purchasers" who were better situated than Oakland to bring suit).

*Second*, and relatedly, DIRECTV's "injury occurred at the first step following the defendants' price-fixing conspiracy" because "[t]he reduced output—and the associated loss of profits—was … a direct result of the conspiracy to fix the prices of retransmission rights." App.21a. Put differently, DIRECTV's injury is not derivative of an injury to someone else who is closer to Petitioners in the supply chain. *Cf. Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 133–34 (2014) (proximate-cause principles generally bar suits for harm that is "purely derivative of misfortunes visited upon a third person by the defendant's acts" (quotation marks omitted)).

*Third*, at the time of the anticompetitive conduct in this case, DIRECTV already had an established, multi-year course of dealing with Petitioners. App.26a–27a. As detailed above, all the courts of appeals that have addressed nonpurchaser antitrust standing have deemed this a critical factor. App.26a–27a; *see Montreal Trading*, 661 F.2d at 867–68; *City of Oakland*, 20 F.4th at 460.

A history of dealing is relevant because it helps assuage the concerns courts and commentators have had about nonpurchaser suits. Without such a history, "*[a]nyone* could claim that he or she would have purchased at the competitive price." *City of Oakland*, 20 F.4th at 458 (emphasis added) (quoting Areeda & Hovenkamp ¶ 391b1); *see Montreal Trading*, 661 F.2d at 867–68 ("If nonpurchasers who have never dealt with a defendant could recover, a seemingly unlimited number of plaintiffs could assert a virtually unlimited quantity of lost purchases ...."). But DIRECTV's history of dealing with the sidecars means that DIRECTV is not just "anyone." No speculation is necessary to conclude that DIRECTV would have licensed retransmission rights from Mission and White Knight under non-collusive conditions, because DIRECTV had previously done exactly that. And the parties' historical dealings also make it easier to calculate "concrete losses" because they "provide[] a benchmark for assessing the effect of the alleged conspiracy." App.26a–27a.

Petitioners criticize what they call a "sparse record of DIRECTV's prior dealings with Petitioners." Pet.18. But the complaint alleged that DIRECTV "typically negotiate[s] retransmission consent agreements with broadcasters and broadcast station groups every three to four years," that DIRECTV had entered into retransmission consent agreements with Mission and White Knight in 2019 that ran until 2022, and that Petitioners' anticompetitive conduct occurred in connection with negotiations to renew those existing contracts. Compl. ¶¶ 60, 90–91. Petitioners do not explain why these allegations are insufficient. They also do not dispute that the parties did in fact have a long history of dealing, about which DIRECTV could have pleaded more detail had it been required to do so.

Regardless, a case-specific dispute about the sufficiency of DIRECTV's allegations—allegations which are currently being built upon through discovery in the district court—does not justify this Court's review.

*Fourth*, additional features of the market at issue here further support the Second Circuit's conclusion that DIRECTV is an efficient enforcer. The market for retransmission rights features a small number of potential purchasers—the limited universe of MVPDs—and federal law requires Petitioners to negotiate in good faith with all those potential purchasers. *See* 47 C.F.R. § 76.65. So one need not "speculate" to infer that absent the conspiracy, Mission and White Knight would have offered to sell DIRECTV retransmission rights at the competitive price, since federal law required them to do so. And DIRECTV does not have to show that it would have beaten out other potential purchasers, because retransmission rights are not a physical product, like a pair of sneakers, that can only be sold once; they are what economists call a "nonrivalrous good," meaning a sale to one purchaser does not prevent a sale to another purchaser.

Together, these factors justify the Second Circuit's conclusion that DIRECTV is a proper plaintiff to enforce the antitrust laws against Petitioners' price-fixing conspiracy.

3. Petitioners' counterarguments are unpersuasive. They try to portray DIRECTV's injuries as indirect and speculative by constructing an elaborate "chain of causation" they say DIRECTV will have to prove. Pet.20 (quoting *Associated Gen. Contractors*, 459 U.S. at 540). According to Petitioners, "DIRECTV's damages claim requires showing:

(1) Petitioners allegedly demanded supracompetitive rates; (2) DIRECTV responded by ending negotiations; (3) after DIRECTV's [retransmission consent agreements] with Mission and White Knight expired, their stations became blacked out; (4) after the blackouts, unidentified customers allegedly unsubscribed from DIRECTV; and (5) the lost revenue from those subscriptions was greater than the avoided costs of paying retransmission consent fees." Pet.23–24. This argument shows only that even the most straightforward causal relationships can be distorted into a Rube Goldberg-style, multi-step "causal chain."[6]

Petitioners claim that each of these "intervening steps" depends on speculation, Pet.24, but this is self-evidently false. The first step in Petitioners' chain—that the sidecars demanded supracompetitive prices—is the alleged antitrust violation itself, which Petitioners do not dispute was plausibly pleaded. *See* Dist. Ct. Dkt. 116 at 3 (concluding as much on remand). The second and third steps—that DIRECTV refused to accede to the sidecars' demands and that this resulted in

[6] One might as well say that the relationship between flipping a light switch and the room being illuminated is indirect and speculative because it requires showing that (1) flipping the switch brought two metal contacts together inside the switch housing; (2) the closed contacts completed an electrical circuit; (3) electric current began flowing through the circuit; (4) the current reached the filament in the lightbulb; (5) the current heated the filament to a temperature at which it would incandesce and emit photons of visible light; and (6) the photons reached the eyes of an observer. This elongating of the causal chain may be an entertaining exercise, but it does not change the fact that there is a direct causal relationship between flipping the switch and the light coming on.

blackouts—are indisputable historical facts. And the fourth and fifth steps—that the blackouts led to lost subscribers and lost profits for DIRECTV—require no speculation because, as the Second Circuit explained, the parties' history of dealing established a "benchmark for assessing the effect of the alleged conspiracy" and a "baseline" from which DIRECTV "can identify concrete losses of subscribers and profits during the blackout periods that occurred when [the agreements] terminated." App.26a–27a.

It takes chutzpah for Petitioners to claim that it is "speculative" whether blacking out the most popular television stations for DIRECTV's subscribers harms DIRECTV. From Petitioners' perspective, the *whole point* of blackouts is to put pressure on MVPDs by leveraging customers' desire to watch their favorite channels. That is why, as soon as the blackouts started, Mission and White Knight issued identical press releases aimed at subscribers stating: "Despite our tireless efforts, DIRECTV has refused our fair offer and is making negotiations very difficult. They will tell you it's for your benefit, but don't believe it. Our offer is fair. And now they hold you the subscriber hostage. It's not right." Compl. ¶¶ 110–11. Petitioners' entire business model depends on MVPDs being injured by blackouts; MVPDs would have no reason to pay Petitioners for retransmission rights in the first place, and Petitioners would have zero negotiation leverage, if failing to enter into such agreements did not negatively impact MVPDs. Especially at the pleading stage, the Second Circuit was entitled to use a modicum of "common sense," *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 118 (2025), to conclude that

DIRECTV's injuries from conduct *that was intended to injure it* are not too speculative to proceed to discovery.

To the extent Petitioners' argument is about calculating the amount of damages rather than confirming their existence, *see* Pet.21, the argument is misplaced at this juncture. "[P]otential difficulty in ascertaining and apportioning damages is not … an independent basis for denying standing where it is adequately alleged that a defendant's conduct has proximately injured an interest of the plaintiff's that the statute protects." *Lexmark*, 572 U.S. at 135 (emphasis omitted). In any event, calculating damages will not be any more difficult here than in other antitrust cases. Calculating antitrust damages "is hardly beyond the ken of the federal courts" even if it "may require expert testimony." *In re Platinum & Palladium Antitrust Litig.*, 61 F.4th 242, 265 (2d Cir. 2023) (quoting *Sanner v. Bd. of Trade*, 62 F.3d 918, 930 (7th Cir. 1995)). And even if DIRECTV were ultimately unable to "quantify its losses with sufficient certainty to recover damages," it would "still be entitled to injunctive relief." *Lexmark*, 572 U.S. at 135; *accord Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 111 & n.6 (1986).[7]

[7] Petitioners also assert that DIRECTV is not a proper plaintiff because allowing it to bring suit would create a "risk of duplicative recovery." Pet.20. But Petitioners do not develop any argument as to why, and even Judge Sullivan in his dissent below disagreed with this contention. App.30a. In any event, the Second Circuit was right to explain that there is no such risk here, including because DIRECTV was the sole target of the conspiracy. App.28a.

### III. Other considerations counsel against granting the petition.

None of Petitioners' remaining justifications for review (Pet.24–29) withstand scrutiny.

To start, the question presented arises very rarely. By Petitioners' own count, only three circuit court opinions have squarely addressed the issue of antitrust standing for priced-out nonpurchasers, and one of those opinions (*Montreal Trading*) is nearly 50 years old. And there is not even a whisper of disagreement among those three courts as to the relevant legal standards. This is hardly an issue that is crying out for this Court's guidance.

Petitioners thus have to resort to crying wolf, treating the decision below as if it promised antitrust standing to *all* priced-out nonpurchasers. They claim the decision below has "no natural stopping point" and will "open the floodgates" to "speculative antitrust claims." Pet.20, 25. That is farfetched to say the least. As discussed above, the Second Circuit's fact-dependent reasoning was based on the specific and unusual constellation of facts of this case, where Petitioners are plausibly alleged to have engaged in a price-fixing conspiracy targeting a single customer as part of renewal negotiations for existing multi-year contracts that provide a baseline for assessing injury. That reasoning is in line with cases like *Montreal Trading* and *City of Oakland*, which demonstrate that in suits by other nonpurchasers, different facts may dictate a different outcome. It has been almost half a century since the Tenth Circuit announced that antitrust standing could be proper for a nonpurchaser who "can show a regular course of dealing with the conspirators."

*Montreal Trading*, 661 F.2d at 868. That pronouncement has not led to the parade of horribles Petitioners invoke, and there is no reason to think the Second Circuit's decision will either.

Petitioners' claim that the Second Circuit's opinion would allow "any potential purchaser of sneakers" to sue shoe manufacturers for price-fixing is thus obvious hyperbole and ignores the approach articulated by each of the three courts of appeals to have considered the question. For one thing, a conspiracy to fix the retail price of sneakers would not have a single potential customer as its "sole target," and customers who actually "paid fixed prices" for the shoes could be expected to bring suit. App.24a–25a. For another, an occasional sneaker buyer would not be able to point to anything like DIRECTV's well-established course of dealing with Petitioners, in which the parties had an existing three-year contract and "a longstanding history of reaching agreements every three years." App.27a (quotation marks omitted).

Finally, even if the Court were looking for a vehicle to "clarify the antitrust standing doctrine," Pet.25, this is not it. The same case-specific facts that strongly support DIRECTV's standing make this a poor vehicle for developing broadly applicable principles of antitrust law that would matter beyond this case.

## CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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