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

Syllabus

UNITED STATES POSTAL SERVICE *v.* FLAMINGO INDUSTRIES (USA) LTD. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 02–1290. Argued December 1, 2003—Decided February 25, 2004

After their contract to make mail sacks for the United States Postal Service was terminated, respondents brought this suit alleging, *inter alia*, that the Postal Service had sought to suppress competition and create a monopoly in mail sack production. The District Court dismissed the antitrust claims, concluding that the Postal Service is not subject to liability under federal antitrust law. The Ninth Circuit reversed, holding that the Postal Service can be liable but that it has a limited immunity from antitrust liability for conduct undertaken at Congress' command.

Held: The Postal Service is not subject to antitrust liability. In both form and function, it is not a separate antitrust person from the United States but is part of the Government, and so is not controlled by the antitrust laws. Pp. 2–11.

(a) The waiver of immunity from suit provided by the Postal Reorganization Act (PRA)—which gives the Postal Service the power "to sue and be sued in its official name," 39 U. S. C. §401—does not suffice by its own terms to subject the Postal Service to liability under the Sherman Act. The two-step analysis of *FDIC* v. *Meyer*, 510 U. S. 471, 484, applies here. *Meyer*'s first step is met because the PRA's sue-and-be-sued clause effects a waiver of sovereign immunity for actions against the Postal Service. However, *Meyer*'s second step for finding liability—whether the Sherman Act's substantive prohibitions apply to the Postal Service—is not satisfied. The Sherman Act imposes liability on any "person," defined "to include corporations and associations existing under or authorized by the laws of . . . the United States." 15 U. S. C. §7. In holding that the United States is not a person authorized to bring a treble-damages claim for its own

alleged antitrust injury under the Sherman Act, *United States* v. *Cooper Corp.*, 312 U. S. 600, 606–607, this Court observed that, if the definition of "person" included the United States, the Government would be exposed to liability as an antitrust defendant, a result Congress could not have intended, *id.,* at 607, 609. Although the antitrust statutes were later amended to allow the United States to bring antitrust suits, see 15 U. S. C. §15a, Congress did not thereby change the statutory definition of "person." So, *Cooper*'s conclusion that the United States is not an antitrust "person," in particular not a person who can be an antitrust defendant, was unaltered by Congress' action; indeed, the means Congress used to amend the antitrust law implicitly ratified *Cooper*'s conclusion that the United States is not a proper antitrust defendant. Pp. 2–8.

(b) For purposes of the antitrust laws, the Postal Service is not a separate person from the United States. The PRA's designation of the Postal Service as an "independent establishment of the executive branch of the Government of the United States," 39 U. S. C. §201, is not consistent with the idea that the Postal Service is an entity existing outside the Government. Indeed, the designation indicates just the contrary. The PRA gives the Postal Service a high degree of independence from other Government offices, but it remains part of the Government. The Sherman Act defines "person" to include corporations, 15 U. S. C. §7, and had Congress chosen to create the Postal Service as a federal corporation, the Court would have to ask whether the Sherman Act's definition extends to the federal entity under this part of the definitional text. Congress, however, declined to create the Postal Service as a Government corporation, opting instead for an independent establishment. The choice of words likely was more informed than unconsidered, because Congress debated proposals to make the Postal Service a Government corporation before it enacted the PRA. Although the PRA refers explicitly to various federal statutes and specifies that the Postal Service is exempt from some and subject to others, 39 U. S. C. §409–410, it makes no mention of the Sherman Act or the antitrust laws. This silence leads to no helpful inference one way or the other on the question at issue. However, the other considerations the Court has discussed lead to the conclusion that, absent an express congressional statement that the Postal Service can be sued for antitrust violations despite its status as an independent establishment of the Government, the PRA does not subject the Postal Service to antitrust liability. This conclusion is consistent with the nationwide, public responsibilities of the Postal Service, which has different goals from private corporations, the most important being that it does not seek profits, §3621. It also has broader obligations, including the provision of universal mail delivery

Syllabus

and free mail delivery to certain classes of persons, §§3201–3405, and, most recently, increased public responsibilities related to national security. Finally, the Postal Service has many powers more characteristic of Government than of private enterprise, including its state-conferred monopoly on mail delivery, §601 *et seq.,* and the powers of eminent domain and to conclude international postal agreements, §§401, 407. On the other hand, but in ways still relevant to the antitrust laws' nonapplicability, the Postal Service's powers are more limited than those of private businesses, since it lacks the power unilaterally to set prices or to close a post office, §404. Its public characteristics and responsibilities indicate it should be treated under the antitrust laws as part of the Government, not a market participant separate from it. The fact that the Postal Service operates some nonpostal lines of business beyond the scope of its mail monopoly and universal service obligation does not alter this conclusion. Pp. 8–11.

302 F. 3d 985, reversed.

KENNEDY, J., delivered the opinion for a unanimous Court.