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O'Melveny's O'Rourke, Sallet, Robson Author Law360 Article on The Rule Of Reason

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On July 2, 2013, *Law360* published an article by O'Melveny & Myers partners Jon Sallet and Ken O'Rourke, and counsel Katrina Robson, titled "FTC V. Actavis: Reconciling Conflicts In Rule Of Reason." The piece concerns the US Supreme Court's June 17 decision in *Federal Trade Commission v. Actavis*, which contains a discussion of "rule of reason" that the authors argue "stretches beyond one industry or one statutory scheme." According to the article, the Court rejected a general rule of legality based on the "scope of the patent" test, while also (1) requiring the FTC to "prove its case as in other rule-of-reason cases," (2) rejecting the idea that the inquiry requires consideration of "every possible" fact or theory, and (3) leaving "to the lower courts the structuring of the present rule-of-reason antitrust litigation."

The authors discuss "the fundamental tension that exists within the rule of reason," which they argue "can be expansive and burdensome, particularly in an 'information age' when data ... is measured in gigabytes rather than pages."

Sallet and Robson reside in O'Melveny's Washington, DC, office, and O'Rourke resides in the Firm's Los Angeles office. They are members of the Firm's Antitrust and Competition Practice.

