

Supreme Court Overturns Class Certification in Suit Against Comcast

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On March 27, 2013, the Supreme Court held five to four in *Comcast Corp. v. Behrend*, No. 11-864 (Mar. 27, 2013) that the district court improperly granted certification in an antitrust class action because of the plaintiff's failure to provide a damages model capable of measuring damages on a classwide basis. While the dissent argued that the decision "breaks no new ground on the standard for certifying a class action" and should be limited to its facts, the decision could lead to increased scrutiny for class certification, regardless of the substantive cause(s) of action, under Federal Rule of Civil Procedure 23.

The proposed class consisted of more than two million current and former Comcast subscribers and alleged damages based on Comcast's anticompetitive conduct. Specifically, the plaintiff alleged that Comcast violated Sections 1 and 2 of the Sherman Act by entering into unlawful swap agreements whereby Comcast would "swap" customers with another cable provider's customers to concentrate its operations in the Philadelphia region, and in turn raise rates.

While the plaintiff set forth four unique theories of antitrust impact, the district court accepted only one -- "the overbuilder theory" -- which alleged that Comcast's anticompetitive actions reduced the level of competition from companies that build competing cable networks. In holding that class certification was improperly granted, the majority asserted that the plaintiff "would be entitled only to damages resulting from reduced overbuilder competition, since that is the only theory of antitrust impact accepted for class-action treatment by the District Court."

It follows then, the Court held, that the plaintiff's failure to differentiate damages resulting from all antitrust violations from those specific to overbuilder competition meant that class action certification was improper under Rule 23. In other words, Rule 23 required the plaintiff to set forth a methodology for calculating damages that would be just and reasonable, and only a methodology isolating damages resulting from overbuilder competition would suffice in this case.

The dissent disagreed with a number of premises on which the majority based its decision, and found that the peculiarities of the case meant that the "Court's ruling is good for this day and case only."

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