

SUPREME COURT OF THE UNITED STATES

Comcast Corp. v. Behrend

569 U.S. 27 (2013) · No. No. 11-864 · Decided March 27, 2013

SUMMARY

The United States Supreme Court held that a class action brought by Comcast subscribers was improperly certified under Federal Rule of Civil Procedure 23(b)(3). The Court concluded that the plaintiffs' damages model did not measure damages attributable to the sole theory of antitrust impact accepted for class treatment and therefore could not establish that damages were measurable on a classwide basis. The Court reversed the judgment of the Third Circuit.

CASE DETAILS

COURT	Supreme Court of the United States
WRITING FOR THE COURT	Justice Scalia; Chief Justice Roberts; Justice Kennedy; Justice Thomas; Justice Alito
JURISDICTION	Federal
DECIDED	March 27, 2013
DOCKET	No. 11-864
DISPOSITION	reversed
PROCEDURAL POSTURE	Petitioners sought review by certiorari of the Third Circuit's affirmance of a District Court order certifying a Rule 23(b)(3) damages class in an antitrust action.
STANDARD OF REVIEW	The Court evaluated whether the Rule 23(b)(3) predominance requirement was satisfied and required a rigorous analysis, including inquiry into merits-related issues bearing on certification.
PRECEDENTIAL VALUE	United States Supreme Court precedent
PARTIES	Comcast Corporation and its subsidiaries v. Caroline Behrend and other named plaintiffs

TOPICS

- class actions
- civil procedure
- commercial litigation
- commercial

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a district court may certify a Rule 23(b)(3) class without resolving merits-related arguments bearing on whether the Rule 23 requirements are satisfied.
2. Whether respondents' damages model established that damages attributable to the accepted overbuilder-deterrence theory could be measured on a classwide basis.
3. Whether the class action was properly certified under Rule 23(b)(3)'s predominance requirement.

HOLDINGS

1. A court evaluating class certification must conduct a rigorous analysis of Rule 23's prerequisites, even when that analysis overlaps with the merits of the underlying claim.
2. A damages model supporting class certification must measure only damages attributable to the theory of antitrust liability accepted for class treatment; a model that does not do so cannot establish that damages are susceptible of classwide measurement.
3. The class was improperly certified because respondents could not show, through their damages model or another methodology, that damages attributable to the accepted theory could be measured on a classwide basis; individual damage calculations would therefore overwhelm common questions.

KEY QUOTATIONS

“Such an analysis will frequently entail “overlap with the merits of the plaintiff’s underlying claim.”” (5-6)

“If the model does not even attempt to do that, it cannot possibly establish that damages are susceptible of measurement across the entire class for purposes of Rule 23(b)(3).” (7)

“Under that logic, at the class-certification stage any method of measurement is acceptable so long as it can be applied classwide, no matter how arbitrary the measurements may be.” (8)

“In light of the model’s inability to bridge the differences between supra-competitive prices in general and supra-competitive prices attributable to the deterrence of overbuilding, Rule 23(b)(3) cannot authorize treating subscribers within the Philadelphia cluster as members of a single class.” (10-11)

FACTUAL BACKGROUND

Comcast and its subsidiaries used a clustering strategy from 1998 to 2007 by acquiring competing cable providers and exchanging systems outside the Philadelphia region for competitor systems inside it. Comcast's share of subscribers in the Philadelphia cluster allegedly rose from 23.9 percent to 69.5 percent. Subscribers alleged that the clustering reduced competition and caused supra-competitive cable prices, relying on an expert regression model to calculate classwide damages. The model did not isolate damages attributable to the only theory accepted for class treatment—deterrence of overbuilder competition.

PROCEDURAL HISTORY

The Eastern District of Pennsylvania certified a class of more than two million Comcast subscribers after accepting only the theory that Comcast's clustering deterred overbuilder competition and finding that damages could be measured classwide. The Third Circuit affirmed, declining to consider petitioners' challenge to the damages model because it also implicated the merits. The Supreme Court reversed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The judgment of the Third Circuit was reversed. The opinion does not state additional specific remand instructions.

CASES CITED

- United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337 (1906)
- Wal-Mart Stores, Inc. v. Dukes, Wal-Mart Stores, Inc. v. Dukes, 564 U.S. ____ (2011)
- General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 160-161 (1982)
- Califano v. Yamasaki, 442 U.S. 682, 700-701 (1979)
- Amchem Products, Inc. v. Windsor, 521 U.S. 591, 614-615, 623-625 (1997)
- Story Parchment Co. v. Paterson Parchment Paper Co., 282 U.S. 555, 563 (1931)
- Image Technical Services, Inc. v. Eastman Kodak Co., 125 F.3d 1195, 1224 (9th Cir. 1997)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
- Rogers v. United States, 522 U.S. 252, 259 (1998) (O'Connor, J., concurring in result)
- The Monrosa v. Carbon Black Export, Inc., 359 U.S. 180, 183 (1959)
- Tardiff v. Knox County, 365 F.3d 1, 6 (1st Cir. 2004)
- Chiang v. Veneman, 385 F.3d 256, 273 (3d Cir. 2004)
- Bertulli v. Independent Ass'n of Continental Pilots, 242 F.3d 290, 298 (5th Cir. 2001)
- Beattie v. CenturyTel, Inc., 511 F.3d 554, 564-566 (6th Cir. 2007)
- Arreola v. Godinez, 546 F.3d 788, 801 (7th Cir. 2008)
- In re Visa Check/MasterMoney Antitrust Litigation, 280 F.3d 124, 139-140 (2d Cir. 2001)
- United States v. Grinnell Corp., 384 U.S. 563, 570-571 (1966)
- Atlantic Richfield Co. v. USA Petroleum Co., 495 U.S. 328, 334 (1990)
- Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489 (1977)
- United States v. Virginia, 518 U.S. 515, 589 n.5 (1996) (Scalia, J., dissenting)
- United States v. Doe, 465 U.S. 605, 614 (1984)
- Graver Tank & Manufacturing Co. v. Linde Air Products Co., 336 U.S. 271, 275 (1949)

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