

Resolving Interconnection Disputes in the U.S.: Limiting the Reach of Antitrust Law Where the Telecommunications Act Applies

VERIZON COMMUNICATIONS INC., v. LAW OFFICES OF CURTIS V. TRINKO, LLP

In a decision rendered on 13 January 2004 -*Verizon Communications Inc. v. Law Offices of Curtis V. Trinko*- the U.S. Supreme Court unanimously held that antitrust law does not expand to cover anti-competitive behavior of an incumbent Local Exchange Carrier (LEC) failing to comply with the duty to offer its competitors just, reasonable, and non-discriminatory access to its network, as mandated by the 1996 Telecommunications Act.

The lawsuit is a class action brought by the law offices of Curtis Trinko LLP on behalf of customers of AT&T. The complaint alleged that Verizon, the Incumbent Local Exchange Carrier in New York, engaged in anti-competitive behavior by failing to provide its competitor (AT&T) adequate connections to its local loop, resulting in poor quality of service offered by AT&T to its customers. The Supreme Court overturned the decision of the U.S. Court of Appeals for the Second Circuit in New York, which ruled that Verizon's alleged lack of cooperation is a violation of section 2 of the Sherman Act.

After stating that Section 601(b)(1) of the 1996 Telecommunications Act preserves antitrust claims, the Supreme Court held that Verizon's failure to comply with its facility sharing obligations under the 1996 Telecommunications Act does not state a claim under section 2 of the Sherman Act. The court demonstrated that Verizon's behavior does not fall within the court's refusal to deal precedents. The Court also refused to grant recourse to the essential facilities doctrine. According to the Court, this doctrine serves no purpose in this case because there is a "regulatory agency with effective power to compel and to regulate sharing".

The Court further argued that antitrust analysis must "reflect the distinctive economic and legal setting of the regulated industry to which it applies". In the case of telecommunications the existence of a detailed regulatory mechanism designed to deter and remedy anti-competitive behavior minimizes the importance of traditional antitrust enforcement.

The court then engaged in a cost-benefit analysis of antitrust intervention to enforce interconnection obligations. The Court stated that "*Allegations of violations of §251(c)(3) duties are difficult for antitrust courts to evaluate, not only because they are highly technical, but also because they*

are likely to be extremely numerous, given the incessant, complex, and constantly changing interaction of competitive and incumbent LECs implementing the sharing and interconnection obligation." In addition, the Court contended that effective remediation of violation and enforcement of these detailed sharing obligations is a "daunting task . . . beyond the ability of judicial tribunal to control."

The court further argued that judicial oversight under the Sherman Act would distort investment by deterring companies and their competitors from investing in facilities that might be subject to forced sharing under antitrust enforcement in addition to "the variety of litigation routes already available to and actively pursued by competitive LECs".

The Supreme Court decision in *Verizon v Trinko* has been considered an important decision limiting the possibility to bring traditional antitrust suits against carriers violating the Telecommunications Act. By reversing the Court of Appeals decision the Supreme Court has limited the reach of antitrust doctrine. The decision may have broad repercussions reaching beyond the telecommunication sector into other business sectors subject to a sector-specific regulatory framework.

The Court's decision is available in the Supreme Court's Web Site at <http://www.supremecourtus.gov/opinions/03pdf/02-682.pdf>

Source: G-REX Advisor Boutheina Guerhazi