Syllabus

SUPREME COURT OF THE UNITED STATES

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PACIFIC BELL TELEPHONE CO., DBA AT&T CALIFORNIA, ET AL. *v.* LINKLINE COMMUNICATIONS, INC., ET AL.

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

No. 07–512. Argued December 8, 2008—Decided February 25, 2009

Petitioners (hereinafter AT&T) own infrastructure and facilities needed to provide "DSL" service, a method of connecting to the Internet at high speeds over telephone lines. As a condition for a recent merger, the Federal Communications Commission requires AT&T to provide wholesale DSL transport service to independent firms at a price no greater than the retail price of AT&T's DSL service. The plaintiffs in this case, respondents here, are independent Internet service providers that compete with AT&T in the retail DSL market in California. The plaintiffs do not own all the facilities needed to supply DSL service, and must lease wholesale DSL transport service from AT&T. They filed suit under §2 of the Sherman Act, asserting that AT&T unlawfully "squeezed" their profit margins by setting a high price for the wholesale DSL transport service it sells and a low price for its own retail DSL service. This maneuver allegedly placed the plaintiffs at a competitive disadvantage, allowing AT&T to maintain monopoly power in the DSL market. AT&T moved for judgment on the pleadings, arguing that the plaintiffs' claims were foreclosed by *Verizon Communications Inc.* v. *Law Offices of Curtis V. Trinko, LLP*, 540 U. S. 398, 410, in which this Court held that a firm with no antitrust duty to deal with its rivals has no obligation to provide those rivals with a "sufficient" level of service. The District Court found that AT&T had no antitrust duty to deal with the plaintiffs, but nonetheless denied the motion, holding that *Trinko* did not address price-squeeze claims. The court certified its order for interlocutory appeal on the question whether *Trinko* bars price-squeeze claims when the parties are required to deal by federal communications law, but not antitrust law. The Ninth Circuit affirmed, holding that *Trinko* did not address the viability of price-squeeze claims, and thus the plaintiffs' complaint stated a potentially valid §2 claim.

Held:

1. The case is not moot. The plaintiffs now agree that their claims must meet the *Brooke Group* test for predatory pricing, apparently apart from their price-squeeze theory. That test established two requirements for predatory pricing: below-cost retail pricing and a " 'dangerous probability' " that the defendant will recoup any lost profits, see *Brooke Group Ltd.* v. *Brown & Williamson Tobacco Corp.*, 509 U. S. 209, 222–224. Despite the plaintiffs' new position, the parties continue to seek different relief: AT&T seeks reversal of the decision below and dismissal of the complaint, while the plaintiffs seek leave to amend their complaint to allege a *Brooke Group* claim. It is also not clear that the plaintiffs have unequivocally abandoned their price-squeeze claims. Prudential concerns favor answering the question presented; absent a decision on the merits, the Circuit conflict that this Court granted certiorari to resolve would persist. Pp. 5–7.

2. A price-squeeze claim may not be brought under §2 when the defendant has no antitrust duty to deal with the plaintiff at wholesale. Pp. 7–17.

(a) Businesses are generally free to choose the parties with whom they will deal, as well as the prices, terms, and conditions of that dealing. See *United States* v. *Colgate & Co.*, 250 U. S. 300, 307. But in rare circumstances, a dominant firm may incur antitrust liability for purely unilateral conduct, such as charging "predatory" prices. *Brooke Group*, *supra,* at 222–224. There are also limited circumstances in which a firm's unilateral refusal to deal with its rivals can give rise to antitrust liability. See *Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U. S. 585, 608–611. Here, plaintiffs do not allege predatory pricing, and the District Court concluded that there was no antitrust duty to deal. Plaintiffs challenge a different type of unilateral conduct in which a firm "squeezes" its competitors' profit margins. This requires the defendant to operate in both the wholesale ("upstream") and retail ("downstream") markets. By raising the wholesale price of inputs while cutting its own retail prices, the defendant can raise competitors' costs while putting downward pressure on their revenues. Price-squeeze plaintiffs assert that defendants must leave them a "fair" or "adequate" margin between wholesale and retail prices. Pp. 7–9.

(b) Where there is no duty to deal at the wholesale level and no predatory pricing at the retail level, a firm is not required to price both of these services in a manner that preserves its rivals' profit margins. Pp. 9–12.

(1) Any challenge to AT&T's *wholesale* prices is foreclosed by a straightforward application of *Trinko*. The claim in *Trinko* addressed the quality of Verizon's support services, while the claims in this case challenge AT&T's pricing structure. But for antitrust purposes, there is no meaningful distinction between price and nonprice components of a transaction. The nub of the complaint in both cases is identical—the plaintiffs alleged that the defendants (upstream monopolists) abused their power in the wholesale market to prevent rival firms from competing effectively in the retail market. But a firm with no antitrust duty to deal in the wholesale market has no obligation to deal under terms and conditions favorable to its competitors. See *Trinko, supra,* at 410. Had AT&T simply stopped providing DSL transport service to the plaintiffs, it would not have run afoul of the Sherman Act. Thus, it was not required to offer this service at the wholesale prices the plaintiffs would have preferred. Pp. 9–10.

(2) The other component of a price-squeeze claim is the assertion that the defendant's *retail* prices are "too low." Here too plaintiffs' claims find no support in existing antitrust doctrine. "[C]utting prices in order to increase business often is the very essence of competition." *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U. S. 574, 594. To avoid chilling aggressive price competition, the Court has carefully limited the circumstances under which plaintiffs can state a Sherman Act claim by alleging that the defendant's prices are too low. See *Brooke Group, supra,* at 222–224. The complaint at issue here has no allegation that AT&T's conduct met either *Brooke Group* requirement. Recognizing a price-squeeze claim where the defendant's retail price remains above cost would invite the precise harm the Court sought to avoid in *Brooke Group*: Firms might raise retail prices or refrain from aggressive price competition to avoid potential antitrust liability. See 509 U. S., at 223. Pp. 11–12.

(c) Institutional concerns also counsel against recognizing such claims. This Court has repeatedly emphasized the importance of clear rules in antitrust law. Recognizing price-squeeze claims would require courts simultaneously to police both the wholesale and retail prices to ensure that rival firms are not being squeezed. Courts would be aiming at a moving target, since it is the *interaction* between these two prices that may result in a squeeze. Moreover, firms seeking to avoid price-squeeze liability will have no safe harbor for their pricing practices. The most commonly articulated standard for price squeezes is that the defendant must leave its rivals a "fair" or "adequate" margin between wholesale and retail prices; this test is nearly impossible for courts to apply without conducting complex proceedings like rate-setting agencies. Some amici argue that a price squeeze should be presumed if the defendant's wholesale price exceeds its retail price. But if both the wholesale price and the retail price are independently lawful, there is no basis for imposing antitrust liability simply because a vertically integrated firm's wholesale price is greater than or equal to its retail price. Pp. 12–15.

(d) The District Court on remand should consider whether an amended complaint filed by the plaintiffs states a claim upon which relief may be granted under the pleading standard articulated in *Bell Atlantic Corp.* v. *Twombly*, 550 U. S. 544, 561–563; whether plaintiffs should be given leave to amend their complaint to bring a *Brooke Group* claim; and such other matters properly before it. Pp. 15–17.

503 F. 3d 876, reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. BREYER, J., filed an opinion concurring in the judgment, in which STEVENS, SOUTER, and GINSBURG, JJ., joined.