

IN THE SUPREME COURT OF THE UNITED STATES

No. 07-512

PACIFIC BELL TELEPHONE COMPANY,
DBA AT&T CALIFORNIA, ET AL.,

Petitioners,

v.

LINKLINE COMMUNICATIONS, INC., ET AL.,

Respondents.

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

MOTION OF *AMICUS CURIAE* AMERICAN ANTITRUST INSTITUTE
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT
AND FOR DIVIDED ORAL ARGUMENT

The American Antitrust Institute ("AAI") is an independent non-profit education, research, and advocacy organization. Its mission is to advance the role of competition in the economy, protect consumers, and sustain the vitality of the antitrust

laws. AAI filed its *Amicus Curiae* Brief in Support of Dismissal of the Writ or Affirmance on October 21, 2008.

Pursuant to Rules 21 and 28 of the Rules of this Court, AAI respectfully requests leave to participate in oral argument in this case should the Court not dismiss the writ of certiorari as moot. AAI requests that oral argument be divided with the respondents, and that undersigned counsel be allowed ten minutes of argument time. Respondents have indicated that they take no position on this motion.

The question presented in this case is whether a plaintiff states a claim under Section 2 of the Sherman Act by alleging that the defendant - a vertically integrated retail competitor with an alleged monopoly at the wholesale level but no antitrust duty to provide the wholesale input to competitors - engaged in a "price squeeze" by leaving insufficient margin between the wholesale and retail prices to allow the plaintiff to compete.

In their brief, respondents have essentially conceded the question and abandoned their price-squeeze claim. They argue that the judgment below *should* be vacated and that they be permitted to amend their complaint to further develop their allegations that petitioners engaged in predatory pricing at the retail level under Brooke Group Ltd. v. Brown & Williamson

Tobacco Corp., 509 U.S. 209 (1993), in accordance with the dissent below.

AAI's *amicus* brief urges the Court to dismiss the writ of certiorari as moot, as the question presented is now merely hypothetical, and the issue of whether the complaint states or could state a claim of predatory pricing is not properly before the Court. Moreover, all parties concede that a Brooke Group predatory pricing claim survives even in the absence of an "antitrust duty to deal." AAI further argues, however, that if the Court does not dismiss the writ, the judgment of the Ninth Circuit should be affirmed because the district court's determination that petitioners had no "antitrust duty to deal" does not bar respondents' conventional price squeeze claim, a position no longer asserted by respondents.

AAI should be permitted to participate in oral argument because, if the Court does not dismiss the writ of certiorari as moot, and goes on to decide the question presented, the judgment of the Ninth Circuit will be undefended. Moreover, if the Solicitor General is given time to argue, see Motion of the United States for Leave to Participate in Oral Argument as Amicus Curiae and for Divided Oral Argument, the "unique perspective on the question presented" that he presumably will press, *id.* at 2, is that a price squeeze should be eliminated as

an independent antitrust offense. AAI has vigorously contested this point in its brief. Respondents have not addressed the issue in their brief, nor do they have any apparent interest in the resolution of that abstract question.

Accordingly, AAI's motion for leave to participate in oral argument and for divided oral argument should be allowed.

Respectfully submitted,

A handwritten signature in cursive script that reads "Richard M. Brunell".

Richard M. Brunell
Counsel of Record
American Antitrust Institute
2919 Ellicott St., N.W.
Washington, D.C. 20008
(617) 435-6464

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