

Davis Polk Antitrust Update - March 2009

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The Supreme Court unanimously held in *Pacific Bell Telephone Co. v. Linkline Communications, Inc.* (decided February 25, 2009) that price squeeze claims are not cognizable absent a duty-to-deal under the antitrust laws. The plaintiffs were internet service providers, which leased DSL facilities from AT&T at wholesale and used them to provide retail DSL service to customers. As a condition for a recent merger, the Federal Communications Commission ("FCC") required AT&T to provide wholesale DSL transport service to independent firms at a rate no greater than the retail price of AT&T's own DSL service. AT&T controls most of the "last mile" – the lines that connect individual homes and businesses to a telephone network. In order to provide competing DSL service to residential and business customers, independent firms, such as the plaintiffs, must lease AT&T's last mile facilities.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Arthur J. Burke

+1 212 450 4352
+1 650 752 2005
arthur.burke@davispolk.com

Ronan P. Harty

+1 212 450 4870
ronan.harty@davispolk.com

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