

Suit Challenging Cable Bundling Survives Motion to Dismiss

Article By:

Womble Bond Dickinson (US), LLP

Cable subscribers, tired of being forced to purchase more obscure channels like VH1 Classic and Teen Nick in order to get their nightly Daily Show fix on Comedy Central, should be encouraged by a recent **antitrust decision** out of the Southern District of New York.

In the case of **Cablevision Systems Corporation v. Viacom International, Inc.**, cable operator **Cablevision** sued cable programmer **Viacom** based on Viacom's practice (like virtually all large cable programmers) of pricing its channels so that the all of its offerings must be taken in order to purchase popular channels at a lower price. Cablevision alleges that Viacom abuses its market power over access to its most popular cable networks (including **BET, Comedy Central, MTV, and Nickelodeon**) to force cable operators to license and distribute its less popular channels, which many subscribers do not want (like CMT Pure Country, Logo, MTV Hits, MTV Jams, Nick Jr., Nick 2, Nicktoons, Teen Nick, VH1 Classic, and VH1 Soul). Cablevision argues that Viacom's practices inflict on-going harm to Cablevision, consumers, and competition generally and constitute illegal "tying" and "block booking" in violation of Section 1 of the Sherman Act and New York state antitrust laws.

Viacom filed a motion to dismiss the complaint, alleging that Cablevision had not sufficiently alleged harm to competition (a critical element of a Sherman Act claim) and waited too long to bring its complaint. This week the judge denied Viacom's motion to dismiss, allowing the case to proceed to discovery on all counts. While Cablevision will still face a difficult road as it is forced to prove its claims, the opinion constitutes a significant victory for cable operators and consumers seeking an alternative to current cable bundling practices.

Cablevision is not the first to make this type of antitrust claim, but it is significant because it is the first to survive a motion to dismiss. A prior suit out of the Ninth Circuit, *Brantleyv. NBC Universal, Inc.*, which was brought as a class action by consumers seeking to unbundle cable, was dismissed before reaching the merits. The Court found that anticompetitive harm not been alleged, because plaintiffs were merely alleging harm to consumers, rather than competition. Cablevision's lawyers have gone to great lengths in their filings to differentiate themselves from the consumer plaintiffs in the *Brantley* case and have beefed up their complaint with nearly 70 pages of in-depth economic analysis and market data in support of their allegations of abuse of market power and harm to competition. (Ironically, however, Cablevision was a defendant in the *Brantley* case and took many positions contrary to those in its current complaint in its pleadings in that case—a fact not lost on

Viacom in its motion to dismiss.)

Cablevision's suit is also interesting, because it constitutes the first time a cable operator has sued a cable programmer, alleging that cable bundling practices are the result of programmer demands, and not a practice agreed upon between operators and programmers, as was alleged in Brantley. By claiming the practices—much loathed by many cable subscribers—are solely the result of programmers' demands, Cablevision's antitrust suit seeks to put an end to these practices and, presumably, open up more possibilities for alternative cable pricing arrangements.

Copyright © 2025 Womble Bond Dickinson (US) LLP All Rights Reserved.

National Law Review, Volume IV, Number 177

Source URL: <https://natlawreview.com/article/suit-challenging-cable-bundling-survives-motion-to-dismiss>