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Digital Content Producers Lack Antitrust Standing to Sue Wireless Carriers Over MMS

by Howard Ullman on March 2, 2012



Wireless Telephony

Davis v. AT&T Wireless Services, Inc., No. CV 11-02674 DDP (March 1, 2012) (Pregerson, J.)

Not everyone can sue for an antitrust violation. Usually, if plaintiffs and defendants do not at least participate in the same market, plaintiffs lack standing.

In *Davis*, Judge Pregerson dismissed antitrust claims against various wireless telephone companies and other defendants brought by a purported class of commercial producers of multimedia content. Plaintiffs claimed that when the wireless carriers created the Multimedia Messaging Service standard for sending multimedia data files, they agreed not to implement digital rights management measures that would have protected materials copyrighted by third parties. Allegedly, the carriers' motive was to increase revenues and profits from the use of MMS.

The Court ruled that the plaintiffs had not alleged antitrust injury, and therefore lacked antitrust standing. Plaintiffs are producers and owners of multimedia content; defendants, to the contrary, are wireless service carriers who enable subscribers to send messages that can include multimedia content. "Plaintiffs and Defendants are therefore not participants in the same market, and Plaintiffs fail to allege the required antitrust injury."

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