

AntitrustConnect Blog

AT&T's Planned Acquisition of T-Mobile Challenged by Justice Department

Jeffrey May (Wolters Kluwer) · Wednesday, August 31st, 2011

The U.S. Department of Justice today moved to block AT&T Corporation's proposed acquisition of T-Mobile USA Inc. According to the Justice Department, the proposed acquisition would combine two of the four largest providers of mobile wireless telecommunications services. These four national carriers—AT&T, Verizon, Sprint, and T-Mobile—control over 90 percent of the national cell phone market.

AT&T said in an August 31 [statement](#) that it was “surprised and disappointed” by the Justice Department's action. Despite repeated meetings with the Department of Justice, “there was no indication from the DOJ that this action was being contemplated,” according to AT&T. The company said that it would request an expedited hearing and that it would “vigorously contest this matter in court.”

The proposed \$39 billion acquisition of T-Mobile from Deutsche Telekom was announced by AT&T in March. AT&T has said that the “U.S. wireless industry is fiercely competitive, and will remain so after the merger.” The telecommunications giant rejects the government's characterization of the transaction as a four-to-three merger, and points to competition from “super regional players,” such as U.S. Cellular and Cellular South, and other providers, such as MetroPCS and Leap Wireless. AT&T also argues that the deal will improve service quality, increase coverage and infrastructure, and create jobs.

AT&T is the second-largest mobile wireless telecommunications services provider in the United States, as measured by subscribers. T-Mobile is the nation's fourth-largest mobile wireless telecommunications services provider, as measured by subscribers. The government alleges in its 25-page [complaint](#) that “AT&T's elimination of T-Mobile as an independent, low-priced rival would remove a significant competitive force from the market” and “substantially reduce competition.”

Relevant Market

For purposes of evaluating the competitive effects of the transaction, the government defines the relevant product market as mobile wireless telecommunications services and, alternatively, mobile wireless telecommunications services provided to enterprise and government customers.

With respect to the relevant geographic market, the government contends that it is “appropriate

both to identify local markets in which consumers purchase mobile wireless telecommunications services and to identify the nature of the nationwide competition affecting those markets.”

Consumers consider a local area as the relevant geographic market. These local areas in which consumers have the same competitive choices fairly approximate cellular market areas (CMAs) identified by the Federal Communications Commission to license providers for certain spectrum bands. According to the Justice Department, AT&T and T-Mobile compete in approximately 97 of the nation’s top 100 CMAs. Each of these 97 CMAs constitutes a relevant geographic market.

The government goes on to allege in its complaint that, while “CMAs are appropriate geographic markets from the perspective of individual consumer choice, from a seller’s perspective, the Big Four carriers compete against each other on a nationwide basis and AT&T’s acquisition of T-Mobile will have nationwide competitive effects across local markets.”

As for the product market limited to mobile wireless telecommunications services provided to business and government customers, the geographic market is national in scope.

Concentration, Competitive Effects

The vast majority of the 97 markets identified are highly concentrated, the government contends. Moreover, the increase in market share resulting from the acquisition should be presumed to enhance market power, it is alleged.

In discussing the competitive effects of the proposed deal, the government highlights the importance of T-Mobile’s status as an aggressive competitor. “AT&T’s acquisition of T-Mobile would eliminate the important price, quality, product variety, and innovation competition that an independent T-Mobile brings to the marketplace,” the Justice Department alleges. This reduction in innovation is a concern identified in the joint Federal Trade Commission/Department of Justice [2010 Horizontal Merger Guidelines](#) (CCH Trade Regulation Reporter ¶13,100). The guidelines outline the federal antitrust agencies’ principal analytical techniques, practices, and enforcement policy with respect to horizontal mergers, such as the AT&T/T-Mobile combination.

Exhaustive Investigation

The complaint follows an “exhaustive investigation,” according to Sharis A. Pozen, Acting Assistant Attorney General in charge of the Department of Justice Antitrust Division. “We conducted dozens of interviews of customers and competitors, and we reviewed more than 1 million AT&T and T-Mobile documents,” Pozen said in a prepared [statement](#).

The suit comes at a time when the Department of Justice has been criticized in some circles for not doing enough to block anticompetitive mega-mergers. Some have questioned the wisdom of the Justice Department’s decision to allow recent combinations of air carriers United and Continental and Southwest and AirTran to proceed. In addition, some have pondered the adequacy of the conditions placed on approved transactions, such as Comcast Corporation’s acquisition of U.S. global media and entertainment giant NBC Universal.

Industry Reaction

Sprint, the nation’s third largest wireless provider and a vocal opponent of the acquisition said that it “applauded” the Justice Department’s action. “The DOJ today delivered a decisive victory for

consumers, competition and our country,” according to a [Sprint statement](#). “By filing suit to block AT&T’s proposed takeover of T-Mobile, the DOJ has put consumers’ interests first.”

Court Filing

The case was filed in the federal district court in Washington, D.C. It has been assigned to Judge Ellen Huvelle. Over the years, Judge Huvelle has signed off on a number of U.S. consent decrees resolving anti-merger suits, including merger challenges involving AT&T. However, Judge Huvelle has rejected a government suit attacking an acquisition.

A decade ago, Judge Huvelle refused to accept the Justice Department’s “overly narrow and static definition of the product market” in a challenge to SunGard Data Systems, Inc.’s acquisition of the disaster recovery solutions assets of Comdisco, Inc. (*U.S.v. Sungard Data Systems, Inc.*, 172 F.Supp.2d 172, [CCH 2001-2 Trade Cases ¶73,493](#)). The government subsequently abandoned the merger challenge.

The case is *U.S. v. AT&T Corp., T-Mobile USA, Inc., and Deutsche Telekom AG*, 1:11-cv-01560.

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