

AntitrustConnect Blog

Seven States Join U.S. in Suit to Block AT&T's Acquisition of T-Mobile

Jeffrey May (Wolters Kluwer) · Monday, September 19th, 2011

The Attorneys General of California, Illinois, Massachusetts, New York, Ohio, Pennsylvania, and Washington have signed on to the U.S. Justice Department's complaint challenging AT&T, Inc.'s proposed \$39 billion acquisition of T-Mobile USA. An [amended complaint](#), adding the seven states, was filed on September 16.

On the same day, a [proposed scheduling order](#) was also filed in the case. The parties have set some deadlines; however, they have been unable to reach an agreement on a trial date, which impacts the discovery timeline.

The government has proposed a start date for the trial of March 19, 2012. AT&T said it would be ready for trial two months earlier, in January. A status conference at which the parties may work out their differences was set for September 21.

The U.S. Department of Justice filed its original complaint on August 31, seeking to block AT&T's proposed acquisition of T-Mobile from Deutsche Telekom (See [August 31 blog post](#)). The deal would combine two of the four largest providers of mobile wireless telecommunications services, according to the government. AT&T is the second-largest mobile wireless telecommunications services provider in the United States and T-Mobile is the nation's fourth-largest provider, as measured by subscribers. Verizon, the largest provider, and Sprint are the other two national players.

Amended Complaint

In the amended complaint, the seven states alleged a violation of federal law—Section 7 of the Clayton Act. They brought the suit in their sovereign capacities and as *parens patriae* on behalf of the citizens, general welfare, and economy of each of their states. They sought attorney fees and costs in addition to a permanent injunction blocking the transaction.

New York State Attorney General Eric T. Schneiderman, whose office helped lead the group of states reviewing the merger, said in a [September 16 statement](#) that the states worked closely with the U.S. Department of Justice during the investigation. Schneiderman contended the merger would sharply increase concentration in five market areas in New York: New York City, Buffalo, Rochester, the Albany-Schenectady-Troy area, and Syracuse.

Massachusetts Attorney General Martha Coakley also issued a [statement](#) to announce her state's

participation in the suit. Coakley noted that the greater Boston, Worcester, Springfield, and New Bedford/Fall River areas were among the 97 cellular marketing areas in which head-to-head competition between AT&T and T-Mobile would be lost if the transaction were to proceed. “The proposed merger would create highly concentrated markets in Massachusetts and could lead to higher prices and poorer service,” Coakley said.

Washington State Attorney General Rob McKenna added that if the companies merged, wireless customers in the most populated parts of Washington state—including Seattle, Tacoma and Spokane—would be particularly impacted. McKenna also suggested that the transaction would have an anticompetitive impact on Global System for Mobile technology. He said in a [September 16 statement](#):

The merger would also give AT&T a monopoly over Global System for Mobile (GSM) technology, the most popular technology for American consumers and businesses that require that their phones work internationally. AT&T and T-Mobile are the only major carriers to utilize GSM. After the deal, small and regional cell providers of GSM technology would be forced to negotiate exclusively with AT&T to provide services to their customers.

It is not uncommon for states to work with the U.S. Department of Justice in suits challenging acquisitions involving mobile wireless providers. In 2008, the Department of Justice Antitrust Division along with 22 states sued to block Verizon’s \$28 billion acquisition of Alltel Corporation. The antitrust concerns were resolved under the terms of a consent decree ([2009-1 Trade Cases ¶76,516](#)), which since has been modified ([2011-1 Trade Cases ¶77,416](#)).

Also in 2008, the U.S. Justice Department and Vermont required divestitures to resolve antitrust concerns over Verizon’s \$2.7 billion acquisition of Rural Cellular Corporation ([2009-1 Trade Cases ¶76,586](#)). More recently, Louisiana joined a Justice Department suit, challenging AT&T’s \$944 million acquisition of Centennial Communications Corp. in 2009. A consent decree resolved concerns that the transaction would harm competition in parts of Louisiana and Mississippi ([2010-1 Trade Cases ¶76,990](#)).

State Support for the Merger

While seven states have joined the complaint, there are a number of states that support the merger. AT&T said in an [August 31 statement](#) that the transaction had the support of 11 State Attorneys General, as well as 27 governors.

State support for the deal comes primarily from rural areas. In July, Attorneys General from Alabama, Arkansas, Georgia, Kentucky, Michigan, Mississippi, North Dakota, South Dakota, West Virginia, and Wyoming sent a letter to Federal Communications Commission Chairman Julius Genachowski and Christine Varney, then Assistant Attorney General in charge of the U.S. Department of Justice Antitrust Division, urging approval of the deal based on the asserted benefits for their citizens. The letter asks for approval of the merger “with appropriate and carefully-crafted merger-specific remedies and conditions... [that] may be needed to protect competition and the public interest without unduly delaying the merger or undermining the synergies, economies or benefits of the merger.”

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