



The American Antitrust Institute

August 17, 2011

By Express Mail

Honorable Sharis Pozen  
Acting Assistant Attorney General  
U.S. Dept. of Justice  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530

Re: AT&T's Acquisition of T-Mobile

Dear Ms. Pozen:

The American Antitrust Institute (“AAI”) urges the Antitrust Division to block the proposed acquisition by AT&T Inc. of T-Mobile USA, Inc. from Deutsche Telekom AG. Based on our review of publicly available information, including submissions to the FCC by the parties and others, it is evident that the “the effect of such acquisition may be substantially to lessen competition” in wireless communication markets, and therefore the acquisition violates Section 7 of the Clayton Act.

Given the importance of the wireless industry to the economy, the size of this transaction, and the likely anticompetitive effects on consumers, AAI believes this proposed merger should be your highest priority.

The attached analysis of the transaction, which is largely drawn from AAI’s comments and reply comments submitted to the FCC, makes the following key points:

- The proposed merger is presumptively anticompetitive because it would reduce the number of significant competitors from 4 to 3 and otherwise significantly increase concentration in already highly concentrated markets. Indeed, the merger raises a significant risk that the wireless market would revert to a duopoly, as AT&T and Verizon would control more than 75% of all wireless subscribers and 78% of wireless revenues, and Sprint may be marginalized as a competitor.
- The evidence suggests that the regional and local fringe competitors such as MetroPCS and Leap Wireless, which in total account for less than 7% of all wireless revenues, do not meaningfully constrain the pricing of the national carriers’ post-paid plans, and could not adequately substitute for the loss of T-Mobile as a national competitor. Recent declines in subscriber growth reported by MetroPCS and Leap only reinforce this conclusion. Moreover, if AT&T cannot cost-effectively expand capacity without acquiring T-Mobile, as AT&T claims, then surely barriers to entry and expansion

are so high that new entry or expansion by other, far-smaller carriers could hardly be expected to counteract the loss of T-Mobile.

- Beyond the unacceptably high degree of concentration, the evidence confirms that the merger poses a significant risk of unilateral, coordinated, and exclusionary anticompetitive effects. Indeed, AT&T has acknowledged that it expects to increase the margins from T-Mobile subscribers. The evidence indicates that stock market investors also expect the transaction to be anticompetitive.

- AT&T's efficiencies defense fails to satisfy the stringent requirements of the Horizontal Merger Guidelines and the case law. Besides failing to demonstrate that its purported savings could not be obtained by practical alternatives, AT&T has failed to show that any savings would prevent price increases and reverse the merger's adverse effect on consumers. On the contrary, the claimed efficiencies merely reduce the fixed-cost capital expenditures that AT&T would otherwise make to upgrade its network in response to competitive pressures.

Since the wireless duopoly was ended in the mid-1990s, competition has brought tremendous gains to consumers of wireless services and to the economy as a whole. It would be unfortunate to sacrifice those benefits now by permitting AT&T to acquire T-Mobile.

Please do not hesitate to contact us if we can provide any additional information or analysis to you or your staff.

Very truly yours,



Richard M. Brunell  
Director of Legal Advocacy



Albert A. Foer  
President