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AT&T's Full Cost for Getting T-Mobile

By ANDREW ROSS SORKIN

Mark Dye/Newscast, via Associated PressRené Obermann, left, chief executive of Deutsche Telekom, which has agreed to sell T-Mobile, and Randall L. Stephenson, chief executive of AT&T, which has agreed to buy the company.

"We have never seen a deal with more regulatory risk be attempted in the U.S."

That was the initial assessment of AT&T's $39 billion agreement to acquire T-Mobile, from Jonathan Chaplin, one of the most thoughtful telecommunications analysts on Wall Street.

"It is unlikely that AT&T would attempt a deal that they knew would fail," he said. "However, we can't see how they would get this through without massive divestitures and concessions."

In Washington, though, the question is whether the deal should get through at all. And if it is approved, how much will AT&T ultimately have to give up?

The deal is a classic duopoly case study: if AT&T and T-Mobile combined, it would set up a match-up like Coca-Cola vs. Pepsi, with AT&T pitted against Verizon. The other rivals become almost irrelevant.

AT&T and Verizon would control roughly 80 percent of the national market. The next biggest is not that big at all: Sprint is just cracking double digits, at about 12 percent. After that is the bottom tier — MetroPCS, Leap and the like — all in single digits, though their numbers have been growing.

Randall L. Stephenson, the chief executive of AT&T, would say this is the wrong way to look at the marketplace. For the last 24 hours, he has been telling anyone who will listen that the Justice Department should and will judge the transaction on a local market-by-market basis. He says on a local level, his company is often competing against at least five players — and in some cities, like Detroit and Miami, T-Mobile is not even in the top tier.

Technically, Mr. Stephenson is correct. The government will evaluate the deal on a market-by-market basis, and he does have multiple "competitors" in each market.

But let's be honest for a moment: MetroPCS and Leap, his supposed competitors, do not offer like-for-like products that can replace AT&T's offering. One of the reasons MetroPCS has been able to offer lower prices than AT&T is that it does not offer true national service. (It would dispute this assessment because it uses roaming agreements and other companies' networks — namely Verizon's and Sprint's — to extend its reach.) The iPhone? Forget about it.

When you think about innovation in the cellular industry, whether it be technology, price plans or service, it has not come from the third-tier companies; instead, the third-tier companies have played copycat to AT&T, Verizon, Sprint and T-Mobile. The big question is whether an AT&T-Verizon duopoly will create enough competition to further drive competition and keep prices low.

"This is a significant horizontal consolidation by all the traditional measurements. This level of concentration, two-thirds of the time, has been rejected by the Department of Justice," Reed E. Hundt, the former chairman of the Federal Communications Commission, said on a segment with me on CNBC on Monday.

Michael J. Copps, an F.C.C. commissioner, said last year that the amount of concentration in the cellular industry should be considered "a bright caution light for this commission as we go about the business of advancing competition and consumer well-being in the broadband age."

"We are going to need an extra dose of vigilance going forward and use whatever policy levers we have available to ensure good outcomes for American consumers," he said.

On that score, in the short term at least, the facts may be on AT&T's side. A deal with T-Mobile should improve its service and coverage area, while allowing it to upgrade its systems with enough spectrum to keep up with the insatiable demand of consumers for more data and video over hand-held devices.

Rick Kaplan, senior adviser to the F.C.C. chairman, Julius Genachowski, said on Monday that the industry was desperately in need of more spectrum. "The spectrum crunch is real," he said. "We're going to have to get more spectrum online for broadband."

AT&T hopes to leverage that sentiment by arguing that without the deal, the company customer support efforts will be hobbled.

The company is also playing the patriotic card by contending that the deal will "strengthen and expand critical infrastructure for our nation's future" and will "help achieve the president's goals for a high-speed, wirelessly connected America."

All of that may be true. And perhaps the government should approach deals in this context, but if so, it would be a complete shift in policy.

So what will AT&T have to give up to get the thumbs up?

That's the $3 billion question — the amount of money it would have to pay T-Mobile's parent, Deutsche Telekom, if the deal were blocked. That huge breakup fee should provide a powerful incentive to compromise.

But then the question becomes what "remedy" the government could come up with to ensure competitiveness and innovation. AT&T would have to give up an awful lot of spectrum to ever create a true national competitor to it or Verizon.

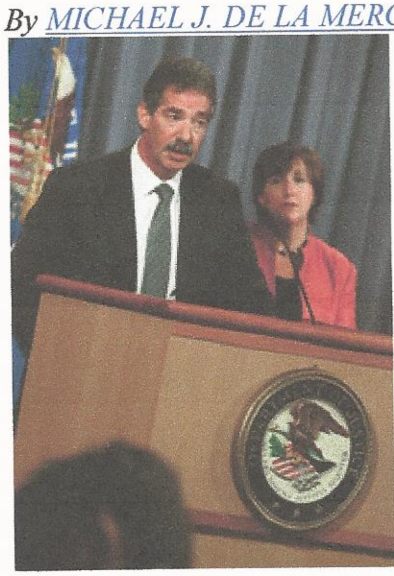
Lesser concessions could include commitments to make their networks open to competitors through roaming agreements and reseller agreements, allowing other carriers to sell service on AT&T's network under another brand. (That is what Verizon had to do in 2008.)

Whatever the outcome, it is going to be a long, drawn-out battle.

August 31, 2011, *10:56 am* Mergers & Acquisitions

U.S. Moves to Block AT&T Merger with T-Mobile

By MICHAEL J. DE LA MERCED, JEFFREY CANE *and* BEN PROTESS



Stephen Crowley/The New York TimesJames M. Cole, the Justice Department's deputy attorney general, said the merger would result in "higher prices, fewer choices and lower quality products."

5:13 p.m. | Updated

The Justice Department on Wednesday sued to block AT&T's proposed $39 billion acquisition of T-Mobile USA, a deal that would create the largest carrier in the country and reshape the industry.

"The department filed its lawsuit because we believe the combination of AT&T and T-Mobile would result in tens of millions of consumers all across the United States facing higher prices, fewer choices and lower quality products for their mobile wireless services," James M. Cole, the deputy attorney general, said at a news conference.

AT&T said it would "vigorously contest this matter in court."

The Justice Department's complaint, which was filed in United States District Court in Washington, said that T-Mobile "places important competitive pressure on its three larger rivals, particularly in terms of pricing, a critically important aspect of competition." The complaint also highlighted T-Mobile's high speed network and its innovations in technology, noting that it was the first to use Google's Android operating system and BlackBerry wireless e-mail, among other things.

"AT&T's elimination of T-Mobile as an independent, low-priced rival would remove a significant competitive force from the market," the complaint said. "Thus, unless this acquisition is enjoined, customers of mobile wireless telecommunications services likely will face higher prices, less product variety and innovation, and poorer quality services due to reduced incentives to invest than would exist absent the merger."

Shares of AT&T ended the day down 3.9 percent. In trading in Frankfurt, shares of Deutsche Telekom tumbled nearly 8 percent.

The Justice Department has broad authority to influence proposed deals.

In January, the U.S. sued Comcast for its proposed merger with NBC Universal; the case was settled at the same time with Comcast agreeing to some concessions.

On rare occasions, the agency takes the more aggressive step of suing to block a deal altogether, as it did with AT&T and earlier this year with H&R Block's bid for the owner of TaxAct tax-preparation software.

Sometimes just the threat of legal action is enough to stymie a deal, as in May when Nasdaq and a partner dropped their rival bid for the New York Stock Exchange's parent company. In other cases, the Justice Department will remain silent, blessing a deal by default.

In a statement, AT&T said: "We are surprised and disappointed by today's action, particularly since we have met repeatedly with the Department of Justice and there was no indication from the D.O.J. that this action was being contemplated.

"We plan to ask for an expedited hearing so the enormous benefits of this merger can be fully reviewed. The D.O.J. has the burden of proving alleged anticompetitive affects and we intend to vigorously contest this matter in court."

That could mean a potentially lengthy court fight. Companies have triumphed over the Justice Department before, such as a federal judge sided with Oracle in its purchase of PeopleSoft in 2004.

Yet there is still the chance that two sides could reach a settlement on the deal.

In a news conference on Wednesday, Sharis A. Pozen, the acting assistant attorney general, indicated that a compromise was still a possibility, saying: "We apprised them of our serious concerns. And as any party can do, our door is open. If they want to resolve those concerns, we can certainly do that."

AT&T also expects to enter in discussions about a possible solution, people briefed on the matter told DealBook.

Indeed, AT&T has one powerful incentive to try to salvage the deal. Under the terms of the agreement that AT&T signed with Deutsche Telekom, AT&T would pay a breakup fee of $3 billion in cash, as well as a roaming agreement and spectrum rights — an estimated total value of $6 billion — if the acquisition did not go through for regulatory reasons.

AT&T already has three high-priced law firms advising on the deal, including Sullivan & Cromwell, Arnold & Porter and Crowell & Moring. T-Mobile is receiving legal advice on the merger from Wachtell, Lipton, Rosen & Katz; Cleary, Gottlieb, Steen & Hamilton; and Wiley Rein.

Ever since AT&T announced plans to buy T-Mobile from Deutsche Telekom for $39 billion in March, the deal has proved controversial. Lawmakers, consumer advocates and rivals have voiced opposition to the merger, saying it would significantly reduce competition. The deal would have left just three major players: AT&T, Verizon and the significantly smaller Sprint Nextel.

The complaint also noted that AT&T and T-Mobile currently compete head to head in 97 of the 100 biggest wireless markets in the country.

"Sprint urges the United States government to block this anticompetitive acquisition," Vonya McCann, Sprint's senior vice president for government affairs, said back in March. "This transaction will harm consumers and harm competition at a time when this country can least afford it."

Shares of Sprint Nextel ended up nearly 6 percent on the day.

Citigroup analysts said Sprint was "a potential beneficiary" of the antitrust action. Still, they said that AT&T's pursuit of T-Mobile was "a catalyst for eventual wireless consolidation in some form, either through the current proposed transaction or other merger scenarios that would likely form if the pending merger is not completed."

The Justice Department's complaint noted that while there were smaller telecommunications providers, none of their voice networks "cover even one-third of the U.S. population, and the largest of these smaller carriers has less than one-third the number of wireless connections as T-Mobile."

On Wednesday, AT&T said that "we remain confident that this merger is in the best interest of consumers and our country, and the facts will prevail in court."

The company repeated its arguments that a merger would "help solve our nation's spectrum exhaust situation and improve wireless service for millions," would expand 4G mobile broadband and would mean billions in additional investment and tens of thousands of jobs.

Deutsche Telekom said it would join with AT&T to defend the deal, saying in a statement that it was "very disappointed" by the Justice Department's action.

Taking the Top Spot . . .

If AT&T buys T-Mobile USA, the combined company would have the most cellular subscribers.

Sources: The companies; Thomson Reuters

. . . With a Big Deal

The deal would be one of the largest since the financial crisis of 2008.*

ACQUIRER	TARGET	DATE ANNOUNCED	DEAL SIZE, IN BILLIONS
Pfizer	Wyeth	1/26/09	$64.5
Bank of America	Merrill Lynch	9/15/08	48.8
Merck	Schering-Plough	3/9/09	45.7
Exxon Mobil	XTO Energy	12/14/09	40.7
AT&T	**T-Mobile**	**3/20/11**	39.0
Berkshire Hathaway	Burlington Northern Santa Fe	11/03/09	35.9

*The list excludes bailouts and acquisitions by governments.

The New York Times http://nyti.ms/1hoSqav

PERSONAL TECH

T-Mobile Turns an Industry on Its Ear

FEB. 26, 2014

Farhad Manjoo

STATE OF THE ART

A rash of consumer-friendliness has broken out across the mobile data industry. Over the last year, the four major carriers — AT&T, Verizon, Sprint and T-Mobile — have cut prices and offered greater flexibility in how they sell their voice, text and broadband services. The industry could be on the verge of an all-out price war.

Who is responsible for this blessed state of affairs?

Credit must go to the United States government.

In 2011, officials at the Federal Communications Commission and the Justice Department moved to block AT&T's proposed $39 billion acquisition of T-Mobile. That kept the struggling, fourth-place carrier alive as an independent firm. And it led John J. Legere, T-Mobile's flamboyant, foul-mouthed chief executive, to brand his company the "uncarrier," and inaugurate a string of measures that have turned every accepted practice in the mobile business on its head.

T-Mobile's resurgence, and the effect it has had on the larger market for cellular service, may hold important lessons for regulators who will soon sit in judgment over the latest enormous broadband proposal, Comcast's deal to gobble up Time Warner Cable.

While T-Mobile executives are reluctant to credit the failed merger with AT&T as the source of the firm's aggressive new pricing strategy, they admit that they see themselves as disrupters in the market. "We want to identify every pain point for consumers in this industry and eliminate them all," said Michael Katz, T-Mobile's vice president for marketing.

In the last year, T-Mobile has dropped the traditional two-year contract from its lineup; now its plans come without customer lock-in. It has also dropped early termination fees, overage charges and other extra strings that carriers apply to keep you in line. The carrier now allows customers to text and use the Web while traveling in 100 countries at no extra charge. T-Mobile has also offered to pay off the early-termination fees its new customers might incur with their old carriers when switching. Most important, it has unbundled the price of a phone from the price of wireless service. Now, you can pay a separate amount for each piece. This means that if you decide against immediately upgrading when you finish paying off your phone, your monthly bill might — astonishingly — go down.

Former F.C.C. officials say this is exactly what the agency hoped for when, in 2011, it weighed in against AT&T's plan to purchase T-Mobile. As the agency's staff explained in a lengthy report, regulators feared that shrinking the four major carriers to three would give providers an incentive to raise prices. Instead, regulators saw an elegant escape hatch for T-Mobile. If AT&T was forced to call off the deal, it would owe T-Mobile a breakup fee worth at least $3 billion in cash, plus an additional $1 billion in rights to wireless spectrum. The money and spectrum would allow T-Mobile to build out its network infrastructure, making it more attractive to new users. Given the right leadership, regulators hoped the fourth-place carrier could play a spoiler's role in the marketplace. By aggressively courting new users, T-Mobile would act as an agitator prompting change across the industry.

And that's what has happened. After the merger fell apart, T-Mobile began to invest heavily in its network; its LTE broadband area now reaches 200 million people and its access speeds have been found to be faster than those of its larger rivals. The firm's real innovation began last March, though, when it announced its Simple Choice plan, which offered two unusual features. First, there was no contract lock-in; if you found a better deal on some other network a few months after signing up, you were free to leave. Second, the advertised prices were for network access alone, and did not include a smartphone. If you wanted a smartphone, T-Mobile would sell you one at full price, splitting the payments over two years. A top-of-the-line phone, like the iPhone 5S, sells for about $650, which is about $27 a month for 24 months.

What's the benefit of paying for the plan and the phone separately rather than as one big bundle? At first glance, it might not seem as if you're saving that much. If you buy an iPhone 5S and a 2.5-gigabyte plan from T-Mobile, you'll be out $87 a month — that's $60 for the service, and $27 for the phone. That's only slightly less than the $95 a month AT&T charges for its 2 GB, two-year contract plan, which includes a subsidized phone. This plan was once AT&T's primary offering. (If you bought a high-end phone, AT&T would also charge $199 when you signed up.)

But the real benefit of T-Mobile's unbundled pricing is its flexibility. Separating the phone from the service lets you jump off what Jeff Bezos once called the "upgrade treadmill" — the pressure to constantly purchase the latest and greatest device even when you don't really need it. After two years with T-Mobile, your $27-a-month device payment shrinks to $0, and then, if you're still managing just fine with your pretty good phone, you'll pay just $60 a month for network access. A contract plan doesn't work that way; after you've paid off your phone, your payments remain the same. So even if you don't need another phone, it makes financial sense to upgrade — and, in the process, lock yourself in for another two years because otherwise, you were just giving extra money to your carrier. Unbundled plans are also attractive for those who want to purchase low-cost unlocked phones — devices that can work on multiple carriers, like Google's fantastic $349 Nexus 5. If you buy that device from Google, you can pay T-Mobile just for network access.

T-Mobile's plans were so blindingly sensible that its competitors have been forced to respond.

In December, AT&T updated its plans to include a contract-free option. In February, Verizon offered a new set of plans that include similar options, though Verizon's plans are far more costly and less flexible. The larger carriers have also copied other T-Mobile ideas. After T-Mobile introduced its early upgrade program, Jump, which lets you pay an optional fee for the privilege of getting a new phone more frequently than every two years, AT&T, Verizon and Sprint followed suit.

T-Mobile's bold pricing efforts have helped it attract four million new customers over the last year. But the company's cuts have come at a cost; in its earnings report this week, T-Mobile reported a loss of $20 million in the fourth quarter, up from $8 million last year, a decline the company attributed to the sums it has spent on promotions. Privately, its rivals say that T-Mobile's spending is unsustainable, and that if larger competitors match all of its efforts, the company won't be able to invest in its network. Many analysts also say they believe T-Mobile is bent on adding customers to make itself more attractive for an eventual sale to Sprint. That will be difficult, because the very fact that T-Mobile has been so disruptive as an independent company has made officials wary of approving more consolidation in the industry.

The upshot: Nobody knows if T-Mobile's aggressive pricing will lead to a permanent change in the way cellular service is sold. But I, for one, am happy to see it die trying.

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