

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice, Antitrust Division
450 5th Street, N.W., Suite 7000
Washington, D.C. 20530

Plaintiff,

v.

AT&T INC.,
One AT&T Plaza
208 South Akard Street
Dallas, Texas 75202

T-MOBILE USA, INC.,
12920 SE 38th Street
Bellevue, Washington 98006

and

DEUTSCHE TELEKOM AG,
Friedrich-Ebert-Allee
Bonn, Germany D-53113

Defendants.

Case: 1:11-cv-01560
Assigned To : Huvelle, Ellen S.
Assign. Date : 8/31/2011
Description: Antitrust

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the merger of two of the nation's four largest mobile wireless telecommunications services providers, AT&T Inc. ("AT&T") and T-Mobile USA, Inc. ("T-Mobile"), and to obtain equitable and other relief as appropriate. Plaintiff alleges as follows:

I. NATURE OF THE ACTION

1. Mobile wireless telecommunications services are vital to the everyday lives of hundreds of millions of Americans. From their modest beginnings in the 1980s, when handsets were the size of a brick and coverage areas were limited, mobile wireless telecommunications devices have evolved into a profusion of smartphones, feature phones, tablets, data cards, e-readers, and other devices that use the nationwide mobile wireless telecommunications networks. Mobile wireless telecommunications services have become indispensable both to the way we live and to the way companies do business throughout the United States. Innovation in wireless technology drives innovation throughout our 21st-century information economy, helping to increase productivity, create jobs, and improve our daily lives. Vigorous competition is essential to ensuring continued innovation and maintaining low prices.

2. On March 20, 2011, AT&T entered into a stock purchase agreement to acquire T-Mobile from its parent, Deutsche Telekom AG (“DT”), and to combine the two companies’ mobile wireless telecommunications services businesses (“Transaction Agreement”). AT&T, with approximately 98.6 million connections to mobile wireless devices, and T-Mobile, with approximately 33.6 million connections, serve customers throughout the United States, with networks that each reach the homes of at least 90 percent of the U.S. population. AT&T and T-Mobile are two of only four mobile wireless providers with nationwide networks and a variety of competitive attributes associated with that national scale and presence. The other two nationwide networks are operated by Verizon Wireless (“Verizon”) and Sprint Nextel Corp. (“Sprint”). Although smaller providers exist, they are significantly different from these four. For instance, none of the smaller carriers’ 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. Similarly, regional competitors often lack a nationwide data network, nationally recognized brands, significant nationwide spectrum holdings, and timely access to the most popular handsets. Collectively, the “Big Four” – AT&T, T-Mobile, Verizon, and Sprint – provide more than 90 percent of service connections to U.S. mobile wireless devices.

3. Due to the advantages arising from their scale and scope of coverage, each of the Big Four nationwide carriers is especially well-positioned to drive competition, at both a national and local level, in this industry. T-Mobile in particular – a company with a self-described “challenger brand,” that historically has been a value provider, and that even within the past few months had been developing and deploying “disruptive pricing” plans – places important competitive pressure on its three larger rivals, particularly in terms of pricing, a critically important aspect of competition. AT&T’s elimination of T-Mobile as an independent, low-priced rival would remove a significant competitive force from the market. Additionally, T-Mobile’s investment in an advanced high-speed network and its innovations in technology and mobile wireless telecommunications services have provided, and continue to provide, consumers with significant value. 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. Because AT&T’s acquisition of T-Mobile likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, the Court should permanently enjoin this acquisition.

II. JURISDICTION AND VENUE

4. The United States files this Complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. AT&T, DT, and T-Mobile are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has subject-matter jurisdiction over this action pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. §§ 25 and 26, and 28 U.S.C. §§ 1331, 1337, 1345.

6. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391(b)(1), (c). Defendants AT&T, DT, and T-Mobile transact business and are found within the District of Columbia. The Defendants have consented to personal jurisdiction in this judicial district.

III. THE DEFENDANTS AND THE TRANSACTION

7. AT&T, with headquarters in Dallas, Texas, is a corporation organized and existing under the laws of the State of Delaware. AT&T is one of the world's largest providers of communications services, and the second-largest mobile wireless telecommunications services provider in the United States, as measured by subscribers. AT&T provides mobile wireless telecommunications services in 50 states, the District of Columbia, and Puerto Rico, providing approximately 98.6 million connections to mobile wireless devices. In 2010, AT&T's revenues from mobile wireless telecommunications services were \$53.5 billion, and its total revenues were more than \$124 billion.

8. T-Mobile, with headquarters in Bellevue, Washington, is a corporation organized and existing under the laws of the State of Delaware. T-Mobile is the fourth-largest mobile wireless telecommunications services provider in the United States as measured by subscribers. T-Mobile provides mobile wireless telecommunications services in 48 states, the District of Columbia, and Puerto Rico, providing approximately 33.6 million connections to mobile wireless devices. In 2010, T-Mobile's revenues from mobile wireless telecommunications services were approximately \$18.7 billion. T-Mobile is a wholly owned subsidiary of Deutsche Telekom AG.

9. Deutsche Telekom AG is a German corporation headquartered in Bonn, Germany. It is the largest telecommunications operator in Europe with wireline and wireless interests in numerous countries and total annual revenues in 2010 of €62.4 billion.

10. Pursuant to the Transaction Agreement, AT&T will acquire T-Mobile for cash and stock worth approximately \$39 billion. If this transaction is consummated, AT&T and T-Mobile would become the nation's largest wireless carrier. The merged firm would have approximately 132 million connections to mobile wireless devices in the United States, with more than \$72 billion in mobile wireless telecommunications services revenues.

IV. TRADE AND COMMERCE

A. Relevant Product Markets

11. Mobile wireless telecommunications services allow customers to engage in telephone conversations and obtain data services using radio transmissions without being confined to a small area during a call or data session, and without requiring an unobstructed line of sight to a radio tower. Mobility is highly valued by customers, as demonstrated by the more

than 300 million connections to mobile wireless devices in the United States. In 2010, revenues from the sale of mobile wireless telecommunications services in the United States were approximately \$160 billion. To provide service, mobile wireless telecommunications carriers typically must acquire FCC licenses to utilize electromagnetic spectrum to transmit signals; deploy extensive networks of radio transmitters and receivers at numerous telecommunications towers and other sites; and obtain “backhaul” – copper, microwave, or fiber connections from those sites to the rest of the network. They must also deploy switches as part of their networks, and interconnect their networks with the networks of wireline carriers and other mobile wireless telecommunications services providers. To be successful, providers also typically must engage in extensive marketing and develop a comprehensive network for retail distribution.

12. Mobile wireless telecommunications services include both voice and data services (e.g., texting and Internet access) provided over a radio network and allow customers to maintain their telephone calls or data sessions wirelessly when traveling. Mobile wireless telecommunications providers offer their services on a variety of devices including mobile phones, smartphones, data cards, tablet computers, and netbooks. In addition, an increasingly important group of customers are building mobile wireless capability into new devices, such as e-readers and vehicle tracking equipment, and contracting for mobile wireless telecommunications services on behalf of their own customers. There are no cost-effective alternatives to mobile wireless telecommunications services. Because neither fixed wireless services nor wireline services are mobile, they are not regarded by consumers of mobile wireless telecommunications services as reasonable substitutes. In the face of a small but significant price increase imposed by a hypothetical monopolist it is unlikely that a sufficient number of customers would switch some or all of their usage from mobile wireless telecommunications

services to fixed wireless or wireline services such that the price increase or reduction in innovation would be unprofitable. Mobile wireless telecommunications services accordingly is a relevant product market under Section 7 of the Clayton Act, 15 U.S.C. § 18.

13. Business customers, sometimes known as enterprises, and government customers often select and contract for mobile wireless telecommunications services for use by their employees in their professional and/or personal capacities. These customers constitute a distinct set of customers for mobile wireless telecommunications services, and sales of mobile wireless telecommunications services covered by enterprise or government contracts amounted to more than \$40 billion last year. The selection and service requirements for enterprise and government customers are materially different than those of individual consumers. Enterprise and government customers typically are served by dedicated groups of employees who work for the mobile wireless carriers, and such customers generally select their providers by soliciting bids, sometimes through an “RFP” (request for proposal) process. Enterprise and government customers typically seek a carrier that can provide services to employees, facilities, and devices that are geographically dispersed. Therefore, enterprise and government customers require services that are national in scope. In addition, prices and terms tend to be more attractive for enterprise and government customers than for individuals, and include features such as pooled minutes as well as favorable device upgrade and replacement policies. Enterprise and government service contracts often are individually negotiated, with carriers frequently providing discounts on particular RFPs in response to their competitors’ offers. There are no good substitutes for mobile wireless telecommunications services provided to enterprise and government customers, nor would a significant number of such customers switch to purchasing such services through ordinary retail channels in the event of a small but significant price

increase in services offered through the enterprise and government sales channels. Accordingly, mobile wireless telecommunications services provided to enterprise and government customers is a relevant product market under Section 7 of the Clayton Act, 15 U.S.C. § 18.

B. Relevant Geographic Markets

14. Mobile wireless telecommunications services are sold to consumers in local markets that are affected by nationwide competition among the dominant service providers. It is therefore 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. AT&T's acquisition of T-Mobile will have nationwide competitive effects across local markets.

15. Because most customers use mobile wireless telecommunications services at and near their workplaces and homes, they purchase services from providers that offer and market services where they live, work, and travel on a regular basis.

16. The nation's four largest providers of mobile wireless telecommunications services, including AT&T and T-Mobile, provide and market service on a nationwide basis. Other providers have limited networks that cover only particular localities and regions. Those smaller carriers typically do not market to customers outside of their respective network coverage areas, and may not even sell to such customers; therefore, local or regional carriers are not an attractive, or perhaps even available, option for those customers who live and work in areas outside of these smaller providers' respective network coverage areas.

17. Accordingly, from a consumer's perspective, local areas may be considered relevant geographic markets for mobile wireless telecommunications services. The Cellular Market Areas ("CMAs") that the FCC has identified and used to license mobile wireless

telecommunications services providers for certain spectrum bands often approximate the areas within which customers have the same competitive choices. AT&T and T-Mobile compete against each other in local markets across the United States that collectively encompass a large majority of U.S. mobile wireless telecommunications consumers. Indeed, AT&T and T-Mobile compete head to head in at least 97 of the nation's top 100 CMAs as well as in many other areas. These 97 CMAs alone include over half of the U.S. population. Each of these 97 CMAs, identified in Appendix B, effectively represents an area in which the transaction likely would substantially lessen competition for mobile wireless telecommunications services and each constitutes a relevant geographic market under Section 7 of the Clayton Act, 15 U.S.C. § 18. In addition, as described below, the nationwide effects of the transaction likely would substantially lessen competition in local markets across the nation.

18. In competing for customers in the 97 markets identified in Appendix B and other CMAs, AT&T and T-Mobile (as well as Verizon and Sprint) utilize networks that cover the vast majority of the U.S. population, advertise nationally, have nationally recognized brands, and offer pricing, plans, and devices that are available nationwide. For a variety of reasons, there is little or no regional variation in the pricing plans offered by the Big Four nationwide carriers. Nationwide pricing simplifies customer service and billing, reduces consumer confusion that might otherwise result from regional pricing disparities, and allows the carriers to take advantage of nationwide advertising in promoting their services. Similarly, when the Big Four carriers make devices available to the public, they typically make them available nationwide. This too minimizes customers' confusion and dissatisfaction, and allows the carriers to take advantage of nationwide marketing. In addition, the Big Four carriers generally deploy system technology on a nationwide basis, including critical components such as network standards, e.g., LTE or

HSPA+. These technological choices are an important aspect of competition in the mobile wireless telecommunications services market.

19. The national decision-making of the Big Four carriers results in nationwide competition across local markets. Each of the Big Four firms making a competitive choice regarding a pricing plan, or other national competitive attribute, will consider competitive conditions across the United States, as the decision will take effect throughout the United States. Because competitive decisions affecting technology, plans, prices, and device offerings are typically made at a national, rather than a local, level, the rivals that affect those decisions generally are those with sufficient national scale and scope, i.e., the Big Four. As AT&T acknowledged less than three years ago during a merger proceeding, it aims to “develop its rate plans, features and prices in response to competitive conditions and offerings at the national levels – primarily the plans offered by the other national carriers.” As AT&T recognized, “the predominant forces driving competition among wireless carriers operate at the national level.” That remains the case today.

20. Because, as AT&T admits, competition operates at a national level, it is appropriate to consider the competitive effects of the transaction at a national level. There is no doubt that AT&T and T-Mobile compete against each other on a nationwide basis, make many decisions on a nationwide basis, and that this national competition is conducted in local markets that include the vast majority of the U.S. population. Indeed, customers in local markets across the country often face very similar choices from AT&T, T-Mobile, Verizon, and Sprint, regardless of whether local or regional carriers also compete in any particular CMA. It is necessary, therefore, to analyze competition at the national level in order to capture, as AT&T has stated, “the predominant forces driving competition among wireless carriers,” and the impact

of these forces on competitive decisions and outcomes that are fundamentally national in nature. Thus, whereas 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.

21. Enterprise and government customers often have multiple office and business locations throughout the United States, and employees who may travel frequently. Enterprise and government customers often contract at the same time for employees located at these multiple locations across the country. Therefore, enterprise and government customers generally require a mobile wireless provider with a nationwide network, and are willing to contract with a carrier anywhere in the United States who has such a network. Accordingly, the United States is a relevant geographic market under Section 7 of the Clayton Act, 15 U.S.C. § 18, for mobile wireless telecommunications services offered to enterprise and government customers.

C. Concentration

22. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index ("HHI"), which is defined and explained in Appendix A to this Complaint. Preliminary market share estimates demonstrate that in 96 of the nation's largest 100 CMAs – all identified in Appendix B as representing relevant geographic markets for mobile wireless telecommunications services – the post-merger HHI exceeds 2,500. Such markets are considered to be highly concentrated. In one additional CMA identified in Appendix B, the post-merger HHI falls just below 2,500 and the market would be considered moderately concentrated.

23. In 91 of the 97 CMAs identified in Appendix B as representing relevant geographic markets for mobile wireless telecommunications services – including all of the