COMPETITIVE ENTERPRISE INSTITUTE

Tech Briefing 2001

A Free-Market Guide to Navigating Tech Issues in the 107th Congress

Telecommunications and Media Mergers

by
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Over the past two years, the telecommunications and media industries have seen a dramatic series of mergers and acquisitions. Among the deals implemented or proposed: Bell Atlantic's merger with GTE (to form Verizon); SBC's acquisition of Ameritech; AT&T's purchase of several major cable-television firms; and AOL's union with Time Warner. Although this merger "wave" has caused much concern in the press, restructuring could provide many benefits to consumers.

The technology. The restructuring of the telecommunications and media industries is in many ways due to advancements in technology. The development of the Internet, broadband communication, and other technologies—in addition to regulatory changes—has called into question the old industry structures. The former, neat divisions of communications into several regional telephone companies and separate long-distance and cable-television sectors may no longer fit today's world.

Background. The regulatory review process for mergers and acquisitions varies based upon the industries involved and the type of transaction. All transactions above $50 million are subject to review by federal antitrust authorities, either the Department of Justice or the Federal Trade Commission. Under the Clayton Act, these mergers can be challenged if the likely impact will "substantially lessen competition." The reviewing agency has no more than 50 days to conduct its investigation.

In addition, the Federal Communications Commission reviews any transactions involving FCC licenses. In practice, this means FCC approval is required for virtually all mergers involving media or telecommunications firms. Unlike the antitrust authorities, FCC is not limited to the Clayton Act competition standards. It can reject any transaction it finds is not in the "public interest," a term which, because it is not defined in either statutes or regulations, means whatever FCC decides it should mean in each case.[1] There is also no time limit on FCC review, which can take upwards of two years.

Many mergers are also subject to review by state attorneys general under state antitrust law, by state public-utilities commissions, by local authorities (such as when a cable franchise is involved), and increasingly by regulators outside the US, such as the European Union. While each merger is different, there are some general points policymakers should keep in mind when reviewing transactions.

Consumer choice is increasing, not decreasing. Despite occasional claims that we are heading back to the days of the Ma Bell monopoly, or that media is being unduly concentrated, consumers have more choices today than ever before. Long-distance choices are increasing, with AT&T's market share falling to only 37.2 percent[2]; local telephone choice is increasing, with the market share of competitive providers almost doubling over the past two years; the number of TV outlets has skyrocketed, first through the growth of cable, then of satellite television. On top of this, the Internet is promising increased choice across the board.

Mergers don't necessarily mean less competition. Most recent mergers involve firms that do not already compete with each other—either they provide different products (*i.e.*, AOL/Time Warner), or they provide the same product, but in different geographic regions (*i.e.*, Bell Atlantic/GTE). The actual number of choices for consumers in any given market remains the same. Moreover, by increasing the efficiency of the firms involved, mergers can often actually *increase* competition in a market. For instance, the proposed acquisition of Sprint by MCI WorldCom (a combination shot down by the Department of Justice) could have created a stronger competitor to AT&T in the long-distance market.

Mergers are no guarantee of success. The popular conception that bigger firms can muscle their way into market dominance is not true. Size alone provides no guarantee of market power or of success. In 1999, for instance, many thought AT&T would dominate telecommunications because of its acquisitions of cable firms TCI and Media One. Only a year later, with its stock price falling, AT&T changed course and announced it would divide itself into three separate firms.

Slowing or retarding change can hurt consumers. While not every merger is ultimately successful in the marketplace, restructuring is sometimes essential to providing the best services or lowest prices to consumers. These benefits can take the form of economies of scale (the millionth customer may cost less to serve than the first), or economies of scope (a nationwide network can be better than a regional one). Other benefits can be less tangible, but no less real; one much-discussed benefit of the AOL/Time Warner merger was integration within one company of new-economy and old-economy knowledge bases.

Stopping or delaying benefits can be costly. According to a recent study by the Heartland Institute, the cost of regulatory delays in mergers, according to stock-market values, was some $12 billion in 1996 alone.[3]

Policy recommendation. Eliminate FCC review of mergers. Since mergers already undergo scrutiny by antitrust regulators, additional review by FCC is redundant. Moreover, by adding time and uncertainty to the restructuring process, FCC review can harm consumers. FCC's merger-review authority should be eliminated. (Review of applications for license transfers could be kept as a purely administrative process, limited to an examination of whether the transferee meets statutory qualifications).

If this is not possible, FCC authority should at least be curtailed by 1) limiting the review period to 90 days or less, and 2) replacing the vague "public interest" test with a straightforward competition test. These two steps would reduce the harms caused by delays in merger review, and base that review on tested principles of consumer welfare, rather than ill-defined and conflicting notions of public interest.

In whatever reviews do take place, policymakers should keep foremost in mind the dynamic nature of the technology sector. Constantly evolving technology means that firms must often restructure, and restructure quickly. It also means the market power that any firm enjoys is much less likely to last. Merger authorities should therefore be cautious in interfering in the vital process of change.

~ James Gattuso

For further reading:

Ellig, Jerry. "Understanding the Urge to Merge in the Telecommunications Industry." *Citizens for a Sound Economy Foundation Issue Analysis*, no. 91, 20 May 1999.

Comments of the Competitive Enterprise Institute, *In the Matter of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer of Control*, CC Docket No. 98-184, 23 November 1998.

[1] See Harold Fuchtgott-Roth, “Can-Opener Merger Review Law,” speech before the ALI-ABA Conference on The Communications Marketplace: Antitrust and Regulatory Issues, 5 October 2000; available at www.fcc.gov/Speeches/Furchtgott_Roth/2000/sphfr012.html.

[2] This is based on share of all long-distance revenue. Federal Communications Commission, *Statistics of the Long Distance Telecommunications Industry* (January 2001).

[3] Robert Ekelund, Jr., and Mark Thornton, “The Cost of Merger Delay in Restructuring Industries,” *Heartland Institute Policy Study*, no. 90, 23 June 1999; available at www.heartland.org.