

DOJ's AT&T Suit Shows Law Trumps Politics

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As a longtime advocate for innovation and competition in high-tech markets, I was relieved to see the Justice Department step forward and challenge the proposed AT&T, T-Mobile merger -- the most audacious and blatantly anti-competitive merger proposal I have seen for quite some time.

Unfortunately, some describe the DOJ's decision as aggressive, when in reality it was a no-brainer. By all objective economic metrics, this merger should have never even been thought within the realm of the possible. By DOJ's established guidelines, the market concentrating effect of this combination was more than three times that which would be "presumed to be likely to enhance market power" and thus lead to a merger challenge.

AT&T knew that the offsetting efficiency gains it touted were highly suspect. In an accidentally released [internal document](#), AT&T admitted that it could achieve a comparable improvement in its nationwide network -- the main rationale for the proposed merger -- for one tenth the cost of what it was paying to purchase T-Mobile.

The fact that AT&T was willing to pay T-Mobile, in cash and valuable assets, more than [six billion dollars](#) if the deal was blocked is a tangible illustration of how little respect the company had for the resoluteness of U.S. antitrust enforcement.

Wall Street's reaction to the proposed merger was cynical and shallow with some of the best telecom analysts frequently giving the deal between a 75% and 80% chance of winning [regulatory approval](#). The consensus view was that AT&T and its legions of highly paid lawyers and lobbyists could somehow overwhelm the clear facts and legal principles that counseled against approving the transaction.

The company even modified its economic arguments -- the bread and butter of its case -- multiple times as the regulatory agencies were reviewing the merger. Despite playing it fast and loose with its arguments on the merits, AT&T realized its best hope was to rely on its time-tested political playbook.

In a multimillion dollar advertising and lobbying campaign, AT&T advanced a number of

specious political arguments that had absolutely nothing to do with the merger review. For one, the company highlighted the random assortment of public interest organizations that "supported" the merger, despite the fact that vast majority of the groups had typically shown little interest or expertise in telecommunications policy. AT&T's astroturfing rather than real grassroots support became more transparent, however, when it came to light that its chief Washington lobbyist concurrently led the philanthropic arm of the company.

Also, in an unfortunate turn of events, the president of the Gay and Lesbian Alliance Against Defamation was forced to [step down](#) and the organization rescinded its support for the merger after it was revealed that the support corresponded with a [generous donation](#) from the telecom giant.

AT&T then went on to trumpet the unionizing of [20,000](#) T-Mobile employees -- not saying anything about what would happen to the 20,000 other [T-Mobile workers](#). Then in a facts-be-damned, politically expedient messaging shift designed to dovetail with the country's concern about unemployment, AT&T boasted about the job creating prospects for the merger, despite the fact they had already indicated the obvious -- that the merger would result in cost efficiencies due to elimination of redundancies.

Luckily, the antitrust enforcers were not distracted. The DOJ's action was a much-needed victory for the law over political expediency and facts over spin. Perhaps because we are several generations removed from the robber barons and predatory conglomerates of the early 20th Century, the purpose of competition policy has been forgotten by the general public.

Wall Street pundits are quick to label government antitrust intervention as "big government interference" with the private sector akin to regulation, when antitrust enforcement is actually designed to allay regulation. Indeed, many commentators, and AT&T itself, acknowledged that a pure duopoly wireless world -- which would likely result if the merger was approved -- would require more regulation than exists now.

Darwinian competition, not government micromanagement, forces firms to innovate and keeps prices low -- and that is exactly what antitrust intervention is designed to promote.

A line has been drawn in the sand. A megacompany not accustomed to losing in Washington is being told political muscle doesn't always win and that a government with integrity could work swiftly and efficiently. Although a bruising Court battle will eventually determine the outcome, the competition cops stiffened their backbones at the right time when they could have yielded to power -- as conventional wisdom seemingly dictated -- and accepted the merger as a fait accompli.

Although much of the chattering class will remain myopically focused on short-term market reactions, fundamentally our nation and our economy are healthier when the markets and megacorporations believe U.S. antitrust authorities are truly committed to competitive marketplaces and willing to take decisive action to enforce the laws on the books.