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A Test For Competition

Robert H. Lande

University of Baltimore School of Law, rlande@ubalt.edu

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Points of View

PROPOSED MERGERS WOULD HURT SATELLITE TV AND CRUISE LINE CONSUMERS.

A moment of truth has arrived for the Bush administration's trustbusters. Mergers announced in two industries would, unless blocked, lead to firms that would dominate their markets. Moreover, the unproven theories that reportedly are being proffered to excuse these mergers could be used to rationalize the formation of monopolies in many other crucial industries. The entire business community should be watching to see the strength of the administration's commitment to principles of competition.

Over the next few weeks the Justice Department and the Federal Communications Commission are expected to decide whether to challenge EchoStar's proposed \$18.3 billion acquisition of DirecTV, and the Federal Trade Commission will decide whether to challenge rival bids by Carnival Cruise Line and by Royal Caribbean Cruise Line for P&O Princess. All these mergers threaten severe harm to consumers in the form of significantly higher prices and substantially fewer choices.

Risking Media Diversity

EchoStar's acquisition of DirecTV would create a television satellite monopoly by joining the two largest satellite TV providers. This would be bad news for viewers and also for anyone who fears that our nation is not well-served by a loss of media diversity. Merger supporters have responded that the EchoStar-DirecTV deal would benefit consumers because the combined satellite TV operation could compete better with cable TV. They also deny that reducing the choices that most urban viewers have from the current three program providers down to two would lessen competition.

This reasoning is flawed. Satellite TV and cable TV do compete with one another, but if this merger led to the formation of a single satellite company it would be likely to set its rates just below cable TV's monopoly rates. This would eliminate any meaningful price competition that results from having three competitors in a market. And there would be much less competitive pressure on either cable or satellite TV to serve the special programming needs of minorities, those who prefer religious programming, or anyone whose political preferences or tastes are different from those who select the shows.

Furthermore, in many rural areas there is no cable service, so the EchoStar deal creates a huge problem. Millions of viewers would be served only by a monopoly satellite service. Its prices would be set by self-regulation instead of competition. If this weren't bad enough, these viewers would no longer have any purchasing choices whatsoever. And even if rural consumers had no complaints about price, what will they do if they don't like the program choices offered to them, or if service is lousy?

In most industries, the primary reason why we prefer competition is so that consumers can get low-priced goods and services. We often take it for granted that competition is equally important at providing us a relatively large variety of choices and an optimal level of quality. But it is difficult to think of an area where consumer choice is as important as it is in the media sector. Even if a monopolized media sector were price-competitive, many would fear the harms that inevitably would result from a loss of editorial and other types of diversity. Most Americans prefer media markets that provide several real choices--even more than they prefer price competition.

There are reports that DOJ staffers have recommended that the Antitrust Division challenge the merger, and that division head Charles James will accept their recommendation. There have not been any rumors, however, as to what the FCC will do in the EchoStar case. We can hope that the Bush administration enforcers use this occasion for a grand demonstration that it truly cares about the consumer choice issues that concern so many viewers.

Clear Sailing for Mergers?

The contest in the cruise industry between Carnival and Royal Caribbean for P&O Princess also raises a host of antitrust issues that impact consumers. This is not, contrary to what some believe, an issue that mostly affects the rich: 60 percent of U.S. cruise passengers earn less than \$60,000 a year. Carnival's takeover of Princess would give it 49 percent of the North American market. A combined Royal Caribbean/Princess cruise line would leave the market with just two major firms (with 38 percent of the market for Carnival and 41 percent for Royal Caribbean) and several small competitors.

There have been media reports that the FTC staff has recommended that the commission permit both mergers. If either is permitted, however, it is likely that prices will rise while quality and choice fall. Nor would it be surprising if the cruise line that lost the contest for Princess engaged in perfectly legal tacit collusion with the winner to boost cruise prices.

Carnival reportedly has told the FTC not to worry about price increases even if it gains monopoly status because of the industry's peculiar pricing practices, often called yield management. Allegedly, it is not competition between cruise lines that keeps the price of cruises low. Rather, the claim is that in order to fill up the cruises, there is an incentive to continually lower prices enough to fill the ships. For this reason, we supposedly can trust that even a complete cruise line monopoly will do the right things for consumers.

In fact, under this logic, mergers to total monopolies would be permitted in any market--such as airlines, hotels, and

any form of entertainment where tickets are sold--where the firms involved practice yield management and have an incentive to cut prices at the end.

These pricing policies, however, are no substitute for competition. Nothing produces lower prices, higher quality, and a more diverse selection better than the competition that arises in response to a rival's offerings. The yield management argument ignores the fact that firms with monopoly power find it profitable to set higher prices initially, and for selected customers. It also ignores the fact that consumers care greatly about cruises, precise itineraries, ambiance, food, entertainment, and overall quality. A reduction of consumer choice hurts consumers just as surely as the higher prices that can result from reduced competition.

The Bush administration has said that it would not make any radical changes from the anti-merger policies of the last administration. But, finally, two mergers have arisen that will test the nature and depth of that commitment to competition. Government approval of these mergers would announce what is perhaps the most dramatic shift in antitrust enforcement in decades: even mergers that form monopolies can be permitted.

Democratic and Republican administrations alike have long prevented the emergence of market power by rejecting mergers that allow companies to dominate their markets. Yet the Bush administration may be receptive to highly questionable corporate arguments that even monopolies are not likely to raise prices or reduce consumer choice.

Need for Enforcement

If the antitrust enforcers give a green light to the formation of dominant firms in both the broadcasting and cruise industries, these decisions--together with its acceptance of an extraordinarily weak settlement in the Microsoft case--would demonstrate the Bush administration's acceptance of corporate rationalizations. The White House has criticized corporate malfeasance at Enron, WorldCom, and other companies. But its rhetoric must be matched by actions. The recent financial scandals demonstrate what happens when government enforcers fail to draw a line in the sand.

These mergers are an excellent opportunity for the Bush administration to demonstrate that it wants consumers to have the choices that free and full competition will bring.

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