

DOJ SUES TO STOP AT&T/T-MOBILE MERGER

Finally, the Department of Justice did something (aside from its good work on Civil Rights) worthy of its name: it sued to prevent the AT&T/T-Mobile merger.

The Department of Justice today filed a civil antitrust lawsuit to block AT&T Inc.'s proposed acquisition of T-Mobile USA Inc. The department said that the proposed \$39 billion transaction would substantially lessen competition for mobile wireless telecommunications services across the United States, resulting in higher prices, poorer quality services, fewer choices and fewer innovative products for the millions of American consumers who rely on mobile wireless services in their everyday lives.

The department's lawsuit, filed in U.S. District Court for the District of Columbia, seeks to prevent AT&T from acquiring T-Mobile from Deutsche Telekom AG.

"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 mobile wireless services," said Deputy Attorney General James M. Cole.

"Consumers across the country, including those in rural areas and those with lower incomes, benefit from competition among the nation's wireless carriers, particularly the four remaining national carriers. This lawsuit seeks to ensure that everyone can continue to receive the benefits of that competition."

"T-Mobile has been an important source of competition among the national carriers, including through innovation and quality enhancements such as the roll-out of the first nationwide high-speed data network,"

said Sharis A. Pozen, Acting Assistant Attorney General in charge of the Department of Justice's Antitrust Division. "Unless this merger is blocked, competition and innovation will be reduced, and consumers will suffer."

The press release, at least, cites a lot of T-Mobile documents to argue for T-Mobile's key role in keeping the cell phone industry competitive, not an AT&T document that was recently leaked showing that AT&T pursued the merger for anti-competitive reasons.

The complaint cites a T-Mobile document in which T-Mobile explains that it has been responsible for a number of significant "firsts" in the U.S. mobile wireless industry, including the first handset using the Android operating system, Blackberry wireless email, the Sidekick, national Wi-Fi "hotspot" access, and a variety of unlimited service plans. T-Mobile was also the first company to roll out a nationwide high-speed data network based on advanced HSPA+ (High-Speed Packet Access) technology. The complaint states that by January 2011, an AT&T employee was observing that "[T-Mobile] was first to have HSPA+ devices in their portfolio...we added them in reaction to potential loss of speed claims."

The complaint details other ways that AT&T felt competitive pressure from T-Mobile. The complaint quotes T-Mobile documents describing the company's important role in the market:

- T-Mobile sees itself as "the No. 1 value challenger of the established big guys in the market and as well positioned in a consolidated 4-player national market"; and
- T-Mobile's strategy is to

“attack incumbents and find innovative ways to overcome scale disadvantages. [T-Mobile] will be faster, more agile, and scrappy, with diligence on decisions and costs both big and small. Our approach to market will not be conventional, and we will push to the boundaries where possible. . . . [T-Mobile] will champion the customer and break down industry barriers with innovations. . . .”

Still, I would bet this suit became a lot easier to file now that AT&T's lies about the merger have been exposed.

Update: The complaint references just two AT&T documents (see paragraph 30). Neither is the leaked document, but they deal with fundamentally the same issue, how AT&T responded to T-Mobile on upgrading its network.