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THOUGHTS ON THE SPRINT ACQUISITION*

Michael Botein**

By way of recapitulation: In early October, MCI/Worldcom announced a roughly $100 billion all-stock deal to acquire Sprint—the third-largest long-distance telephone carrier in the United States.[1] The transaction would give the new company almost half of the nation's long-distance business—AT&T would keep most of the rest—as well as small but significant interests in local phone and Internet companies around the country.[2]

With the exception of Federal Communications Commission Chairman William Kennard, most observers have taken an attitude of benign neglect toward the transaction. The conventional wisdom is that a reduction from three to two major long-distance competitors is not significant, particularly if the transaction increases economies of scale and, thus, potentially lowers consumer prices.[3] After all, most other countries—aside from the United Kingdom—get along just fine with only one long-haul carrier, and the United States did so until entry of MCI and Sprint in the 1980s. With minor divestitures of Internet and local telephone operations—which constitute only a small percentage of both companies' revenues—the U.S. long-distance system would remain competitive and efficient.

The problem here differs from the one that led to the litigation and 1984 divestiture of AT&T's long-distance and local telephone companies in the modification of final judgment.[4] The difficultly is not with traditional vertical integration through ownership of vendors and users—the major issue with AT&T—but, rather, with the aggregation of market power in the long-distance market.

To be sure, the MCI/Sprint merger does not raise the specter of creating another AT&T—particularly if the companies are required to divest their local telephone and

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[1] Peter S. Goodman, *Questions Greet MCI-Sprint Deal; FCC Chief Raises Price Concerns,* THE WASHINGTON POST, Oct. 6, 1999, at A01.

[2] Ernest Holsendolph, *Regulatory Consensus: Rules on Long Distance, Wireless Service must Be Met Bellsouth Scrambles For Sprint,* ATLANTA CONSTITUTION, Oct. 5, 1999 at E2.

[3] Thomas A. Piraino, Jr., *A Proposed Antitrust Analysis of Telecommunications Joint Ventures,* 1997, WIS. L. REV. 639, 645.

[4] *See* U.S. v. American Telephone and Telegraph Co., et. al., 552 F. Supp. 131 (D.C. 1982).

Internet interests. But it does create some real problems in terms of market power.

The challenge will be the prevention of abuse of monopsony power—the use of the buyers' market power to dictate conditions to potential sellers—in terms of the two companies' purchasers of goods and services. It will be difficult to ensure that the two companies do not use monopoly power to engage in horizontal cartel practices in terms of pricing.[5]

Pressure Powers

In terms of potential abuse of monopoly power, the transaction creates a variety of problems.[6] Here, there is a similarity with AT&T, which used precisely such tactics to extract favorable prices from its suppliers before the 1984 divestiture.[7]

Having gained control of about 40% of the U.S. long-distance market[8], the new company may be able to extract artificially low prices from suppliers of equipment and services. An offer of an exclusive buying agreement to a European or Asian electronics manufacturer, for example, would be very attractive—and potentially very exclusive.

The merged company could bargain forcefully with local telephone companies for highly favorable terms for connecting long-distance calls to local telephone subscribers. Long-distance carriers have protested allegedly high local "termination" charges since the break-up of AT&T. With a 40% market share, [9] however, MCI/Sprint would obviously be in a much more powerful bargaining position.

And although it obviously is unfair to posit cartels before the fact, if both AT&T and MCI/Sprint made similar termination-charge offers, their clout would be enormous since their clientele would constitute about 80% of the long-distance market—about AT&T market share before divestiture.[10] It would be hard for local telephone companies to withstand such pressure.

Without beating an altogether too-live horse, this reasoning suggests that the MCI/Sprint merger would create anti-competitive consequences far beyond the long-

[5] Heather Forsgren Weaver, *FCC Reacts as Merger Train Rolls In*, RADIO COMM. REPORT, Oct. 11, 1999, at 2.
[6] Morton Bahr, *Should the Merger Be Approved? No:MCI Worldcom - Sprint Deal is the Worst Yet*, KAN. CITY STAR, Oct. 17, 1999, at K1.
[7] *What They're Saying*, S.F. CHRON., Oct 10, 1999.
[8] Holsendolph, *supra* note 2.
[9] *Telecom Ear*, BUSINESS WEEK, Oct. 18, 1999.
[10] *See id.*

distance market. After all, monopoly power creates anti-competitive behavior for products ranging from telephone cable to CDs.

This wide spread effect is precisely what the Department of Justice and other regulatory authorities have failed to consider. By the time the consequences become evident, it may be too late.