



The American Antitrust Institute

January 7, 2014

William J. Baer
Assistant Attorney General
Antitrust Division, U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Potential Merger between Sprint and T-Mobile*

Dear General Baer and Chairman Wheeler,

The American Antitrust Institute (AAI)¹ believes that strong antitrust enforcement against anticompetitive mergers and conduct is essential for protecting competition in the national wireless industry. Over the past year, T-Mobile has played a central role in creating a more competitive wireless market. We write to you to express our concern that this pro-consumer rivalry will be fleeting if Sprint is permitted to combine with T-Mobile.

To the frustration of American wireless subscribers (read: the vast majority of the population), the national wireless market has only four major players (Verizon, AT&T, Sprint, and T-Mobile) and has long been dominated by the Big Two (Verizon and AT&T). The concentrated national market has meant, among other things, high prices and long-term contracts with large early termination fees. To the delight of consumers, the market took a decisive turn for the better in 2013, after the Department of Justice (DOJ) and Federal Communications Commission (FCC) blocked AT&T's bid to acquire T-Mobile at the end of 2011. However, with press reports that Sprint may soon acquire T-Mobile, this dynamic competition may prove to be temporary.

T-Mobile, as part of its "uncarrier" strategy under new CEO John Legere, has behaved as a maverick firm and instigated much of the positive change in the wireless industry. In 2013, it ended two-year contracts, built out its 4G network to cover a majority of Americans, slashed or eliminated charges on voice and data use in foreign countries, and started offering biannual phone upgrades. Unsurprisingly, T-Mobile's subscriber growth was very strong in the second and third quarters of 2013 (the latest period for which numbers are available). T-Mobile may be far from finished. Reports indicate that the company could soon make its arguably biggest announcement yet. It may offer to credit the early termination charges of customers who switch from a rival carrier and subscribe to one of its plans. With this new competitive pressure, the other national carriers have been forced to improve their own offerings. In a move likely

¹ The AAI is an independent non-profit education, research, and advocacy organization. Its mission is to advance the role of competition in the economy, protect consumers, and sustain the vitality of the antitrust laws. For more information, see www.antitrustinstitute.org.

intended to preempt T-Mobile, AT&T just announced that it would offer \$450 in AT&T credit and gift cards to T-Mobile subscribers who switch to AT&T.

Sprint also appears poised to inject more competition into the market. Softbank, a leading wireless provider in Japan, acquired a majority stake in Sprint in the summer of 2013. Softbank CEO Masayoshi Son has pledged that Sprint will be “aggressive in technology, price packages, [and] services on every front.” Son’s promises shouldn’t be dismissed as empty boasting. In an audacious, heavily debt-financed move, Softbank in 2006 acquired the underperforming Japanese assets of Vodafone. It became the original and exclusive provider of the iPhone in Japan, introduced new pricing plans, and has almost doubled its subscriber base over the past seven years.

Yet, this outbreak of dynamic competition in the national wireless market may be short-lived. Reports indicate that Softbank plans to follow its acquisition of Sprint by buying T-Mobile in 2014. If this deal does indeed occur, the number of national carriers would decline from four to three. And the dynamics of the market would likely change for the worse. The government has generally opposed consolidation to this extent because it is too easy for three players to collectively monopolize a market. Mobile service is no exception. For example, three national carriers dominate the Canadian market. And according to a 2013 report by the Organisation for Economic Cooperation and Development (OECD), Canada has among the highest prices and lowest penetration rates for wireless service of the 34 OECD member nations.

T-Mobile, at present, has a smaller market share than the other carriers and a greater incentive to be aggressive. By reducing its prices and improving service quality, it can attract new subscribers and also capture market share from AT&T, Sprint, and Verizon. If T-Mobile joined with Sprint, would it act in the same manner? It seems improbable. A Sprint/T-Mobile combination would have a much larger market share. With a bigger piece of the national wireless pie, the merged entity may find that maintaining competitive peace with Verizon and AT&T is more profitable than aggressively trying to gain market share from them.

If the deal goes forward, the parties will likely assert that they need to merge to challenge Verizon and AT&T more effectively. This claim flies in the face of existing market realities. An independent T-Mobile has been a dynamic competitor. And following its acquisition by Softbank, Sprint is also in a strong position to confront the power of the Big Two carriers. With the high barriers to entry in establishing a nationwide wireless network and the major cable companies’ agreement with Verizon to stay out of wireless service, T-Mobile and Sprint are the two providers best positioned to maintain a competitive marketplace.

AT&T’s proposed acquisition of T-Mobile in 2011 also suggests that the “consumers and competition require consolidation” argument should be treated with great skepticism. In response to opposition from the DOJ and FCC, AT&T and T-Mobile offered a similar rationale. The parties claimed that unless they combined neither would be able to expand its 4G network. They also made a general and grimmer prediction. Their answer to the DOJ’s court complaint stated that blocking the deal would “severely set back growth and competition in the wireless industry.”² The transaction was ultimately abandoned in the face of government opposition. But, their predictions have not been borne out. In fact, reality has been the

² Answer at 4, *United States v. AT&T Inc.*, 2011 U.S. Dist. LEXIS 125846 (D.D.C. 2011), (No. 11-1560).

exact opposite. Both providers have expanded their 4G networks, and T-Mobile has become a vigorous challenger to its larger rivals.

If anything, a combined Sprint/T-Mobile may be a *weaker* competitor than the two independent carriers are today. The integration of operations in any large consolidation is typically a major undertaking. This process often distracts the merging parties from the marketplace, leading to diminished service and an exodus of customers. Consider the nightmarish amalgamation of fleets, workforces, and information systems in recent airline mergers as an illustration. A Sprint/T-Mobile deal would face significant technological hurdles. Sprint and T-Mobile use different network technologies. Sprint employs CDMA, and T-Mobile uses GSM. Their networks also operate on different frequencies of the electromagnetic spectrum.

The Sprint/Nextel merger shows that combining networks with different technological standards is fraught with difficulties and may even cripple the merged entity's ability to compete. At the time it was acquired by Sprint, Nextel had a network that used the now-obsolete iDEN standard. With their incompatible technologies, Sprint Nextel operated parallel networks and maintained dual branding after the deal was consummated. With this costly (and often confused) strategy, the company lost millions of subscribers and much money in the subsequent years.

As they did in the AT&T/T-Mobile deal in 2011, the DOJ and FCC should seek to block any proposed merger between Sprint and T-Mobile. The two agencies showed then what antitrust law has always assumed: having four national wireless carriers is better for competition and consumers than just three. And government opposition proved correct: the national wireless market is experiencing a new and refreshing bout of vigorous price and service competition. Consumers have been the beneficiaries of this new market landscape. If Sprint and T-Mobile merge, however, this dynamism may end prematurely. The three remaining national carriers would likely be able to raise prices and slow the introduction of new plans and services. Federal regulators would be wise to heed Sprint's own words in opposition to the AT&T/T-Mobile merger: "the alleged consumer benefits are at best illusory and . . . the actual impact of the takeover would be higher prices, less choice, and less innovation."³

Sincerely,



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³ Petition to Deny at 3, Sprint Nextel Corp., In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations before the Federal Communications Commission, WT Docket No. 11-65 (May 31, 2011).



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cc:

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The Honorable Mike Lee
The Honorable Patrick Leahy
The Honorable Chuck Grassley
The Honorable Al Franken
The Honorable Elizabeth Warren
The Honorable Spencer Bachus
The Honorable Steve Cohen
The Honorable Bob Goodlatte
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