

EXHIBIT B

9/1/11 N.Y. Times A1
2011 WLNR 17309522

New York Times (NY)
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September 1, 2011

Section: A

U.S. Files Lawsuit To Block Merger Of Phone Rivals

EDWARD WYATT

Justice Dept sues to block the proposed \$39 billion merger between **AT& T** and **T-Mobile** USA, arguing that keeping them separate would preserve competition in the wireless industry and even help save jobs of American workers; suit sets up an antitrust battle and could take years to wind its way through the courts; photo (M)

WASHINGTON -- The Justice Department on Wednesday sued to block the proposed \$39 billion merger between the cellphone giants **AT& T** and **T-Mobile** USA, arguing that keeping them separate would preserve competition in the wireless industry and even help save jobs of American workers.

In a lawsuit filed in Federal District Court here, the Justice Department argued that the proposed deal, which would join the nation's second- and fourth-largest wireless phone carriers, would result in higher prices and give consumers fewer innovative products. The companies disputed those assertions, and labor unions that support the deal said that the merger would add jobs, not cost them.

"The view that this administration has is that through innovation and through competition, we create jobs," said James M. Cole, the deputy attorney general, at a news conference announcing the lawsuit. Mergers usually reduce jobs through the elimination of redundancies, he said, "so we see this as a move that will help protect jobs in the economy, not a move that is going in any way to reduce them."

The lawsuit, which could take years to wind its way through the courts, sets up a prominent antitrust battle -- a rarity since the election of President Obama, who campaigned with promises to revitalize the Justice Department's policing of mergers and their effects on competition, which he said had declined significantly under the Bush administration.

AT&T said it would fight the lawsuit. "We plan to ask for an expedited hearing so the enormous benefits of this merger can be fully reviewed," Wayne Watts, an executive vice president and general counsel at AT&T, said in a statement. "The D.O.J. has the burden of proving alleged anticompetitive effects, and we intend to vigorously contest this matter in court."

Deutsche Telekom, the German parent of T-Mobile USA, said that the Justice Department "failed to acknowledge the robust competition in the U.S. wireless telecommunications industry and the tremendous efficiencies associated with the proposed transaction, which would lead to significant customer, shareholder and public benefits."

AT&T has been actively involved in discussions with both the Justice Department and the Federal Communications Commission since the proposal was announced in March. The company has indicated that it would consider divestitures or other business actions to allow the deal to go forward.

But Justice Department officials said that those discussions led it to believe that it would be difficult to arrange conditions under which the merger could proceed. "Unless this merger is blocked, competition and innovation will be reduced, and consumers will suffer," said Sharis A. Pozen, acting assistant attorney general in charge of the antitrust division. Offering AT&T only a glimmer of hope, she added that the department's "door is open" to discuss possible remedies.

Both the F.C.C. and the Justice Department would need to approve the merger, and though they consider a proposed combination on different scales, they usually reach the same conclusion. The F.C.C., which has never approved a significant merger that the Justice Department is challenging in court, hinted that it was leaning in the same direction of blocking the **AT& T** deal with **T-Mobile**.

"Competition is an essential component of the F.C.C.'s statutory public interest analysis," said Julius Genachowski, the F.C.C. chairman. "Although our process is not complete, the record before this agency also raises serious concerns about the impact of the proposed transaction on competition."

Consumer advocacy groups cheered the administration's move. "This announcement is something for consumers to celebrate," said Parul P. Desai, the policy counsel for Consumers Union. "We have consistently warned that eliminating **T-Mobile** as a low-cost option will raise prices, lower choices and turn the cellular market into a duopoly controlled by **AT& T** and Verizon."

Harold Feld, legal director of Public Knowledge, a nonprofit group, said that "fighting this job-killing merger is the best Labor Day present anyone can give the American people." Labor groups, however, have generally supported the merger, in part because a substantial number of **AT& T** employees are members of the Communication Workers of America, while **T-Mobile** is a largely nonunion company.

Mr. Cole said the department thought that an independent T-Mobile would be more likely to expand its business and add jobs, while mergers often eliminate jobs.

Critics have faulted the Obama administration for not doing more to block big corporate mergers. Those involving Comcast and NBC Universal, Ticketmaster and Live Nation, and United and Continental Airlines were all approved with conditions attached.

But the challenge to the merger makes the future of an independent T-Mobile more of a question than before the deal was announced. Deutsche Telekom has said it does not want to continue to invest in the American wireless market, preferring to focus on the growth of its telecommunications business in Europe.

Before **AT& T** announced plans to buy **T-Mobile**, there was consistent speculation that a merger between **T-Mobile** and Sprint Nextel, the third-largest provider, was in the works. But such a deal seems unlikely in light of the arguments mustered by the Justice Department against the AT&T deal.

Those arguments include the assertion that a combination that took the number of nationwide wireless phone providers down to three from four would harm competition, because the four nationwide service providers already account for more than 90 percent of the mobile wireless connections nationwide.

The proposed merger has been a topic of robust debate in Congress, where both houses have held committee hearings on the merger. At one of them in May, Randall L. Stephenson, the chief executive of **AT&T**, tried to convince lawmakers that **AT&T** and **T-Mobile** should not even be considered as competitors.

He later abandoned that assertion, going back to the company's main point: While the two companies are competitors, plenty of other competition exists in local wireless markets, with most potential customers having a choice among at least five providers.

"Certain critics may attempt to create a myth that only a few national competitors exist, but wireless competition occurs primarily on the local level," Mr. Stephenson said.

The Justice Department turned some of AT&T's own statements against it, however. "As AT&T acknowledged less than three years ago during a merger proceeding," referring to AT&T's acquisition of Centennial Wireless, "it aims to 'develop its rate plans, features and prices in response to competitive conditions and offerings at the national levels -- primarily the plans offered by the other national carriers,'" the Justice Department said in its lawsuit. "As AT&T recognized, 'the predominant forces driving competition among wireless carriers operate at the national level.' That remains the case today."

PHOTO: James Cole, deputy attorney general, and Sharis Pozen, acting assistant attorney general in the antitrust division, announced the lawsuit to stop AT&T's proposed acquisition of T-Mobile. (PHOTOGRAPH BY STEPHEN CROWLEY/THE NEW YORK TIMES) (B4)

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REGION: (Americas (1AM92); USA (1US73); North America (1NO39))

Language: EN

OTHER INDEXING: (COMCAST; CONTINENTAL AIRLINES; FEDERAL COMMUNICATIONS COMMISSION; JUSTICE DEPARTMENT; JUSTICE DEPT; NBC UNIVERSAL; NEW YORK TIMES; PUBLIC KNOWLEDGE; TICKETMASTER; US FILES LAWSUIT) (Block Merger; Bush; Cole; D.O.J. has; Deutsche Telekom; Harold Feld; James Cole; James M. Cole; Julius Genachowski; Obama; Parul P. Desai; Randall L. Stephenson; Sharis A. Pozen; Sharis Pozen; STEPHEN CROWLEY; Stephenson; Wayne Watts)

EDITION: Late Edition - Final

Word Count: 1213

9/1/11 NYT A1

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