

Bid to block AT&T deal reflects telecom industry

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(AP) -- The Obama administration has explained its effort to block AT&T's purchase of T-Mobile USA by saying it will fight mergers that would reduce competition and hurt consumers.

Yet few think the lawsuit the administration filed Wednesday signals a more aggressive stance toward acquisitions in other industries. Rather, experts say, the administration's challenge of AT&T's purchase comes down to this: Telecom is dominated by just a few big companies. Reducing the number of major players could all but kill competition and drive prices up.

By contrast, few other major industries are controlled by just a handful of giants. And none relies on access to a limited number of public airwaves.

With previous big mergers, the administration has taken a middle-ground approach to antitrust: It's green-lighted deals such as cable company Comcast's acquisition of media giant NBC Universal and Ticketmaster's merger with concert promoter Live Nation. But it also imposed conditions in those deals that are intended to preserve competition.

"They're looking even at very big mergers on their merits, and if the merging parties can't satisfy their concerns, the [Justice Department](#) will say, 'We can't let this go through,'" said Melissa Maxman, an antitrust

attorney with the law firm Cozen O'Connor.

President Barack Obama, on the campaign trail, had pledged tougher antitrust policy. And early in his administration, the Justice Department repealed Bush-era guidelines that had discouraged government action against companies with near monopolies.

As a result, many had expected bold action from the department - crackdowns on industry-dominating companies and roadblocks to many big mergers.

That didn't happen. The lawsuit against AT&T might satisfy some critics who hoped for a much tougher antitrust policy. But it probably doesn't suggest a policy shift.

The AT&T proposal was unique, said Benjamin Brown, a former Justice Department antitrust lawyer, now a partner with the law firm Cohen Milstein.

"I could very easily have seen this same decision being made under the Bush administration," Brown said.

He said there was little evidence for AT&T's claim that regional cellphone carriers can compete with the four national companies: AT&T, Verizon, T-Mobile and Sprint.

If AT&T bought [T-Mobile](#), just three national players would be left. And Sprint could have trouble competing with two bigger behemoths. So it might be acquired, too, further shrinking competition.

"Any time you take four major parties and turn it into three, the Justice Department is going to take a close look," Maxman said.

Telecom mergers attract more scrutiny in part because it's next to impossible for new competitors to emerge. Companies need permission to transmit data on public airwaves. The licenses are costly and scarce. And the cost of building a new system of cell towers and satellites is enormous.

"You can't just pull a bunch of capital together and launch a national cellphone provider, Brown said.

The Obama Justice Department has allowed several big mergers to proceed without court action. But it made the companies sell or change parts of their businesses.

For instance, in the Live Nation-Ticketmaster merger, regulators required Ticketmaster to license its software to a competitor. It also forced it to sell a subsidiary that handles tens of millions of tickets a year.

In January, when the nation's largest cable-TV company, Comcast, took control of NBC Universal, the government forced Comcast to make the full suite of NBC Universal content available as a single package to online competitors. And Comcast had to do so on terms comparable to those reached with more established rivals such as Dish Network Corp. and DirecTV.

The Federal Communications Commission, which can block telecom mergers, joined Justice in making those demands.

In April, Google Inc. won government clearance for its \$700 million purchase of airline fare tracker ITA Software. The deal gave Google a key role in online travel.

But to win Justice Department clearance, Google agreed to license ITA's

software to other companies through 2016. And it agreed to continue to invest in research and development of products, which it would also have to license.

Those deals are likely templates for future merger reviews by Justice, experts said.

"Firms got signals from the earlier deals that were approved that if they were willing to make sufficient (compromises), deals on the borderline might get approved," said Spencer Waller, a professor at Loyola University Chicago's School of Law and director of the school's Institute for Consumer Antitrust Studies.

That's the lesson AT&T appears to have taken. The company says it will fight the court action. But it also plans to meet with Justice lawyers and offer more concessions in hopes of avoiding a court battle, according to a person familiar with the matter who spoke on condition of anonymity because of the confidential nature of the talks.

The lawsuit against AT&T "shows that each case is treated on its own merits," said Art Brodsky, a spokesman for Public Knowledge, a digital-rights advocacy group that applauded the Justice Department's move.

"You don't want them to approve any deal, any more than you want them to approve every deal," Brodsky said.

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