AT&T's great wireless war

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Think of AT&T Inc.'s $39 billion attempted takeover of German-owned T-Mobile USA as a long, multi-front war, the ultimate test of business, legal and political strategy.

And now, with the deal in doubt after an all-out eight-month assault that failed, AT&T is in a tactical retreat. It wants to fight one set of regulators at a time, withdrawing its merger application before the Federal Communications Commission and focusing on the U.S. Department of Justice, which filed an antitrust lawsuit.

Both agencies must ultimately approve the transaction for it to close. The FCC last week released a staff report - vigorously disputed by AT&T - that concluded the deal would not be in the public interest because it would be likely to raise prices, eliminate American jobs and create an unprecedented level of concentration in the wireless industry. The Justice Department says the deal would be anti-competitive.

AT&T and its predecessor companies have fought these battles before, completing several mergers in the past decade by granting concessions and divesting assets to satisfy Justice and the FCC.

This time is different. Many observers give AT&T little chance of completing the wireless mega-merger, announced in March, even with larger-than-expected divestitures of spectrum and customers.

But there is no sign of surrender.

"AT&T is not giving up," said Andrew Gavil, a professor at Howard University School of Law in Washington, D.C., the main front in the takeover war. A final resolution, he expects, will probably involve the "slicing and dicing" of T-Mobile among AT&T and other competitors.

If a settlement isn't reached, the deal appears headed for an antitrust trial in February. Justice and AT&T both say they are ready for court. A victory there, and AT&T would go back to the FCC.

Even in much-diluted form, the merger would reshape the domestic $180 billion-a-year wireless industry by combining the second- and fourth-largest competitors into a dominant nationwide provider.

Customers, communities, suppliers and anyone who uses a mobile phone or other mobile device has a stake in the outcome, especially with the move to the next generation of wireless technology, 4G LTE, which promises much faster, more reliable service to more people.

The industry is in the midst of an explosion of innovation, leading to what AT&T calls an insatiable demand for data.

In the next few years, AT&T Chief Technology Officer John Donovan said in a declaration supporting the merger, real-time streaming of mobile video "will become ubiquitous." Customers will access everything on their home and office computers through their portable phones, tablets and other devices.

The exciting potential of that wireless future has helped the proposed deal attract wide attention. Some small-town mayors said they were elated because the merger would allow their communities full access to the information superhighway. The government of New Zealand worried that the merger might mean the end of competitive roaming rates for its citizens on calls to the U.S.

"This is a bread-and-butter test of the federal government's commitment to American consumers vs. Wall Street and corporate interests," one consumer advocate group wrote to the FCC, opposing the deal.

At the end of August, Justice filed its antitrust complaint. Two competitors - Sprint Nextel Corp. and Cellular South Inc. (now C Spire) - quickly followed with their own antitrust actions.

Since then, squadrons of lawyers, lobbyists, consultants, public relations specialists, consumer advocates and other interested parties - on both sides - have intensified their efforts with the FCC, in federal court and in the court of public opinion.

One consumer group attempted to stop Washington, D.C., television stations from running what it said were misleading ads, aimed at the capital's decision makers, touting the merger's potential job gains.

"You can't believe everything you see on TV," Regina Keeney, an attorney for Sprint, wrote to the FCC.

On its Eye on Sprint website, the Communications Workers of America, which represents 160,000 AT&T workers and supports the merger, attacked Sprint, the third-largest wireless provider.

"Sprint has cut nearly 25,000 U.S. jobs since 2006," a headline said. AT&T, on the other hand, has made unprecedented promises to preserve American jobs in the merger, the union says.

At AT&T, reputations, both corporate and personal, are on the line. Big deals like this, one of the largest since the global economic collapse of 2008, can make or break careers.

Those reputations were tarnished on Thanksgiving Day when AT&T said it would take a $4 billion charge in the fourth quarter to account for the breakup fee due Deutsche Telekom, T-Mobile's owner, if the deal doesn't go through.

That's a lot of money, but AT&T can afford it. Last week, it called some debt that it had issued, saying it would make the $2 billion-plus payment out of cash on hand.

Someday, someone is sure to write the definitive case study of AT&T's great wireless war and how it was won or lost. Here, a couple of months before Justice's scheduled antitrust trial, is where the T-Mobile deal stands today:

THE FCC CASE: Last week, the agency allowed AT&T to withdraw its merger application before it went to a rare hearing before an administrative law judge. Technically, FCC officials said, the case is still open, but when and if AT&T refiles, the approval process would essentially start over at the beginning. Depending upon the timing, there could be a more favorable political climate.

In its report, the agency's staff concluded the deal would lead to an "unprecedented increase" in market concentration. The top two remaining providers, AT&T and Verizon Wireless, would have 75 percent of the national market, and 99 of the top 100 markets would have share levels that cause concern.

The report said that the loss of T-Mobile as a competitor would give AT&T "unilateral incentive" to raise prices. It disputed AT&T's claims that the merger would create jobs, called the company's economic and engineering models unreliable and said the company's own documents contradicted its claims that the merger was essential for it to build out its LTE network to 97 percent of Americans.

AT&T opposed public release of the report and called the FCC's actions troubling and improper. FCC officials conceded that releasing the report at this point in the process was unusual but said it was in the public interest. The FCC said it will share the report with the Justice Department.

Late last week, AT&T issued a detailed rebuttal of the report, calling it flawed and unfair. The company said that its additional LTE network capital investment would create jobs and that the merger would contribute to the long-term trend of declining prices in the wireless industry.

While losing that fight with the FCC, AT&T did win a significant victory.

During Thanksgiving week, FCC Chairman Julius Genachowski recommended to his fellow commissioners that they approve AT&T's nearly $2 billion purchase of prime wireless spectrum from Qualcomm Inc. The agency had been reviewing the Qualcomm deal, announced last December, in tandem with T-Mobile.

THE ANTITRUST CASES: The Department of Justice's antitrust lawsuit is scheduled for trial Feb. 13 in the U.S. District Court for the District of Columbia. The U.S. has been joined by the states of New York, Washington, California, Illinois, Massachusetts, Ohio, Pennsylvania and the commonwealth of Puerto Rico.

In what was seen as a negative development for AT&T, a federal judge prohibited H&R Block Inc. from acquiring a smaller tax preparation software firm in late October. It was the first time since 2004 that the Justice Department had gone to trial to block a merger.

In early November, the same federal judge hearing AT&T's Justice

Department case denied general antitrust claims by Sprint and Cellular South but said they could pursue limited claims against AT&T and T-Mobile.

Sprint says the merger would hamper its access to the newest handsets and other mobile devices. AT&T, for example, had exclusive access to the iPhone for several years. Cellular South says the merger would impinge the roaming ability of a small affiliate.

"Where private plaintiffs have successfully pleaded antitrust injury, the fact that they are defendants' competitors is no bar," U.S. District Judge Ellen Huvelle wrote in her opinion. No trial date has been set.

Demonstrating the wide reach of the proposed merger, Google Inc. has also filed in the case. The Internet giant wants to make sure that secret plans for its Android operating system remain secret as confidential documents are shared and filed in court.

THE MAIN CLAIMS: AT&T portrays the merger as "an American company investing in America," a major commitment to advance the country's leadership in mobile broadband. T-Mobile's owner, Deutsche Telekom, is partially owned by the German government.

AT&T says the merger will benefit consumers by expanding network capacity, improving quality and making 4G LTE available to nearly the entire U.S. population, something neither company could do alone. The wireless industry is intensely competitive now and would remain so after the merger, AT&T says.

"The reason this transaction should go through is because the efficiencies generated will lead to more output, period. That's it," said Dennis Carlton, a University of Chicago economist and consultant for AT&T, during an economics workshop on the merger at the FCC.

But the Justice Department says that the "elimination of T-Mobile as an independent, low-priced rival would remove a significant competitive force from the market" and would probably lead to "higher prices, less product variety and innovation and poorer quality services."

Currently, there are four nationwide providers: AT&T, Verizon, Sprint and T-Mobile.

Sprint says the merger would push the market back to a "1980s-style cellphone duopoly" controlled by AT&T and Verizon, the Twin Bells.

Sprint points out that the Department of Justice broke up the Bell System in 1984, "but through a series of acquisitions, the 'Ma Bell' descendants, AT&T and Verizon, have largely reassembled the Bell monopolies under their joint control."

REGULATORY HISTORY: With the T-Mobile merger, AT&T expected intense scrutiny but ultimate approval.

"We anticipate there will be some markets we will have to divest," Chief Executive Randall Stephenson told The Wall Street Journal soon after the March announcement.

That's the way it worked in the past for AT&T, as well as Verizon. The Department of Justice simultaneously filed complaints and proposed final judgments, mandating concessions. The FCC's approval and required concessions came in the same time frame.

In February 2004, Cingular announced a $41 billion cash deal for AT&T Wireless, creating the nation's largest wireless provider. Cingular was owned by SBC Communications Inc. and Bell South. Eight months later, Justice filed its complaint and proposed settlement. Among the divested markets was Dallas-Fort Worth, acquired by MetroPCS.

The Cingular transaction, the FCC staff report noted last week, raised concern about spectrum concentration in 80 markets covering 15 percent of the U.S. population. The T-Mobile deal, the report said, triggered the agency's spectrum screen in 274 markets covering 66 percent of the population.

In January 2005, SBC announced its merger with AT&T Corp. (the new entity eventually became AT&T Inc.). Ten months later, the Justice Department filed its complaint and proposed settlement.

In June 2007, AT&T agreed to acquire Dobson Communications of Oklahoma City for about $2.8 billion. Four months later, the Justice Department filed.

In June 2008, Verizon announced a $28 billion takeover of Alltel. Four months later, the Justice Department and six states filed their complaint and proposed settlement.

In November 2008, AT&T said it planned to acquire Centennial Communications for $944 million. Eleven months later, the Department of Justice and Louisiana filed their complaint and settlement.

With T-Mobile, there was no simultaneous settlement agreement - only the antitrust complaint, five months after the deal announcement.

And so the battle continues.

TIMELINE:

Key events in AT&T's proposed merger with T-Mobile and dates of key upcoming events:

-December 2010: AT&T agrees to buy spectrum from Qualcomm for $1.925 billion in cash.

-March 20: AT&T agrees to acquire T-Mobile USA from Deutsche Telekom in a stock purchase deal valued at $39 billion.

-Aug. 8: The FCC Federal Communications Commission tells AT&T, T-Mobile and Qualcomm that it is considering the proposed transactions "in a coordinated manner."

-Aug. 31: The Department of Justice sues AT&T, T-Mobile and Deutsche Telekom over the proposed merger.

-Sept. 6: Sprint Nextel files suit against AT&T over the proposed T-Mobile acquisition.

-Sept. 19: Cellular South files suit against AT&T.

-Oct. 31: The Department of Justice wins an antitrust action against H&R Block as a federal judge blocks a merger with a competitor. It's the first time since 2004 that the Justice Department has taken an antitrust case to trial.

-Nov. 2: U.S. District Judge Ellen Huvelle rules that Sprint and Cellular South can proceed with limited claims in their antitrust cases against AT&T.

-Nov. 3: AT&T discloses that it expects to close the T-Mobile transaction in the first half of 2012. Previously, the expectation was the first quarter.

-Nov. 22: The FCC chairman Julius Genachowski tells AT&T officials that he will be sending a draft order to fellow commissioners approving the Qualcomm deal and designating the T-Mobile transaction for a rare hearing before an administrative law judge.

-Nov. 23: AT&T and Deutsche Telekom withdraw their applications for the T-Mobile purchase.

-Nov. 29: The FCC publicly releases a lengthy staff report saying the T-Mobile merger is not in the public's interest because it would probably lead to higher prices and fewer jobs.

-Jan. 13, 2012: The agreement with Qualcomm expires. Either party may extend it for 90 days if FCC approval is still pending.

-Feb. 13, 2012: Trial date in the Department of Justice case.

-Sept. 20, 2012: AT&T's agreement with banks to provide $20 billion in unsecured bridge financing for the T-Mobile acquisition expires.