Comcast, NBC deal will face tough antitrust review

December 2 2009, By JOELLE TESSLER , AP Technology Writer

In this photo made Tuesday, Nov. 17, 2009, the NBC logo and peacock are shown in New York. While regulators may not block Comcast Corp.'s plans to take control of NBC Universal altogether, they will almost certainly require substantial concessions to protect competitors from a company that would own an abundance of popular programming along with the cable lines to roughly a quarter of all U.S. households that pay for TV. (AP Photo/Mark Lennihan)

(AP) -- Comcast Corp. will likely have to accept substantial conditions if the cable TV provider wants to win regulatory approval for control of NBC Universal's broadcast network, cable channels and movie studios.

Although federal regulators probably won't block a deal outright on anticompetitive grounds, they could prohibit Comcast, for instance, from denying rival subscription-TV services such as DirecTV access to NBC

channels and other popular programming.

Under a deal expected to be announced Thursday, Comcast would control the Peacock network and about two dozen cable channels such as Bravo, CNBC and SyFy along with the cable lines to roughly a quarter of all U.S. households that pay for TV.

The regulatory review remains the biggest question mark now that all the corporate pieces appear to be in place. Vivendi SA is expected to sell General Electric Co. the portion of NBC Universal it doesn't already own. GE, in turn, would sell a 51 percent stake in the entire unit to Comcast.

A review by the Federal Communications Commission and either the Justice Department or the Federal Trade Commission could take a year or longer.

The deal is bound to face tougher scrutiny than past ones given a Democratic administration that has vowed to encourage diversity in media ownership and ramp up antitrust oversight overall.

"This is a new administration that has promised to be a tough cop on the beat," said Corie Wright, policy counsel for Free Press, a public interest group that opposes the deal. "Any conditions it exacts should and will be painful because this would be a tremendous consolidation of market power."

Regulators probably won't stop the deal entirely because the two companies are in two different businesses with little overlap, Concept Capital analyst Paul Gallant said.

But federal reviewers will have to sort out the implications of allowing a company that already provides cable and Internet connections to so many

Americans to take control of a vast media empire, too.

NBC Universal owns the NBC and Telemundo broadcast networks; 16 local TV stations; an array of popular cable channels including CNBC, Bravo and Oxygen; the Universal Pictures movie studio and theme parks; and a stake in Hulu, which distributes free television programming online.

Comcast, meanwhile, has 23.8 million cable TV customers, 15.7 million high-speed Internet subscribers and 7.4 million customers for its phone service. The company also owns some cable channels already, including E! Entertainment and the Golf Channel, and a controlling interest in the Philadelphia 76ers and Flyers.

The biggest concern facing regulators centers on what happens when one company owns both distribution platforms and content, said Stifel Nicolaus analyst Rebecca Arbogast.

Before approving America Online Inc.'s purchase of Time Warner Inc. in 2001, regulators required Time Warner to offer online services other than just AOL on its high-speed cable Internet network.

In clearing News Corp.'s 2003 acquisition of satellite provider DirecTV, regulators prohibited the combined company from discriminating against competing subscription TV services and channels it didn't own.

A key challenge in these types of deals, Arbogast explained, is ensuring that rivals in the subscription TV market can still get access to popular programming owned by the merged company.

In this case, government regulators may prohibit Comcast from denying access to NBC channels and sports programming to DirecTV, Echostar Corp.'s Dish Network, Verizon Communications Inc.'s FiOS and other

competitors. Regulators could also mandate binding arbitration in disputes over access fees and terms.

Regulators may also consider closing the so-called "terrestrial loophole" for Comcast. Federal rules require cable TV operators that own programming to grant competitors access to that programming if it is delivered over satellite. But Comcast and other cable companies have managed to avoid those obligations with popular sports programs by sending it over landlines instead.

Dish Chief Executive Charles Ergen, for one, has complained that Dish has been unable to carry Philadelphia sports games shown on Comcast's regional sports network. A merger condition, however, could end such practices.

Another key challenge lies in ensuring that the subscription TV service - in this case, Comcast's cable system - can't drop smaller, independent channels from its lineup. This could be handled by prohibiting Comcast from discriminating against cable channels that it doesn't own.

Regulators are certain to take a particularly hard look at markets where Comcast already owns the local cable system and would now acquire a local NBC or Telemundo broadcast station. Those include parts of the San Francisco Bay Area, Philadelphia and Washington, D.C. Regulators might even require Comcast to divest the local stations out of fear that the combined company would be too powerful in negotiations over programming and advertising rates.

While the federal review of News Corp.'s acquisition of DirecTV does offer some guidance for regulators this time around, the current deal does raise new issues, too, Arbogast noted. That's because Comcast is also a major broadband provider.

Public interest groups are especially concerned that a combined company could try to use its control over high-speed Internet connections to favor its own media content on the Web.

This would violate proposed "network neutrality" rules the Federal Communications Commission is considering to require broadband providers to give equal treatment to Internet traffic. Last year, the FCC ordered Comcast to stop blocking subscribers from using an online file-sharing service called BitTorrent in a ruling Comcast is challenging in court.

Public interest groups are also concerned that Comcast could begin charging for Hulu and denying other online video sites access to its media content because Internet video may represent a threat to its core cable TV operations.

"The question is: Can Comcast slow the rise of Net video as a competitor to its cable TV business?" Gallant said.

Indeed, Comcast and Time Warner Inc. are preparing to launch a new service that will make cable programming from about two dozen channels available online. Although Comcast will not charge an additional fee for the service, it will be available only to cable subscribers.

While all of these issues will be on the table, any conditions that the government ultimately imposes will be shaped by the conversations with competing channels, video providers, public interest groups and other affected parties.

Still, "there is little doubt that there would have to be significant concessions for this to pass regulatory muster," said Andrew Jay Schwartzman, head of the public interest group Media Access Project.

"It will be a long list before we're done."

Citation: Comcast, NBC deal will face tough antitrust review (2009, December 2) retrieved 19 September 2024 from https://phys.org/news/2009-12-comcast-nbc-tough-antitrust.html