The Daily Dish

Standards for Merger Review

DOUGLAS HOLTZ-EAKIN | SEPTEMBER 17, 2018

Eakinomics: Standards for Merger Review

Companies choose to merge. But because companies should do what is best for them, it can be useful for federal agencies to review these mergers to ensure that they are consistent with the greater good. But what does that mean, and how can one operationalize the concept? In practice, the only standard that makes sense is the consumer welfare standard. Mergers and acquisitions are the business of, well, businesses unless they harm consumer welfare. If they do, they should be nixed.

At some level, this is a matter of common sense. Everything about the economy should be organized around consumers. Companies should not produce products that people don't want (and should go out of business if they do) and prices should reflect costs. Investments should be directed toward high-return projects — those that produce services and products that consumers will value in the future. As a corollary, government should be consumer-oriented as well. The political calculus of figuring out how much defense spending (or anything else) people want is complicated, but is necessary to make sure consumers get what they want when they cannot choose their own level of defense spending but instead are forced to share a common level.

This brings me to the discussion that surrounds the merger of T-Mobile and Sprint. One of the first things that one hears is that it will create a "big" company. I understand that "big" is out of favor, but big relative to what? Is it big relative to the prepaid telephone market (where both companies have a significant footprint)? As noted by AAF's Will Rinehart, T-Mobile and Sprint have roughly a combined 30 million prepaidcustomers. But the real issue is whether "prepaid" is it's own market. As Rinehart lays out, there is no difference between the prepaid and postpaid product markets. Instead, the difference is that those in the postpaid market essentially pass a "credit check" — the carrier is willing to provide a month-by-month loan for the wireless services (and, perhaps, phone). Those in the prepaid market do not make this grade, but that has nothing to do with competition for telephone services.

More broadly, T-Mobile and Sprint are viewed as "wireless" companies. But is there no competition between wireless technology and the more traditional fixed broadband market? Of course there is, and it is rising. As Rinehart notes, the Federal Communications Commission has weighed in on this saying: "The extent to which wireless broadband services can impose competitive discipline on wireline providers depends on many factors, including technologies, prices, consumer preferences, and the business strategies of providers that offer both wireless and wireline Internet access services. Mobile wireless Internet access service could provide an alternative to wireline service for consumers who are willing to trade speed for mobility, as well as consumers who are relatively indifferent with regard to the attributes, performance, and pricing of mobile and fixed platforms." This is happening and it is an important dynamic development.

In short, mergers and acquisitions should be evaluated for their impact on consumer welfare. But this evaluation should be increasingly dominated by the dynamics of competition and not static, piecemeal looks at the market.