



Insight

Will the DirecTV/Dish Merger Draw Biden Administration Ire?

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Executive Summary

- In late September, DirecTV agreed to purchase rival satellite television company Dish for \$1, but also acquire its billions of dollars of debt.
- The transaction could draw regulatory scrutiny due to concerns with concentration in the satellite television market, especially considering the Federal Communications Commission will review the transaction under its broad public interest standard rather than the narrower Clayton Act's focus on harm to competition.
- Despite concerns about concentration, the deal would likely provide significant procompetitive benefits to the home television market, which has seen a drastic shift in recent years with consumers increasingly “cutting the cord,” as well as to broadband markets by relieving the debt burdens on Dish's wireless broadband business.

Introduction

In late September, DirecTV agreed to [purchase rival](#) direct broadcast satellite (DBS) company Dish – though only Dish's DBS business and its streaming application, SlingTV, and not its budding wireless broadband industry. Although DirecTV spent only \$1 on the acquisition, it agreed to take on Dish's approximately [\\$10 billion](#) debt.

The deal could raise antitrust scrutiny because Dish and DirecTV are the [two largest DBS companies](#) in the United States, and combining the two would leave DBS customers with essentially one option for service. Further, the Biden Administration has generally taken an aggressive stance against [concentration in markets](#), and the Federal Communications Commission (FCC) will also review the merger under its [public interest standard](#), which is much less [merger-friendly](#) than the Clayton Act that governs Federal Trade Commission (FTC) and Department of Justice (DOJ) review.

At the same time, the deal could provide significant benefits to consumers. Consumers are increasingly “[cutting the cord](#)” and obtaining home television services through online streaming services such as Netflix, Hulu, and Dish's SlingTV. As consumers move away from traditional forms of television viewing, DBS providers must make their offerings more attractive to outcompete newer rivals. Accordingly, the merger would likely allow the firm to offer more targeted channel packages at lower costs to consumers, and put additional competitive pressures on broadcast, cable, and streaming services. Further, by offloading its heavily indebted DBS business, Dish's parent EchoStar would be able to more [freely invest in its budding wireless network](#), increasing competition in broadband markets.

Notably, this merger could provide a useful case study in how far the Biden Administration will go to prevent concentration in markets. Even if regulators ultimately approve the merger, they could initially object with the

goal to obtain voluntary agreements relating to labor practices, pricing, or other administration priorities. In doing so, however, the FCC would essentially forgo the economic analysis of the transaction and instead focus on advancing unrelated policy priorities of the administration.

Specifics of the Deal

DirecTV will purchase Dish's DBS business, which includes the streaming service SlingTV, for \$1, while also assuming Dish's approximately \$10 billion debt. The deal is contingent on TPG, a private equity firm that owns around 30 percent of DirecTV, providing funding to cover the \$2 billion of Dish's debt that is due in November.

Additionally, Dish's parent company EchoStar would retain the company's budding wireless broadband business, which has begun to deploy its [open-RAN](#) network across the country. Finally, TPG would acquire a majority stake in DirecTV from AT&T which currently owns the company..

Antitrust Scrutiny

Under traditional theories of antitrust harms, this merger would likely not raise significant scrutiny, but the Biden Administration's approach to antitrust creates some uncertainty. The deal would combine the two largest DBS providers in United States, which could give the resulting entity the ability to control prices for consumers who have no alternatives. But most Americans have many options to obtain television services, whether through broadcasting, cable television services, or streaming options, and currently DBS businesses are losing a [significant amount of subscribers](#). If a DBS provider raises prices or limits how many channels a basic bundle has, most consumers have alternatives that they can substitute for DBS. As a result, even a single, dominant DBS provider would likely lack monopoly power.

But with the current administration's approach to targeting concentration in markets, regulators could still attempt to block the merger. For example, regulators may distinguish multichannel, linear services such as cable and DBS from individual local broadcasting stations or streaming applications. Further, the deal does include SlingTV, one of the major virtual multichannel streaming services, potentially increasing concentration for such services.

In addition, unlike mergers in other technology markets, the deal would involve the transfer of spectrum licenses, meaning the FCC would review the transaction under its public interest standard, which allows the agency to view the transaction beyond simply a competitive lens. And even if the FCC approves the transaction, it could extract concessions during its review unrelated to competition, such as the implementation or removal of labor practices.

Indeed, this isn't the first time the two companies have attempted to merge. In 2002, both the FCC and the DOJ blocked the merger of the two companies citing competitive concerns, though the market dynamics have shifted dramatically since then.

Procompetitive Effects of the Merger

The merger presents a useful case study on how far the Biden Administration is willing to go to target concentration in markets, as there are many procompetitive justifications for the merger. If the administration blocks the deal, these competitive benefits could be lost.

First, and most important, the market for home television is much broader than just DBS services. An increasing number of Americans are choosing to “cut the cord,” canceling their home television subscriptions and instead getting their television through streaming services that operate over the internet. Applications such as SlingTV, ESPN+, and YouTube TV allow customers to tune in directly to television stations traditionally accessed through cable packages or broadcast locally. And many consumers bypass the linear television offerings entirely, instead using applications such as Hulu, Netflix, Peacock, or Paramount+ to stream individual shows on demand. If a combined DirecTV and Dish attempt to behave like a monopolist, consumers would have a wide variety of substitutable products available.

To remain competitive, the newly combined firm would instead need to further lower costs and increase offerings. And by merging, the resulting efficiencies and increased consumer base could allow for lower prices, helping the firm better retain its existing subscribers and perhaps acquire new ones. Further, DirecTV has already announced that the merger should allow it to offer more targeted channel packages at lower prices, providing a better service that more directly meets the needs of its subscribers.

Second, if a DBS option becomes more competitive, it would put additional pressures on other video services. Broadcasters, cable, and streaming services already face competition, and a more competitive DBS offering would further increase these pressures. As a result, these services would increasingly need to offer better packages at lower prices if they want to retain viewership, further improving options for consumers.

Third, with such a large debt hanging over the company, it is unclear whether Dish could stay in business without the deal. By allowing the merger under a [failing firm theory](#), Dish’s customers would be able to continue purchasing DBS service with limited, if any, interruptions.

And finally, by offloading Dish’s debt but retaining its 5G, [open RAN](#) wireless network, EchoStar, the [owner of the remaining Dish assets](#), would be able to invest more resources into its wireless broadband business. Not only would this add competition in wireless broadband markets, it could also increase competition in fixed home broadband markets as EchoStar deploys fixed wireless services.

Conclusion

Overall, there is a very strong competitive case for the DirecTV-Dish merger, and the concerns that blocked previous attempts have largely been eliminated by shifts in market dynamics. The Biden Administration’s shift to targeting concentration could extend to this case, however, despite the probability that competition in broader markets would in fact increase, even if competition in a distinct, narrow market is all but eliminated.