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September 14, 2000

The Honorable Billy Tauzin
Chairman
Subcommittee on Telecommunications, Trade, and Consumer
Protection
Committee on Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Tauzin:

This responds to your letter of September 7 to Assistant Attorney General Joel I. Klein requesting comments concerning acquisition of a U.S. telecommunications firm by a firm owned by a foreign government, and inquiring specifically about the Department's antitrust review of the proposed acquisition of VoiceStream Wireless Corp. by Deutsche Telekom AG.

Telecommunications mergers, like mergers in other industries, are subject to antitrust review by the Antitrust Division under section 7 of the Clayton Act, which prohibits mergers that are likely to substantially lessen competition. The Antitrust Division's role in reviewing such acquisitions, including acquisitions that involve firms owned by a foreign government, is limited solely to an examination of the competitive effects of the acquisition, without reference to the national security, law enforcement, or other public interest considerations that were addressed at your recent hearing.

Foreign government ownership of a party to a proposed merger could be relevant to the competitive analysis in specific cases -- for example, if it is likely to affect the existence or durability of market power in a foreign market and if, under the particular circumstances, the merger is likely to enable that market power to be used to injure U.S. commerce. But whether foreign government ownership creates an antitrust problem depends upon an analysis of the specific facts of the case.

The Antitrust Division carefully reviewed both the potential horizontal and vertical effects of the proposed acquisition of VoiceStream Wireless Corp. (VoiceStream) by Deutsche Telekom AG (DT). The Division concluded that the proposed acquisition did not violate the Clayton Act. This conclusion, of course, leaves other agencies free to review the proposed acquisition under their own legal authorities.

VoiceStream provides wireless telephone services, used for both voice and data communications, in many markets throughout the United States. VoiceStream does not have a large market share in any market, whether market share is measured by revenue or by subscribers, and does not have a large share of licensed spectrum in any area. DT is, of course, a substantial landline and wireless provider in Europe, but at present it does not compete in U.S. wireless markets. Therefore, the proposed acquisition would not eliminate any competition between DT and VoiceStream in any U.S. wireless market.

The Antitrust Division considered whether the minority interest in Sprint PCS stock held by DT might, in combination with DT's ownership of VoiceStream, substantially lessen competition, and concluded that it would not. The Division concluded that DT's ownership of Sprint PCS shares would not give DT any significant ability to influence Sprint PCS's competitive behavior, and would not materially affect the incentives of either VoiceStream or Sprint PCS to compete against one another and against other wireless firms.

The Antitrust Division also considered whether the proposed acquisition would permit DT to use its dominant position in Germany to substantially lessen competition in violation of the antitrust laws because of the vertical relationship between DT and VoiceStream with respect to calls between DT's German and U.S. customers. By any measure, VoiceStream accounts for only a very small portion of the origination and termination of U.S.-German calls. Under the specific facts of this case, the Division concluded that the limited vertical integration resulting from the proposed acquisition would not be likely to substantially lessen competition in violation of the antitrust laws.

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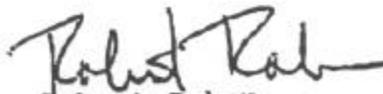
Absent any horizontal or vertical competitive concerns, there was no legal basis for challenging the proposed acquisition under the antitrust laws. The decision not to bring an antitrust enforcement action should not be construed as a conclusion concerning other issues presented by the proposed transaction that may be considered by agencies other than the Antitrust Division. Nor should it be construed as predetermining any conclusions as to the competitive effects of other mergers between U.S. telecommunications firms and foreign carriers.

The Antitrust Division analyzes acquisitions on a case-by-case basis, looking at the specific companies and the specific markets involved in each transaction. If a particular transaction is likely to substantially lessen competition, the Clayton Act authorizes the Antitrust Division to prevent competitive harm by seeking to block the acquisition or by seeking other appropriate remedies or conditions to prevent anticompetitive results. In fact, in two relatively recent cases, the Antitrust Division did take enforcement action in connection with transactions that involved U.S. telecommunications firms and foreign firms that raised antitrust problems. In both the British Telecom/ MCI matter and the Sprint/ France Telecom/ Deutsche Telecom matter, the Division required the parties to remedy competitive problems raised by their transactions.

In sum, we can assure you that the Antitrust Division will continue to take appropriate enforcement action with respect to proposed transactions that would violate the antitrust laws.

I hope this is responsive to your questions. Thank you for your interest in antitrust enforcement.

Sincerely,



Robert Raben
Assistant Attorney General