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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

KEITH DEAN BRADT, TIM NIEBOER, PAM WARD, VALERIE JOLLY, JUNE STANSBURY, KATHERINE ARCELL, CHRISTINE WHALEN, JOSE BRITO, BRENDA DAVIS, PAM FAUST, CAROLYN FJORD, GABE GARAVANIAN, HARRY GARAVANIAN, JOCELYN GARDNER, MIKE MALANEY, LEN MARAZZO, LISA MCCARTHY, DEBORAH PULFER, WILLIAM RUBINSOHN, SONDRA RUSSELL, CLYDE STENSRUD, GARY TALEWSKY, DIANE ULTICAN and JEFFREY NICKERSON,

Plaintiffs,

v.

T-MOBILE US, INC., DEUTSCHE TELEKOM AG, SPRINT CORPORATION, and SOFTBANK GROUP CORP,

Defendants.

CASE NO.:

COMPLAINT TO PROHIBIT THE MERGER OF SPRINT BY T-MOBILE IN VIOLATION OF SECTION 7 OF THE CLAYTON ANTITRUST ACT, 15 U.S.C. § 18, AND SECTION 1 OF THE SHERMAN ANTITRUST ACT, 15 U.S.C. § 1

INTRODUCTION

1. The telecommunications industry in the United States is a huge and vitally important component of the economic engine that serves to propel and innovate our economy and to define our identity as a nation. There are more cellular phones in

the United States than there are people.

2. There are now four companies in the United States that control 98.7% of the cellular telecommunications market. These four companies are Verizon, AT&T, T-Mobile and Sprint. The number three company, T-Mobile, now proposes to merge with the number four company, Sprint.

3. As a result of this merger the new T-Mobile would command 29.7% of the national market share for voice calls and text in the United States. The further result would be to concentrate the nation's critical communications facilities in only three companies that will command nearly 99% of the market - one of which companies is foreign-owned and controlled. This is an open and blatant violation of the antitrust laws as has been defined and underscored in the benchmark opinions our Supreme Court.

4. The economic policy of the United States Congress, endorsed by the United States Supreme Court, is to promote competition over combination.[1] Competition spurs investment and jobs, stimulates output and creates greater consumer choice.

5. The merger of T-MOBILE and SPRINT now threatens to subvert this policy by accelerating an anticompetitive trend toward hegemony in the telecommunications industry that will have drastic strategic consequences for the country.

6. Plaintiffs have filed this suit to take a stand in favor of competition over concentration in this marketplace and to "call a halt" to the trend toward domination by megaliths.[2]

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[1] "A company's history of expansion through mergers presents a different economic picture than a history of expansion through unilateral growth. Internal expansion is more likely to be the result of increased demand for the company's products and is more likely to provide increased investment in plants, more jobs and greater output. Conversely, expansion through merger is more likely to reduce available consumer choice while providing no increase in industry capacity, jobs or output. It was for these reasons, among others, Congress expressed its disapproval of successive mergers. Section 7 was enacted to prevent even small mergers that added to concentration in an industry. See S. Rep. No. 1775, 81st Cong., 2d Sess. 5." Footnote 72, *Brown Shoe v. United States*, 370 U.S. 294, at 345 (1962).

[2] "We cannot avoid the mandate of Congress that tendencies toward concentration in industry are to be curbed in their incipiency, particularly when those tendencies are being accelerated through giant steps striding across a

7. This is a private antitrust action seeking an Order of the Court prohibiting the proposed merger and resulting elimination of SPRINT COPRORATION (hereinafter SPRINT) by T-MOBILE US (hereinafter T-MOBILE) as a violation of the antitrust laws.

8. This merger will create a "threatened loss or damage" to the Plaintiffs and to the public at-large should SPRINT be eliminated the effect of which may be to increase prices because SPRINT is currently the low-cost competitor among the four national competitors in the marketplace. Furthermore, SPRINT's cellular service covers over 93% of the United States population. Its merger will eliminate 17% of the nationwide wireless services market currently serviced by SPRINT and will reduce the number of competitors in the market from four to three, with the result that the three remaining companies will control 98.7% of the market, far greater than any concentration previously permitted under the Supreme Court decisions.

9. T-MOBILE's merger of SPRINT for $26 billion in cash is both substantial and non-trivial and the combined companies will be valued at $146 billion. The company's ownership will be split three ways, with Deutsche Telekom owning 41.7 percent and SoftBank Group holding 27.4 percent. The remaining 30.9 percent will be publicly owned.

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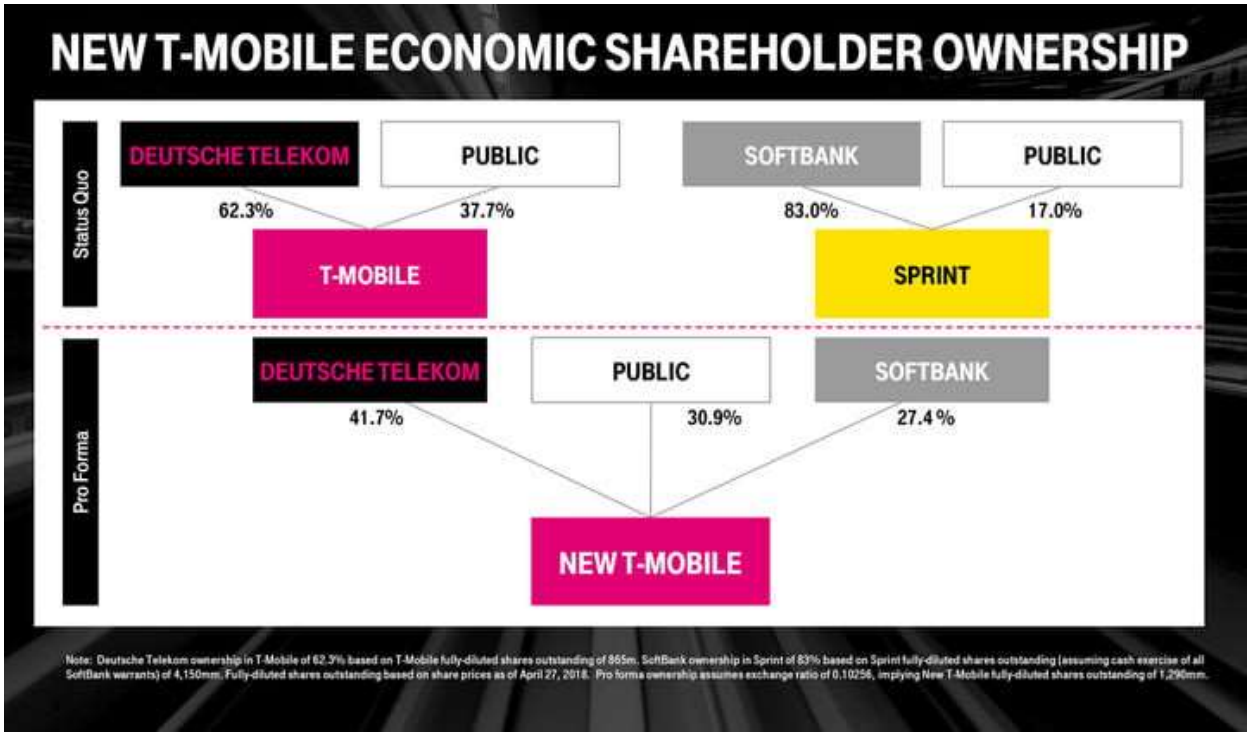
hundred cities at a time. In the light of the trends in this industry we agree with the Government and the court below that this is an appropriate place at which to call a halt. *Id*. at 346.



10. The combined company will have more than 130 million customers, closing in on rivals AT&T which is first with 154 million subscribers and Verizon which is second with 150 million. T-Mobile is currently the third largest carrier in the U.S. with 77.3 million subscribers, while Sprint is currently fourth with approximately 53.5 million customers.

11. The proposed merger is a violation of Section 7 of the Clayton Antitrust Act (15 U.S.C. § 18) in that the effect of the elimination of Sprint may be "substantially to lessen competition, or tend to create a monopoly" in the retail mobile wireless services market in the United States.[3]

12. The proposed merger is prohibited by the binding authority of the Supreme Court of the United States in its decisions in *Brown Shoe Co. v. United States*, 370 U.S. 294 (1962), *United States v. Philadelphia National Bank*, 374 U.S. 321 (1963), *United States v. Aluminum Company of America*, 377 U.S. 271 (1964), *United*

[3] Section 7 of the Clayton Antitrust Act provides in pertinent part as follows: "No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital … where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such merger may be substantially to lessen competition, or tend to create a monopoly."

States v. Von's Grocery Co, 384 U.S. 270 (1966), *United States v. Pabst Brewing Co.*, 384 U.S. 546 (1966), and *United States v. Falstaff Brewing Corporation*, 410 U.S. 526 (1973).

JURISDICTION

13. This private action is specifically authorized under Section 16 of the Clayton Antitrust Act (15 U.S.C. § 26) which provides in pertinent part that "any person…shall be entitled to sue and have injunctive relief …against threatened loss or damage by a violation of the antitrust laws."

14. The private action to vigorously challenge a merger is encouraged by the Congress and the Supreme Court of the United States. In strong and unmistakable language, the Supreme Court has declared in its American Stores opinion: "The Act's other provisions manifest a clear intent to encourage vigorous private litigation against anticompetitive mergers." *California v. American Stores Company*, 495 U.S. 271, 284 (1990).

15. Plaintiffs therefore bring this action under the authority of Section 16 of the Clayton Antitrust Act (15 U.S.C. § 26) and allege that the proposed elimination of SPRINT by T-MOBILE constitutes a substantial threat of injury to the Plaintiffs because the merger may have the effect "substantially to lessen competition and tend to create a monopoly" in the United States in violation of Section 7 of the Clayton Antitrust Act (15 U.S.C. § 18). In addition, the contract to eliminate SPRINT constitutes a "contract, combination in the form of a trust or otherwise, or conspiracy" as an unreasonable restraint of trade in violation of Section 1 of the Sherman Antitrust Act[4] in that, among other things, it is a non-trivial transaction between significant rivals, neither of which is a failing company, that eliminates a substantial and growing competitor from the market.

16. The proposed merger is in and substantially affects the interstate and foreign commerce of the United States in that wireless voice-calls, messaging and data and all the accoutrements and other necessities of the wireless telecommunications

[4] 15 U.S.C. §1.

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