

February 2007

An XM-Sirius Merger: Any Chance?

Having been involved, compiling data and developing arguments in the government's review of EchoStar's attempt to purchase DirecTV in 2002-2003, The Carmel Group sees many similarities – and some notable differences – comparing a possible merger to monopoly between the satellite radio duopolists, Sirius and XM.

There are many similarities and some notable differences compared to EchoStar's attempt to purchase DirecTV.

One of the critical filings in the 2002-03 EchoStar-DirecTV proposed merger involved a so-called “ping-pong” chart. This graphic indicated one of the party's competitive responses to the other's, when it came to things like retail promotions, customer incentives, and many other marketing efforts to attain and retain subscribers. Not unlike the EchoStar-DirecTV intra-industry competition (which that ping-pong chart proved was quite significant), the same type of hyper-competition exists between the U.S. satellite radio rival XM and SIRI. In fact, until recently, to hear the aggressiveness as the two talked about the other's competitive efforts, was often comical.

Next, merge that reality with the Federal Communications Commission's (FCC) core DNA, which is a single mission statement supporting three key motivations: Competition, Diversity and Localism, “in the public interest.” As it sees in the DirecTV-DISH rivalry, the fact that SIRI and XM compete so vigorously is to pour fuel upon the FCC's “Competition Is Good” mantra. In fact, section 170 of the FCC's Digital Audio Radio Service (DARS) rules states “Even after DARS licenses are granted, one licensee will not be permitted to acquire control of the other remaining satellite DARS licensee. This prohibition on transfer of control will help assure continuing competition in the provision of satellite DARS service.” (emphasis supplied)

The FCC, if nothing else, gives market dynamics involving competition the benefit of the doubt.

This is not to say that the FCC would not change this rule 170. But what it does say is that the FCC, if nothing else, gives market dynamics involving competition the benefit of the doubt, which is probably appropriate in a free market economy. And the Department of Justice's anti-trust division is even more adamant when it comes to the reasoning behind antitrust, i.e., to keep prices down and to stimulate consumer choice.

To take that competition away will probably require a full set of remarkable new dynamics. Those dynamics would include not only both companies' financial dynamics hitting a long-term dead end (not likely), but also a significantly different lobbying and political agenda in Washington, DC. In the latter column, even if the 2008 presidential elections bring in a new administration, most doubt whether that would make much difference. That is because the real lobbying force in



SPECIALISTS IN SATELLITE, MEDIA AND TELECOM INVESTMENT BANKING

They would also have to give much more significant and perhaps lasting consideration to two huge potential future nightmares based on the same precedent.

Washington, DC, the National Association of Broadcasters, is as equally positioned, or more, to support Democrats as it is Republicans. And the NAB does not like satellite radio.

Additionally, on the legal side, the Department of Justice's Antitrust Division would still be expected to see the competitive arena as a rather limited one, where XM and SIRI – and only XM and SIRI – compete as a product/service. This would mean the DOJ would still not recognize MP3 devices, HD terrestrial radios, music to cell phones and Internet radios as competition to satellite radio, at least not until each has a defined service and significant competitive base. By this analyst's reckoning, that change is still years away.

And finally, another political note puts an additional crimp on any plans Mel Kramizan or Gary Parsons may have to possibly bring their units together, despite the obvious advantages that come from the economies of scale and power of one competitive force. Politics and the law are huge creatures of precedent. If, anytime in the near future, the powers that be in Washington, DC were to OK a proposed SIRI-XM merger, they would also have to give much more significant and perhaps lasting consideration to two huge potential future nightmares based on the same precedent: changing the rules on media ownership, and readdressing the proposed merger of DirecTV and EchoStar.

Which means we're just about right back where we started.

By Jimmy Schaeffler
The Carmel Group

Jimmy Schaeffler is chief service officer and senior analyst at The Carmel Group, a publisher and consultancy based in Carmel-by-the-Sea, CA. The company covers telco, satellite, cable, wireless and related services, as well as computers and the media. Schaeffler can be reached at jimmy@carmelgroup.com; or, (831) 643 2222.