The Daily Dish

Mergers and Growth

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Eakinomics: Mergers and Growth

The Trump Administration has a mixed record on freeing the economy from its Obama-era torpor. On the plus side are the regulatory rollback and business tax reform. On the negative side are dubious trade and immigration policy decisions. And among the most baffling is its new approach to merger reviews. The poster child of this policy is its handling of the AT&T-Time-Warner merger. This should be straightforward: the deal is a vertical merger between a content producer and a distribution network, does not reduce competition in either content or distribution, and should be unobjectionable. The Department of Justice (DOJ) has not questioned a vertical merger of this type in three decades. Indeed, it is quite similar to the Comcast-NBCUniversal merger approved by the DOJ in 2011.

Instead, the DOJ has sued to block the merger, which must have shocked AT&T and Time-Warner, who had started the process of merging prior to the arrival of the Trump Administration. But it gets stranger. In its filing with the court, the DOJ enunciates a policy of "structural remedies" to improve competition. (Remember, there appears to be no reduction in competition.) A structural remedy creates or preserves independent firms in order to enhance competition. An example is a divestiture, where one of the merging firms spins off a portion of its business as an independent, competitive firm. In the past, it was thought that structural remedies made little sense in the context of a vertical merger, since the companies are not directly competing. That thinking has evidently changed.The alternative to such structural changes is a "behavioral remedy," where the merging companies promise legally to behave in such a way that preserves competition. AT&T and Time-Warner might have anticipated agreeing to such rules of conduct, as this is exactly what happened in the Comcast-NBCUniversal case. The DOJ reached a settlement that required, for example, the provision of "economically equivalent" and "comparable" video programming to online video distributors, as well as arbitration rights for online video distributors.

These abrupt policy changes are unfair to the companies involved – and, as *The Wall Street Journal* highlights, confusing to investors. But there is also a potentially larger cost to the economy. Mergers and acquisitions are an important part of the capital allocation that undergirds growth. It is fundamentally anti-growth to change the rules capriciously and throw a wrench of paralysis into capital reallocation, because the standards of review are unknowable.

The important policies of regulation and taxation have been moved to pro-growth footing. It would be desirable for complementary policies like the approach to mergers to fall in line.