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President Trump's trustbusters don't take no for an answer. After a federal judge rejected their lawsuit to stop AT&T Inc. from acquiring Time Warner Inc., the **Justice Department decided to appeal**.

Why? Critics think the Justice Department is doing the bidding of Mr. Trump by punishing Time Warner for the reporting of its news channel, CNN. A more generous theory is, it is testing the frontiers of consumer protection, far more than the administration's pro-business tilt would imply. Which theory prevails will depend in part on how the Justice Department handles a different merger: the pending tie-up between T-Mobile US , Inc. and Sprint Corp. , the number three and four wireless carriers, respectively. Both mergers require tricky judgments about the evolution of technology and media consumption habits. Nonetheless, the legal and economic case against T-Mobile/Sprint is far stronger than against AT&T/Time Warner. If the Justice Department waves through the deal—which the companies hope to complete in the first half of 2019—the agency will raise questions about its political independence and fealty to antitrust principles.

The bar to halting AT&T/Time Warner was high from the start. It is a vertical merger between a supplier (Time Warner produces filmed content) and a customer (AT&T distributes content). A supplier typically wants to sell to as many customers as possible, even if they compete with an affiliate. Blocking such a merger would require concluding that the supplier won't sell to some customers simply to benefit its affiliate, a high bar to clear. Indeed, the Justice Department last sued to stop a vertical merger in 1977, and it lost. There isn't much empirical evidence on the harm from merging distribution and content, so the Justice Department relied heavily on an economic model that the trial judge didn't find persuasive. By contrast, T-Mobile/Sprint is a horizontal merger between competitors selling similar products. And whereas Time Warner faces growing competition in content from Netflix Inc., Amazon.com Inc. and Hulu, the opposite is true in wireless: The share of subscriptions controlled by AT&T, Verizon, T-Mobile and Sprint has grown from 80% in 2004 to 99% now, according to UBS analyst Batya Levi. T-Mobile notes others like Comcast Corp. and Charter Communications, Inc. are launching their own wireless services, but thus far, those simply piggyback on the big four's existing facilities.

The companies say that, combined, they'll lower costs and prices, but there is evidence that similar mergers have in the past hurt consumers. **A 2015 study** by Tommaso Valletti, currently the chief competition economist for the European Commission, and two co-authors looked at wireless mergers across developed countries from 2002 to 2014. It found when four carriers become three, customer bills typically rise by 16%, or by 4% to 7% when the merging firms are small. Economists use the Herfindahl-Hirschman Index to measure market concentration: At zero, the market is completely competitive; at 10,000, a single firm controls everything. The Justice Department considers an industry whose HHI tops 2500 highly concentrated, and if it rises by 200, it presumes market power is growing. By my calculations, the wireless HHI is already 2850, and combining T-Mobile and Sprint would boost it by 400, easily meeting both tests.
So what's the case for letting the companies merge? The companies extol the potential to create jobs, especially in rural America. After Masayoshi Son, chief executive of SoftBank Group, Sprint's controlling shareholder, met Mr. Trump in late 2016 and promised to create thousands of jobs in the U.S., investors assumed odds of an eventual merger improved. (A SoftBank spokesman says Mr. Son didn't discuss a merger with Mr. Trump.) Job promises are politically appealing but have no place in antitrust review.

The best argument for the merger is that the two companies could together invest more in infrastructure, in particular the emerging 5G wireless standard, and thus compete more effectively with AT&T and Verizon. There is merit to this claim: The Valletti study found mergers did lead to more investment. And the financially frail Sprint's odds of survival certainly rise as part of a larger firm. But the hypothetical benefits to high-end business customers of a third 5G competitor may not outweigh the costs borne by low-end consumers, especially of prepaid cellular plans where T-Mobile and Sprint dominate. Bond rater Standard & Poor's hinted at precisely this, concluding the merger would significantly stabilize the industry's finances but could contribute to "meaningfully higher prices for consumers." Then there is the less quantifiable but potentially more important effects on innovation. Former President Barack Obama's Justice Department killed AT&T's takeover of T-Mobile in 2011 in part because it feared losing T-Mobile's disruptive presence. After the bid died, T-Mobile went on to announce a $4 billion network upgrade, offer plans without annual contracts and bid for its competitors' customers by offering to pay their early termination fees. There is no guarantee that if the Trump Justice Department sues to block T-Mobile Sprint, it will succeed. But without even trying, the Justice Department would rightly raise questions about why it is so much more determined to undo AT&T/Time Warner. – ***Wall Street Journal***

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