

\*\*\*\*\*

DoJ NOT SEEN TAKING RADICAL COURSE  
ON TELECOM ANTITRUST, LAWYERS SAY

The Department of Justice under the Obama administration may end up adopting a somewhat more activist stance toward the telecom sector than it showed under the Bush administration, but DoJ's overall approach to the industry on antitrust matters is not likely to take a radical new turn, telecom law experts seemed to agree today.

Speaking during a Law Seminars International phone presentation today, Donald Russell, a partner with Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP, offered that the DoJ would likely take a somewhat more aggressive approach to telecom antitrust issues and mergers within the sector compared to the Bush administration's mostly hands-off approach.

But, he said, "I don't think it will be a dramatic change, or wildly different than what we had under Democratic and Republican administrations for quite a while." Noting that some top officials at DoJ currently were at the agency and at the Federal Trade Commission during the Clinton administration, Mr. Russell said, "You can look at the kind of policies that the Clinton administration pursued . . . more active than what we have had, but not dramatically different."

Michael Altschul, senior vice president and general counsel at CTIA, noted that DoJ has created a new "front office" position in the antitrust division for competition advocacy, and said that may lead to DoJ making "advocacy filings" with other government agencies, as he said it did recently in FCC broadband proceedings. "We've seen this in the past where DoJ and FTC will file comments at the FCC, or hold talks with NTIA [National Telecommunications Information Administration] or other executive branch agencies to talk about competition policy."

Queried on the status of any DoJ probe looking into the market power of large telecom service providers following a "Wall Street Journal" report in early July that DoJ was undertaking such an effort, the two legal experts said they were unaware that the existence of such a probe had since been confirmed by anyone with the government or the companies that may be the subject of such an effort.

"I have not seen any confirmation, that might be because DoJ does not comment on investigations, but public companies [targeted in such probes] have an obligation to make disclosures," said Mr. Russell. "At this point, I am operating under the assumption that there is no formal investigation of any kind, but also operating under the assumption that attorneys at the Antitrust Division are always monitoring the telecom industry. I expect whenever they see something that warrants a formal investigation it will happen very quickly."

"It's significant that none of the companies in the industry have said anything other than they have not received any formal notice from DoJ," Mr. Altschul, a former DoJ antitrust attorney, said.

Regarding whether the kind of undue market power that would lead to a DoJ investigation exists among telecom service providers or wireless handset makers, Mr. Russell said he saw little evidence of that, and instead noted there exists "robust competition" among service providers and handset makers.

Mr. Altschul voiced agreement, and noted the increasing penetration of larger markets by lower-priced wireless service providers Leap Wireless International, Inc., and MetroPCS Communications, Inc., which are competing strongly against the four U.S. national carriers. "We are seeing more facilities-based competition, not less, as a result of spectrum auctions," he said.

Both men shied from making any specific prediction of how DoJ and the FCC might treat a combination of T-Mobile USA, Inc., and Sprint Nextel Corp. - the subject of press rumors in recent days - but Mr. Altschul offered that such a deal "would be a different kind of merger," in that "the kind of consolidation we've seen [in the past] is carriers filling out their footprints . . . so consumers in geographic markets were not losing a competitor." The presence of newer competitors like Leap and MetroPCS, he speculated, might end up smoothing the path for a combination of the national carriers. "Going from five firms in a market to four might not be as troubling as going from four firms to three," he said. - John Curran, john.curran@woltesrkluwer.com

*(Source: TR Daily www.tr.com)*