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The Comcast and NBCU Merger: The Upside Down Analysis of Dr. Mark Cooper

by

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I have just had the opportunity to read the statement that Dr. Mark Cooper, the Director of Research for the Consumer Federation of America, has prepared in opposition to the proposed combination of Comcast and NBC Universal. Normally the detached analysis has to wait to see the affirmative case for a merger to bless it. But in this stance, Dr. Cooper has achieved a rare feat. The evidence that he presents against this proposed merger suffices to explain emphatically why it ought to be approved.

As a matter of basic theory, any merger evaluation should depend on an accurate appraisal of its relative costs and benefits. Under the traditional analysis of a merger, the pro side consists of the efficiency gains that are obtained from the integration of the facilities of the two firms. The negative side, in turn, consists of the increase in market concentration to the extent that it allows the new firm to raise its prices above the competitive level. As a matter of basic theory, this risk may materialize in horizontal mergers, but rarely will appear in vertical ones, which involve the integration of two facilities or services at different levels in the chain of production.

Dr. Cooper's analysis does not engage in this elementary form of analysis. The words "efficiency" and "benefit" do not appear anywhere in the analysis, so that the implicit baseline for his dubious judgment is that any cost of the merger is in and of itself to require its rejection by the applicable public authorities.

This omission is curious beyond belief. The first question to ask about this merger is whether it should be treated as horizontal or vertical. To be sure, there are some horizontal components to the merger, which could be met by a partial divestiture in some local markets if the concentration levels are thought to move too high. But the vast bulk of this transaction lies on the vertical side of the line, which involve the linkage of a transmission company — Comcast — with a content company—NBC Universal.

Dr. Cooper acknowledges this point when he notes the "complementary" nature of the assets of the two firms. To most people in the field, the merger of two complements in effect is one of the reasons why vertical mergers are viewed generally with favor why horizontal mergers are not. Thus in patent pools, for example, the antitrust law encourages the pooling of complements, because of the way in which such pooling lowers transaction costs and eliminates some of the substantial social losses associated with the "double marginalization" problem, which produces substantial resources when two successive links in the chain of production that enjoy some monopoly power interact with each other.

Dr. Cooper has the rare skill to turn an economic virtue into a social vice. He writes that the two companies have in their respective roles of distributor and content provider, "a competitive rivalry. For example, in providing complementary services, broadcasters and cable operators argue about the price, channel location and carriage of content." Argue? What his odd choice of words shows us is that he has no explanation as to why the reduction in transaction costs should count as a social loss, when in fact it allows the provision of more services at lower prices. The gains from vertical integration are treated as though they create a social loss, which is even more mysterious because he does not bother to establish that either firm has any level of monopoly power to begin with.

He then fortifies this analysis with one kind of alarmist prediction that makes sense only to those who are convinced that both companies will commit hari-kari after their linking up their fortunes. Thus he thinks that Comcast will carry only NBC content, which NBC will in turn only supply to Comcast. But why would either company wish to make its network weaker than it need be, by entering into actions of exclusion that hurt itself as much as any outsider? If the purchase of outside content allows Comcast to satisfy its customers' tastes, it will go for it. If selling content to other service providers allows NBC to gain more revenues, all the better. Both points are especially true for Comcast which does not have nationwide penetration in the cable market.

These antitrust arguments are then dead losers. Nor are they improved by the other ad hoc diversionary arguments that are just beside the point. For antitrust purposes, what possible difference could it make that Mr. Cooper claims Comcast has raised its rates every year? If it can do so without the merger, why think that the merger will make matters worse? And why harp on the point that Comcast has blocked Internet access to a competitive supplier of video material? If Comcast violated a law or regulation, then that "conduct" offense should be punished. But it is irrational to think that any particular past sin has some outsized role to play in the assessment of a proposed forward-looking merger.

It is even worse to claim that letting go workers after merger should count against the merger, when the entire purpose of antitrust law is to allow firms to produce more with less. Perhaps some workers will be let go. Or perhaps some additional services will be provided. But until letting go workers becomes some kind of public offense, the point is a mindless diversion unless the antitrust law become a back-handed way to introduce civil service requirements through the back door.

So the question remains why anyone should think that the identification of these efficiency gains should count as an objection to this merger? Dr. Cooper's magic bullet on this point is that we are not dealing with two companies that "sell widgets." We are dealing with companies that are dealing with speech and public discourse.

True enough, but the last thing that any analyst should do is botch the antitrust analysis in any field that is as important as speech. Instead, the question is to ask why this combination might affect the market in speech. Here two points are relevant. The first is that the political speech market has never been healthier, because the coming of age of the web introduces more political content and lower cost of access than ever before. Entertainers may experience serious grief with the web because they are trying to sell content that is easily pirated. But political commentators are intent upon giving away content for free in the hope that every reader will forward a particular story to his or her entire list. *Puhleeze forward*!!

NBC surely must be hit hard in the content department like every other established news service. It may not be a failing company, but it is surely one that is buffeted by the winds of change. If it thinks that this alliance will stop the bleeding, it should be given the running room to make the business judgment that might salvage or expand its operations.

The situation is in reality exactly the opposite of what Dr. Cooper's topsy-turvy analysis predicts. Efficiency is even more important when first amendment issues are at stake than when they are not. He is not able to perform a minor intellectual miracle of having an upside down antitrust analysis saved by topsy-turvy First Amendment analysis. His errors don't cancel each other out. They cumulate.

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