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The Role of Economic Analysis in the Comcast Time Warner Cable Merger

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Earlier this year, Comcast abandoned its proposed merger with Time Warner Cable in the face of opposition by the U.S. Department of Justice and the Federal Communications Commission. This article briefly discusses the economic analysis presented and points the reader to interesting material in the filings that may have relevance to other mergers and antitrust cases.

During the roughly fourteen months, between the announcement of the merger on February 13, 2014 and its collapse on April 24, 2015, economists working for Comcast, and economists working for several companies that opposed the merger, presented significant theoretical and empirical evidence to the agencies. They debated whether the merger would substantially lessen competition or tend to create a monopoly (the standard for the Justice Department) or cause public harm (the standard for the FCC).

Until the end, the media accounts of the merger focused on Comcast's claim that the merger was innocuous because Comcast and Time Warner claimed they did not operate in the same local markets and therefore did not compete. If that were the economic crux of the matter the merger review process would not have taken so long. They really don't compete for cable households. Like other American cable companies providing services for households they seldom operate in the same market as another cable company. In fact, most American households face a choice between one cable company and one telecom company.

Much of the analysis focused on two key characteristics of the merging parties:

1. Both provided broadband services; they were Internet Service Providers ("ISPs"). As ISPs they were two-sided platforms that were intermediaries between internet content providers—which include online video distributors ("OVDs") such as Netflix—and households.
2. They both also provided linear programming and pay television services; they were multi-video programming distributors ("MVPDs"). OVDs have encouraged American households to "cut the cord" with cable or to reduce the size of the bundle of channels they buy.

These features led to two key issues on the broadband side.

First, would the merger increase interconnection fees for OVDs, and possibly other internet content providers, and thereby cause harms that would give the Justice Department and FCC concerns under their respective mandates? That led to a consideration of bargaining

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between large ISPs and OVDs, the examination of empirical evidence concerning whether larger ISPs charge higher interconnection fees, and whether Comcast even has the incentive or ability to impose interconnection fees. That was the key horizontal issue.

Second, would the merger increase the ability and incentive of Comcast to foreclose OVDs because they competed with Comcast's MVPD business? That led to an examination of whether OVDs were complements that Comcast wanted to embrace because it could make more money on the ISP side or extinguish, if it could, because it would lose more than that on the MVPD side. While some of that analysis involved economic theory, much of it was based on the interpretation of Comcast actions and business documents. Those were the key vertical issues.

There is much fodder in this case, including the analysis of two-sided platforms, monopoly bottlenecks, bargaining theory, vertical restraints, and the use of natural experiments to test hypotheses. As the economist working for Netflix in opposition to the merger I naturally have my own views on the questions posed above and the weight of the evidence. But regardless of whether you agree with me, or with the conclusion reached by the two authorities that reviewed the evidence, there is a lot of interesting material in the filings that may have relevance to other mergers and antitrust cases, including:

- The main Neflix filings, as well as the main Comcast filings, which include declarations by Comcast's economists; [2] and
- Many of the key submissions to the FCC and a link to the entire FCC record. The FCC, unlike the Justice Department, has an obligation to provide a public record of non-confidential material.[3]

[2] *Available at* https://www.competitionpolicyinternational.com/the-comcast-time-warner-cable-merger-economic-and-legal-submissions-by-netflix-in-opposition-to-the-merger

[3] *Available at* https://www.fcc.gov/transaction/comcast-twc.