FTC Approves Rocket Joint Venture

The Wall Street Journal

In its reporting on the Federal Trade Commission's (henceforth FTC) recent approval of the United Launch Alliance (henceforth ULA) Joint Venture between Lockheed Martin and Boeing, the Wall Street Journal maintains that the consent order agreed upon by all parties effectively mitigates all anticipated harms to competition.[i] A look to the FTC documents relating to the merger, however, gives cause for serious doubts both about the merger and about the Journal's reporting of it.

The facts about this joint venture are relatively straightforward and uncontested. There are two relevant products in the product market: vehicles for space missions, and with launch services to deliver those vehicles to space. There is one major space vehicle producer besides Boeing and Lockheed Martin, and no launch service providers besides Boeing and Lockheed Martin. The two product markets are vertically linked insofar as space vehicles need to be compatible with the launch vehicles used to provide launch services. The relevant geographic market is the United States, since the United States government is the only buyer in both markets, and since domestic policy requires the United States Department of Defense (henceforth DoD) to purchase both products only from domestic providers. Furthermore, fixed costs in both product markets are so high as to make entry highly difficult if not impossible.[ii]

ULA would provide the DoD with launch services, but not with space vehicles, which raises both horizontal and vertical concerns. First, since ULA would have a monopoly on launch services, there is a potential loss of both price and non-price competition. Furthermore, non-public information from one parent company of ULA might pass between ULA and the other parent company, potentially injuring competition in both product markets. Second, ULA might favor either or both of its parent companies over competing space vehicle providers, and either or both parent companies might favor ULA over potential entrants into the launch services market. These injuries to competition would be against Section 5 of the FTC Act and Section 7 of the Clayton Act.

The Assistant Director of the FTC Bureau of Competition finds all of these harms to be likely, and is "unable to conclude that the cost savings are sufficient to reverse the [Joint Venture's] potential to harm the government."[iii]

However, the Undersecretary of Defense argues for the DoD that the benefits of this merger to the DoD's primary value of reliability exceed the monetary costs. Most especially, he emphasizes that the extra experience gained by the ULA launch team from working on all the DoD's launches, rather than the fraction of all launches that each parent company worked on, will lead to the launches becoming much more reliable. Besides that, he "also expects benefits from the cross-fertilization of ideas and methods between the two previously separated engineering and manufacturing teams." However, the main way in which the government currently insures reliability of launches is operating two distinct families of launch vehicles.[iv] It is difficult to see how ULA can both benefit from combining the methods of its two parent companies and maintain two entirely distinct families of launch vehicles—one or the other of these benefits is likely not to exist.

The FTC evaluates transactions like this one by a rule of reason that weighs harms against benefits to the public good; there is no per se prohibition against joint ventures that may injure competition, as can be seen in, for example, in *In the Matter of General Motors Corporation et al, 103 FTC 374 (1984)*. In this case, as one of the FTC commissioners makes clear in her concurrence, the DoD is the only agent of the public, since it is the only consumer, and so its judgment of the merger must be given due weight.[v]

There is, however, a fundamental distinction to be made between the joint venture in the General Motors case and the current transaction, which distinction raises reservations about the current application of the rule of reason. This distinction is between the large group of consumers in the General Motors and the single consumer—the DoD—in this case. Whereas an aggregate of

consumers can reasonably modeled as optimizing their purchasing decisions in the standard way, the consumption of the DoD is different. Historically, the DoD has been known to spend far beyond its budget, sometimes to the point of losing track of its own expenditures.[vi] Therefore, the DoD's assessment that a certain benefit is worth its cost must be considered with some skepticism.

This skepticism is only increased upon a closer reading of the agreement. By all accounts, the agreement makes no effort to mitigate the harms arising from the monopoly in launch services. Rather, it focuses on the DoD's own concerns, that is, the ancillary harms to competition from the vertical elements of the case and from the information-sharing issues. These ancillary issues are addressed through purely structural means, which are acknowledged to be inferior.[vii] Even assuming that the agreement, if followed, would achieve its goals, the fact that the fine for each violation is $11,000 gives reason to think that the parent companies stand to gain a lot from violating the agreement, thereby exacerbating the harms of the joint venture.[viii]

The DoD's spendthrift ways and private interests may be being perpetuated at public cost, and the FTC commissioner can offer nothing more than a lame acknowledgement of ignorance: "I lack the technical expertise to second-guess DoD's conclusion that allowing the formation of ULA is the best way to preserve national security and protect the public interest. […] I reluctantly agree that the Commission must give DoD the benefit of the doubt."[ix] This seems like a good point of which the media might inform the public.

The Wall Street Journal does attempt to discuss the harms of the joint venture, but ultimately dismisses them: "During the following months, FTC and Pentagon officials devised a web of protections to guard against [the economic losses caused by harms to competition]."[x]

Such irresponsible policymaking leads to huge government deficits and great harm to the public good, and such irresponsible reporting leads to widespread ignorance of matters of public policy. In the matter of the Boeing Corporation et al., the public might lose on all sides.

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Endnotes

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