

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
MCI COMMUNICATIONS)
CORPORATION and)
BT FORTY-EIGHT COMPANY)
("NewCo"),)
)
Defendants.)
_____)

Civil Action No. 94-1317 (TFH)

Filed:

MOTION OF THE UNITED STATES FOR MODIFICATION OF THE FINAL JUDGMENT

Plaintiff, the United States of America, moves this Court to modify the Final Judgment in the above-captioned matter. Plaintiff's motion is based on the following grounds:

1. On June 15, 1994, the United States filed its complaint in the above-captioned case alleging that the acquisition by British Telecommunications plc ("BT") of a 20% ownership interest in MCI Communications Corporation ("MCI") created an incentive for BT, using its existing market power in the United Kingdom, to favor MCI at the expense of other United States international carriers in the market or markets for international telecommunications services in violation of Section 7 of the Clayton Act, 15 U.S.C. §18. The complaint also alleged that the formation of a joint venture between BT and MCI ("NewCo") to provide seamless global network services to multinational corporations created an incentive for BT to use its dominance

in the UK to favor the joint venture at the expense of other global network service providers in the provision of the UK segment essential to any seamless global network.

2. The Final Judgment, filed contemporaneously with the complaint and entered by the Court on September 29, 1994 after a Tunney Act review, contains provisions designed to reduce the risk that BT would use its market power to discriminate in favor of MCI or the joint venture. The Final Judgment further provides that the Department may seek a modification of the Final Judgment in order to prevent future discrimination. The potential discrimination need not have been foreseen at the time the Complaint in this matter was filed. If a motion for modification is uncontested, it is analyzed under a public interest standard. After the Final Judgment was entered, BT and MCI consummated BT's 20% acquisition and formed the joint venture, NewCo.

3. In November 1996, BT and MCI entered into a Merger Agreement and Plan of Merger pursuant to which MCI will be completely merged into a wholly-owned subsidiary of BT. The new parent company, BT, will then be renamed Concert, plc.

4. Both the US and UK governments have enacted reforms since the Final Judgment was entered that alter the status of competition for international traffic between the US and the UK. Despite these changes, however, BT still maintains substantial market power in local and domestic long distance services in the United Kingdom and BT's dominance in these markets is unlikely to erode swiftly.

5. Accordingly, certain modifications to the Final Judgment aimed at deterring and detecting discrimination need to be retained and, in some cases, strengthened in order to ensure

that the resulting full integration of BT and MCI and changed market conditions will not impair the effectiveness of any protections afforded by the existing decree.

6. The proposed Modified Final Judgment, filed contemporaneously herewith, sets forth the specific modifications agreed to among the parties. Plaintiff's Memorandum In Support Of Modification demonstrates that the proposed modifications are necessary to address the concerns raised by the full integration of BT and MCI as well as certain regulatory changes and, therefore, are in the public interest.

7. Defendants have authorized Plaintiff to state that they concur in this motion.

8. The Department does not believe that this modification is subject to the Tunney Act. Because of the important issues involved, however, the Department intends to follow the comment procedures outlined in the attached Explanation of Procedures. After completion of the procedures, the Department will file another motion requesting that the Court enter the attached Modified Final Judgment.

Respectfully submitted,

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