

Testimony of

# The Honorable Orrin Hatch

June 18, 2003

Statement of Chairman Orrin G. Hatch  
Before the United States Senate Committee on the Judiciary  
Subcommittee on Antitrust, Competition, and Business and Consumer Rights  
Hearing on

"THE NEWSCORP/DIRECT TV DEAL:  
THE MARRIAGE OF CONTENT AND GLOBAL DISTRIBUTION"

I want to start by thanking the Chairman of the Antitrust Subcommittee, Senator DeWine, and the Ranking Democratic Member, Senator Kohl, for holding this important hearing to examine the NewsCorp/Direct TV transaction.

NewsCorp's acquisition of a controlling interest in Direct TV raises important public policy issues relating to competition and diversity of viewpoints in our country's media market place. The Judiciary Committee as a whole, and the Antitrust Subcommittee in particular, must continue to examine the critical issues surrounding increased concentration of our Nation's media outlets as they arise in regulatory and enforcement contexts. The NewsCorp acquisition - like so many of the recent media acquisitions - requires us to weigh the benefits of such a transaction against the potential for reduced competition in media markets.

There has been much controversy surrounding media ownership, given the Federal Communications Commission's recent decision to relax its media ownership regulatory requirements, and the Justice Department's approval of several media acquisitions. These issues are complex and require careful consideration of specific market place factors and the potential for competitive harm. When it comes to ensuring competition and diversity in our media markets, I have not -- and will not -- analyze the issue by blindly condemning all merger consolidations. To me, "big" is not necessarily bad. Rather, the issue of media consolidation requires a careful weighing of our Nation's interest in promoting competition and diversity.

In my view, such an analysis requires examination of the potential for anti-competitive conduct, rather than adherence to inflexible regulatory restrictions or hard and fast enforcement rules. Market forces - not federal across-the-board regulations - will ensure that consumers benefit from a transaction. To this end, traditional antitrust enforcement will more effectively and efficiently protect competition and enhance diversity than regulatory one-size-fits-all approaches.

With these principles in mind, I want to turn to the specific NewsCorp acquisition. Overall, it is important to remember that the competitive implications of the NewsCorp acquisition of a controlling interest in Direct TV are far different than those raised two years ago by the proposed merger between EchoStar and Direct TV, which was eventually blocked by the Justice Department and the Federal Communications Commission. Unlike the EchoStar-DirectTV, the NewsCorp transaction does not raise traditional "horizontal" merger concerns which result in reduced competition among existing competitors; however, the NewsCorp acquisition requires analysis of the "vertical" implications of the marriage of NewsCorp, a significant content supplier, and Direct TV, a multi-channel video distributor.

NewsCorp does not own any United States-based satellite distribution facilities, but does own programming assets, including 20th Century Fox, the Fox Network, and the FoxNews Channel. Direct TV and EchoStar control over 90 percent of the United States Direct Broadcast Satellite market, but only about 20 percent of the broader multi-channel video distribution market, which continues to be dominated by cable television systems serving approximately 75 percent of the national multi-channel video market.

The combination of NewsCorp and Direct TV may result in significant benefits to viewers across the country by injecting additional competition in the multi-channel video market. NewsCorp has been an innovative competitive force in the United States and globally. With this acquisition, NewsCorp may be in an even better position to compete with cable television and EchoStar, Direct TV's primary DBS competitor, and deliver new and innovative programming services. At the same time, we need to examine whether or not there is any real potential for anti-competitive behavior by NewsCorp or Direct TV that may outweigh the overall benefits this merger could provide.

I look forward to hearing from Mr. Murdoch and other witnesses today concerning this important transaction and the impact it will have on markets across the country.

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