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March 24, 2008 12:26 PM PDT

XM-Sirius merger wins Justice Dept. approval

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This story was updated at 2 p.m. PDT with new information and again at 10:30 p.m. with the correct title for Mel Karmazin. He is the CEO of Sirius.

The proposed union of XM Satellite Radio and Sirius Satellite Radio won approval Monday from the U.S. Department of Justice, after more than a year of review.

Antitrust officials said they concluded that combining the only two satellite radio players would not "substantially lessen competition," beating back concerns raised by consumer groups and an intense lobbying campaign from broadcast radio operators.

"The evidence did not show that the merger would enable the parties to profitably increase prices to satellite radio customers for several reasons," the Justice Department said in [a statement](#).

The proposed deal--an all-stock deal now valued at \$5 billion--still awaits a decision from the Federal Communications Commission, which had warned that the companies had [high hurdles to surmount before gaining approval](#).

That's because in 1997, the FCC adopted an order prohibiting such a merger when it would result in only one operator controlling all satellite radio spectrum. The commission has [asked for comments from the public](#) about whether to waive or modify that rule, and FCC Chairman Kevin Martin said last week [that a decision is getting closer](#).

XM and Sirius shareholders [approved the merger](#) in November.



XM and Sirius issued a statement acknowledging the Justice Department's decision but did not immediately comment further.

The companies have argued in various regulatory venues over the past year that the deal **would not result in increased prices for subscribers** and that, in fact, it would actually produce more programming choices, such as options to buy themed bundles of channels that are cheaper than either company's existing packages. Sirius CEO Mel Karmazin argued that those changes would be possible in large part because of "efficiencies" gained through merging the companies.

Consumers would also, in theory, be able to hear programming that's specific to one service--such as Howard Stern on Sirius and Oprah on XM--without having to purchase a new radio, if the companies merge.

At the moment, accessing channels offered by both satellite radio providers--for instance, Howard Stern on Sirius or Oprah on XM--requires a separate \$12.95 monthly subscription and receiver for each company. If the deal is approved, company executives have said subscribers will be able to access channels from both XM's and Sirius's lineups without purchasing new radios, and that prices for either service won't climb above the \$12.95 rate currently charged.

Under a **post-merger pricing plan** revealed last summer, consumers would also have numerous other options, ranging from a 50-channel "a la carte" package costing \$6.99 per month, to a 180-channel bundle of combined XM and Sirius offerings for \$25.90 per month. But to subscribe to the new "a la carte" channel packages, consumers would have to buy new radio receivers capable of processing those requests, which would reportedly cost the same amount as existing receivers (ranging from about \$50 to more than \$200).

Consumer advocacy groups, such as the Consumers Union and the Consumer Federation of America, had **questioned whether consumers will really be able to take advantage of those promised benefits** without incurring new costs.

Christopher Murray, senior counsel to Consumers Union, told CNET News.com on

Monday: "The result for consumers is likely to be higher prices, more advertising on pay radio, and fewer choices for programming. This is an unthinkable and disappointing result. Let's hope the FCC does a better job in reviewing this deal."

National Association of Broadcasters Executive Vice President Dennis Wharton said the organization was "astonished" that the Justice Department had signed off on the deal.

Monopoly or not?

One key question facing antitrust officials was whether a combined XM-Sirius entity would constitute a monopoly. The politically powerful National Association of Broadcasters and radio conglomerate Clear Channel Communications had argued that would be the case and that the deal should be thrown out. XM and Sirius contended that satellite radio should be viewed not in a market by itself, but in competition with traditional and Internet-based radio services.

In reaching its conclusion, the Justice Department sided with the satellite radio operators' interpretations. Because of the existence of "a variety of other sources of audio entertainment, including traditional AM/FM radio, HD Radio, MP3 players (e.g., iPods), and audio offerings delivered through wireless telephones," along with whatever "next generation" audio-delivering technology may emerge, the antitrust overseers said they found no evidence that the satellite radio operators would be tempted to raise prices.

The Justice Department also argued that there has never been "significant" competition among the satellite providers because "customers must acquire equipment that is specialized to the satellite radio service to which they subscribe, and which cannot receive the other provider's signal." Moreover, the companies have begun entering into long-term contracts with car manufacturers to provide their services, which means there's no evidence that there will be competition between the companies on that front "for many years," the Justice Department said.

More than 70 members of Congress from both political parties had also urged that the deal be shot down, arguing that it was contrary to the public interest. Democratic congressional leaders were quick to criticize the Justice Department's ruling on Monday and to vow more oversight.

"We believe the elimination of competition between XM and Sirius is contrary to antitrust law and the interests of consumers," Sen. Herb Kohl (D-Wis.), the chairman of the U.S. Senate's antitrust panel, said in a statement. "We urge that the FCC find the merger contrary to the public interest and exercise its authority to block it."

Rep. Edward Markey (D-Mass.), chairman of a House of Representatives telecommunications and Internet panel that oversees the FCC, urged the regulators, if they approve the deal, "to appropriately condition any such approval to ensure consumer welfare with respect to long-term service plans and pricing as well as equipment compatibility and pricing."

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