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PERSPECTIVE: OLIVE BRANCH OR TROJAN HORSE?

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This May, after nearly eight months, the Federal Communications Commission finally approved Deutsche Telekom's acquisition of U.S. mobile operator VoiceStream Communications. For those of us who followed this case, the U.S. government's delay-egged on by xenophobes on Capitol Hill who did not want a U.S. carrier 100% owned by a foreign company, much less a foreign company that has a significant equity interest held in it by its national government-threatened to make this transaction yet another casualty in the on-going "telecoms trade war" of the last several years. When we examine the FCC's decision closely, however, it appears that Chairman Michael Powell's FCC may actually be seeking a cessation of hostilities between the U.S. and the international telecoms community.

Adam Smith warned over 200 years ago that mercantilism harms consumer welfare because retaliation is inevitable. Under the Hundt and Kennard regimes' "scorched earth" – or, as U.S. Federal Reserve Chairman Alan Greenspan described them, "essentially adversarial" – international telecoms policies, however, the FCC deliberately refused to recognize that retaliation could ever be a problem. Instead, the FCC quixotically charged ahead in a hypocritical game of "Do As I Say, Not As I Do" to the consternation of the international telecoms community.

Yet, for the first time in recent memory, the FCC in the DT/VoiceStream order was quick to point out that in balancing concerns about national security against the benefits of allowing foreign investment in the U.S., the FCC must be careful not to act too aggressively so as to

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"avoid retaliation against U.S. investments in foreign markets." While not an explicit *mea culpa,* perhaps one can infer a tacit recognition of, and apology from, Powell's FCC for the U.S' mercantile "Pax Americana" approach of the last eight years.

Similarly, the FCC under Mssrs. Hundt and Kennard never hesitated to criticize publicly any foreign regulatory agency for even the slightest perceived transgression against U.S. firms. Yet, in the DT/VoiceStream order, the FCC re-fused repeatedly to comment on the effectiveness of RegTP, the German regulator, instead choosing to focus on the competitive effects of DT's entry into U.S. markets. Thus, although the FCC found the record on RegTP "mixed," it appropriately left the thorny issues of diplomacy to the U.S. Trade Representative.

But perhaps the most shocking act of reconciliation (either by design or, more likely, by accident) was the FCC's analytical evisceration of the ridiculous logic underpinning its International Settlement Rate Benchmarks order. That is to say, the FCC's Benchmarks order was motivated by the fear that somehow a foreign monopolist could use the monopoly rents derived from its home market, along with the "above cost" settlement rates paid by U.S. firms, to predate (*i.e.*, price below cost) in U.S. origination markets for International Message Telecommunications Service (IMTS), drive all of its competitors out, and then recoup its losses by charging US consumers supra-competitive prices. Yet, in the DT/VoiceStream order, the FCC specifically rejected this argument, reasoning that in a post World Trade Organization world: (1) each termination market now has standard, cost-based interconnection rates; and (2) even assuming a foreign firm could slip one past its home regulators, given the maturity and competitiveness of the U.S. IMTS market, it is highly unlikely that a foreign monopolist could successfully predate, drive out incumbent operators and subsequently recoup.

Unfortunately, the scars of the "telecoms trade war" run deep. As such, it remains to be seen whether the FCC's approach in DT/VoiceStream is a genuine olive branch or is just another Trojan horse. Let's hope that peace is at hand.