

# Comcast/NBC Universal Merger

## CASE STUDY

<b>Client</b>	In 2010, US cable company Comcast, a Multichannel Video Programming Distributor, and NBC Universal Inc (NBCU), a broadcast and for-pay programming provider, sought government approval for their proposed merger. During the merger review, Bates White Partner, Duke University professor, and former FCC chief economist Leslie M. Marx submitted a report on behalf of Bloomberg TV, a video programming provider that had concerns about the merger impeding its effective competition in this market. Professor Marx suggested a number of remedies that were subsequently imposed on the merging parties by the FCC.
BLOOMBERG TV	
<b>Industry</b>	
COMMUNICATIONS	

Professor Marx showed how the integration between NBCU-owned CNBC, the dominant business channel, and Comcast, the dominant programming distributor in areas where demand for financial news is highest (e.g., New York and Chicago), would greatly increase the merged firm's ability and incentive to anticompetitively foreclose Bloomberg TV from accessing end users (TV viewers and Internet users).

After explaining the economic theories that led to a conclusion regarding competitive harm from the merger's vertical integration, Professor Marx empirically measured the extent to which the merged firm could distort competition in the provision of financial news programming. Among other avenues, competitive harm could come from Comcast's refusal to include Bloomberg TV in some of its programming bundles. This action would place Bloomberg TV in a tier with fewer subscribers, thereby disadvantaging Bloomberg TV and making end users more likely to turn to CNBC. Professor Marx also proposed conditions that could alleviate the anticipated competitive harms she had identified.

In January 2011, the companies won conditional government approval of the proposed merger. The FCC Order authorizing the merger imposed conditions very similar to those that Professor Marx had suggested. The FCC recognized that "[b]y foreclosing or disadvantaging rival programming networks, Comcast can increase subscribership or advertising revenues for its own programming content."<sup>1</sup>

### Contact us

1300 Eye Street NW, Suite 600  
Washington, DC 20005  
202.408.6110

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<sup>1</sup> Memorandum Opinion and Order, Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, MB Docket No. 10-56, FCC 11-4 (released Jan. 20, 2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-11-4A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-4A1.pdf). The case is *United States v. Comcast Corp.*, No. 11-106, slip op. (U.S.D.C. Sept. 1, 2011), available at <http://www.justice.gov/atr/cases/f274700/274715.pdf>. (Additional pleadings in the case can be found on the Department of Justice's website: <http://www.justice.gov/atr/cases/comcast.html>.)