

1 competitors, may be little better than an unregulated monopoly in terms of its outcome.
2 The extent to which such a market approaches effective competition will depend upon
3 other variables, including the extent of barriers to entry and exit and the extent to which
4 customers fluidly move between suppliers or tend to “stay” with a single supplier.

5 Market share is not the only factor to consider. But, most of the studies in
6 economics which attempt to analyze or measure market power focus on concentration
7 ratios (the percentage of industry sales, output, employment, etc. claimed by a given
8 number of firms--typically four or eight). While they do not provide the complete
9 picture, concentration ratios are very important, since they provide a practical indicator
10 of market power.

11
12 **Q. How does the concept of effective competition relate to the listed “criteria”**
13 **that the Commission is required to consider under subsection 3005(a)(1) ?**

14 A. It is somewhat misleading to call these listed items “criteria,” since they are not precise
15 standards to be met by quantitatively measurable means. Instead, they are topics--
16 subject areas--that the law requires the Commission to take into account in deciding
17 whether to reclassify a service as competitive. The statutory checklist is as follows:

- 18 1. The ease of market entry;
- 19 2. the presence and viability of other competitors, including market shares;
- 20 3. the ability of competitors to offer those services or other activities at
21 competitive prices, terms and conditions;
- 22 4. the availability of like or substitute services or other activities in the relevant
23 geographic area;
- 24 5. the effect, if any, on protected services;

- 1 6. the overall impact of the proposed regulatory changes on the continued
- 2 availability of existing services;
- 3 7. whether the consumers of the service would receive an identifiable benefit from
- 4 the provision of the service or other activity on a competitive basis;
- 5 8. the degree of regulation necessary to prevent abuses or discrimination in the
- 6 provision of the service or other activity; and
- 7 9. any other relevant factors which are in the public interest.

8 66 Pa.C.S. §3005(a)(1).

9 These are points which the Commission must consider, not objective criteria
10 which readily resolve the question of whether or not a service is sufficiently competitive
11 to justify a reduction or elimination of regulatory controls. While the legislature did not
12 use the term “effective competition,” there is considerable parallel between this concept
13 and the factors to be considered by the Commission. For instance, ease of market entry
14 (and exit) is important in judging the degree to which competition is effective. Relative levels
15 of market share are important in judging the “presence and viability of other
16 competitors.” Similarly, if the other firms do not offer “like” services which are close
17 “substitutes” for those offered by the dominant firm, or if these other firms are unable to
18 offer services at “like terms and conditions,” competition may not be effective, despite
19 other indicators that seem promising.

20 The list (excluding the no. 9 catch-all) actually breaks into two sets of four--the
21 first set (1-4) is potentially subject to quantification while the second set (5-8) is more
22 inherently subjective; yet both sets involve a considerable degree of judgment. Thus,
23 for example, Item 2, the “presence and viability of other competitors” doesn’t state a
24 minimum number of competitors, nor does it specify a particular measure or degree of
25 “viability.” Depending upon a firm’s relative market share, and the likelihood that its

1 market share would diminish if the dominant firm was released from regulatory
2 restrictions, a competitive firm may or may not provide a “viable” source of competitive
3 pressure, and it may or may not remain a “viable” presence in the market once the
4 dominant firm’s offerings are reclassified. As I will show in the next section of my
5 testimony, the Company attempts to exploit the generality of the Chapter 30 criteria to
6 claim that its wide array of business service categories qualify for reclassification as
7 competitive, without providing any substantial proof that viable competition exists for
8 each such category within each part of BA-PA’s service territory.

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