

The Government's Lawsuit

Background

- AT&T and Time Warner announced their intention to merge over a year ago (*Oct. 22, 2016*).
- Since then, 18 other countries and jurisdictions have approved the merger.
- Approval by the U.S. Department of Justice (DOJ) is the only remaining regulatory hurdle to closing the transaction.

What Happens Next

- The DOJ's lawsuit is not the final say on the matter. Rather, the DOJ now has the burden of proving in court that the merger violates the law.
- AT&T and Time Warner will ask the Court to schedule a hearing on the DOJ's claims as soon as possible.
- After considering all of the evidence presented at the hearing, the Court will determine if the government has met its burden to prove its case under the law.

The Government's Lawsuit is Inexplicable

- The DOJ has not successfully blocked a vertical merger in court in nearly 50 years.
- The last time the DOJ blocked a vertical merger in court, Nixon was President.
- The last time the DOJ took a vertical merger case to trial was in the Carter administration, and the DOJ lost.
- Since then the DOJ has approved hundreds of vertical mergers.

AT&T will Win in Court

- This is a vertical merger between two companies who do not compete with each other and operate in highly competitive markets.
 - Time Warner creates content, movies and TV shows — e.g., CNN, TNT, TBS and HBO.
 - AT&T distributes content through mobile phones, the internet and satellites.
 - The critical and uncontested fact is that this merger neither eliminates any competitor nor increases concentration in any market.
 - Under established antitrust principles and well-accepted empirical analysis, such vertical integration virtually always benefits consumers.
- This merger will benefit consumers by:
 - Creating more competition in the evolving, multi-faceted entertainment industry.
 - Giving consumers more choice and value—not less—in how they get their favorite content.
 - Making entertainment more innovative, interactive and mobile.
 - In short, Time Warner content will be distributed in more ways and to more places and people, not less.
- The DOJ approved a similar vertical merger between Comcast/NBCUniversal in 2011. The AT&T/Time Warner merger presents a much *easier* case for approval because:
 - Comcast and other cable companies control the lion's share of pay-TV subscriptions in the localities where they operate;

- Comcast/NBCUniversal controls one of the Big Four broadcast networks (NBC). Time Warner lacks anything comparable; and,
- Online streaming services like Netflix, Amazon and Hulu have exploded in popularity since the Comcast/NBCU deal was approved in 2011.
- Against this backdrop, there is no realistic possibility that AT&T's acquisition of Time Warner's modest portion of a rapidly-expanding content universe could possibly slow innovation or lead to higher consumer prices.