

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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UNITED STATES OF AMERICA,		)	
		)	
<i>Plaintiff,</i>		)	
		)	
v.		)	Case No. 1:17-cv-02511-RJL
		)	
AT&T INC., DIRECTV GROUP HOLDINGS, LLC, and TIME WARNER INC.,		)	
		)	
<i>Defendants.</i>		)	
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**DEFENDANTS’ RESPONSE TO PLAINTIFF’S MOTION FOR SCHEDULING ORDER**

In advance of the Court’s Initial Status Conference, AT&T Inc., DirecTV Group Holdings, LLC, and Time Warner Inc. (“Defendants”) submit this response to the Government’s comparison of this case to other merger challenges—a comparison that purports to show that the case cannot be fairly litigated before the April 22, 2018 expiration of the merger agreement.

The Government’s chart of timelines in other merger cases includes four cases in which the Government sued *after* the mergers had already been consummated (Parker-Hannifin, Bazaarvoice, Dean Foods, Microsemi), and three cases in which the mergers were abandoned before the scheduled trial date (Deere, AT&T-T-Mobile, JBS). These cases are not useful comparators. The Government also excludes FTC challenges on the ground that they involve preliminary injunction hearings rather than merits trials. But because a preliminary injunction is typically outcome-determinative, FTC challenges are vigorously litigated, and often involve extensive factual records.<sup>1</sup>

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<sup>1</sup> See, e.g., *FTC v. Staples, Inc.*, 190 F. Supp. 3d 100, 110 (D.D.C. 2016) (describing “extraordinary amount of work” involved in FTC investigation, including “seven weeks of discovery,” with more than fifteen million pages of documents, more than seventy depositions, and five expert reports); *FTC v. Sysco Corp.*, 113 F. Supp. 3d 1, 15 (D.D.C. 2015) (“[W]ithin a

When FTC challenges are included along with pre-consummation DOJ cases tried since 2000, Defendant's proposed timeline falls comfortably in line with other merger challenges:

Case Name	Complaint Filed	Days to Trial/Hearing
Sungard Data Sys. (D.D.C.) (DOJ)	Oct. 22, 2001	17
Foster (D.N.M.) (FTC)	Apr. 12, 2007	25
ProMedica Health (N.D. Ohio) (FTC)	Jan. 7, 2011	34
Libbey (D.D.C.) (FTC)	Jan. 14, 2002	42
CCC Holdings (D.D.C.) (FTC)	Nov. 26, 2008	43
H.J. Heinz (D.D.C.) (FTC)	July 14, 2000	47
Phoebe Putney (M.D. Ga.) (FTC)	Apr. 20, 2011	54
UPM-Kymmene Oyj (N.D. Ill.) (DOJ)	Apr. 15, 2003	55
Whole Foods (D.D.C.) (FTC)	June 6, 2007	55
Franklin Electric (W.D. Wis.) (DOJ)	May 31, 2000	62
Lab. Corp. (C.D. Cal.) (FTC)	Dec. 1, 2010	64
Swedish Match (D.D.C.) (FTC)	June 23, 2000	74
Sysco (D.D.C.) (FTC)	Feb. 20, 2015	74
OSF Healthcare (N.D. Ill.) (FTC)	Nov. 18, 2011	75
Steris (N.D. Ohio) (FTC)	May 29, 2015	80
Arch Coal (D.D.C.) (FTC)	Apr. 1, 2004	81
<b>DEFENDANTS' PROPOSED SCHEDULE</b>		<b>92</b>
Oracle (N.D. Cal.) (DOJ)	Feb. 26, 2004	102
Staples (D.D.C.) (FTC)	Dec. 7, 2015	105
Advocate Healthcare (N.D. Ill.) (FTC)	Dec. 22, 2015	105
H & R Block (D.D.C.) (DOJ)	May 23, 2011	106
Hershey Med. Ctr. (M.D. Pa.) (FTC)	Dec. 9, 2015	123
Anthem-Cigna (D.D.C.) (DOJ)	July 21, 2016	123
AB Electrolux (D.D.C.) DOJ	July 1, 2015	124
Aetna-Humana (D.D.C.) (DOJ)	July 21, 2016	137
Energy Solutions (D. Del.) (DOJ)	Nov. 16, 2016	139 <sup>2</sup>

two-month period, the parties worked tirelessly to exchange millions of documents, depose dozens of witnesses, and secure over a hundred declarations.”). Each case also involved more than 20 movants, intervenors, and interested parties contesting complex third-party confidentiality issues.

<sup>2</sup> Trial placed in “ready pool” for 4/4/17; trial began on 4/24/17.

The Government relies heavily on Judge Brown’s observation in *FTC v. Whole Foods*, 548 F.3d 1028, 1041 (D.C. Cir. 2008), that the District Court should take “whatever time it need[s]” to fully consider the evidence. (Mot. 2.) We agree. Judge Brown was observing that a court should take adequate time *after* the hearing to reach its decision—which is precisely why Defendants’ proposed schedule provides for 47 days between trial and the expiration of the merger agreement. Defendants respectfully request that the Court set trial to commence on or about February 20, 2018 or as soon thereafter as the Court deems appropriate.

Dated: December 4, 2017

By: 

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**CERTIFICATE OF SERVICE**

I certify that on December 4, 2017, I caused the foregoing to be electronically filed with the Clerk of Court using CM/ECF system, which will send notification of such filing to the registered participants.

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