

# The Government's Lawsuit

## **Background**

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- 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**

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- 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**

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- 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**

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- 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.