Govt argues that AT&T-Time Warner deal would hurt consumers (Update)

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In this March 22, 2018, file photo, AT&T CEO Randall Stephenson leaves the federal courthouse, in Washington. The U.S. government pleaded its case Monday, April 30, for blocking AT&T from absorbing Time Warner, saying it would hurt consumers as a big antitrust trial crept toward its end and a decision by a federal judge. (AP Photo/Jose Luis Magana, File)

The U.S. government pleaded its case Monday for blocking AT&T from absorbing Time Warner, saying the combination would hurt consumers.

In the landmark antitrust trial's last day in federal court, lead Justice Department attorney Craig Conrath argued that the $85 billion proposed merger "would have a massive effect on the structure of the pay-TV industry."

The Trump Justice Department sued in November to block the deal, saying it would force consumers to pay hundreds of millions of dollars more to watch their favorite shows, whether on a TV screen, smartphone or tablet.

Conrath told U.S. District Judge Richard Leon that if he doesn't block the merger outright, he should consider ordering other remedies such as "partial divestitures." That could mean, for example, that AT&T wouldn't be able to acquire key parts of Time Warner like Turner Broadcasting, which includes CNN, Conrath suggested.

"That is an effort to kill the deal," Daniel Petrocelli, the companies' lead attorney in defending the merger, countered later in his closing argument. "You take away those pieces and there is no deal."

The Justice Department had suggested before the trial began that AT&T could gain approval for the merger by selling off DirecTV or Turner Broadcasting. But AT&T had rejected any option that would cause it to lose control of CNN.

Petrocelli said the government had failed to prove that the merger would dampen competition and raise prices for pay TV.

"This whole case is a house of cards," he said. In fact, consumers could end up paying less after a merger—even $500 million less annually—Petrocelli suggested, trying to poke holes in the model presented by the government's economist witness.

But Conrath said evidence presented by the government during the six-week trial showed that by hurting competition in that industry, the deal "would impose substantial harm on consumers" and raise prices.

The merger would combine the phone giant with the owner of CNN, HBO, the "Harry Potter" franchise and pro basketball. It would be one of the biggest media mergers ever. The outcome of the case could shape how consumers get—and how much they pay for—streaming TV and movies.

It wasn't clear whether Conrath's suggestion of alternatives to blocking the merger indicated the government may be anticipating that it could lose the antitrust suit. Separately, there was a sign that AT&T may be under increased pressure to achieve the deal: the announcement Sunday of a merger agreement linking T-Mobile and Sprint, the third- and fourth-largest U.S. wireless companies, giving them bulk to more tightly compete against industry leaders AT&T and Verizon.

The trial resulted from the first time in decades the government had sued to stop a merger of two companies that don't directly compete. It could imprint future antitrust policy. After the weeks of argument and testimony from experts as well as customers and competitors of the two companies, it now falls to Leon to decide.

Leon said he aims to issue his ruling by June 12 at the latest, mindful of the financial consequences if the deal isn't completed by the "drop-dead date" of June 21. Under the merger agreement, either company could walk away from the deal if it isn't completed by then, and AT&T would have to pay Time Warner a "breakup" fee of $500 million.

AT&T and Time Warner have insisted throughout the trial that their deal won't hurt competition in the booming pay TV business.

AT&T, a wireless, broadband and satellite behemoth, became the country's biggest TV provider with its purchase of DirecTV. The largest pay TV company, it accounts for a substantial portion of AT&T's earnings. DirecTV claims about 25 million of the 90 million or so households in the U.S. that are pay TV customers.

To lure wireless customers, AT&T offers discounts on DirecTV and could soon do so with HBO.

The government argues that AT&T would gain outsize market power, jacking up prices it charges cable providers to carry networks in the Time Warner stable. Rival providers to AT&T such as Charter Communications or Cox, which now are customers of Time Warner for its content, would also become its competitors. Its star witness was Carl Shapiro, an economist at the University of California, who used an economic model to predict that some $500 million more annually could show up on consumers' cable bills by 2021.

The rival economist put on by the companies, Dennis Carlton from the University of Chicago, refuted Shapiro's model as overly complicated and rejected his conclusions.

If Leon blocks the deal, a chill over media deal-making is likely. Big internet players like Amazon or Google could decide to keep building up their own content offerings rather than growing them by acquisitions. If the companies prevail, on the other hand, that could spur a wave of similar deals as other distributors—including major cable, satellite and phone companies—bulk up with entertainment purchases to compete against internet-born rivals.

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