

# Judge clears AT&T-Time Warner deal, rebuking Trump administration

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AT&T and Time Warner attorney Daniel Petrocelli speaks to the press after a court ruled that the \$85 billion merger between the two companies could go ahead

A US federal judge approved Tuesday the \$85 billion merger of wireless

and broadband giant AT&T with media-entertainment conglomerate Time Warner, delivering a stinging rebuke to Donald Trump's administration in its first major antitrust court case.

US District Judge Richard Leon said the government had failed to meet its burden of proof that the tie-up between the largest US pay-TV operator and the media entertainment giant would harm competition.

The case had been closely watched as setting a benchmark for other big corporate mergers, especially in the media and communications sector.

Leon said the case fell short on all counts and warned the government against seeking to hold up the deal with an appeal, saying that would cause "irreparable" harm to the two companies whose tie-up has been delayed for a year and a half.

"There would be no irreparable harm to the government (with a delay), only to the companies," Leon told the packed courtroom in an unusual session to announce his opinion.

"The government has taken its best shot and lost."

Leon's 172-page ruling was a total victory for the companies. It said the government failed to back up its three theories of harm to consumers from the mega-merger.

He maintained that the government's claim that pay TV costs would rise from the tie-up was based on "speculative" logic and that its study from an expert witness was contradicted by other evidence from the government.

## **'Sound and proper' repudiation**

Daniel Petrocelli, who led the legal team for the two companies, told reporters outside the courthouse that the decision marked a "sound and proper" repudiation of the government's case.

"We're disappointed that it has taken 18 months to get here but we're relieved that it's finally behind us," he said.



US Assistant Attorney General Makan Delrahim said the government was disappointed in losing the challenge to the AT&T-Time Warner merger and was weighing options

He said the ruling "stands as a testament to the wisdom of the combination of these two great companies and how it will benefit

consumers for generations to come."

AT&T general counsel David McAtee said in a statement he was pleased with the outcome and expected the deal would be closed by June 20.

The deal brings together AT&T's wireless and broadband networks and its DirecTV subscription service with the media assets of Time Warner, which include CNN and other Turner cable channels, Cartoon Network, premium channel HBO and the Warner Bros studios.

Makan Delrahim, head of the Justice Department's Antitrust Division, said the government was considering its next steps.

"We are disappointed with the court's decision today," he said.

"We continue to believe that the pay-TV market will be less competitive and less innovative as a result of the proposed merger between AT&T and Time Warner."

John Bergmayer of the consumer group Public Knowledge said he expected the government would appeal.

"In the meantime, not only may consumers be harmed directly by the anticompetitive harms that this merger will cause, such as higher bills and fewer choices of programming and provider, but also by the many other mergers it will encourage," Bergmayer said.

Some analysts say the court approval offers an effective green light to other major deals, including the Walt Disney offer to buy key film and television assets of 21st Century Fox and the T-Mobile/Sprint agreement in wireless.

"Due to AT&T already owning Direct TV and having U-verse, it has

been using a lot of Time Warner content for some time. Thus, I don't think the integration will be as difficult as it first appears," said Morningstar analyst Allan Nichols.

But Rebecca Lieb of Kaleido Insights warned that mergers like these are usually "very difficult" to implement.



AT&T said it expects to close its merger with Time Warner by June 20, 2018 after prevailing in the government's antitrust challenge

"Merging content distribution with creation is easier said than done, particularly on a scale that encompasses all media," she added.

## **New services, packages**

AT&T and Time Warner argue they need more scale to compete with online rivals like Netflix and Amazon and with Silicon Valley giants like Google, Facebook and Apple, which are expanding in the rapidly evolving sector.

Independent media analyst Alan Wolk said the clear approval opens the door to AT&T offering new kinds of services and packages that can tie into 5G, or fifth-generation wireless networks.

"Imagine AT&T giving free CNN and free HBO to every AT&T wireless subscriber," Wolk said.

Time Warner gets better viewership data to more effectively compete against online platforms like Netflix, which "will make it easier for them to better target ads," Wolk added.

President Donald Trump had previously denounced the AT&T deal, vowing that his administration would block it because it would concentrate corporate power unacceptably.

This fueled speculation that Trump could be retaliating due to critical coverage of his administration from news broadcaster CNN, a Time Warner property.

"Trump's meddling in law enforcement actions, his attacks upon particular companies, and his utter unpredictability have created the kind of legal uncertainty common in 'banana republics,'" said Berin Szoka of the think tank Tech Freedom.

"At least in antitrust law, the courts, not Trump officials, will have the final say on what the law really is. Every business in America is safer

today from being strong-armed by a would-be strongman."

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