

US appeals court clears AT&T's \$81B purchase of Time Warner

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In this June 13, 2018, file photo, the logos for Time Warner and AT&T appear above alternate trading posts on the floor of the New York Stock Exchange. A federal appeals court has blessed AT&T's takeover of Time Warner, Tuesday, Feb. 26, 2019, defeating the Trump administration by affirming that the \$81 billion merger won't harm consumers or competition in the booming pay TV market. (AP Photo/Richard Drew, File)

A federal appeals court on Tuesday cleared AT&T's takeover of Time

Warner, rejecting the Trump administration's claims that the \$81 billion deal will harm consumers and reduce competition in the TV industry.

The ruling by the U.S. Court of Appeals in Washington came in the high-stakes competition case, approving one of the biggest media marriages ever. It was already completed last spring, soon after a federal trial judge approved it. AT&T, a wireless carrier and TV and home internet provider, absorbed Time Warner, the owner of CNN, HBO, the Warner Bros. movie studio, "Game of Thrones," sports programming and other shows.

Many observers had expected the decision favorable to AT&T from the three-judge appeals court panel. The decision was unanimous to uphold the trial judge's June ruling. Opposing the merger forced the Justice Department to argue against standing legal doctrine that favors mergers among companies that don't compete directly with each other, what's known as a vertical merger.

The U.S. antitrust lawsuit against Dallas-based AT&T marked the first time in decades that the government has challenged that doctrine by suing to block a vertical merger.

The appeals court judges said U.S. District Judge Richard Leon was correct to dismiss the government's argument that AT&T's takeover of Time Warner would hurt competition, limit choices and jack up prices for consumers to watch TV and movies.

"The government failed to meet its burden of proof" for its theory that costs for Time Warner's Turner Broadcasting content would increase after the merger, mainly through threats of programming "blackouts," the judges wrote. The Turner networks include CNN.

The Justice Department antitrust attorneys had asserted that Leon

misunderstood the complexities of the TV industry and the nature of AT&T's competitors.

The idea behind the merger was to help AT&T—which claims about 25 million of the 90 million U.S. households that are pay TV customers—compete better with online rivals like Netflix, YouTube and Hulu.

AT&T already had a streaming service, DirecTV Now, but it launched a cheaper offering called WatchTV soon after the deal closed. It's planning another streaming service, "WarnerMedia," for later this year.

"The merger of these innovative companies has already yielded significant consumer benefits, and it will continue to do so for years to come," AT&T General Counsel David McAtee said in a statement.

"While we respect the important role that the U.S. Department of Justice plays in the merger review process, we trust that today's (decision) will end this litigation."

The ruling dealt a major setback to the Trump Justice Department. If the government decided to appeal the ruling, the next step likely would be the Supreme Court, and it wasn't clear whether Justice planned to do so.

There's about a 50 percent chance of the government taking it to the high court—and scant prospects of it winning there, said Matthew Cantor, an attorney focusing on telecom antitrust matters at Constantine Cannon in New York.

The Justice Department appears committed to pursuing the long-shot bid against the merger, rather than considering conditions that could have been imposed on AT&T by the trial court to make the deal more acceptable. The head of Justice's antitrust division, Makan Delrahim, doesn't like merger conditions requiring regulators to keep an eye on the

combined company's conduct for years after.

But politics and presidential influence also could be a factor, Cantor suggested. When the deal was first made public in October 2016, it drew fire from then-candidate Donald Trump, who promised to kill it "because it's too much concentration of power in the hands of too few." Trump as president has publicly feuded with Time Warner's CNN, calling it "failing" and a purveyor of "fake news," and suspending one of its correspondents from the White House.

"It seems to me that political considerations played into this," Cantor said. "It's odd that the Justice Department has gone after this merger as its principal merger case. ... This was a very tough case. It's very hard to challenge a vertical merger."

The case could affect future antitrust regulation. It underscores that the government should look at vertical mergers more critically, particularly when the companies combining are already in industries that have few competitors, said Diana Moss, president of the American Antitrust Institute.

There has been a rush of deal-making in the cable, entertainment and telecom industries over the last few years, and Leon's ruling opened the doors for more efforts.

Just a day after his decision, Comcast jumped back into a bidding war with Disney for most of 21st Century Fox's TV and movie businesses. Disney eventually won, and Comcast bought British broadcaster Sky instead.

In other deal activity, wireless carriers Sprint and T-Mobile also are attempting to combine. The Justice Department and the Federal Communications Commission are still reviewing that deal, which is not a

vertical merger. Sprint and T-Mobile are direct competitors.

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