AT&T–Time Warner Win Could Open Opportunities for More Multimedia Megadeals

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On June 12, a federal judge ruled in favor of AT&T's $85 billion acquisition of Time Warner – a verdict that could have a huge impact on the industry and consumers. As a result of this merger, HBO, CNN, Warner Bros. and Time Warner's other brands have changed hands. Time Warner's TV shows and movies are joining forces with AT&T's enormous distribution system, including its cell phone and satellite networks.

AT&T's purchase of Time Warner affords it the opportunity to expand its customer offerings while gaining direct ownership of content-creation capabilities necessary to capitalize on the rapidly changing media landscape, including the ability to more directly compete against multimedia giants like Netflix and Amazon.[1] This merger could bring new competition to Google and Facebook, which have captured about two-thirds of the online advertising market. Combining AT&T's mobile, broadband and DirecTV platforms with Time Warner's movies, TV shows, music and sporting events could make AT&T a formidable rival to these organizations.

Comcast Bids Against Disney for 21st Century Fox

One day after AT&T received the official green light, with no conditions to divest any of its holdings, Comcast made a $65 billion all-cash offer for the entertainment businesses of 21st Century Fox, including a 30 percent stake in the Hulu streaming service. Comcast hopes to outbid Disney's pending, stock-based $52.4 billion deal with Fox, even going so far as to cover the $1.525 billion Fox would owe Disney if it abandons that deal.[2] Fox has yet to decide whether it will postpone its July 10 meeting to vote on the Disney deal. A bidding war may ensue – and the stakes are high. Fox's TV channels and movie franchises are coveted

[1] Hadas Gold and Brian Stelter, "Judge approves $85 Billion AT&T-Time Warner deal," CNN, June 13, 2018: money.cnn.com/2018/06/12/media/att-time-warner-ruling/index.html.

[2] Chris Welch, "Comcast makes $65 Billion offer to steal 21st Century Fox away from Disney," *The Verge*, June 13, 2018: www.theverge.com/2018/6/13/17457244/comcast-21st-century-fox-film-tv-studios-acquisition-deal-announced.

properties that could help Comcast or Disney beat back fierce digital competitors such as Netflix and Amazon.

M&A Activity Could Accelerate as Digital Transformation Reshapes Telecom and Media Industries

The rapid speed of disruptive innovation represents the most significant risk in the technology, media and telecommunications industry, according to board members and C-suite executives worldwide.[3] The rapid pace of change in the sector means that many traditional telecom providers that have been slow to react to digital transformation, including but not limited to the acquisition and distribution of content, are at risk of being left behind or overtaken by new market entrants. Consumers' expectations are high, and they will gravitate toward those companies that offer the most compelling options and customer choices for the best price.

According to a GSMA report, by 2025 the global telecom industry will be massive in size and scale, with approximately 5.9 billion unique mobile subscribers and 5.0 billion mobile internet users.[4] This makes content a highly valuable commodity for telecom providers. Given consumers' voracious appetite for pay TV and other entertainment services, including the ability to custom-tailor viewing choices based on personal preference, and the constant demands to keep up with the Internet of Things and digital transformation, we could see more telecom and media companies merging in order to thrive long-term.

What Legal Experts Are Saying

Thus far, legal experts have diverging views of the long-term effects of the AT&T ruling. Jones Day noted in an alert issued shortly after the ruling that vertical mergers like that of AT&T/Time Warner, which have built-in efficiencies, are harder to challenge than horizontal mergers, where market share presumptions help the plaintiff. The policy decision of the U.S. Department of Justice (DOJ) to avoid behavioral remedies (a commitment to behave competitively postmerger) limited its options in this instance to a divestiture or structural remedy, or litigation to block the deal. Jones Day noted that while every merger is different,

[3] *Executive Perspectives on Top Risks for 2018*, Protiviti and North Carolina State University's ERM Initiative, www.protiviti.com/toprisks.

[4] *The Mobile Economy 2018*, GSMA Intelligence: www.gsma.com/mobileeconomy/wp-content/uploads/2018/02/The-Mobile-Economy-Global-2018.pdf.

this decision may temper future vertical challenges. However, it expects the decision to have little impact on horizontal mergers.[5]

In addition, as noted in an article published in *The American Lawyer* shortly after the ruling, "Four out of five M&A lawyers at top New York-based firms … stressed that one court's approval of one deal – no matter how welcome – will not influence M&A deal flow that significantly for the remainder of this year." In the article, an M&A attorney from a noted law firm, quoted anonymously, observed that "each new transaction has its own particular details that may or may not spark the attention of an antitrust regulator concerned about anti-competitiveness."[6]

Bottom-line, thus far, legal experts are far from certain that the AT&T/Time Warner court ruling will be a significant long-term catalyst for future mergers.

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[5] "Antitrust Alert: Court Rejects DOJ Antitrust Challenge to AT&T/Time Warner," Jones Day, June 2018, http://www.jonesday.com/antitrust-alert-court-rejects-doj-antitrust-challenge-to-atttime-warner-06-14-2018/#.

[6] Miriam Rozen, "Despite Comcast Bid After AT&T's Big Win, No 'Avalanche' of M&A in Offing," *The American Lawyer*, June 15, 2018: www.law.com/americanlawyer/2018/06/15/despite-comcast-bid-after-atts-big-win-no-avalanche-of-ma-in-offing/?slreturn=20180518130838.

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