# AT&T's victory in Time Warner merger clears way for deal bonanza

by Joe Williams
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Tuesday's ruling is a boon to AT&T's media expansion plans and paves the way for other so-called vertical mergers to clear the federal approval process.
*Steven Senne*



AT&T's victory against the federal government's challenge to a proposed merger with Time Warner furthers the company's goal of becoming a media powerhouse and may clear potential hurdles for other businesses pursuing similar acquisitions.

The case, in which a federal judge rejected the government's claim that the deal would hinder competition and raise consumer costs, was closely watched by businesses because the Justice Department rarely challenges so-called vertical mergers, or deals between two companies at different points in a supply chain that don't compete directly.

It was also one of the more significant cases recently initiated by the federal government and was seen as an indicator for how the Trump administration would pursue other antitrust matters.

The judge's ruling is a major win for AT&T Chief Executive Officer Randall Stephenson, who banked on the merger to help propel the telecom giant into the content industry, and will give ammunition to supporters of other combinations.

"You can bet that the emerging parties in all of these other vertical merger challenges will take the judge's statements and the judge's opinion and use it in their case," said Michael Carrier, a law professor at Rutgers University.

Billions of dollars are on the line. CVS Health, for example, is in the midst of a federal review of its proposed $69 billion merger with Aetna. And Cigna is hoping to combine its health insurance services with Express Scripts, a top U.S. pharmacy benefit manager, in a deal valued at $54 billion.

There's also speculation that Comcast will challenge the Walt Disney Co.'s purchase of 21st Century Fox; news reports have said the cable giant was awaiting the outcome of the AT&T-Time Warner case before officially submitting a bid.

An Aetna spokesman declined to comment. Cigna and Express Scripts both said they remained confident in federal approval for their merger given the complementary nature of the two businesses. Spokespersons for Disney, Comcast and CVS Health did not immediately respond to requests for comment.

But while companies may be looking positively on Tuesday's decision, experts were divided on just how much impact the ruling in one district court would have on future cases.

"Even if the judge decided on a fairly broad ground, I think there would still be a lot more beans to grind before we made a decision about what this signaled for the future," Tad Lipsky, a former acting director of the Federal Trade Commission's competition bureau and deputy assistant attorney general, said prior to the ruling.

Indeed, past deals not involving direct competitors have proceed with little regulatory resistance. Amazon, for example, was able to acquire Whole Foods in 2017 without having to divest any assets or agree to specific conditions. In other instances, the antitrust regulators have required relatively small divestitures as a condition of approval.

Challenging the AT&T-Time Warner merger was a defining moment for the agency's current antitrust chief, Makan Delrahim, who said he was "disappointed" by the ruling.

"We will closely review the court's opinion and consider next steps in light of our commitment to preserving competition for the benefit of American consumers," he said in a statement.

Critics said the merger could ultimately lead to higher costs for consumers, a charge the companies deny. Those concerns were heightened for some by the Trump administration's decision to end the net neutrality rules launched by former-President Barack Obama's administration. AT&T's ownership of DirecTV also raised concerns that a purchase of Time Warner would hinder competition in the cable TV market.

Aside from the political backdrop of challenging a merger involving the future owner of CNN, a news channel that routinely faces the ire of President Trump, a decision in the government's favor would have upended multiple industries and thrown business strategies into question.

The agency gets few shots at legacy rulings. Former officials say the Justice Department often passes on challenging some transactions in anticipation of others in which it has a better chance of succeeding, putting additional pressure on a handful of potentially landmark cases.

“We were thinking about the long game," said John Newman, a former DOJ antitrust attorney and current law professor at the University of Memphis. "There may have been a particular investigation that we felt was problematic but also presented a lot of litigation risks, and ultimately the decision would be, 'This is not the case to bring in this area.'”



Delrahim’s loss in the AT&T-Time Warner case could dissuade the federal government from challenging any similar mergers in the near future. The judge in the case declined to grant a stay that would force the companies to keep their assets separate pending an appeal.

"The parties can go ahead and consummate the merger. That makes it really tough on the government to appeal, since, as the old saying goes, it’s hard to unscramble the eggs," Newman said.