

FULL STREAM AHEAD: COMPETITION AND CONSUMER CHOICE IN DIGITAL STREAMING

HEARING

BEFORE THE

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,
REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

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FULL STREAM AHEAD: COMPETITION AND CONSUMER CHOICE IN DIGITAL STREAMING

Wednesday, January 7, 2026

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,
REGULATORY REFORM, AND ANTITRUST

COMMITTEE ON THE JUDICIARY
Washington, DC

The Subcommittee met, pursuant to notice, at 10:05 a.m., in Room 2141, Rayburn House Office Building, the Hon. Scott Fitzgerald [Chair of the Subcommittee] presiding.

Present: Representatives Fitzgerald, Jordan, Issa, Cline, Gooden, Hageman, Harris, Baumgartner, Nadler, Raskin, Correa, Balint, Garcia, Lofgren, and Johnson.

Mr. FITZGERALD. The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time.

We welcome everyone to today's hearing on "Competition and Consumer Choice in Digital Streaming." I will recognize myself for an opening statement. Before, I know the witnesses are aware and I think the Members are, we have a briefing on Venezuela at 11:30, so we're going to kind of see how things flow and how we move here today, and, depending on that—I know there are some Members that absolutely want to attend that, so we'll just keep that in mind as we move through this.

For much of the 20th century, film distribution was dominated by theatrical release. The golden age of Hollywood saw the rise of movie stars in Blockbuster hits that drew millions to the box office. The creation of television in the 1950s introduced a new and innovative way to consume media.

What was initially seen as a threat to the film industry instead became one of its greatest synergies. Studios began licensing films for TV broadcast, and the advent of the VHS tape and DVD player opened up an additional revenue extreme for direct consumer video sales.

The emergence of digital technology and broadband internet fundamentally disrupted this model and, with it, the dominant players. In the year 2000, only 1 percent of households had broadband internet capability and that capability of delivering high-quality

videos online. By 2023, that number reached 80 percent of U.S. households.

Streaming platforms eliminated the need for theatrical releases and physical distribution, which we know was troubling to the industry. Instead of relying on theater chains, our video sales content could be delivered directly to consumers on demand. This shift lowered barriers to entry and enabled the new competitors to challenge traditional studios on a global scale. The result, as we're seeing today, is studios that did not exist in Hollywood's golden age, acquiring the ones that did.

The injection of disruptors has also forced legacy studios to adapt to that. Netflix's introduction of the first streaming only model in 2010 forced Paramount, Disney, Warner Brothers, and others to develop their own platforms. Fifteen years later, nearly all major film and TV studios have their own streaming platforms.

Today, digital streaming is a primary method for consumers to use and to develop access to TV and other media content. According to a 2025 Nielsen report, streaming represented nearly 47 percent of total TV usage and, for the first time ever, outpaced the combined share of broadcast and cable. As more content becomes fractionalized across multiple streaming services, consumers are growing frustrated.

Separate, Nielsen's survey found that 46 percent of streaming viewers are finding it difficult to find the content they want to watch because of too many services.

A survey by the Motley Fool found that the number is even higher with 62 percent of subscribers surveyed believing there are too many options. This is particularly acute in sports broadcasting. Fans who want to watch their favorite sports teams are now having to subscribe to multiple streaming platforms to access each game. This frustration is driven in large part by increased prices.

According to *The Wall Street Journal*, since 2019, prices for the top streaming services have risen an average of 87 percent. Disney Plus, Apple TV, and NBC Peacock have all seen price increases of more than 100 percent since their creation. Households who subscribe to an average of four streaming platforms are quickly seeing their monthly streaming bills equal or surpassing their monthly cable bill.

As consumer demand for streaming continues to rise, platforms must compete for viewers by offering high-quality content. Netflix, Apple, and Amazon, for example, have made significant investments in movie studios to deliver Blockbuster-level movies and award-winning TV straight to consumers, and it appears to be working. Netflix has 18 Oscar nominations in 2025, and Apple TV *Pluribus* just became the most watched show in the streaming studio's history, but that content does not come without a cost.

To make a Blockbuster film will now cost the studio more than \$200 million. A high-end TV show could easily exceed \$10 million per episode. *Pluribus* cost Apple TV a reported \$15 million an episode. As a result, many of these companies operate with negative profit margins for several years before achieving profitability. Netflix is the only platform to maintain consistent profitability since 2022.

In other words, the barrier to sustaining a competitive streaming service is high. It's no surprise then that many of these companies are choosing to buy rather than build their own content. Disney, for example, acquired 20th Century Fox in 2019. Amazon acquired MGM Studios in 2022. Most recently, Netflix announced an agreement to acquire Warner Brothers Studio. This deal, one of the largest of 2025, would combine two of the top four streaming services by global subscriber count. As expected, the reactions to this merger have been mixed.

Let me be clear. This hearing is not about picking winners or losers in the merger context. This is for Warner Brothers shareholders. Today, we're here to start a much-needed conversation about whether further consolidation in the streaming industry would be helpful or harmful to consumers.

Economic theory teaches us that mergers create efficiencies, and that's no different when it comes to the streaming industry. By vertically integrating content production and distribution, platforms can eliminate and also work on lowering redundancies and focus on delivering high-quality content to consumers at lower prices.

Some will argue that eliminating arrival will hurt competition or further entrench a dominant player. Others may say it will harm our already distressed theatrical film industry. We should take all those concerns very seriously.

I would remind colleagues that the antitrust law is meant to protect consumers by promoting competition, and any potential harm should always be weighed against consumer benefit. A merger that results in greater choice in video libraries at lower prices is welcomed.

While delivering to consumers a solution to their current frustration with the fractionalized streaming content, it does not strike me, certainly, to think, and many of the other members, as a merger, we should initially be concerned with a look at the entire entity of what's being promised.

I want to thank our witnesses for being here with us today, and I look forward to your testimony.

I now will recognize the Ranking Member, Mr. Nadler, for his opening statement.

Mr. NADLER. Thank you, Mr. Chair. Mr. Chair, the entertainment and media landscape has been transformed in recent years. Many of these changes have brought undeniable benefits, such as streaming services that give viewers more options at their fingertips than ever before. Many of these changes have also come at a cost, as lax antitrust enforcement and waves of consolidation have concentrated power in just a few major players.

One thing that seems to be constant over the last few decades: A merger involving Warner Brothers. It began with the disastrous AOL-Time Warner merger in 2000, and then the short-lived partnership with AT&T in 2019, and then its latest incarnation since 2021 as Warner Brothers Discovery. Now, once again, Warner Brothers is up for sale to another media giant.

This time, it has accepted a bid from Netflix, the global leader in streaming services and a major content producer in its own right, to control Warner's streaming and studio assets, including

such mammoth properties as DC Studios, HBO and HBO Max, and Warner Brothers' motion picture and television groups, as well as Warner's 128 million streaming subscribers.

What we know today about this proposal raises a host of questions about its effect on the pricing, production, and distribution of content going forward. We have also heard great alarm from the movie theater industry, which despite claims from Netflix that it will keep theatrical businesses operating largely as they are, takes seriously comments from its co-CEO who called movie theaters, quote, "an outmoded idea" and, quote, "not consumer friendly."

Further, label groups like the Writers Guild of America and the Directors Guild have raised concerns and say that this proposed merger is not in their interest or the public's.

Serious concerns have been raised about whether this deal, which by some measures would give the merged company over 30 percent of the streaming market, could reduce competition, diminish consumer choice, raise subscription prices, threaten jobs, wages, and working conditions in the creative industries, and reduce diversity of content and viewpoints.

Netflix argues that this merger would allow it to better compete with the range of other platforms that are battling for eyeballs and attention from viewers, including other streaming giants like YouTube, traditional movies and television, social media, and more. If Netflix must get bigger to compete, that is a sign of a market that is already highly out of balance.

Under the Netflix deal, Warner's cable channels, including, most notably, *CNN*, would be spun off into a separate business that would not be part of the sale. Another major media conglomerate, Paramount Skydance, has now made a hostile bid to control all of Warner's properties, including *CNN*.

Even though the Warner Brothers' board has rejected the Paramount bid for now, Paramount could still pursue a buyout of Warner Brothers. A potential merger with Paramount presents its own set of antitrust concerns, by collapsing what are now five major movie studios down to four, thereby reducing competition and substantially increasing concentration within an already concentrated industry. Not only could this bring higher prices and less choices for consumers, but it could also bring fewer jobs and lower wages for content creators.

The Paramount bid also brings its own unique set of circumstances of concerns because it would place *CNN* under the control of the Ellison family, the same billionaires who have curried favor with Donald Trump by imposing control over the content of *CBS News*.

Just weeks ago, Bari Weiss, the controversial minder placed in charge of *CBS News*, spiked a story on *60 Minutes* that would have shed light on the Trump Administration's lawless campaign to send migrants to be tortured in an El Salvadoran prison. Presumably, the Ellisons have similar designs on making *CNN* more Trump friendly.

A merger with either Netflix or Paramount would result in a behemoth that poses significant antitrust and other public policy concerns that require careful scrutiny.

I have long believed that the unchecked concentration of economic power in any industry poses a danger to economic fairness and to our democracy. While I do not prejudge the merits of any proposed merger, I am concerned with any deal that would significantly increase the concentration in a market that is already highly concentrated. Such increased concentration could not only harm consumers, but we have also heard great concern from the creator guilds who are borne the brunt of decades of media consolidation that historically has been followed by fewer jobs, downward pressure on wages, and reduced creative opportunities.

That is why it is so important that any merger be reviewed with careful and impartial analysis by the antitrust regulators. Unfortunately, under the Trump Administration, the antitrust review process has been dangerously corrupted and politicized.

Just last month, we heard from a former senior Trump Administration antitrust official who testified that, under this administration, the rule of law is being replaced by the rule of lobbyists and corporate interests.

We know that the White House routinely intervenes in Justice Department matters, often to benefit the President and his cronies. Already, Trump himself has said, quote, "I'll be involved in that decision," when asked about the Warner Brothers deal.

Does he intend to put his thumb on the scale in favor of Paramount as a reward for his friends, the Ellisons who, according to press reports, have already promised to implement, quote, "sweeping changes" over *CNN* if they were to take control? This is not a farfetched scenario. There are troubling reports that Trump tried to block the AT&T-Time Warner merger as retaliation for *CNN*'s critical coverage of him during his first administration and campaign.

Mr. Chair, we have seen this movie before, and the sequel is almost always worse. A hallmark of the second Trump Administration has been a determined effort to exercise control over the independent news media, whether through frivolous lawsuits against media outfits, limiting press access to the White House and the Pentagon, and gutting funding for public radio and *PBS*. The White House must not be allowed to use the merger review process as another tool in its campaign to bend the media to its will.

A proposed merger, whether it be with Netflix, Paramount, or some other suitor, must be analyzed on its own merits. What we know already about the antitrust review process under this administration calls for serious congressional oversight, and, unfortunately, our Republican colleagues have turned a blind eye to their oversight responsibilities during this Congress and today is just one more missed opportunity.

It is vitally important that we examine the Warner Brothers' merger closely to ensure that any deal will protect competition, consumers, and workers, and I appreciate our witnesses being here today to lend their expertise. I look forward to today's hearing, and I yield back.

Mr. FITZGERALD. The gentleman yields back. I now recognize the Ranking Member of the Full Committee, Mr. Raskin, for his opening statement.

Mr. RASKIN. Mr. Chair, thank you very much, and thank you to all the witnesses for joining us today.

Against the background of a media industry that is already heavily concentrated under the control of several multibillion-dollar media companies, we're gathered to discuss the proposed acquisition of Warner Brothers Discovery by Netflix, two giant rivals in the field of entertainment. The alternative acquirer, Paramount Skydance, is itself not only a giant rival in entertainment but also a rival in news.

In ordinary times, we'd proceed carefully with an acquisition of this size to ensure that it passes scrutiny under American antitrust laws, but these are not ordinary times. Just last month, this Subcommittee heard testimony from whistleblower Roger Alford who served in antitrust at the DOJ during both the first and second Trump terms. During Trump's first term, Alford served as Deputy Assistant AG and during the second as the principal Deputy Assistant AG, which is second in command.

He testified to the pervasive practice of lobbyists attempting to corruptly influence antitrust law enforcement at the Department of Justice, telling us that corporate lobbyists now boast about their ability to overrule both the professional antitrust experts and President Trump's own hand-picked leadership at the antitrust division. Just to be clear, Professor Alford is a strong supporter of President Trump. He served in both the first and second terms.

He sees clearly that this political and financial corruption of antitrust law betrays Donald Trump's avowed populist agenda, as he sees it, the one of lower prices, affordability, and increased choice and competition that the President once long ago promised the American people on the campaign trail. Well, we already know well how this corruption works in Trump's Washington.

Professor Alford gave a detailed description of what he called the HPE-Juniper merger scandal. He told us that on numerous occasions in a variety of matters, we implored our superiors and lawyers on the other side to call off the jackals, but to no avail. Today, cases are being resolved based on political connections, not on the legal merits.

These warnings from a top Trump appointee command our urgent attention. Yet, my Republican colleagues refuse to conduct any kind of serious oversight of what's going on in the administration.

In 12 months, our colleagues have had just one administration official come and appear before the Committee: FBI Director Kash Patel. Committee Democrats have invited two Trump officials as Minority witnesses, and, as you know, we only get to invite one witness, but we have had two of them: Mr. Alford and FTC Commissioner Alvaro Bedoya. The Chair has had only one.

We urgently need the Attorney General, Pam Bondi, to appear before the Judiciary so we can conduct oversight over an increasingly out of control, lawless, and corrupt Department of Justice, both in the antitrust domain and in many others.

It's not just DOJ. The whole government is now saturated in pay to play corruption and lawlessness. Take the example of Skydance's acquisition of Paramount last year. In late 2024, incoming FCC Commissioner Brendan Carr accepted two tickets worth \$12,000 to go to the Kennedy Center Gala. The donor was Paramount whose

proposed merger with Skydance was about to acquire Commissioner Carr's approval.

Now, I concede that \$12,000 these days is petty cash compared to the billions of dollars that are being raked in by the President routinely and the corruption flowing throughout the administration, but pre-Trump, a \$12,000 gift to an FCC commissioner that you're about to appear before would have been a scandal.

Well, at the gala, Commissioner Carr reportedly pulled his host aside and gave them advice. Paramount owns *CBS*. President Trump had sued *CBS* for \$10 billion in damages because he didn't like the way that they edited an interview with Vice-President Kamala Harris. Well, that, of course, is an entirely frivolous legal claim. I don't like the way that *Fox News* edits the interviews with Donald Trump, but that doesn't constitute defamation against me. That's just stupid.

Commissioner Carr reportedly told the Paramount executives that Trump's grudge against *CBS News* was so serious that it would make review of the merger, quote, "tougher than anticipated," and they might need to make some concessions directly to the President to convince him to approve the deal.

Once in office, Carr sat on the merger for months. Why? Trump could extract extraordinary benefits from the companies in exchange for approval of the deal. Look what he got: A \$16 million contribution to his Presidential library, millions dollars more committed in free advertising, a promise to install a Trump-friendly monitor minder in the *CBS* newsroom, and the cancellation of the *Late Show* with Stephen Colbert. Only then did Carr permit the merger to proceed.

Ladies and gentlemen, this is not antitrust law. This is a political and financial shakedown substituting for an antitrust merger review. It's got nothing to do with antitrust law or consumer choice or lower prices. It is corruption. It's exactly what Professor Alford was warning us about, and one key result of this corruption is a newsroom that refuses to broadcast news that the administration disfavors.

A few days after Alford testified, *CBS' 60 Minutes* was scheduled to air a special on CECOT, the notorious torture prison in El Salvador, introduced to inmates there as hell on earth, that the Trump Administration has used as a dumping ground for immigrants, many of them lawful asylum seekers.

Right before the story was set to air, it was indefinitely postponed. Why? What happened? Well, we don't have to wonder. Bari Weiss, the new Editor-in-Chief at *CBS* and the new government-imposed Pravda-Like media monitor and minder said she would not let the broadcast go forward without getting comment from a government spokesperson on the air. The Trump Administration had refused to allow any of them to comment on the air.

Here's Sharyn Alfonis, the *60 Minutes* correspondent who said:

Our story was screened five times and cleared by both *CBS* attorneys and Standards and Practices. It was factually correct. In my view, pulling it now after every rigorous internal check has been met is not an editorial decision. It's a political one. We requested responses to questions in our interviews with DHS, the White House, and the State Department. Government silence is a statement. It's not a veto. Their refusal to be interviewed is a tactical maneuver designed to kill the story. If the administration's refusal

to participant becomes a valid reason to spike a story, we have effectively handed the government a kill switch for any reporting they find inconvenient.

I hope that this kind of consolidated corporate government censorship troubles all our colleagues, Democrats and Republicans who still have a First Amendment bone in their body. This kind of censorship regime aligns us with the State of press freedom in Putin's Russia or Mohammad bin Salman's Saudi Arabia.

The economic effects of these side deals must trouble us, too. Each new merger acts as a new opportunity for the President to enrich himself and his family and friends. The cost of businesses involved in these deals now, even as a term in the economic literature, the Trump Transaction Tax, every party to this kind of transaction now bears the risk of a political shakedown for money, concessions that are not connected to proper antitrust review. It's about what enriches and satisfies the President.

Hundreds of economic studies and gangster States show that these kinds of corrupt practices reduce investment, distort markets, increase costs, and lead to lower employment.

Here we are again. When Warner Brothers announced that it would put itself up for sale, President Trump promised that "I'll be involved in that decision," although no law gives him a role in it.

Mr. ISSA. Mr. Chair, I must object. I fully believe that opening statements can be as long as—for the Ranking Members, can be as long as necessary if they stay on topic. This is clearly a bashing of the President and beyond the pale of this Committee.

Mr. RASKIN. I'm not going to accept any subject matter or content regulation by the gentleman from California. I'm about to finish, so let's not belabor a ridiculous point. We've never interrupted an opening statement of anybody on your side of the aisle. What a ridiculous thing to do.

Mr. FITZGERALD. I would just remind the Ranking Member that we're up against an 11:30 kind of hard stop for a briefing.

Mr. RASKIN. OK. I appreciate that and I'll be done in a minute. OK?

The President seems to want Paramount and Netflix to compete for his approval of a deal. Both companies are already lobbying the White House right now, and to State the obvious, President Trump is not an antitrust expert, nor is he committed to antitrust law. He's long been critical of *CNN*, which is owned by Warner Brothers. For years, he's told us that he hates their reporting, he hates their reporters, and he wants to sue the network.

Does anyone doubt that one way to entice the President's favor is to promise him more direct control over *CNN*?

Mr. Chair, we should be calling in the government officials who participated in or acquiesced in these side deals. To date, I am sorry to say the closest we've gotten to hearing from a real administration witness is Professor Alford who we invited here at the Minority's invitation when he could have been your witness months ago.

This proposed merger poses significant antitrust questions. I'm eager to discuss them, but this Committee must also do the work of ensuring that the antitrust laws are actually being enforced and not being replaced by a system of corruption.

Thank you, Mr. Chair. I yield back.

Mr. FITZGERALD. The Ranking Member yields back. Without objection, all their opening statements will be included in the record.

We'll now introduce today's witnesses: Mr. Jay Ezrielev is the founding and managing principal of Elevecon, a consulting firm. He also serves as an adjunct Professor at George Mason University Antonin Scalia Law School. He previously served as an economic adviser to the FTC Chair Joseph Simons.

Ms. Jessica Melugin: Ms. Melugin is the Director of the Center for Technology and Innovation at the Competitive Enterprise Institute. Her research focuses on antitrust, online privacy, artificial intelligence, telecommunications, social media, and net neutrality regulation.

Dr. John Yun: Dr. Yun is a Professor of Law at the George Mason University Antonin Scalia Law School. His research focuses on antitrust and intellectual property, data, and privacy. He previously served as the Acting Deputy Assistant Director of the Bureau of Economics at the Federal Trade Commission.

Mr. Matt Wood: Mr. Wood is the Vice President of Policy and General Counsel at *Free Press*, a nonprofit organization that advocates on issues relating to media and technology. Mr. Wood leads the organization's policy and legal efforts.

We welcome our witnesses and thank them for appearing today.

We will begin by swearing you in. Would you please rise and raise your right hand. Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief so help you God?

Let the record reflect that the witnesses have answered in the affirmative.

Thank you and you can be seated.

Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask you to summarize your testimony in 5 minutes.

Dr. Ezrielev, you may begin.

STATEMENT OF JAY EZRIELEV

Mr. EZRIELEV. Mr. Chair, the Members of the Committee, thank you for the opportunity to testify on competition and consumer choice and digital streaming. I am Jay Ezrielev, founder of the economic consulting firm, Elevecon. I'm also an adjunct Professor at Antonin Scalia Law School at George Mason University. From 2018–2020, I worked at the FTC as the economic adviser to Chair Joseph Simons.

Digital streaming has revolutionized how we consume video content. It has driven innovation in both content creation and distribution, which benefits consumers. It is now the most popular way we consume video content.

We now have two potential Blockbuster merger deals in digital streaming with both Netflix and Paramount seeking to acquire Warner Brothers. These deals have the potential to reshape the competitive landscape in digital streaming. There is an understandable concern about these deals, what these deals will mean for streaming and content creation.

Will we continue to have innovation and new compelling content delivered via digital streaming. The two potential deals will face antitrust merger review, most likely by DOJ. Will this review make sure that we continue to have the benefits of digital streaming competition?

The two deals come at a pivotal time for antitrust. Antitrust enforcement agencies have been shifting the focus of enforcement from the core focus of harm to competition to pursuing broader policy goals. This shift began under the Biden Administration with the antitrust enforcement agencies pursuing a broader policy agenda, such as combating unfair treatment of workers and seeking to diminish corporate power.

This is a troubling development for antitrust. Deviating from the core antitrust principles will diminish antitrust as a tool for preventing harm to competition. Expanding antitrust beyond this core principle replaces efficient market function with enforcers' views of what is fair and equitable. It chills entrepreneurship by supplanting an entrepreneur's judgment about the best way to allocate capital. It is this entrepreneurship that has brought us enormous innovation and prosperity.

While it's still early days, antitrust enforcement agencies under the current administration are continuing to apply a broad scope of antitrust enforcement. Even more troubling, States are increasingly pursuing their own antitrust agendas beyond preventing harm to competition.

In reviewing the potential Netflix and Paramount deals, antitrust enforcement should focus on the core antitrust goal of preventing harm to competition. The enforcers should not be picking which of the two deals should go through based on what they think will deliver the best outcome for consumers. This choice is for Warner Brothers Discovery shareholders.

The enforcers should also not use their leverage to extract a settlement that advances a policy agenda. The focus should be strictly on preventing harm to competition.

I don't know if there is a compelling antitrust case against either of the deals. However, I would be highly skeptical of an enforcement case based entirely on a structural presumption, or a presumption of substantial lessening of competition based on an increase in market concentration in the relevant market. Such an increase in market concentration should be a starting point for determining whether to move further in the investigation. An increase in market concentration is not by itself a reliable indicator of harm to competition.

Most importantly, let's keep antitrust focused on preventing harm to competition and not on advancing a political agenda.

[The prepared statement of Mr. Ezrielev follows:]

DIGITAL STREAMING AND ANTITRUST

Dr. Jay Ezrielev

Founder, Elevecon

Testimony Before the House Judiciary Subcommittee on Administrative State, Regulatory Reform, and Antitrust

January 7, 2026

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today on competition and consumer choice in digital streaming. I am Jay Ezrielev, founder of the economic consulting firm Elevecon. I am also an adjunct professor at Antonin Scalia Law School at George Mason University. From 2018 to 2020, I worked at the Federal Trade Commission (FTC) as the economic advisor to Chairman Joseph Simons.

Why Digital Streaming Raises Interesting Antitrust Questions

The focus of my testimony is antitrust analysis of digital streaming. Digital streaming competition has drawn the attention of politicians, critics, and the public because of the significant rise in popularity of digital streaming. There is also significant interest in digital streaming because of competing attempts by Netflix and Paramount to acquire Warner Brothers Discovery (WBD). Each of these companies offers digital streaming services. The two deals also have significant vertical components as each company creates and distributes video content. WBD has announced plans to spin off its cable TV business (including CNN) prior to being acquired by Netflix. WBD has accepted the deal with Netflix, but Paramount has launched a hostile bid to acquire WBD.

The Netflix/WBD and Paramount/WBD deals raise significant antitrust policy questions about their effects. Critics have suggested that both deals would diminish digital streaming competition. Critics have also raised concerns that Netflix, if successful at acquiring WBD, would divert Warner Brothers' film distribution away from theatrical releases toward digital streaming, although Netflix claims that it plans to continue theatrical releases of such films.

These deals are also significant because they have the potential to transform how we consume video content. The way we watch videos is changing rapidly with a significant shift to digital streaming and away from cable and satellite. Both the Netflix/WBD and Paramount/WBD deals may further accelerate the shift toward digital streaming. Thus, antitrust review of the two deals may determine how the marketplace for video content distribution evolves over time.

Traditional Role of Antitrust

Before I turn to the analysis of digital streaming competition, it is first important to discuss the role of antitrust enforcement. Antitrust seeks to unleash the full power of markets to generate economic progress and prosperity. Markets under a capitalist system are the greatest prosperity-producing mechanisms in the history of mankind. Entrepreneurs identify money-making opportunities and make a risky investment in the hope of getting rich. They often fail, but they sometimes succeed in spectacular ways, making a great deal of money for themselves and generating prosperity for others. Adam Smith identified this effect in the *Wealth of Nations*, 250 years ago, writing how an “invisible hand” was leading individuals motivated by their own gain to create economic wealth for others.

Antitrust embraces markets’ role in generating economic progress. It does not seek to displace a business’s judgment about the best way to allocate capital to generate value for its enterprise. Instead, antitrust has a limited but critical role in making sure that enterprises do not take actions that generate private gains at the expense of eliminating competition. Antitrust law prohibits mergers when private value generated by a merger comes from eliminating competition rather than through greater efficiencies and innovation.

Antitrust Scope Expansion

There has been a recent shift in antitrust enforcement from the traditional role of preventing harm to competition to pursuing broader policy goals. This shift began under the Biden administration. Biden administration FTC Chair Lina Khan and Assistant Attorney General for the DOJ Antitrust Division Jonathan Kanter embraced the “New Brandeis School” that calls for an expanded role of antitrust enforcement in pursuit of policy goals such as protecting democratic institutions, preserving liberty, and combatting social and economic ills, including income inequality, the rise of dominant corporations, imbalances among competitors, unfair treatment of workers, and concentration of economic power.¹

The Biden administration antitrust enforcers were willing to extend the frontiers of antitrust to pursue the administration’s policy agenda, transcending traditional antitrust.² For example, in September 2024, the FTC brought a lawsuit against the three largest pharmacy benefit managers (PBMs) that accused the companies of “unfair rebating practices.”³ This

¹ Ezrielev, J. (2024, November 14). Trump’s Election Flips the Script on Antitrust. *Barron’s*. <https://www.barrons.com/articles/trump-antitrust-lina-khan-ftc-90a9d1f9?st=BtRx9h>

² *Id.*

³ FTC Press Release, *FTC Sues Prescription Drug Middlemen for Artificially Inflating Insulin Drug Prices* (Sep. 20, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices>.

case illustrates the agency's willingness to use Section 5 of the FTC Act in ways that extend beyond traditional harm to competition analysis. In its lawsuit, the FTC does not allege any decrease in competition among rival PBMs.

While it is still early days, it appears that the antitrust enforcement agencies under the current administration are continuing the Biden administration's policies of enforcing an expanded scope of antitrust in pursuit of a broad policy agenda that goes beyond preventing harm to competition. For example, the FTC under the current administration continues to pursue the "unfair rebating practices" case against the PBMs. In addition, states' attorneys general have increasingly pursued their own antitrust agendas that exceed the normal bounds of antitrust of preventing harm to competition.⁴

This expansion in the scope of antitrust enforcement risks harming economic growth. Pursuing a policy agenda that seeks to condemn conduct that antitrust enforcers deem "unfair" impairs normal market forces that seek economic growth and prosperity. Forcing market participants to adhere to conduct that enforcers deem fair or equitable could supplant a business's judgment about the best way to increase value for its enterprise. Such policies will restrain innovation and diminish economic progress.

Antitrust Analysis of Digital Streaming

Antitrust analysis of the potential Netflix/WBD and Paramount/WBD deals should focus strictly on whether the deals would cause significant harm to competition. The enforcers should avoid the pursuit of an alternative policy agenda that goes beyond preventing harm to competition. Pursuing alternative policy agendas when there is no harm to competition preempts market judgment about the best way to generate value, which chills dynamism and innovation to the detriment of economic progress.

If neither digital streaming deal raises significant antitrust issues (based on potential harm to competition), antitrust enforcement should allow free market forces to find the best way to invest in content creation and distribution of content that generates the most value and best meets market demand. This is especially important for distribution of video content where markets have undergone significant change and are continuing to do so. Free markets are best equipped to meet the challenges of changes in demand and evolving technology as market participants have the expertise and financial motive to allocate assets to serve market demand in the most efficient way.

The antitrust enforcement agencies should allow the markets to choose the digital streaming deals that generate the greatest value for shareholders, unless the enforcers

⁴ See, e.g., Morgan Lewis Insight, *State Attorneys General Increase Antitrust Enforcement* (Apr. 23, 2025), <https://www.morganlewis.com/pubs/2025/04/state-attorneys-general-increase-antitrust-enforcement>.

determine it is appropriate to challenge deals based on evidence of likely harm to competition. Antitrust enforcers should not put their thumb on the scale to determine whether Netflix or Paramount should acquire WBD based on the enforcers' views of which deal would be best for the public. The decision of who will acquire WBD should be made by WBD shareholders. Antitrust enforcement should not interfere with this process (unless antitrust enforcers challenge one or both deals based on compelling evidence of likely harm to competition).

The antitrust enforcers should not use the threat of a potential challenge of either of the deals to extract consents from the merging parties, unless the enforcers have compelling evidence of likely harm to competition. Such extraction of merger settlements may weaken the ability of markets to reach deals that generate greatest value.

Is There a Compelling Digital Streaming Antitrust Case Against the Proposed Mergers?

How likely is a compelling antitrust case against either deal based on a reduction in digital streaming competition? It is hard for me to assess the strength of a case against the proposed deals because I have not reviewed the evidence that the enforcers may use in challenging either of the two deals. That said, I would be highly skeptical of a case against either deal based on a structural presumption approach (presumption of substantial lessening of competition based on an increase in market concentration in the relevant market) for assessing competitive effects.⁵ My skepticism is based on several reasons.

First, mere evidence of an increase in market concentration is not a reliable indicator of substantial lessening of competition. Prior to the Biden administration and the 2023 Merger Guidelines, the federal antitrust enforcement agencies used such increases in market concentration only as an initial starting point for conducting a further investigation of potential merger effects.⁶

Second, defining relevant markets is not a precise science. One could arrive at different relevant market definitions based on sometimes arbitrary assumptions and different market definition methodologies. Significant competition may come from outside the relevant market. For example, if the antitrust enforcement agencies define the relevant market to be Subscription Video on Demand (SVOD) streaming services, that would

⁵ OECD Directorate for Financial and Enterprise Affairs Competition Committee, *The Use of Structural Presumptions in Antitrust – Note by the United States* (Dec. 4, 2024), <https://www.justice.gov/atr/media/1410851/dl>.

⁶ See U.S. Dep't of Justice & Federal Trade Comm'n, *2023 Merger Guidelines* (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf and U.S. Dep't of Justice & Federal Trade Comm'n, *2010 Horizontal Merger Guidelines* (2010), <https://www.justice.gov/atr/file/810276/dl?inline=>.

exclude consideration of competition from other (non-subscription based) digital streaming services and applications such as YouTube and TikTok. The merging parties in either deal may face significant competition from non-subscription-based digital streaming services. For example, if Netflix increased its subscription fees, a significant number of consumers may leave Netflix and watch video content on YouTube instead. Restricting the relevant market to SVOD streaming would only tell a part of the story on digital streaming competition.

Third, even under a SVOD streaming services relevant market, a market definition most favorable for an enforcement case against the Netflix/WBD and Paramount/WBD deals, the current static market shares of each of the companies appear to be relatively small.⁷ Such small shares do not suggest that there is likely to be compelling empirical evidence of harm to digital streaming competition from either deal.

Fourth, that both Netflix and WBD offer SVOD streaming services does not mean that the two streaming services provide a significant competitive constraint on each other. The analogous argument applies to SVOD services of Paramount and WBD. Many consumers may not view Netflix and HBO Max as significant substitutes for their consumption of video streaming because they want to subscribe to both services. Consumers may also not view Netflix and HBO Max as significant substitutes because the content of the two services is sufficiently differentiated, and a significant share of consumers may not view the two services as reasonably interchangeable.

Fifth, current market shares may not be meaningful gauges of long-term competitive significance if the market is undergoing significant changes and market shares are not stable over time. Entry, exit, and shifting consumer preferences can significantly alter the market's competitive dynamics and may lead to significant shifts in market share among market participants. The dynamic nature of competition in the relevant market (including significant entry, exit, and expansion by market participants) suggests that assessing competitive effects based on static competition models and static shares would yield unreliable results.

Sixth, either of the proposed mergers may generate significant efficiencies that would counterbalance any harmful effects associated with an increase in market concentration.

⁷ See, e.g., evoca.tv, *Streaming Service Market Share (2026) – Revenue Data* (Dec. 19, 2025), <https://evoca.tv/streaming-service-market-share/>.

Mr. FITZGERALD. Thank you, Doctor. The doctor yields back. Ms. Melugin, you may now begin.

STATEMENT OF JESSICA MELUGIN

Ms. MELUGIN. Chairman Fitzgerald, Ranking Member Nadler, and the distinguished Members of the Subcommittee, thank you for inviting me to testify. My name is Jessica Melugin. My work focuses on technology and antitrust at the Competitive Enterprise Institute, a nonpartisan public policy organization. I am also an anti-trust and competition fellow at the Innovators Network Foundation.

It's sometimes said that history does not repeat itself, but it often rhymes. Certainly, there is a familiar tone in today's conversation around the merits of antitrust intervention in digital streaming markets to what we've heard before in past calls to intervene in entertainment mergers.

In 2005, after what *The Wall Street Journal* then described as, quote, "The not so gentle prodding of Federal antitrust authorities," the movie rental chain Blockbuster dropped its bid to purchase rental chain rival Hollywood Entertainment. Defenders of the merger pointed to the emerging competitive threat of a then up-and-comer who had signed up three million subscribers to rent DVDs through the mail. That disruptor was, of course, Netflix.

While regulators fretted about the combined market power of two brick-and-mortar DVD rental chains, the market was busy shifting the paradigm.

An increasingly widespread internet soon disrupted traditional models of distribution once again. Netflix was adept enough to navigate that transition from the post office to telecom, and the company now finds itself more directly involved in the conversation around preserving competition in the entertainment industry.

While the details of these separate cases have changed, the lessons of regulatory restraint remain the same. Just as the Federal Trade Commission could not have anticipated the technological shifts that rendered physical DVD rentals nearly obsolete, anti-trust regulators today still cannot predict what might come next. They can, however, observe current market dynamism to better understand how allocating economies of scale and vertical—allowing economies of scale and vertical integration could benefit consumers.

As digital streaming companies and adjacent market participants adjust to a landscape where consumers' time and attention are now the most important remaining scarcities, regulators will likely evaluate their attempts to merge, adapt, and compete. This process should follow well-established methodologies, using economic evidence to determine the relevant market and possible anticompetitive effects, while equally assessing the potential proconsumer consequences.

Determining the proper relevant market will be the first step of any antitrust litigation, but it won't be an easy task here. Government efforts to block mergers will likely attempt to establish the narrowest possible definition of the relevant market; namely, subscription video-on-demand exclusively. Does that provide an accurate reflection of how consumers view possible substitutions? Do broadcast, cable, and satellite channels still provide ample competi-

tive pressure to restrain prices, encourage output, or maintain quality for merged streaming services?

Looking forward, rather than backward, does YouTube TV or even the standard YouTube or TikTok platform sufficiently compete with streaming for consumer attention? Social media's vast and free-to-the-company content may well constitute a sufficient competitive threat to streaming services that justifies their need to bolster their holdings of more evergreen rewatchable content libraries and the production capabilities of traditional studios.

Perhaps concerns about preserving competition are less about horizontal issues between merging streaming services and more about the ability of traditional companies to survive and compete with social media giants.

Even the narrowest relevant market will prove challenging for regulators to defend in court. If opponents of a merger succeed in defining the market as confined exclusively to subscription video-on-demand, market shares will be difficult to establish.

Muddying the waters of market share are the widespread practices of consumers maintaining many subscriptions simultaneously, known as multihoming; bundled subscriptions like Disney Plus that might also include ESPN and Hulu—or maybe not; third-party bundles offered through mobile carriers, internet service providers, or credit cards; Amazon Prime subscriptions that might result more from e-commerce interest than from streaming entertainment interest; and different tiered offerings with or without advertising offered for different prices.

Regardless of the relevant market, the market shares agreed on, courts will then be required to evaluate the competitive effects of the merger. Proposed mergers may hold the promise of significant economic efficiency gains and commensurate benefits for consumers.

Even horizontal aspects of mergers, such as those involved in Netflix and Warner Brothers Discovery deal may benefit consumers. Increased selection, cost savings, and more accurate recommendations are all possibilities.

Regulators must recognize that traditional media companies require flexibility to adapt to prevent meeting the same fate as the Blockbuster dinosaur. Constraining these entities from pursuing such arrangements by pretending the market is static will neither benefit consumers nor competition in the long run.

Thank you for this opportunity.

[The prepared statement of Ms. Melugin follows:]



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U.S. House of Representatives

Subcommittee on the Administrative State, Regulatory Reform and Antitrust of the

Committee on the Judiciary

2141 Rayburn House Office Building

January 7, 2026

Hearing on “Full Stream Ahead: Competition and Consumer Choice in Digital Streaming”

Written Statement of Jessica Melugin

Director, Center for Technology and Innovation

Competitive Enterprise Institute

Chair Fitzgerald, Ranking Member Nadler, and distinguished members of the subcommittee, thank you for holding this hearing and inviting me to testify today. My name is Jessica Melugin. My work focuses on technology and antitrust at the Competitive Enterprise Institute, a nonpartisan public policy organization that concentrates on regulatory issues from a free-market perspective. I am also an Antitrust and Competition Fellow at the Innovators Network Foundation.

It is sometimes said that history does not repeat itself, but it often rhymes. Certainly, there is a familiar resonance in today’s conversation around the merits of antitrust intervention in digital streaming markets to what we have heard before in calls to intervene in entertainment mergers of the past.

In 2005, after what the *Wall Street Journal* then described as, “the not-so-gentle prodding of federal antitrust authorities,” the movie-rental chain Blockbuster dropped its bid to purchase its rival, Hollywood Entertainment.¹ Defenders of antitrust restraint at the time pointed to the emerging competitive threat of an up-and-comer who had, by then, signed up three million subscribers to rent DVDs through the mail. That disruptor was, of course, Netflix. While regulators fretted about the combined market power of two brick-and-mortar DVD rental chains, the market was busy shifting the paradigm.

¹ “Blocking Blockbuster,” *Wall Street Journal*, March 30, 2005, <https://www.wsj.com/articles/SB111214522098992704>.

The increasingly widespread internet soon disrupted traditional models of distribution once again. Netflix was adept enough to navigate the transition from the post office to telecommunications, and the company now finds itself more directly targeted in the conversation around preserving competition in the entertainment industry. The focus has shifted from purely distributional issues to the integration of distribution with content and the resulting effects on consumers.

While the details of these cases have changed, the lessons of regulatory restraint still remain relevant. Just as the Federal Trade Commission could not anticipate the technological shifts that have rendered physical DVD rentals nearly obsolete, antitrust regulators still cannot predict what will come next. They can, however, observe current market dynamism to better understand how allowing economies of scale and vertical integration could benefit consumers.

As digital streaming companies and adjacent market participants adjust to a landscape where consumers' time and attention are the most important remaining scarcities, regulators will evaluate attempts to merge, adapt, and compete. This process should follow well-established methodologies, using economic evidence to determine the relevant market and possible anticompetitive effects while, equally, assessing the potential pro-consumer consequences.

Determining the proper relevant market will be the initial step of any antitrust litigation. However, that task will not be easy in this context. Government efforts to block mergers will likely attempt to establish the narrowest possible definition of the affected market. That may be defined as subscription video-on-demand exclusively, but does that provide an accurate reflection of how consumers view possible substitutions? Do broadcast, cable, and satellite channels still provide ample competitive pressures to restrain prices, output, or quality for merged streaming services?²

And looking forward rather than backward, does YouTube TV, or even the standard YouTube platform, sufficiently compete with streaming for consumer attention? YouTube's vast and 'free to the company' content may well constitute a sufficient competitive threat to streaming services to justify their need to bolster their position through the acquisition of the more evergreen, rewatchable content libraries and production capabilities of traditional studios. Perhaps concerns about preserving competition are less about horizontal issues between merging streaming services and more about the ability of those companies to survive and compete with social media giants.

Even the narrowest relevant market will prove challenging for regulators to defend in court. If opponents of a merger succeed in defining the market as confined exclusively to subscription video-on-demand only, market shares will be difficult to establish.³ Muddying the waters of

² "The Gauge: TV Viewing Trends in the U.S.," Nielsen, accessed January 3, 2026, <https://www.nielsen.com/data-center/the-gauge/#viewing-by-platform>.

³ Eric Fruits, "Streaming Market Shares: Error 404, Data Not Found," Truth on the Market, December 11, 2025, <https://truthonthemarket.com/2025/12/11/streaming-market-shares-error-404-data-not-found/>.

market share are the widespread practices of consumers maintaining many subscriptions simultaneously, known as ‘multi-homing’; bundled subscriptions like Disney+ that might also include ESPN and Hulu—or not; third-party bundles offered through mobile carriers, internet service providers, or credit cards; Amazon Prime subscriptions that might result from e-commerce consumer motivation more than from streaming entertainment interest; and different tiered offerings with or without advertising offered for different prices.

Regardless of the relevant market and the market shares agreed upon, courts will then be required to evaluate the competitive effects of the merger.⁴ Proposed mergers may hold the promise of significant economic efficiency gains and commensurate benefits for consumers, particularly those with vertical aspects.⁵ But even the horizontal aspects of mergers, such as those involved in the Netflix and Warner Bros. Discovery deal, may benefit consumers. Increased selection, cost savings, and more accurate recommendations are all possible outcomes.⁶

Regulators must recognize that traditional media companies require the flexibility to adapt to prevent meeting the same fate as the Blockbuster dinosaur. Constraining these entities from pursuing such arrangements by pretending the market is static will benefit neither consumers nor competition in the long run.

Thank you for this opportunity and I look forward to your questions.

⁴ Josh Wright, “Just How Much Antitrust Risk Is There in a Netflix - Warner Brothers Merger?,” *Competition on the Merits*, Substack, December 29, 2025, <https://competitiononthe merits.substack.com/p/just-how-much-antitrust-risk-is-there>.

⁵ Fred Ashton, “Netflix/WBD Deal Likely to Face Antitrust Investigation, American Action Forum, December 9, 2025, <https://www.americanactionforum.org/insight/netflix-wbd-deal-likely-to-face-antitrust-investigation/>.

⁶ John M. Yun, “Evaluating the Sale of Warner Bros Discovery to Netflix from an Antitrust Perspective,” *Truth on the Market*, December 8, 2025, <https://truthonthemarket.com/2025/12/08/evaluating-the-sale-of-warner-bros-discovery-to-netflix-from-an-antitrust-perspective/>.

Mr. FITZGERALD. Thank you, Ms. Melugin. Dr. Yun, you are now recognized.

STATEMENT OF JOHN M. YUN

Mr. YUN. Good morning. Thank you, Chair Fitzgerald, Ranking Member Nadler, and the distinguished Members of this Subcommittee. It's a true honor to be here. My name is John Yun, and, obviously, we're here to assess the potential combination of Netflix and Warner Brothers and associated assets.

I see three main issues and there are more, but these are the three that I'll focus on, but happy to discuss more:

(1) The consumer-facing combination downstream in the streaming service market between Netflix and HBO Max. What's going to happen to those prices and the bundles? What's the relevant market to assess that competition?

(2) What happens to HBO Max? Does it remain an independent streaming option, or it will be integrated? If so, how?

(3) What about the upstream assets, the combination of Netflix production studio, as well as Warner Brothers Studios? What happens to that content library, the content creators, that distribution? Is there an incentive to foreclose others from access to that previously do have access?

As I mentioned, these invoke both what we call horizontal and vertical issues in antitrust. Horizontal issues are your standard issues of competition between competitors. Think Coke versus PEPSI, Samsung versus Apple. Those are the same issues that we can see both in the streaming market downstream and the streaming production market upstream.

There's also something called a vertical issue, though, and that's the possible control of two or more levels of the supply chain. Here, the primary concern that I've seen is that Netflix now will control WB Studios' assets and distributions and IP properties. What does that mean for consumers?

All of these questions are going to be governed under the Clayton Act, Section 7, which is substantial lessening of competition or a tendency to create a monopoly, and the courts have consistently examined three markers to whether this is going to be met or not and that's usually prices, output, and innovation. Other objectives have been called on and looked at, at times, but these are the three that almost inevitably the court's rule examine.

That being said, let's start with question (1), the combination possibly of Netflix and HBO Max. The key question, as mentioned previously, will be what is the relevant market in which these streaming services compete? Is it limited to just other streaming services, like Amazon Prime Video, Apple Plus, Peacock, and Paramount Plus? If so, what's the market share? We do have debates of whether market shares are good proxies for market power, which is what we're really interested in, but the courts have been clear, this is what they will look at.

The combination of Netflix and HBO Max will, according to some estimates, and these are just public estimates, can be above 30 percent. I'll mention in a moment why that matters. There are other sources, though, that put it below 30 percent, so it will be a key question of what the real data shows.

Assuming it does hit the 30 percent or more marker, the reason this matters is a 1963 Supreme Court case, *Philadelphia and National Bank*, and it established a structural presumption that if you're above that 30 percent, there's a presumption that the deal is illegal and harmful to consumers. It doesn't mean it is. There is an opportunity by the parties to demonstrate that the procompetitive benefits outweigh that presumption. It's not an illegal call, but it is a strong presumption and relevant for this assessment.

It's pretty close to 30 percent, the sources I've seen, so that does move it a little bit closer to the parties' favor, but it is still above that presumption, so it's going to be an incentive to the parties. I say that not cynically, but it could be the reality that the market is broader than just streaming services. It could include YouTube. It could include TikTok. It could include cable, satellite, et cetera. That's going to be a key question and something that I think I'm happy to explore further later.

In terms of question (2), will HBO Max remain an independent service is a concern I've seen publicly and in forums, just in preparation for this hearing. An astounding statistic that Netflix has shared is that 75 percent of HBO Max subscribers are also Netflix subscribers. That makes me sort of, based on my economic training, think that this is going to be integrated into some type of premium tier. Happy to discuss further. That's just a prediction. It's unlikely that HBO Max will remain an independent service post-merger.

Question (3) is the vertical concern, that Netflix's control of WB's assets upstream will lead to some type of foreclosure of that. For example, Harry Potter was available on Peacock even though that's a WB property. Ted Lasso was produced by WB Studios for Apple Plus. Will all of that stop post-merger? That consideration I think will also be part of what the agencies and the courts examine.

With that, my time is up, so thank you very much.

[The prepared statement of Mr. Yun follows:]

Prepared Statement of

John M. Yun

Professor of Law
Antonin Scalia Law School
George Mason University

Before the

United States House of Representatives
Committee on the Judiciary
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

Hearing on

“Full Stream Ahead: Competition and Consumer Choice in Digital Streaming”

Washington, DC

January 7, 2026

1 Introduction

Chairman Fitzgerald, Ranking Member Nadler, and distinguished Members of the Subcommittee, thank you for offering me the opportunity and privilege to appear before you today. My name is John Yun. I am an economist and a Professor of Law at the Antonin Scalia Law School, George Mason University. Previously, I was at the U.S. Federal Trade Commission for 18 years in a variety of positions including as a staff economist and an Acting Deputy Assistant Director in the Bureau of Economics, Antitrust Division. I have also taught economics at Georgetown University, the Georgia Institute of Technology, and Emory University.

Warner Bros. Discovery (WBD) has announced that it is selling its Warner Bros. studios (WB) (home of properties such as Harry Potter, DC Comics movies, Lord of the Rings, and Game of Thrones) and HBO, including HBO Max, to Netflix.¹ Netflix was chosen among a group of bidders that also included Paramount and Comcast.² This potential combination of WB-HBO and Netflix raises several important antitrust questions. Will the combination result in a less competitive streaming market with associated adverse outcomes for consumers? Related, is the relevant market to assess this deal broader than a narrowly defined “streaming only” market to include traditional, scheduled broadcasts of content—called “linear TV” (e.g., cable TV, broadcast networks, satellite TV, and hybrids like YouTube TV)—or video content from social media platforms including YouTube and TikTok? Further, what will happen to HBO Max post-merger? Will it remain a separate service or be integrated into Netflix? Upstream, will the combination of WB Studios (and all associated WBD production properties) and Netflix Studios (i.e., Netflix’s in-house production of its original movies and shows) create additional concerns?

As the above questions indicate, there are two areas of overlap that will likely be the primary focus of an antitrust investigation. The first overlap is the consumer-facing services of Netflix and HBO Max. The second overlap is combining Netflix and WB’s content

¹ See, e.g., Netflix, *Press Release*, Dec. 5, 2025, <https://about.netflix.com/en/news/netflix-to-acquire-warner-bros>.

² See, e.g., Alex Weprin, *Warner Bros. Is For Sale, Who’s Buying?*, THE HOLLYWOOD REPORTER, Nov. 8, 2025, <https://www.hollywoodreporter.com/business/business-news/warner-bros-sale-odds-buyers-1236421920>.

production and the subsequent distribution of movies and shows. Consequently, the deal involves both “horizontal” and “vertical” antitrust issues. Horizontal issues involve the direct competition between rivals within a specific market. For example, Coke and Pepsi are horizontal competitors within a soft drink market. Similarly, combining Netflix and HBO Max is a horizontal concern—as is the combination Netflix Studios and WB Studios. Vertical issues arise when two or more levels of a supply chain are impacted by a deal. For instance, if a large beer manufacturer purchases a large aluminum can supplier, this would invoke “vertical” concerns. Specifically, the concern would be whether the deal would incentivize the beer manufacturer to either (a) foreclose rival beer producers’ access to aluminum cans—by denying supply or significantly raising prices (“input foreclosure”)—or (b) foreclose rival aluminum can suppliers by denying them access to the manufacturer’s beer brands (“customer foreclosure”). Similarly, does the deal incentivize the combined firm to foreclose WB Studio content (e.g., Harry Potter movies) from non-Netflix services (e.g., Peacock, where, as of this moment, Harry Potter is currently available)?

2 *Horizontal Overlap #1: Streaming Services*

The combination of Netflix’s market-leading streaming service with HBO Max is the first horizontal overlap that will likely receive significant scrutiny from the antitrust agencies.³ The question is whether this combination will lessen competition to the degree that consumers will experience higher prices, lower output, or less innovation.⁴ To address this question, the central issue will be to delineate the boundaries of the “relevant market” to assess the competition between Netflix and HBO Max. The relevant market bounds the legal and economic analysis to incorporate the material competitive constraints on the

³ A legal challenge would be brought under the Clayton Act, Section 7 that prohibits mergers and acquisitions where “in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.”

⁴ See, e.g., Herbert Hovenkamp, *The Structure of Merger Law*, NOTRE DAME L. REV. (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4851593 at 3 (“The best metrics for identifying lessened competition from a merger are higher prices, lower market output, or diminished innovation, consistent with the goals of antitrust generally. Most Supreme Court and lower court antitrust decisions articulate these goals for antitrust policy.”). While other objectives could be considered (e.g., loss of consumer choice, greater political influence), pursuing these objectives would face significant legal challenges.

merging parties. Once the relevant market is delineated, market shares are calculated. Market shares play an important role in antitrust cases because they are used as proxies for market power and the ability to change market conditions within the relevant market.

The most “natural” boundary for this deal is a U.S. streaming service market that would include Netflix, Amazon Prime Video, Disney+ (Hulu),⁵ Paramount+, Peacock, HBO Max, and Apple TV+.⁶ The most obvious difference between a streaming service and linear TV services, such as cable TV, is the ability to watch shows and movies “on demand.”⁷ A U.S. streaming service market comprised of these leading providers is likely the “narrowest” market that the agencies would define, where “narrow” refers to the scope of substitute products included in the relevant market. In contrast, the parties are likely to advocate for a broader market definition that could include linear TV; hybrids such as YouTubeTV (that has both linear and on-demand content); and video-sharing platforms (e.g., YouTube, TikTok).⁸

Assuming for the moment that the relevant market is streaming services, finding reliable market share data is a bit tricky. First, there is the question of geographic scope. Various sources tend to report global subscriber counts and market shares, which may not map well to the U.S. market. For example, according to one source, the top four streaming services by global subscribers are Netflix (302 million subscribers), Amazon Prime Video (200 million), Disney+ (131 million), and HBO Max (128 million).⁹ Yet, using the same source (and taking the information with a grain of salt), if we filter the data to just the U.S., the subscriber counts are as follows: Netflix (82 million), Amazon (75 million), Hulu (64 million),

⁵ Disney+ and Hulu are merging into one service in 2026. See, e.g., Roger Palmer, *Hulu to Merge into Disney+*, WHAT'S ON DISNEY PLUS, Aug. 6, 2025, <https://whatsondisneyplus.com/hulu-to-merge-into-disney>.

⁶ This market could also be called “subscription video on demand” (SVOD). There are numerous other streaming services available; however, their market shares likely too small to materially impact the analysis, and they are likely sufficiently differentiated from the leading streaming services that the agencies would seek to exclude them (e.g., ESPN+ for sports, Crunchyroll for Japanese anime shows and films).

⁷ Consequently, the streaming service market has been given the label “subscription video on demand” (SVOD).

⁸ See, e.g., Lara O'Reilly & Lucia Moses, *Read the Letter Netflix's Co-CEOs Sent to Reassure Staffers About Its Bid to Buy Warner Bros.*, BUSINESS INSIDER, Dec. 15, 2025, <https://www.businessinsider.com/netflix-co-ceos-send-staffers-letter-about-warner-bros-deal-2025-12> (quoting a letter from Netflix CEO to staffers: “Are we confident regulators will approve? ... if you look at it through the lens of Nielsen data, even after combining with Warner Bros., our view share would only move from 8% to 9% in the US—still well behind YouTube (13%) and a potential Paramount/WBD combination (14%).”).

⁹ FlixPatrol, *Streaming Services*, <https://flixpatrol.com/streaming-services>.

Paramount+ (59 million), HBO Max (58 million), Disney+ (55 million),¹⁰ Peacock (41 million), and Apple TV (18 million).¹¹ If we take the above eight services as the “universe” of streaming services in the U.S., the corresponding market shares are as follows: Netflix (18%), Amazon (17%), Hulu (14%), Paramount+ (13%), HBO Max (13%), Disney+ (12%), Peacock (9%), and Apple TV (4%). These shares are generally consistent with a Pew Research survey that found 72% of U.S. adults say they have watched programming on Netflix with Amazon a close second at 67%.¹² The rest of the survey results are also broadly consistent with the above market shares: Hulu (52% of adults), Disney+ (48%), Paramount+ (44%), Peacock (41%), HBO Max (41%), and Apple TV+ (25%).

Even if the above percentages are accurate, is an aggregate count of subscribers a good proxy for market power? One reason to question the proxy is that there is clearly a difference between “users” and “use,” i.e., the time spent on a service. For example, a streaming service that has 100 users who watch, on average, 10 hours a week likely has more influence on the market than a competing service that has 100 users who watch, on average, one hour a week. This observation is based on the presumption that the intensity of use likely correlates with demand inelasticity, that is, all else equal, users are less price sensitive for services they use a lot of relative to services they rarely use. There are exceptions to this presumption, however. For instance, suppose that HBO Max is not “used” as much as Netflix or Amazon, but households maintain the subscription because the value of each “use” is high (e.g., HBO Max offers more blockbuster movies that subscribers watch only once or twice but place a high value on).

Further, things are complicated by the fact most American households subscribe, on average, to approximately three to four streaming services.¹³ Thus, there is pervasive “multi-

¹⁰ I have kept Disney+ and Hulu separate for the purposes of calculating market shares because the integration has not yet occurred, and it is not clear what will happen to their combined subscriber counts.

¹¹ FlixPatrol, *Top Streaming Services by Subscribers in the United States*, <https://flixpatrol.com/streaming-services/subscribers/united-states>.

¹² Eugenie Park & Colleen McClain, *83% of U.S. adults use streaming services, far fewer subscribe to cable or satellite TV*, PEW RESEARCH CENTER, July 1, 2025, <https://www.pewresearch.org/short-reads/2025/07/01/83-of-us-adults-use-streaming-services-far-fewer-subscribe-to-cable-or-satellite-tv>.

¹³ See, e.g., Emily Glover, *Top Streaming Statistics*, FORBES, Nov. 27, 2025, <https://www.forbes.com/home-improvement/internet/streaming-stats>; Jack Caporal, *State of Streaming 2025: Streaming Services and Consumer Sentiment*, THE MOTLEY FOOL, Dec. 28, 2025, <https://www.fool.com/research/state-of-streaming>.

homing” in the streaming market. Yet, it is not clear what this means for competition. On one hand, pervasive multi-homing suggests that consumers have options. On the other hand, it may be the case that multi-homing is not suggestive of substitution options but rather complementarities—or, relatedly, a desire to supplement the primary streaming service(s) with additional programming. For instance, the previously referenced Pew survey found that 21% of surveyed adults have watched ESPN+ (the subscription-based version of ESPN).¹⁴ It is unlikely that most of those adults would perceive ESPN+ as a substitute for Netflix or Hulu. The same logic could be applied to other streaming services that are more differentiated, e.g., Disney+ has more programming aimed at a younger audience. According to one survey, Disney+ users are the most price sensitive and would be “the first to go” for 44% of the respondents, which is consistent with the view that Disney+ is perhaps more a complement, or a supplement, than a complete substitute for other leading streaming services.¹⁵ Perhaps this is part of the motivation for integrating Hulu into Disney+, which is to offer a more robust set of programming options to increase “use” and make the joint service more demand inelastic.

So, how should the government measure who is “winning” the streaming market? Ultimately, while imperfect, the best measure is likely the share of total hours watched. This was the approach taken by the district court in *Federal Trade Commission (FTC) v. Meta*, where the court rejected the FTC’s proposed “personal social networking” market (comprised principally of Facebook, Instagram, and Snapchat) and defined the market more broadly as social media (which includes YouTube and TikTok).¹⁶ Importantly, within this market, the court explained that “the best single measure of market share is total time spent.”¹⁷ Of course, no measure is going to be perfect, so market shares should only be used as a rough proxy for market power—where the real work will come in understanding the

¹⁴ Park & McClain, *supra* note 12.

¹⁵ Glover, *supra* note 13. One analogy is the various rooms in a house that you could use to relax, e.g., living room, den, basement rec room. These rooms are complementary (i.e., you want both a living room and a basement rec room when looking for a house) but also substitutes in use.

¹⁶ *Federal Trade Commission v. Meta Platforms*, Case 1:20-cv-03590-JEB (Nov. 18, 2025), <https://assets.bwbx.io/documents/users/iqjWHBFdfxIU/rww8JGP.20cc/v0>.

¹⁷ *Id.* at 82.

competitive effects between the various streaming providers based on documents, testimony, and data. Within this context, determining the “diversion ratios” between the various streaming services will be critical to understand the degree to which various services are “close” or “distant” substitutes.¹⁸

Nonetheless, market shares *are* critical for the legality of a merger between competitors under the Clayton Act, Section 7, due to the Supreme Court’s precedent established in *Philadelphia National Bank (PNB)*.¹⁹ The 1963 case involved the merger of two Philadelphia-based banks, PNB and Girard Trust Corn Exchange Bank. At the time of the proposed merger, PNB and Girard represented the second and third largest banks in Philadelphia, respectively, and the combined entity would become the largest bank surpassing the First Pennsylvania Bank and Trust Company. The Court notably found that a merger with a combined share above 30% is presumptively sufficient for plaintiffs to “prove” anticompetitive harm from the merger.²⁰ This “structural presumption” remains in place today and would be applied to the combination of Netflix and HBO Max. Whether the merger meets that threshold will depend, again, on the boundaries of the relevant market and how market shares are calculated.

The reason why the PNB presumption matters is because, otherwise, the plaintiff would need to bring greater evidence to meet their legal burden that the acquisition results in anticompetitive harm. Merger analysis is governed under a “rule of reason” framework where the plaintiff must first demonstrate anticompetitive harm through documents, analysis, testimony, etc.²¹ If the plaintiff meets that burden, then the burden shifts to the defendant who has an opportunity to show that the deal is procompetitive and will improve market outcomes for consumers. This is an appropriate burden—as the defendants are the

¹⁸ For example, if 100 users leave Netflix due to a price increase, and 20 of those users move to HBO Max, then the diversion ratio between the two products is 20%. Alternatively, suppose that HBO Max was not available one day due to a technical problem, where would those users divert their attention to?

¹⁹ *United States v. Philadelphia Nat’l Bank*, 374 U.S. 321 (1963), <https://supreme.justia.com/cases/federal/us/374/321>.

²⁰ *Id.* at 364 (“Without attempting to specify the smallest market share which would still be considered to threaten undue concentration, we are clear that 30% presents that threat.”).

²¹ See, e.g., John M. Yun, *The Legality of Legacy Business Practices in Antitrust*, 24 U. Pa. J. Bus. L. 244, 253-55 (2021).

low-cost providers of the information and have a strong incentive to present all the pertinent evidence supporting their merger efficiency claims. Finally, the burden shifts back to the plaintiff to make the case that the procompetitive justifications could be achieved through “less restrictive” alternatives.

Consequently, one of the key questions will be the combined market share of Netflix-HBO Max based on viewing hours. To that end, one source does report data on streaming service market shares based on viewing hours (although, again, the accuracy of the information is uncertain, and the data is from 2024).²² Specifically, the market shares based on hours watched are as follows: Amazon (21%), Netflix (20%), HBO Max (15%), Disney+ (13%), Hulu (11%), Paramount+ (7%), Apple TV (6%), Peacock (2%), and others (5%). Based on these values, a combined Netflix and HBO Max would represent approximately 35% of all streaming hours, which would make it the largest single player in the market and, crucially, place it above the 30% PNB threshold.

Based on another source (S&P Global) that measures market shares for streaming services using subscription revenue, a combined Netflix-HBO Max would have a 39% share,²³ which, again, is over the PNB threshold. Specifically, the revenue shares are as follows: Netflix (28.3%), Hulu (12.3%), HBO Max (10.7%), Prime Video (9.2%), Peacock (8.8%), Disney+ (8.7%), Paramount+ (7.7%), Apple TV (1.9%), and Others (12.5%).

Does it matter that the combined market share is just barely above the 30% PNB threshold (when using the combined 35% market shares based on hours watched)? Yes and no. Common sense dictates that a combined market share of 35% percent is obviously different than something significantly higher, e.g., 55%. Nonetheless, legal presumptions are there to ease the administrative burdens on courts. Consequently, once the combined shares are above the 30% threshold (whether 35% or 55%), the legal presumption of anticompetitive harm applies. However, the presumption is logically weaker the closer the

²² See Erik Gruenwedel, *Report: Netflix Barely Maintains U.S. Market Share Advantage Over Prime Video*, MEDIA PLAY NEWS, Apr. 4, 2024, <https://www.mediaplaynews.com/report-netflix-barely-maintains-us-market-share-advantage-over-prime-video>.

²³ See James Faris & Lucia Moses, *Who Does Netflix Compete With? That Question Could Make or Break Its Warner Bros. Bid*, BUSINESS INSIDER, Dec. 15, 2025, <https://www.businessinsider.com/netflix-warner-bros-antitrust-analysis-paramount-skydance-regulators-social-media-2025-12>.

combined share approaches the 30% threshold. This will be most likely be relevant when agencies, and potentially courts, examine the procompetitive justifications that will be offered by the parties. If the shares are closer to the PNB threshold, then, all else equal, it stands to reason that the parties have a better chance to demonstrate that the procompetitive efficiencies from the deal outweigh the presumptive harm.

Given the specter of the *PNB* precedent, Netflix will likely advance an argument that it competes in a market that is broader than streaming services. As mentioned, candidates for this broader market include linear TV and video-sharing platforms like YouTube and TikTok. How will this determination be made? A useful case study is the *FTC v. Meta* decision, where the district court considered empirical evidence of substitution between Facebook-Instagram and YouTube & TikTok.²⁴ This included observational data on consumer use patterns, survey data, and “natural experiments” to measure substitution (e.g., when YouTube experience a 90-minute outage in 2018). For Netflix and WBD, establishing this broader market will be critical because of the PNB threshold (although, even with the PNB presumption, they have an opportunity to demonstrate procompetitive efficiencies). While it may be easy to dismiss the inclusion of YouTube and TikTok as competitors for the attention of Netflix and HBO Max users, the line between streaming services and video-sharing platforms is not always clear. For instance, survey data indicates that Gen Z (born between 1997-2012)²⁵ watches relatively less streaming services and relatively more social media compared to older generations.²⁶ This leads one observer to conclude that “younger generations may be more likely to part ways with streaming services, especially if they become more expensive or fragmented.”²⁷ Additionally, the various platforms themselves do not neatly fall into viewing categories. For instance, Netflix also offers live events, videos games, and podcasts.²⁸ YouTubeTV also offers video on

²⁴ *FTC v. Meta*, Case 1:20-cv-03590-JEB, at 41-61.

²⁵ Beresford Research, Age Range by Generation, <https://www.beresfordresearch.com/age-range-by-generation>.

²⁶ Glover, *supra* note 13.

²⁷ *Id.*

²⁸ See, e.g., Kourtnee Jackson & Brian Rosenzweig, *Netflix Review: Our Top Pick in a Sea of Streaming Choices*, CNET, Nov. 7, 2025, <https://www.cnet.com/tech/services-and-software/netflix-review-our-top-pick-sea->

demand in addition to its linear TV content.²⁹ Relatedly, there is evidence that content is “evolving,” e.g., the rising popularity of “micro dramas” that blur the line between social media platforms, apps, and streaming services.³⁰

In sum, although a relevant market limited to streaming services appears most plausible, *FTC v. Meta* cautions that the ultimate market delineation will turn on the economic evidence—specifically, whether user attention is sufficiently fungible between streaming services and other outlets, such as video-sharing platforms. This is particularly important if we consider audiences across generations may have very different preferences as markets inevitably evolve. We can even consider the history of Netflix, which began as a mail-order DVD rental company. In 2005, Blockbuster withdrew its bid to acquire Hollywood Video due to a likely antitrust challenge from the FTC.³¹ One article highlights that “Blockbuster, however, argued that the FTC failed to consider competition that its stores face from online rental services such as Netflix Inc. and from cheap DVDs sold at discount stores.”³² The rest is history. Hollywood Video and Blockbuster ceased operating in 2010 and 2014, respectively; although, there is one Blockbuster store remaining in Bend, Oregon.³³ This episode illustrates that markets may evolve in ways that buck conventional wisdom or prevailing presumptions.

streaming-choices; Netflix, *Cast Your Eyes on These Pods! Soon You Can Watch Them on Netflix*, Dec. 25, 2025, <https://www.netflix.com/tudum/podcasts>.

²⁹ See, e.g., Eric Liston, *YouTube TV On-Demand Library 2024 and Live Streaming*, FLIXED, Dec. 15, 2023, <https://flixed.io/youtube-tv-on-demand-library-live-streaming>.

³⁰ See, e.g., Lucia Moses, *5 Hollywood Companies from Fox to Disney that are Looking to Capitalize on Soapy ‘Micro Dramas’*, BUSINESS INSIDER, Nov. 9, 2025, <https://www.businessinsider.com/hollywood-invests-micro-dramas-disney-fox-explore-the-format-2025-11>; Elaine Low, *The Art of Hooking Audiences: Execs from a Disney-Backed Microdrama App Tell All*, THE ANKLER, Nov. 10, 2025, <https://theankler.com/p/the-art-of-hooking-audiences-execs> (“With 50 million-plus monthly active users, DramaBox CEO Ruiqing Chen tells me...that the app — which relies on both ads as well as paying subscribers who buy tokens to watch more episodes — is experiencing its highest revenue growth in North America...”).

³¹ See, e.g., Mike Musgrove, *Blockbuster Withdraws Hollywood Merger Bid*, THE SEATTLE TIMES, Mar. 26, 2005, <https://www.seattletimes.com/business/blockbuster-withdraws-hollywood-merger-bid>.

³² Associated Press, *Blockbuster Ends Bid for Rival*, NBC NEWS, Mar. 25, 2005, <https://www.nbcnews.com/id/wbna7293540>.

³³ See, e.g., The Malls & Retail Wiki, *Hollywood Video*, https://malls.fandom.com/wiki/Hollywood_Video; Blockbuster, *Our Story*, <https://bendblockbuster.com/about>.

3 ***How will HBO Max Be Folded into Netflix?***

Post-merger, will HBO Max remain a stand-alone product, or will it be integrated into Netflix to one degree or another? For its part, immediately after news of the deal broke, Netflix informed its customers that “[n]othing is changing today” and “[b]oth streaming services will continue to operate separately” during the regulatory and shareholder approval process.³⁴

Presuming the deal goes through, Netflix could pursue several options. The first option is to keep the streaming services separate with a bundled offer. This option is particularly appealing if there is a strong desire to differentiate HBO & WB content from Netflix content or if there is little overlap in their customer bases. The second option is to fully integrate HBO Max into Netflix. This is the route chosen by Disney after its purchase of Hulu, which become part of Disney+ in 2026. A third option is to have HBO Max content available as a “premium” tier within Netflix—but not available as a stand-alone product. This is the route that Paramount+ took with Showtime,³⁵ and this appears to be the option that Netflix will pursue.³⁶ Specifically, Netflix has communicated that “with approximately 75% of HBO Max subscribers also being Netflix members, the significant overlap creates an opportunity to offer consumers more tailored, better optimized subscription plans depending on their specific preferences.”³⁷

Ultimately, given that the likely procompetitive justifications for the deal will involve synergies from combining the two properties (e.g., reducing overlapping expenses, creating an “all-in-one” platform for both libraries, etc.), it is hard to image that HBO Max will survive as a stand-alone product. After a transition period, it seems as if some degree of integration

³⁴ See, e.g., Erik Gruenwedel, *Netflix Says HBO Max Will Remain Separate Streaming Service Until Transaction Closes*, MEDIA PLAY NEWS, Dec. 5, 2025, <https://www.mediaplaynews.com/netflix-says-hbo-max-will-remain-separate-streaming-service-until-transaction-closes>.

³⁵ Paramount+ with Showtime, *About Paramount+ with Showtime*, <https://www.paramountpluswithshowtime.com/legal/19njnd/about-showtime>.

³⁶ Netflix, *Netflix Welcomes Warner Bros. Discovery Board Recommendation*, Dec. 17, 2025, <https://about.netflix.com/en/news/netflix-welcomes-wbd-board-recommendation>.

³⁷ *Id.*

is likely—especially considering that 75% of HBO Max subscribers are also Netflix subscribers, which is an astounding level of overlap.³⁸

The next question is pricing. Assuming the services are combined or HBO Max is offered as a premium tier, what will happen to subscription prices? Currently, the standard plan for Netflix with ads costs \$7.99 per month.³⁹ The HBO Max equivalent plan with ads costs \$10.99.⁴⁰ Thus, someone who subscribes to both services pays \$18.98. Would the combined company charge more than \$18.98, e.g., something like \$22.99? This appears unlikely—at least in the near term—if only to avoid significant public backlash following the intense scrutiny surrounding the deal. The question becomes, however, what will happen over time to either the stand-alone prices for Netflix or the bundled price of Netflix plus HBO Max relative to a counterfactual world where the two streaming services remain independent? This will be the primary question that the agencies and parties will need to address.

It is worth noting that different user groups could experience different welfare changes post-merger. For instance, the user group that would likely benefit the most from the integration of Netflix and HBO Max content are the current HBO Max subscribers who also subscribe to Netflix. This group is the least likely to see a price increase, and it is plausible they will enjoy a price decrease. Other potential winners are those who are perhaps right on the cusp of subscribing to Netflix and HBO Max, but do not purchase one or both because their valuation is slightly below the current market price. However, if there is a post-merger combined discount, then they may start to subscribe to both. If there is anticompetitive harm, the primary losers would be existing Netflix and HBO Max subscribers who do not value the added content from HBO Max and Netflix, respectively. For example, suppose that someone loves HBO Max but would not subscribe to Netflix.⁴¹ These consumers will either cancel their subscription due to the price increase—or keep the

³⁸ *Id.*

³⁹ Netflix, *Plans and Pricing*, <https://help.netflix.com/en/node/24926>.

⁴⁰ HBO Max, *HBO Max Plans and Prices*, <https://help.hbomax.com/us/Answer/Detail/000002547#plans>.

⁴¹ This is the basis for a Las Vegas private antitrust complaint that has been filed against Netflix. See, e.g., Mogin Law LLP, *HBO Customer Files Antitrust Class Action Against Netflix to Stop Warner Merger*, Dec. 11, 2025, <https://moginlawllp.com/antitrust-class-action-filed-to-stop-netflix-warner-merger>.

service and absorb the higher price if their valuation of Netflix or HBO Max is sufficiently high. Either way, they would be worse off.

4 Horizontal Overlap #2: Upstream Content Production & Distribution

The antitrust agencies will also scrutinize the combination of Netflix's and WB's upstream content production and distribution businesses. Currently, Netflix creates shows and movies primarily for its own platform. Warner Bros., however, creates content for broader distribution including theaters, cable channels, and rival streamers. Will the merged company lock up all Warner Bros. content and stop selling popular films and shows to competitors (i.e., "input foreclosure")? Will Netflix purchase less movies and shows from other studios due to the merger (i.e., "customer foreclosure")? Or will Netflix limit the time and frequency that WB movies are shown in theaters? To address this last question, the Netflix has communicated that they are "100% committed to releasing Warner Bros. films in theaters with industry-standard windows."⁴²

Could Netflix foreclose rival streaming services—or substantially increase licensing fees—by restricting their access to WB properties such as Harry Potter? This is a common type of concern in vertical mergers and will involve assessing the margins at various levels of the supply chain and the degree to which WB properties have market power. For example, if WB's content has good substitutes (from the perspective of rival streaming services), then Netflix has less incentive to foreclose rivals. Even if Netflix forecloses WB's content, then the impact on the market would be mitigated due to the availability of substitute properties. On this topic, Ben Thompson at Stratechery has expressed that "it seems likely that Netflix will, over time, make Warner Bros. content, particularly its vast libraries, exclusive to Netflix, instead of selling it to other distributors."⁴³ Ultimately, if regulators conclude that this poses a material concern, the parties and the government would likely be able to reach a negotiated remedy, as is common in such cases. For example, Netflix could commit to maintaining third-party access to portions of Warner Bros.' library that were previously

⁴² Netflix, *supra* note 36.

⁴³ Ben Thompson, *Netflix and the Hollywood End Game*, STRATECHERY, Dec. 8, 2025, <https://stratechery.com/2025/netflix-and-the-hollywood-end-game/>.

licensed outside of HBO Max for a defined period (e.g., five to ten years), with pricing resolved through arbitration. One example would be *Ted Lasso*, which is produced by Warner Bros. Studios but distributed through Apple+. ⁴⁴ Similar arbitration commitments were adopted by the merging parties in both the Comcast–NBC Universal and AT&T–Time Warner transactions. ⁴⁵

5 *Procompetitive Justifications*

Whether the PNB presumption is triggered or not, efficiencies and procompetitive justifications will play an important part of the investigation. Netflix has publicly offered two lines of efficiencies. The first is based on combining the libraries of Netflix and HBO Max, where Netflix “can help Warner Bros.’ iconic franchises generate even more value by connecting them to audiences in over 190 countries.” ⁴⁶ This is a plausible claim given the success of the “Netflix effect,” where previously distributed shows like *Breaking Bad* and *Suits* enjoyed a surge in popularity when distributed on Netflix. ⁴⁷ Related, as discussed previously, the merger may give current subscribers of both services “more tailored, better optimized subscription plans depending on their specific preferences.” ⁴⁸

The second line of efficiencies is focused more upstream. Netflix explains that “Warner Bros. has three core businesses that Netflix doesn’t: a successful theatrical film division, a world-class television studio that is a leading supplier to the industry, and HBO—the gold standard in prestige television. By combining them with Netflix’s innovation, IP, global reach, and best-in-class streaming service, we’ll be able to offer more opportunities to creators and strengthen the entire entertainment industry.” ⁴⁹ Further, “[w]ith Warner

⁴⁴ C.f., Peter White, *Netflix Promises Warner Bros TV Will Continue to Sell Shows to Rival Streamers & Networks*, DEADLINE, Dec. 8, 2025, <https://deadline.com/2025/12/netflix-warner-bros-tv-will-continue-sell-show-to-rivals-1236642461>.

⁴⁵ See, e.g., Dennis W. Carlton et al., *A Retrospective Analysis of the AT&T/Time Warner Merger*, 65 J.L. & ECON. S461 (2022) (detailing the impact of these commitments).

⁴⁶ Netflix, *supra* note 36.

⁴⁷ See, e.g., Jordan Bohan, *How the “Netflix Effect” Gave These Shows a Second Life on Streaming*, POP CULTURE PLANET, Oct. 22, 2025, <https://www.popcultureplanet.com/articles/how-the-netflix-effect-gives-shows-a-second-life-on-streaming>.

⁴⁸ Netflix, *supra* note 36.

⁴⁹ *Id.*

Bros.' studio capabilities, we'll be able to ramp up our investment in original programming and production in the U.S. This will mean more and steadier work for crews, post-production teams, creative professionals, and on-screen talent."⁵⁰

Of course, every party to a deal advances positive, consumer-benefitting statements when announcing a major acquisition. The question will be whether the efficiencies are verifiable and merger specific. The parties will need to articulate with some degree of precision the likely benefits to consumers either through innovative products or lower prices due to more efficient operations. The needed strength of the efficiencies will depend a great deal on the predicted anticompetitive harm and the PNB presumption.

6 *The Other Suitors*

The other two major contenders for WBD were Paramount Skydance and Comcast. The main difference with a Paramount purchase is that the combination would likely face less antitrust scrutiny. Paramount owns Paramount+ and Paramount Studios. Like the Netflix scenario, the market overlaps are in streaming and content creation. Based on the prior market shares on viewing hours, combining Paramount+ (7%) and HBO Max (15%) would result in a 22% market share. This figure is lower than the PNB threshold, so the agencies would have a greater burden to develop convincing evidence that the combination creates anticompetitive harm to consumers. Furthermore, combining Paramount+ and HBO Max could, arguably, be viewed as good for competition under the theory that uniting these two services creates a legitimate challenger capable of taking on the market leaders, Netflix and Amazon.

What about Comcast? Comcast owns Peacock and Universal Pictures. Given Peacock's lower shares in a streaming market, this horizontal overlap would likely raise minimal concern. However, Comcast's ownership of Xfinity in cable TV is a complication that likely means that Comcast would have argued for a narrower market comprised only of streaming services.

⁵⁰ *Id.*

7 Conclusion

Overall, it could be argued that the modern digital ecosystem—where the lines between content creation, distribution, and consumer data are blurred—requires regulators to adopt entirely new antitrust theories. This perspective suggests that traditional economic and legal frameworks are inadequate for measuring the competitive effects of integrated tech and media companies. However, despite the digital era’s complexity, the ultimate judgment of the combination of Netflix and WB Studios & HBO will likely hinge on conventional antitrust doctrines. In the end, the fate of the merger will come down to standard arguments concerning market definition and horizontal overlaps.

Mr. FITZGERALD. Thank you, Doctor. Mr. Wood, you're now recognized for 5 minutes.

STATEMENT OF MATTHEW F. WOOD

Mr. WOOD. Chair Fitzgerald, Ranking Member Raskin, Ranking Member Nadler, and the distinguished Members, thank you so much for inviting me today.

This hearing is about competition and consumer choice and digital streaming, and that means we must talk about the string of mega mergers, both past and newly proposed. Runaway consolidation eliminates choice. Companies routinely break promises and evade merger conditions, and under the Trump Administration, these deals pose tremendous danger to free expression.

I must clarify something, though, before I begin, because of the companies involved in these mergers talks and confusion about our name. My organization is called Free Press Action, a republic interest group that works on media tech and telecom policy, and for more than 20 years, we've been analyzing these markets, opposing harmful mergers, and fighting both government censorship and undue corporate control.

We are not affiliated with *The Free Press*, which is the publication Paramount Skydance purchased last year before making its founder the editor-in-chief of *CBS news*.

I don't solely practice antitrust law, but since leaving corporate firms, I've spent much of my last 16 years opposing mergers that enrich executives, bankers, and lawyers at everyone else's expense.

While Paramount is still pursuing Warner Brothers Discovery, the winning bid for now is Netflix's \$82.7 billion deal to buy a company that, as Mr. Nadler noted, is somehow always up for sale in deals that amounted to bad industry bets and huge debts.

Netflix is the largest streaming service in the world, with more than 300 million subscribers. Warner Brothers HBO Max is well over 100 million, third largest in the U.S. by most accounts. Paramount is likely the fifth largest streamer in the U.S., and that combo, of course, would couple two of the big five Hollywood studios, impacting the market for theatrical releases, movies, and TV.

Both potential mergers could severely harm the viewing public, creative industry workers, journalists, movie theaters that depend on studio content, and their surrounding Main-Street businesses in your districts, too. We fear that either deal will reduce competition in streaming and adjacent markets, with fewer choices for consumers and fewer opportunities for writers, actors, directors, and production technicians. Jobs will be lost. Stories will go untold.

Now, we still need to crunch the numbers for an array of markets and metrics. We'll listen critically to claims about supposed merger benefits, and we'll ask whether there is sufficient competition left to ensure that the billions saved in promised synergies are passed along, not pocketed.

The job for antitrust enforcers is clear. They must engage in careful product market analysis to determine if these mergers violate the law and whether they promise any real efficiencies, not just speculative assurances, as the case law says about alleged benefits to the public.

Either Netflix or Paramount buying Warner Brothers could be presumptively illegal under DOJ's merger guidelines. Members of this Subcommittee and others in Congress have suggested so on a bipartisan basis. Section 7 of the Clayton Act prohibits any merger that would, quote, "substantially lessen competition or tend to create a monopoly in any line of commerce." That is clearly a risk here.

In our view, either deal likely places far too much power in too few hands over what Americans watch and where they get their news. The numbers for that news component are dwarfed by the dollars thrown at the streaming side in studio catalogs, but in addition to HBO, Warner Brothers, of course, owns *CNN* and other cable channels. Netflix doesn't want those. Paramount's Ellison family desperately does.

We're all too familiar with claims that media giants need to merge to continue producing news. Their trickle-down notion is that more money for shareholders means more investment in news or content creation, but as history shows, companies merge to save money, not spend it. Every merger obliterates jobs. Post-merger companies will reduce output and raise prices whenever they can, and having fewer voices make censorship easier with fewer corporate gatekeepers to lean on.

Even more dangerous than the notion that mergers can save the news is the way this President has weaponized the merger review process. In conjunction with other threats made in plain sight, his agencies have used deal approvals to win favors. The FCC has blessed mergers moments after deal proponents promised to follow the President's demands to end diversity policies. They've capitulated on chilling requests to reshape their newsrooms.

The merger that spun Paramount Skydance, as Mr. Raskin has said, was graced by an FCC investigation and a multimillion-dollar settlement of a specious lawsuit over editing choices in an interview with then Vice-President Harris. Paramount installed a former Trump Ambassador as a bias monitor and recently spiked that *60 Minutes* investigation into Trump Administration wrongdoing.

Now, Paramount Skydance's CEO promises, as Mr. Nadler says, to, quote, "make sweeping changes to *CNN* if he takes it over." Tilting a merger review process to facilitate that outcome should be unthinkable under the First Amendment.

Should a President use merger reviews to gain political outcomes he wants? Some may think it depends on which party holds the White House, but that answer abdicates the antitrust oversight this Subcommittee conducts and the antitrust laws enforcers must apply.

Thank you and I look forward to your questions.

[The prepared statement of Mr. Wood follows:]



Written Testimony of

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Free Press Action

Before the

Congress of the United States
House of Representatives
Committee on the Judiciary
Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

Regarding

“Full Stream Ahead: Competition and Consumer Choice in Digital Streaming”

January 7, 2026

Chairman Fitzgerald and Ranking Member Nadler, Chairman Jordan and Ranking Member Raskin, thank you for inviting Free Press Action to testify at this important hearing about competition and consumer choice in digital streaming.

While it would be gratifying to talk about that topic without needing to consider the impacts of transactions that alter the competitive landscape and threaten to erode such choice, we have no choice but to address a string of relevant mega-mergers, both past and newly proposed.

Before digging in on my testimony, however, I must pause to clear up any confusion caused by my organization's name, and its similarity to a much more recently formed newsletter with a similar moniker. Free Press Action is the 501(c)(4) nonprofit I represent. Free Press is our 501(c)(3) organization, and those two entities are separate and autonomous but interrelated. Both are completely independent of funding from business, government, or political parties. Free Press Action is a public-interest group focused on media, tech, and telecom policy. For more than 20 years, we've been analyzing communications markets, opposing harmful mergers in them, and fighting both government censorship and undue corporate control of them.

We are in no way affiliated with The Free Press, the online publication launched circa 2021, which Paramount Skydance acquired last year before making its founder editor-in-chief of CBS News. Since Paramount Skydance is at the center of the latest merger frenzy in the streaming and studio sectors, it seems especially important to make this distinction clear.

As my testimony will show, we are equally concerned about the prospects of Paramount Skydance or Netflix consummating a merger with Warner Bros. Discovery that could radically transform the streaming market and adjacent video markets, even though the deal facts and antitrust analyses may differ in key respects.

Mergers harm consumers, workers, competitors, and downstream businesses. Media mergers especially can harm our democracy, too.

Contrary to the suggestions of CEOs and shareholders salivating over merger payouts—and the bankers and merger & acquisition lawyers hired to push them through the approval process—most mergers reduce competition. Of course, many of us in the bar have been drilled by professors and textbooks on the old saw that antitrust law protects competition, not competitors. Such suggestions are not fully fanciful or trivial, and depend greatly on the facts in any one proposed combination; but they do fail many real-world tests and defy many common-sense observations.

Runaway consolidation eliminates choice, by design. There's no real chance of competition once all of the competitors are picked off, one-by-one. Companies routinely break promises and evade merger conditions designed to mitigate the harms of reduced competition. They claim merger efficiencies in the first place that are dubious at best, if they even bother to argue for public-interest benefits in the relevant “product markets,” as antitrust case law requires.

In short, mergers are a bad deal for everyone, often including the companies who make these bad bets and take on these massive debts. Look no further than the last four or five times that current acquisition-target Warner Bros. Discovery was involved in huge and often hugely disappointing tie-ups. The present company's family tree is nothing short of convoluted, tracing its roots back to the 1990 combination of Warner Bros. Studios and video businesses with the Time Magazine empire; that conglomerate's purchase of Turner Broadcasting (and its CNN) in 1996; the major flop that was the Time Warner/AOL merger, which closed in 2001; AT&T's acquisition of Time Warner in 2018, after an unsuccessful DOJ challenge; and lastly, AT&T's spin-off of those Warner Bros. properties to Discovery less than four years later, in 2022.

In 2021, the Writers' Guild of America West neatly summarized the backdrop against which these mergers took place, along with a seemingly endless string of deals in all sectors over the last half century or more:

Across the U.S. economy, lax antitrust enforcement has given a green light to rampant consolidation, leaving markets across the economy dominated by a few large firms. Federal regulators have demonstrated a deep bias toward merger approval, giving undue deference to speculative economic theories of claimed merger "efficiencies." Too often, the promised merger benefits are never realized, while post-merger companies face little or no repercussions for breaking these promises. Instead, these mergers lead to lower wages, higher consumer prices, fewer or worse consumer choices, and less innovation. Media is the poster child for the failures of antitrust enforcement. The past 12 years have seen unprecedented levels of vertical and horizontal consolidation among television distributors and film and television producers, with large mergers alone totaling over \$400 billion in deal value.¹

Free Press and Free Press Action have opposed many of these deals, and have been part of successful antitrust, FCC, and state-agency actions to block mergers like AT&T/T-Mobile in 2011, Comcast/Time Warner Cable in 2014, and Sinclair/Tribune in 2018. But even with those successes, the flood of deals has reshaped the media industry broadly, and many of the various product markets that antitrust enforcers must discern and analyze in these deal reviews.

I've been in DC now for nearly a quarter century. I don't solely practice antitrust law, but since leaving corporate firms, a lot of my 16-year career at nonprofits has been opposing mergers that enrich executives, bankers, and lawyers at everyone else's expense. That's because media mergers pose a special danger to an informed and diverse democracy in the United States today, where the news produced and the narratives told by corporate conglomerates are vital to shaping our society but far too often shaped by profit motives and political motives too.

¹ WGA West, "Broken Promises: Media Mega-Mergers and the Case for Antitrust Reform," at 2 (Dec. 2021), https://www.wga.org/uploadedfiles/news_and_events/public_policy/broken-promises-merger-report.pdf.

It's not just one community or one side of the political aisle that complains about such bottlenecks. While claims of bias often originate from members of the current majority in Congress, historically underserved communities of color, LGBTQ+ communities, immigrants, religious minorities, and political dissidents of all stripes have experienced tremendous difficulty gaining access to corporate-media megaphones, or seeing themselves in the stories packaged and sold to them.

In short, reducing the number of news outlets and production companies competing for stories costs us the boldness and product differentiation needed to gain attention in a truly competitive market, to carve out niches, and to provide high-quality news and civic information that reflects the communities it serves.

And as I'll discuss at the end of this testimony, under the Trump administration especially, these deals pose a tremendous danger to free expression. The president and his appointees have repeatedly used the merger-review process to exert pressure on media companies and the reporters they employ to modify or withhold content critical of the administration. What should be a straightforward antitrust review and agency-approval process is instead part of an arsenal of pressure tactics and chilling actions to exert government influence over media coverage, with regulatory threats, private lawfare, and even law enforcement deployed to silence narratives that displease this administration.

What we know about the bids for Warner Bros. Discovery sets off alarm bells, for consumer advocates, creative industry workers, and some main-street businesses too.

On December 5, Netflix announced an \$82.7 billion merger agreement with Warner Bros. Discovery. The deal would combine the first- and third-largest streaming platforms in the United States. Netflix is the largest such service in the world, with more than 300 million subscribers.

Warner Bros. Discovery's "HBO Max" is well over 100 million, the fourth-largest streamer in the world by most accounts but third in the United States. The deal would also give erstwhile upstart and now giant Netflix a massive library of Warner Bros. content.

We've written on multiple occasions about the likely harms from these deals.² We've said that the Netflix combination would mean consumers' \$17.99 monthly bills are likely to rise, yet again, and that those consumers are unlikely to see better content or more choices either, despite the companies' claims to the contrary. Either a Netflix or Paramount Skydance deal would reduce competition in streaming and adjacent markets, with fewer choices for viewing consumers—and fewer opportunities for writers, actors, directors, and production technicians.

The post-merger company could reduce output and raise prices, if it can do so profitably. And as creative unions and movie-theater owners have consistently explained leading up to this hearing, the numbers from the relatively recent combinations are bleak. That's true whether it was the last big merger between Hollywood's "Big 5" studios, when Disney acquired 20th Century Fox in 2019, or even the change in ownership that brought Paramount Skydance into existence in 2025. Industry and union representatives cite press accounts reporting that the job losses numbered in the thousands. The post-merger entity's number of wide-release feature films in theaters dwindled, and hundreds of projects in development were shelved. Those consequences are serious not just for studio employees and creative talent, but for theaters in your districts and surrounding main-street businesses as well.

The "golden age of TV" in the early twenty-first century was the product of a more competitive media landscape. Multiple channels and streamers trying to find audiences led to

² See, e.g., Craig Aaron, "In Media MergerMania 2025, We All Lose," *Jacobin* (Dec. 15, 2025), <https://jacobin.com/2025/12/warner-bros-discovery-netflix-merger>.

more risk-taking, creativity, and opportunity for diverse voices. Either proposed deal would undermine that direction. Jobs will be lost. Stories will go untold. In a more competitive environment, HBO and Netflix took chances on new talent and different viewpoints. Documentary filmmakers, for instance, could shop their films to HBO, Netflix, and PBS, too. Between defunding public media and this proposed consolidation, there will be fewer options and less opportunity for independent content creators.

The race for Warner Bros. Discovery isn't over, but no outcome will likely serve the public.

Netflix is not the only corporate giant chasing this merger. Paramount Skydance is aggressively pursuing Warner Bros. Discovery, too. Three days after Netflix and Warner Bros. Discovery announced their merger plans, the jilted suitor launched a hostile takeover, going straight to Warner Bros. Discovery's shareholders with an \$108.4 billion offer to buy not just the streaming business but also the cable networks like CNN and TNT.

A Paramount acquisition of Warner Bros. Discovery wouldn't just consolidate streaming options but would also further concentrate film-studio production. That would further consolidate a market where Disney recently swallowed 20th Century Fox, as noted I above, and Amazon acquired MGM, to name just a few of the swaps and combinations that have taken place during the past few decades. A Paramount/Warner Bros. Discovery combo would couple two of the remaining "Big 5" Hollywood studios, impacting the market for theatrical releases, film production, documentaries, television, and other scripted content. Paramount is also reportedly the fifth-largest U.S. streamer as well.

The industry reps, unions, and creative industry workers Free Press Action has worked with and spoken to over the past few months have made their concerns clear, and voiced their

opposition to any of these scenarios. They will continue to speak for themselves far better than I could, as they develop educational materials, legal arguments, and economic analysis for the record of this hearing and future enforcement actions. Without attempting to compile here all of their research and advocacy, it's worth noting the breadth and depth of these concerns.

As the Writers Guild of America said in October when this latest bidding war began, “Merger after merger in the media industry has harmed workers, diminished competition and free speech, and wasted hundreds of billions of dollars.” As activist and actor Jane Fonda wrote recently in the influential Hollywood newsletter *The Ankler*, these mergers have resulted in “fewer jobs, fewer opportunities to sell work, fewer creative risks, fewer news sources, and far less diversity in the stories Americans get to hear.”

“Netflix or Paramount?” isn’t the only choice, and it’s the wrong question to ask.³ The path to this deal was paved with one failure after another. As I described above, let’s not forget how we got here with this company: Time Warner bought Turner Broadcasting System. Time Warner merged with AOL, then the dot-com bubble burst. AT&T bought Time Warner (and DirecTV too), had no idea what to do with any of it, and spun out Warner Bros. to Discovery. That means Warner Bros. has been at the center of several of the biggest media mergers of all time—and for what?

This complicated history should teach us to be very skeptical of claims that a hugely valuable business like Warner Bros. Discovery “needs” to be sold, and that the only viable buyers are its biggest rivals in various product markets and industry sectors.

³ See *id.*

These potential mergers are certainly concerning, and potentially devastating, but still require careful antitrust analysis and review before definitive pronouncements are made.

We hold and share many of the same concerns as other advocates and experts, as well as the artists, technical personnel, competitors, and downstream businesses that could be hurt by these potential mergers. Yet Free Press Action may take a different and more cautious tone than some of their analyses and published writing, or their statements for the record of this hearing. Like them, we have voiced concerns and even announced opposition to various Warner Bros. Discovery acquisition scenarios, on the basis of the potential harms to consumers and creatives, newsgathering and narrative-making, freedom of the press and freedom of speech.

But the streaming market, and the determination of market shares in them, require further study. The streaming business and economy continue to evolve, with market shares and profit margins more fluid than those metrics may be in some other large media, tech, and telecom product markets. That's true for at least a few reasons. For one, streaming services are not mutually exclusive, like traditional cable service or even cellphones tend to be. People can and often do subscribe to multiple streaming services—which some people and lawmakers may say leads to consumer confusion and fatigue from purchasing multiple services, and others might say leads to more consumer choice and freedom.

To say that streaming is somewhat more competitive and less concentrated for now than some other highly concentrated communications sectors like broadcasting or broadband is damning with faint praise, but it still happens to be true. Advocates—and much more importantly, antitrust enforcers actually reviewing any deal that moves ahead—still need to crunch the numbers for an array of markets and metrics measuring concentration levels.

We'll listen critically to claims about supposed merger benefits as we go. And we'll ask whether there is sufficient competition to ensure that billions saved in promised "synergies" are passed along, not pocketed by the C-Suite and shareholders of these media behemoths. That is what antitrust law and precedent require of claimed deal efficiencies.

The job for antitrust enforcers is clear: They must engage in careful product market analysis to determine if these mergers violate the law, and whether they promise any real efficiencies, not just "speculative assurances that a benefit enjoyed by the [merging parties] will also be enjoyed by the public."⁴

Either Netflix or Paramount buying Warner Bros. could be "presumptively illegal" under DOJ's merger guidelines, as members of this subcommittee and others in Congress have suggested, on a bipartisan basis.⁵ Section 7 of the Clayton Act prohibits any merger that would "substantially [] lessen competition" or "tend to create a monopoly" in "any line of commerce."⁶ That is clearly a risk here.

There is work to be done by the DOJ and other federal or state enforcers considering a Warner Bros. acquisition. And that work must be done without the taint of political influence, blatant corruption, and chilling shakedowns that have been the hallmark of regulatory oversight and merger reviews ever since the start of the second Trump administration.

⁴ *FTC v. Penn State Hershey Med. Ctr.*, 838 F.3d 327, 351 (3d Cir. 2016).

⁵ See, e.g., Letter from Rep. Darrell Issa to AG Pam Bondi, Assistant AG Gail Slater, and FTC Chair Andrew Ferguson (Nov. 13, 2025) (asserting that a Netflix/Warner Bros. Discovery merger would "reportedly push[] the combined entity above a 30 percent share of the streaming market: a threshold traditionally viewed as presumptively problematic under antitrust law"); Letter from Sens. Warren and Blumenthal to AG Pam Bondi, at 2 (Dec. 17, 2025) (citing Tim Wu, "Both Plans to Buy Warner Bros. Are Illegal," *N.Y. Times* (Dec. 9, 2025), <https://www.nytimes.com/2025/12/09/opinion/netflix-paramount-warner-bros.html>).

⁶ 15 U.S.C. § 18.

It's damaging to democracy when journalism consolidates in fewer corporations' hands. It's outright destructive when government picks winners and dictates content.

Either a Netflix or Paramount Skydance purchase of Warner Bros. Discovery is likely to place far too much power, in too few hands, over what Americans watch and also where they get their news. Admittedly, for purposes of this antitrust hearing, the numbers for that news component in any such deal would be dwarfed by the dollars thrown at the streaming side and studio catalogs. But as we all know, in addition to HBO, Warner Bros. Discovery owns CNN and other cable channels. Netflix doesn't want those; Paramount's Ellison family desperately does.

From an economic and communications policy standpoint alone, Free Press Action is all too familiar fending off claims that media giants "need" to merge to continue producing news. Their trickle-down notion is that more money for shareholders means more investment in news or content creation. Just last week, Free Press and allies filed a comprehensive petition to deny⁷ Nexstar's attempt to purchase TEGNA's broadcast stations around the country, which would put Nexstar's national reach far over the cap set by Congress in 2004 and further decimate competition for the production of original, local news.

Broadcast television product markets are separate and distinct from the broader video market, and the streaming and studio content product markets that enforcers will need to determine and assess here. This point cannot be lost: Giant communications companies seeking mergers in any sector always have a self-interested motivation in conflating product markets to depress the concentration levels their deals would cause.

⁷ See Petition to Deny of Free Press, the National Association of Broadcast Employees and Technicians - Communications Workers of America, The NewsGuild - Communications Workers of America, the United Church of Christ Media Justice Ministry, and Public Knowledge, MB Docket No. 25-331 (filed Dec. 31, 2025), <https://www.freepress.net/download/redacted-copy-nxst-tgna-petition-deny-pdf>.

Yet all of this media consolidation is still relevant and harmful to consumers and workers, even if the media properties in play are not substitutes for one another and exist in separate markets for rigorous antitrust analysis purposes. As history shows us, companies merge to save money, not spend it. Their promises of synergies and savings are better read as promises to obliterate jobs. And having fewer voices makes censorship easier, with fewer corporate gatekeepers to lean on. That's true not only in theory, but painfully obvious practice over the past 12 months since the last presidential election.

Even more dangerous than the notion that mergers can “save” the news is the way this President has weaponized the merger review process. In conjunction with other cajoling and threats made in plain sight, his agencies have used deal approvals to win favors. When it comes to Netflix or Paramount buying Warner Bros., Trump has been noncommittal. The message is clear though: Trump is open for business. Flattery and bribery will get you everywhere.

That's what prompted Fonda to write in *The Ankler* about more than just the industry impacts from these potential mergers. “As dangerous as the economic fallout could be, it is not what scares me most. What terrifies me—and should terrify anyone who cares about a free society—is how this administration has used anticipated mergers as tools of political pressure and censorship.” The Trump FCC has blessed mergers, virtually moments after deal proponents promised to follow the President's demands to end diversity policies, even for relatively small but meaningful deals put forward by wireless and broadband giants like AT&T, T-Mobile, and Verizon. But, as Free Press and Free Press Action have documented, that's just a small part of the parade of media and tech companies that have capitulated on chilling requests to reshape their newsrooms and coverage.

In 2025, Free Press produced two reports documenting the kinds of abuses, including this administration's threats to free speech and freedom of the press more broadly, and Donald Trump's demands of media companies seeking mergers and regulatory approvals more specifically.

In December, Free Press examined the Trump administration's hostile relationship with dissent and free expression.⁸ To compile the report, my colleague Nora Benavidez examined nearly 200 free-speech violations—including verbal threats, arrests, lawsuits, regulatory actions, and military deployments—by President Trump, White House officials, Trump-appointed federal regulators, the National Guard, law-enforcement agencies, and other branches of government during the first year of Trump's second term. She found that “while the U.S. government has made efforts throughout this nation's history to censor people's expression and association—be it the exercise of freedom of speech, religion, press, assembly, or the right to petition the government for redress—the Trump administration's incessant attacks on even the most tentatively oppositional speech are uniquely aggressive, pervasive and escalating.”

“The president has tried to cow the press,” Benavidez wrote in a recent *New York Times* op-ed. “His administration banned Associated Press reporters from certain parts of the White House and Air Force One because the outlet uses ‘Gulf of Mexico’ rather than the term Mr. Trump prefers, ‘Gulf of America.’ It tried and failed to force some of the nation's biggest news organizations to agree to restrictions on coverage of the Pentagon. He has said critical coverage of his initiatives is ‘really illegal.’”

⁸ See Nora Benavidez, Free Press, “Chokehold: Donald Trump's War on Free Speech & the Need for Systemic Resistance,” (Dec. 2025), <https://www.freepress.net/download/chokehold-donald-trumps-war-free-speech-and-need-systemic-resistance>.

As our report notes, attacking media independence is page one of the authoritarian playbook, and Trump has told domestic journalists that he will report them to the Department of Justice, foreign journalists to their home governments. Many large media corporations have caved to this administration pressure to remove content or coverage Trump dislikes, or which paints him in a negative light. Demonstrations of corporations' fealty to Trump have included million-dollar payments to bankroll the inauguration, funds for his new White House ballroom, and dubious legal settlements.

All of that is tracked in another 2025 report we produced, featuring a "Media Capitulation Index" produced by my colleague, Tim Karr.⁹ We tracked who owns our nation's 35 largest media conglomerates, and documented their response to pressure and threats by the Trump administration. We found that—to varying degrees—the owners of the largest U.S. media conglomerates are caving to the pressure. This capitulation is not unique to owners of news outlets, like Paramount Skydance (CBS), Disney (ABC) or Warner Bros. Discovery (CNN). It's a pervasive trend for nearly all commercial media, including cable, telecom, and online platforms.

We found that media owners capitulated to this White House in four principal ways:

1. **Payments to Trump in the form of legal settlements**, production contracts, campaign contributions, and other donations;
2. **Rollbacks of prior commitments to diversity, equity and inclusion** practices in hiring and community outreach;
3. **Editorial manipulation and censorship**, by pressuring their newsrooms to soften criticism of the administration, firing staff, and even pulling content that might anger the president; and
4. **Attempting to curry favor with the President** during inaugural ceremonies, private dinners at Mar-a-Lago, and meetings in the White House.

⁹ See Free Press, "Who Owns the Media" (July 2025), <https://www.freepress.net/who-owns-media>.

Thus, Trump appointees are likely to exploit any deal for Warner Bros. Discovery to exert more editorial control over the merger hopefuls. This administration has flexed its regulatory power repeatedly to coerce those results. Carr has repeatedly threatened to block mergers if media companies promoted “invidious DEI policies,” without any specific claims about their supposed violations of equal employment or civil rights laws.

Those tactics have been successfully deployed by and against Paramount Skydance, among many others, including when Carr threatened ABC and said that “we can do this the easy way or the hard way” as a form of pressure to take Jimmy Kimmel off the air. ABC parent company Disney, as well as broadcast conglomerates Sinclair and Nexstar, all succumbed to the Trump FCC’s pressures. Nexstar especially did so with an eye on its own pending merger’s approval chances. The broadcasters only reversed their decisions after widespread public protests. Trump still maintains that networks could lose their licenses if they air negative coverage about him, and shockingly, as noted above, that critical coverage is somehow illegal.¹⁰

Yet clearly most relevant to the potential merger parties in the sweepstakes for Warner Bros. Discovery is the Trump administration’s campaign against CBS News. The FCC approved Skydance’s acquisition of Paramount’s CBS licenses in a 2-1 vote last July, but only after the company paid President Trump \$16 million to settle a meritless lawsuit and agreed to appoint a former Trump ambassador as a “bias monitor” who can censor content critical of the administration. In her dissent, FCC Commissioner Anna Gomez decried the “never-before-seen forms of government control over newsroom decisions and editorial judgment—actions that violate both the First Amendment and the law.”¹¹

¹⁰ See Luke Broadwater, “Trump Says Critical Coverage of Him Is ‘Really Illegal,’” *N.Y. Times* (Sept. 19, 2025).

¹¹ Commissioner Gomez Statement on Closing of Paramount-Skydance Merger (Aug. 7, 2025).

The Paramount Skydance debacle only involved settling a lawsuit with Trump for the airing of an October 2024 interview with then-Vice President Kamala Harris, which Trump claimed *60 Minutes* deceptively edited. (Though just this November, *60 Minutes* aired another interview, this time with Trump, which the network edited heavily.) Trump-appointed FCC Chair Brendan Carr also re-launched an investigation into CBS and *60 Minutes* that his predecessor Chairwoman Jessica Rosenworcel had dismissed as an attempt “to weaponize the licensing authority of the FCC in a way that is fundamentally at odds with the First Amendment.”¹²

Award-winning *60 Minutes* producer Bill Owens stepped down, claiming he faced editorial pressure from company executives who feared that his refusal to appease Trump could jeopardize Paramount’s ambitions.¹³ This was followed by the forced resignation of former CBS News chief Wendy McMahon, and the cancellation of CBS late-night host Stephen Colbert’s program. Colbert was a frequent critic of the Paramount Skydance merger—and rightly called the settlement with Trump a “bribe.”

In sum: The merger that spawned Paramount Skydance was greased by an FCC investigation and a multimillion-dollar settlement of a specious lawsuit over editing choices in an interview with then-Vice President Harris. Now, Paramount Skydance’s CEO promises “sweeping changes” to CNN if he takes it over. Tilting a merger review process to facilitate this should be unthinkable under the First Amendment.

¹² *Preserving the First Amendment*, GN Docket No. 25-11 (Jan. 16, 2025) (Statement of Chairwoman Jessica Rosenworcel).

¹³ See Liam Reilly, “*60 Minutes* executive producer resigns, citing a loss of independence in the wake of Trump lawsuit,” CNN (Apr. 22, 2025), <https://www.cnn.com/2025/04/22/media/60-minutes-executive-producer-resigns-independence/index.html>.

Should a President use merger reviews to gain political outcomes he wants? Some may think it depends which party holds the White House. But that answer abdicates the antitrust oversight this subcommittee conducts, and the antitrust laws enforcers must apply.

Thank you, and I look forward to your questions.

Mr. FITZGERALD. Thank you very much. We will now proceed under the 5-minute rule with questions, and I recognize the gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chair. Today, we're going to speak about disproportionately the Warner Brothers acquisition, needless to say. I could begin this by talking about the political differences that have been alleged in the two buyers and the seller. I could, of course, continue to talk about the last administration that never found a merger that they could accept and blocked many even when overthrown repeatedly by the courts. I could but I won't because, in fact, this is an antitrust hearing, and I would like to focus on that. I admonish all our witnesses in their answers to get off the politics and get on to the specifics of antitrust law.

I'm going to start with Professor Yun. You mentioned the *Philadelphia* case, but you had some doubts even though Nielsen has said that in the streaming, you have a 37 percent market share already by Netflix, an additional 6 percent to be acquired. Is there any reason that we shouldn't believe that this is at least in the ballpark of correct based on one of the largest and most historically significant rating organizations?

Mr. YUN. Thank you, Representative Issa. I appreciate the opportunity to speak on this.

Yes, you're hitting on the key issue, which is the reliability of the data that we're using for this presumption, and this presumption is very important. Again, we can debate whether it should be, but it is standing law today.

Mr. ISSA. Right, but it's standing law to push the scale to where there is essentially no further choice and you, more or less, close the door.

Even if, in fact, hypothetically, they're at 29 percent, and let's just say that Warner Brothers is 5 percent, you're still going over the 30 percent, and few would doubt that you're going to end up with that.

Let me get into a couple of points that you hit. Since 2011, Netflix has increased price 10 times and a total of 39 percent increase after adjusting for inflation. Is that, per se, a demonstration of market power by any reasonable definition?

Mr. YUN. I can get in the weeds. I would say that almost every streaming service has some degree of what we in economics call market power. It's not the same as what we think in antitrust. What do I mean by that? Earlier, there was a chart that was shown that showed—

Mr. ISSA. Well, let me back you up, because I have limited time. The reality is that the price and the cost of receiving a streaming service on an adjusted basis led by Netflix has gone up but not down. From a standpoint of a market, a market that is functional, that we would normally think lowers costs as volume goes up, would you say that this market shows signs of not being functional based on Netflix's consistent lead above the rate of inflation?

Mr. YUN. The reason why I have some concern about the premise that this is necessarily a problematic market is simply because I saw a chart that showed the highest price increases were from Apple Plus, Peacock, and Paramount Plus, who have the lowest share in these markets and the lowest—

Mr. ISSA. Aren't they all still losing money?

Mr. YUN. Yes, no, I—

Mr. ISSA. OK. Isn't there a difference between when you're making money and you increase prices beyond inflation and when you're losing money and you're trying to minimize your losses?

Mr. YUN. I think that's fair.

Mr. ISSA. OK. I want to go on quickly. You talked about vertical and horizontal, and there's plenty of caselaw, including the Supreme Court case that broke up the relationship between the studios and the theaters being owned. Aren't we again in a situation where if Netflix post-acquisition controls a massive library to the exclusion of others, that, in fact, we have the same situation again in which—and I'll just use my own words—if you can exclude and you are a must-have and must-pay and must-buy, isn't that, in fact, a situation in which, at a minimum, everyone would have to have Netflix to have access to not just new production but a vast library that, in fact, by definition, every child grows up watching?

Mr. YUN. I think it's a relevant concern. It's something they will definitely look at for sure.

I did look at some statistics that showed what is the percentage of Warner Brothers in terms of theater production, and it's at that 15–20 percent, so roughly 80 percent is outside of that. I think that—

Mr. ISSA. Of course, theater production is important. I was talking about libraries, and they are both important.

Let me just close with one closing question, which is: You've looked in the past at the years that this Committee oversaw the potential mergers to create competition against Verizon by Sprint, AT&T, T-Mobile, ultimately making a decision that a relative duopoly was better than one strong player and many weak. Aren't we in many ways in that same situation, if you could opine on that?

Mr. YUN. It's going to depend on how we define the relevant market in terms of what is really constraining Netflix's price. Yes, if it's fairly narrow, yes, the consolidation is definitely going to be something that's sufficient for probably the presumption.

Mr. ISSA. Thank you, Mr. Chair.

Mr. FITZGERALD. The gentleman yields back. I now recognize the Ranking Member from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chair. Mr. Wood, supporters of large media mergers, often promise innovation, better services, and more content. Looking back, did those mergers deliver to the public?

Mr. WOOD. In a word, no, I don't think they did, Mr. Nadler. You have listed a litany of deals that involve this company itself. Warner Brothers is now currently up for sale again. I would say with respect to streaming, for example, that, yes, there has been innovation. Consumers have benefited from some of these technological changes, but it's not because of the mergers.

The merger promises that are made are often paper thin, very hard to enforce if they're even real in the first place, and companies routinely break those promises because there's very little antitrust enforcers can do after the fact to unwind a deal. That's a pretty extraordinary remedy. If they promised not to fire people or promised

not to raise prices and they do, there's not much people can do besides wag a finger at them.

Mr. NADLER. Hollywood unions, such as the Writers Guild, are opposing acquisition by either Netflix or Paramount because of concerns that consolidation will reduce employment compensation and creative opportunities. What happens to independent producers and creators when the number of potential buyers for their work shrinks?

Mr. WOOD. Yes, so thank you. We've spoken to some of those writers. We've spoken to some of those independent producers. They're very concerned and rightly so. When the number of buyers for their work shrinks, it's not just that there are fewer open doors; there are fewer doors at all, so they have fewer places they can take their content.

They also have the loss of competition and diversification in the market, fewer smaller independent producers or fewer scrappy competitors who are willing to get a chance on something different. It tends to homogenize content and, by design, reduce the number of outlets and number of choices they have.

Mr. NADLER. What would the effects of these consolidations be under the diversity of content that we see today?

Mr. WOOD. Well, thank you. As I was saying, it would be less diversity. I don't know if there is a metric we can apply to that, but we do see companies in the broadcast space and the streaming space and the studio space homogenizing their content, making things more so-called mainstream, taking fewer risks, needing more money to come back in through the door to justify the huge budgets for the few features they put out. It tends to reduce price—sorry. It tends to reduce choice and increase prices and just to, as you said, reduce diversity and the differentiation between the products these companies have to put out to compete and survive.

Mr. NADLER. Reduce the amount of conflicting information and opinions given to the public?

Mr. WOOD. Yes. That's something our organization has worked on for years. When it comes to the news and competition there, the FCC's tests for that are different from antitrust but related in many ways. They look for more competition, more diversity, and localism.

We're often told that, well, the only way we can have more competition in local news is to have fewer competitors. The only way to have more diversity is fewer voices, and the only way to have local content is to nationalize everything. We, frankly, don't believe those claims, and we've seen them harm communities time and again.

Mr. NADLER. Everything you just said seemed very concerning. The way to have diversity is to have fewer voices.

Mr. WOOD. Yes. As my colleagues on the panel have said sometimes you're going to have a situation where if a firm is failing or can't compete, then a merger might save them and preserve that voice. We are very skeptical of those claims because in *Warner Brothers'* case, for example, by last year's metrics, they were the second most successful studio. They're the third largest streamer in the country.

The notion that a company simply has to be sold or else the shareholders won't make any money, to us, is very questionable. I know that the streamers, in general, have not made as much money as they'd like and some have lost money.

There are legitimate questions there about the profitability of streaming, but as a going concern in an overall business, we just simply are very skeptical of claims that these companies need these mergers to survive or thrive.

Mr. NADLER. Thank you. I understand that Netflix has made promises that it would mitigate possible competition concerns. In particular, it says that it would continue to sell shows to rival streamers. How should these promises be considered in the analysis of potential anticompetitive or public policy harms?

Mr. WOOD. If you're asking me, again, yes. As I said a moment ago, I think that these promises are very hard to enforce, I could imagine a condition in a merger approval if it went through. It's just that whatever these companies agree to, it's sometimes easier for them to lawyer their way out but not even technically break the promise.

Then, once that promise is broken, as I said, there's very little that enforcers can do to unscrambled the egg and put things back together and make companies whole who aren't getting the benefits of these promises that were made.

Mr. NADLER. Thank you. Mr. Chair, I have a number of unanimous consent requests for the record from a series of labor groups coming out against or raising serious concerns with the Netflix-Warner Brothers merger.

Mr. FITZGERALD. Very good. Go ahead.

Mr. NADLER. Oh.

Mr. FITZGERALD. Unanimous consent.

Mr. NADLER. First, is the IDA statement opposing a merger involving Warner Brothers Discovery. The DGA statement on Warner Brothers Discovery/Netflix. The SAG-AFTRA statement regarding proposed Netflix/Warner Brothers transaction. A prepared statement for the record of the Writers Guild of America West and the Writers Guild of America East. The "Hollywood Teamsters: Warner-Netflix deal is another call for alarm for entertainment workers." Finally, the Producers Guild of America.

Mr. FITZGERALD. Without objection. The gentleman's time has expired. I now recognize the gentleman from Virginia for his questions.

Mr. CLINE. Thank you, Mr. Chair. The witnesses for being here for a timely hearing on a—at this moment in time with this a snapshot of a marketplace in constant change and constant motion.

We recognize that the country operates under free-market principles, and businesses should be able to transact as long as they don't create clear antitrust problems. Clarity is something that is in the eye of the beholder, but I do think, in contrast to Mr. Wood's opinion, general skepticism—the standard is not general skepticism about whether a company needs a merger to survive. That's really not what we're talking about here. We're talking about the definition of the relevant streaming market and the regulators and how they're defining it.

Ms. Melugin, why don't you have a go as to how you would define the relevant streaming market today for antitrust purposes, and what single biggest mistake that regulators are making when defining it.

Ms. MELUGIN. We had a very helpful example recently with the decision in the Meta trial, which was seeking to unwind a merger, and unfortunately the judge kind of anticipated questions like this and said this is just not a market definition that they buy. It had excluded too many entities that provided real competition to Meta. That the mistake you could make here would be the same.

I'm not privy to the kind of privileged information that talks about market shares, or eyeball time spent on streaming, but regulators probably will be, and it will be their job to make a case that it's not comparing apples to apples in terms of finding out who might be a good substitute. It's about what consumers feel is a substitute.

That would include saying it might be apples to oranges with some of these streaming services and other variants in social media, but would a consumer maybe substitute an apple for an orange if they had to, they probably will.

That goes to a really, as we've all agreed, an incredibly important piece of this is what is that market share. If it's above that 30 percent threshold, it doesn't mean that it's a closed case and its anti-competitive, you still have a court that's going to assess what are the competitive tradeoffs here.

You have a very difficult task if it even just is above that 30 percent mark to say there aren't going to be economic benefits to consumers here, but if you expanded the market definition you might not even get to that 30 percent number. It will be for the courts to decide, I suspect.

Mr. CLINE. Dr. Yun, how would you define relevant streaming market today, and what is the single biggest issue facing regulators and the mistake that they might be making?

Mr. YUN. Your question hits what I think will be probably 80 percent of the investigation and the debate between the parties and the courts and the agencies.

It is natural to think it's a streaming market. They're probably the closest competitors. As just mentioned, does it include other services.

Let me just share with you, sir, the lines are being blurred. Netflix also offers not only on-demand, but also live sports, they offer podcasts, and they offer video games. YouTube TV, the linear TV that replaces cable, now has on-demand. YouTube itself will now carry the Oscars.

The line is blurring between these, and I say that not because it's going to be defined broadly. I say that simply because it's hard to cabin these platforms into specific categories that we want to do. It will be the job of the agency. It's a data question. No one can sit here and say what the market will be. It's going to be based off the data.

Mr. CLINE. Under current antitrust law, when does vertical integration in media markets pose competitive harm rather than generate efficiencies?

Mr. YUN. That's the key issue. The key question, there are other vertical issues, but as I mentioned in my opening statement, the key vertical issue is whether Netflix is in control of Warner Brothers Studios' IP property and distribution rights, does that create the opportunity for them to foreclose third parties who previously had access to those assets.

That question is something that is a very detailed one. It's going to look at margins at various levels. What is their incentive to do so. What is their market share upstream and downstream. Are there substitutes for these IP properties. These questions have already been asked here at this hearing and it is going to be asked by the agencies. Again, we're not going to know until we see the data.

I will say this, though, usually this is fixed through a commitment by the parties to offer this content through arbitration going forward, 5–10 years typically. This was Comcast NBCUniversal, this was AT&T Time Warner. They're going to probably do the same here. Studies have shown it has been effective in preserving competition. This is done by Dennis Carlton, et cetera. These commitments are court-ordered and enforced, and I'm guessing Netflix will offer the same.

Mr. CLINE. Thank you. I yield back.

Mr. FITZGERALD. The gentleman yields back. I now recognize the Ranking Member of the Full Committee, Mr. Raskin, again.

Mr. RASKIN. Thank you, Mr. Chair. If Paramount were to acquire Warner Brothers, it would put *CNN* under the same ownership as *CBS*. When the Ellisons, who own Skydance, were seeking to acquire Paramount, they made Trump-friendly changes in the newsroom, including installing an ombudsman, which news staff referred to as a hall monitor for them, and so we can only assume the same kind of fate for *CNN*.

Mr. Wood, when there is consolidation in the news media, how does this affect the freedom of speech and expression in the marketplace for ideas generally, and specifically in the Trump period given the very specific phenomena that have arisen in terms of the review process.

Mr. WOOD. Yes. Thank you for the question, Ranking Member Raskin. Your question lays it out well and there really are two distinct threats, at least. First, typically speaking, when you have fewer competing voices, you have fewer people working to get stories, you have fewer risk takers. Reduction of competition reduces the number of opportunities to even tell different stories.

In this administration, we've seen not just consolidation at large as a problem, it's the merger process itself being used, as you detailed so well, as a carrot and basically saying, if you don't agree to change your news coverage, then we won't approve your deal. That's the thing that should be completely out of bounds, but has happened very often with this administration.

Mr. RASKIN. What is happening at *CBS News* under the new management?

Mr. WOOD. Well, I am not a media critic, but I can certainly see what's happening. I know even yesterday there were concerns about the evening news and how it was being used to praise the administration rather than to potentially criticize its actions.

It's the litany of changes that you discussed, the pulling of the story from *60 Minutes*, all the changes to the evening news and the way that they are seemingly looking for administration approval of their news rather than reporting on the government as any journalist would want to do.

Mr. RASKIN. Well, I'm really a stranger to antitrust law. I never taught it. I never even took it. I am going to be reading some books on it this year in anticipation of maybe a change in our political fortunes in the new Congress.

Is there anything within antitrust law which considers the specific First Amendment implications with respect to media mergers that makes it a different kind of analysis from other business antitrust analysis?

Mr. WOOD. I wouldn't say—I would want to look at that myself. I did take it, but it was a while ago now and I've done a lot—

Mr. RASKIN. Dr. Yun, you might know.

Mr. YUN. It's a great question. I would say that generally speaking court precedent would say no, they wouldn't exam it.

Mr. RASKIN. It's just treated the same way?

Mr. YUN. It's output prices and innovation, and First Amendment issues would fall.

Mr. RASKIN. OK. I would like to ask all our witnesses, does everybody agree that Federal antitrust agencies should be subject to intensive congressional oversight? Starting, Dr. Wood, with you.

Mr. WOOD. Yes.

Mr. RASKIN. Dr. Yun, do you agree with that.

Mr. YUN. It seems quite reasonable.

Mr. RASKIN. Yes. Ms. Melugin?

Ms. MELUGIN. Yes.

Mr. RASKIN. Yes. Dr. Ezrielev?

Mr. EZRIELEV. Yes.

Mr. RASKIN. Yes. OK. All right. When I raised the question of whether corruption was interfering with proper antitrust law analysis I was chided by one of my colleagues for ranging far afield from the subject.

If corruption has actually entered, and perhaps some people can never see corruption when it comes to Donald Trump, so set him aside for a second, if corruption actually entered the antitrust review process through money corruption or political influence, would that be a problem? Again, I would like to maybe ask each of you. Yes, Mr. Wood.

Mr. WOOD. It would definitely be a problem. I wouldn't be naive and think that political influences never played a role before. What we're seeing so extraordinary in this administration is the openness of it, and the use of antitrust and merger review, I would say the misuse, to ring out conditions from companies who want approval of their deals.

Mr. RASKIN. Yes. Dr. Yun, do you agree?

Mr. YUN. Yes. I was at the agency 18 years. I'm an antitrust purest, it should be based off the staff and their recommendation.

Mr. RASKIN. It's an economic analysis. It's not a question of whether you can mobilize this lobbyist or this political force to your side.

Mr. YUN. Absolutely.

Mr. RASKIN. Ms. Melugin.

Ms. MELUGIN. Yes, I would agree, this should be matters of traditional laws established in a bipartisan way over the last 40 years, the consumer welfare standard and economic analysis, no matter who is installed in any given administration.

Mr. RASKIN. OK. Dr. Ezrielev?

Mr. EZRIELEV. Yes, I'm against corruption in the agencies.

Mr. RASKIN. All right. Mr. Wood, let me come back to you. Antitrust law did start with the idea of both benefiting the consumers, but also benefiting society by having competitive forces. Would you just say a word about what consolidation means generally for a free society?

Mr. WOOD. Well, your question about antitrust and First Amendment concerns is obviously valid and important in the media context. There's a marketplace of ideas that has shrunk, too. I agree with my colleagues, the market questions are the paramount question, although I shouldn't say paramount in this case, but we have to be certainly cognizant of the impacts on our civic information and democracy being impacted by the loss of that source of information.

Mr. FITZGERALD. The gentleman's time has expired. I now recognize the gentleman from Texas.

Mr. GOOD. Ms. Melugin, consumers increasingly subscribe to multiple streaming services, and recent year's subscription costs have gone up significantly. At the same time, most streaming services haven't been profitable despite increasing subscription costs. Hard to say those words. You struggled, too. I get it.

Where do we go from here, and will subscription costs keep rising, will they eventually run out of business due to lack of profitability, and how does regulating the current market help things for consumers in competition?

Ms. MELUGIN. That's a bundle of excellent questions and observations that I would simply say that the best way is that they're still sorting this out. It's a relatively new advance here, the streaming services, and there's going to probably need to be some amount of consolidation. There's probably going to be some amount of failure.

Failing in a market system isn't the same as a government-imposed failure on these companies or having taxpayers on the hook. It's kind of the natural part of creative destruction that happens. There might need to be some calling from the herd. There might need to be some consolidation for achieving economies of scale.

That even in the different forms of streaming services we see now, like Amazon Prime is a fascinating example of one that is tied to an e-commerce delivery package, people are trying—these companies are trying lots of different approaches to become profitable and to give consumers what they want.

This latest deal that we're talking about today is a lot about combining Netflix distribution advantages and expertise and recommendations and things like that with very valuable library content at Warner Brothers. Will that be successful for them and they'll be able to gain more market share if this deal is allowed and drop prices, I don't know. It's not about for me—my job isn't picking the winners or losers or telling these companies how to act. It's

saying that these are the sound rules of the road in traditional antitrust, and we should stick to that whoever we're evaluating.

Mr. GOOD. Thank you. Dr. Ezrielev, forgive me if I mispronounced your name, in the current market only Netflix has been consistently profitable, with HBO and Disney Plus only recently turning a profit, while most streaming services operate at a loss. Correct me if I'm wrong, too.

What impact would be preventing a merger between Netflix and Warner Brothers, or Paramount, or any other company, have on the market, or any of these businesses, and will we ensure competition, or will it lead to a situation where companies will end up running out of business like Blockbuster?

Mr. EZRIELEV. Thank you for asking that question. There were a lot of questions.

Mr. GOOD. We're good at that here.

Mr. EZRIELEV. I'll take it one-by-one. It's important to let the market sort this out. This market has been very successful in generating growth and innovation and new content, and at the core of it is that these companies are trying to create content that is appealing to consumer.

At the same time there's been growth in streaming. Just because you are losing—earning a negative margin at current demand levels, it doesn't mean that's going to continue as demand grows. That's been the driving dynamic of this space.

It is rational for companies to create more and more content to gain more consumers for your streaming service so that as demand grows, you'll be able to earn higher margins later on.

As far as the impact of this deal, that this is just market trying to reallocate capital to meet demand the best it can. In terms of Netflix and Warner Brothers, there are complimentary assets on both sides. The way you could combine these assets to generate even more compelling content, stream content in a more efficient way, find consumers, create content that is appealing to viewers, this is how you grow the service, and that's going to be good for Netflix and Warner Brothers. I think. I don't know. The future will tell.

It's going to be good for the entire industry. We need this kind of dynamic competition to drive more innovation, better content, better ways of delivering content to viewers, and, also, to use data more effectively to reach viewers with content that they'll find appealing.

Mr. GOOD. Thank you.

Mr. FITZGERALD. The gentleman yields back. I now recognize the gentlewoman from Vermont.

Ms. BALINT. Thank you, Mr. Chair. I'm going to start by just doing some level setting. Americans don't like these mergers. They don't want a few giant companies controlling what they see and what they hear. We want choices. We want more choices. We want artistic freedom. We don't want a handful of companies deciding the content that we see. I hear this over and over again from my constituents.

When these giant companies merge, things get better for the people at the top over and over again. Every single time. Worse for the rest of us. I want us to remember that two of the three companies

we're talking about today exist because of at least one previous merger. It wasn't long ago that Paramount, Skydance, Warner Brothers, and Discovery were separate companies. We need competition. We do not need more consolidation.

Mr. Wood, thanks so much for being here today. Why is it that our media landscape right now has become so consolidated?

Mr. WOOD. Thank you for the question, Congresswoman. It's just decades now of lax antitrust enforcement. That certainly started to turn a corner with the last administration. Even the first Trump Administration we did see efforts there to try to block AT&T from buying Time Warner.

There have been some bright spots. There have been some mergers that we've opposed that have been stopped, like AT&T buying T-Mobile, Comcast buying Time Warner Cable. Those are few and far between. There's been this sort of flood of deals that have gone through. As you said, "it always gets better for the people in the C-suite, but much less often for their customers."

Ms. BALINT. I agree. I agree with you, too, that it is lax antitrust enforcement. You touched on this earlier, who wins, who loses when these mega mergers happen? Let's put a finer point to it. Who wins?

Mr. WOOD. It's the companies and their shareholders, although not always because a lot of these deals have been bad bets for them as well. We've talked today about potential innovation and efficiencies and competition being improved in some sense by merger, and I wouldn't say that's impossible, I would just say that's a pretty high bar.

What you really need is for those efficiencies to be passed along to people rather than just pocketed by the companies. You need to have remaining competition.

Ms. BALINT. I agree.

Mr. WOOD. Sufficient incentive for them to not just pocket those savings, but to actually have to put them back into the business and try to keep their customers happy.

Ms. BALINT. I agree. From what we've heard so far, Paramount and Netflix have submitted bids that already raise significant concerns. We're at the start of what's going to be a very long battle about this. Our Committee is not responsible at all for deciding which deal, or neither, violates the law. That decision is in the hands of the Department of Justice. We know that the DOJ has not been unbiased. That is a strong concern that many of us on this Committee have.

At the last meeting of this Subcommittee, Roger Alford, a DOJ whistleblower, described the pay-to-play climate at the antitrust division. President Trump recently has said he will be, quote, "involved in the Warner Brothers deal." What do you think he means by that, Mr. Wood, when he says he's going to be involved? What is he talking about?

Mr. WOOD. Well, I'm smiling because it sometimes is down to which movies he wants to see made, so it can get kind of ridiculous. It's also just about the Trump family's own fates and fortunes here, and then these political choices. Again, it's not that the political choices aren't real, or somehow are completely invalid, but the government should not be imposing its will on companies. That's a vio-

lation of the First Amendment, when they're dangling antitrust review and approval based on content changes.

Of course, as we're all saying, this should be a market analysis. I agree with my fellow witnesses, that market definition is key here, the merger proponents will always try to expand that market and say we're not that concentrated, opponents of the deal will try to shrink it, those are, again, interesting questions, and they're asked in good faith, but that doesn't mean that the White House weighing in does anything to advance that analysis. It probably just impedes it and takes it off track.

Ms. BALINT. Our job essentially here is to be the watchdog, to be doing the oversight, to be the eyes and ears of our constituents who can't be in this Committee hearing room. I urge the Chair of this Committee to take the role of this Committee seriously. There is strong evidence that our antitrust enforcement system is being corrupted, and we have to use our constitutional authority to investigate.

Monopolies hurt all Americans, and whether it's in meat packing, whether it is in firetruck manufacturing, whether it's a monopoly of the seed industry, or in this case, if it's in the media landscape, we have to be effective watchdogs and not just roll over for an administration that is not doing its due diligence for the American people.

With that, Mr. Chair, I have two unanimous consent that I bring before the Committee. In relationship to whether further consolidation in the industry is going to be a threat to moving theaters and theatrical releases, "Movie Theaters Dread Any Warner Bros. Merger, by the Hollywood Reporter." The second one, "Gen X Went To Movie Theaters Most Often in 2025," according to *New Exhibition Report*. Thank you so much, and I yield back.

Mr. FITZGERALD. Without objection.

Chair JORDAN. Mr. Chair.

Mr. FITZGERALD. The gentlewoman yields back.

Chair JORDAN. If I could, while we're on unanimous consent, have the unanimous consent request from the Chief Legal Officer of Paramount Skydance Corporation for a statement to be entered into the record.

Mr. FITZGERALD. Without objection. The gentleman from North Carolina is now recognized.

Mr. HARRIS. Thank you, Mr. Chair. Thank you all to the panel for your time and your expertise you've given today.

Real quickly, Dr. Ezrielev, as the government, if the government is going to intervene to stop these mergers, it has to prove that the merger is eliminating competition rather than creating benefits for consumers.

Now, you mentioned in your written testimony a phrase that caught my attention when you talked about significant efficiencies that would counterbalance any harmful effects associated with an increase in market concentration.

What potential efficiencies could you foresee arising from the mergers between Warner Brothers, Netflix, or Paramount?

Mr. EZRIELEV. Thank you, Congressman, for that question. There are several sources of efficiencies. The most obvious one is that this is a vertical deal, so both—that means I'm talking about Netflix

and Warner Brothers. The same goes for Paramount and Warner Brothers. It means that they're both creating content and distributing content. By combining the distribution channels of both Netflix and Warner Brothers, there are more efficient ways of distributing content to viewers. Sometimes you could achieve elimination of double marginalizations so that you don't charge your affiliate a margin so that you're saving costs. That's potentially a cost savings.

Another source of efficiency may be better use of data. One of the things that Netflix does very well is recommending shows to people who are likely to enjoy those shows, and that requires a lot of data analysis. Also, creation of shows that are going to appeal to the right audience shows that people are going to watch, that's very risky, it requires a lot of data.

Combining the data of both HBO Max and Netflix, they will be able to better understand what viewers want to see. They will be better able to market the shows so that the right show—the right content is reaching the right viewer. Those are two of the bigger ones, but there are probably others.

Mr. HARRIS. Very good. Thank you, sir. Ms. Melugin, in your written testimony you did mention that today's calls for an anti-trust intervention in digital streaming markets as similar to those of the past. How is this conversation we're having today similar to that in 2005 when you specifically talk about Blockbuster seeking to purchase its rival, Hollywood Entertainment.

Ms. MELUGIN. I think it's just a big temptation for all of us as human beings, and regulators especially, for whatever reason, to take kind of a snapshot of things as they are and view them as static and then deal with those problems as they see them, but, in fact, of course, we have to remember, and we get reminded periodically, it's not static. It's dynamic.

While the marketplace is out making changes that no regulator should be expected to understand there's a certain amount of economic data that should and will be evaluated in whatever deal ends up happening, that's fair, there's great precedent to that.

There are considerations, like efficiencies offsetting any potential competitive harms; that's great. At some point there has to be some amount of regulatory humility that also enters the conversation that says we can't actually predict to say how will Netflix do after this deal. I don't know. They don't know. The people who have skin in the game usually make the best guess.

We've heard about merges that weren't successful in the market as well. No one can know the future, and you just have to keep a little bit of deference to market forces and interested parties in your mind as you look at these deals.

Mr. HARRIS. Are there any specific mistakes that you might reference that regulators made in 2005 that regulators today should avoid.

Ms. MELUGIN. Not looking at the bigger picture in terms of what technologies are going to come online that sort of overthrow the whole system. Right. We all used—I sadly am old enough to remember renting DVDs at Blockbuster and Hollywood Video. Then, when things got really fancy there were those boxes at the grocery store. Amazing innovation. Netflix came along and we couldn't be-

lieve they were doing it through the mail. That was wild and we loved that, too.

There are other factors outside the narrow band of the data regulators are going to look at in this that are happening outside, but, nevertheless, might be impactful. You have to make sure that by intervening in these market deals you're not preventing some of that beneficial innovation unknowingly.

Mr. HARRIS. Thank you. I yield back, Mr. Chair.

Mr. FITZGERALD. The gentleman yields back. I now recognize the gentleman from California.

Mr. CORREA. Thank you, Mr. Chair. I want to welcome our speakers today and our witnesses.

I represent Orange County, California, Southern California. My biggest employer in my district is Disney Land with 40,000 jobs, plus. You can understand the multiplier effect there. Tremendous economic activity.

Southern California, California, the entertainment industry, film industry, big sector, and the 4th and 5th largest economy in the world. That's our bread-and-butter in California, entertainment. Yet, all of you know COVID, AI, other factors have really hurt our job picture in the entertainment industry. Hollywood especially. Losing a lot of jobs.

A lot of graduates from the local best film schools in the country, UCLA, USC, and the other schools, a lot of those graduates can't find jobs today. You heard my colleagues today presenting letters of concern, opposition to these mergers from labor groups. These folks are concerned about their jobs, bread-and-butter.

I love to hear your academics today, your analysis today. Great stuff. Back home people are concerned about their jobs. Where are they going to feed their families tomorrow. A lot of uncertainty.

I'm going to ask each of every one of you, however you can answer, are these mergers going to create jobs? Are they going to stem from the current loss of jobs that are happening? Mr. Wood.

Mr. WOOD. Thank you, Congressman. We would certainly expect them not to stem that loss of jobs and to increase it. I think recent—

Mr. CORREA. Dr. Yun.

Mr. WOOD. Have shown that.

Mr. YUN. I genuinely don't know.

Mr. CORREA. Ms. Melugin?

Ms. MELUGIN. I think there is a chance that some jobs will be lost, and that some jobs we can't articulate at the beginning will be created as well.

Mr. CORREA. Dr. Ezrielev? Please excuse me for mispronouncing your name.

Mr. EZRIELEV. I don't know if they will create jobs or lose jobs.

Mr. CORREA. You have two of you that are uncertain, for sure loss of jobs, and possibly loss of jobs.

Hollywood, best films in the world. Best entertainment in the world. Arguably, yes. Maybe. I don't know. Those blockbusters out there, a lot of my constituents worked on them.

Let me ask you again specifically, Netflix, if Netflix wins this bidding competition, are they going to create jobs? Mr. Wood.

Mr. WOOD. Again, it's hard to predict the future, but when they say synergies they mean job cuts. They mean other kinds of reductions in spending.

Mr. CORREA. Job cuts. Dr. Yun?

Mr. YUN. I don't have a prediction.

Mr. CORREA. Ms. Melugin.

Ms. MELUGIN. I cannot say for certain.

Mr. CORREA. Dr. Ezrielev.

Mr. EZRIELEV. I don't know if they will create jobs. If there is growth in the industry, if there is growth in streaming and more content that will create jobs.

Mr. CORREA. In California? In the U.S.? Somewhere else?

Mr. EZRIELEV. I don't know where.

Mr. CORREA. If Paramount wins this bidding competition, creating jobs, Mr. Wood?

Mr. WOOD. That's a more classic horizontal merger in the studio space, and so, no, again, I would think it would decrease jobs.

Mr. CORREA. Dr. Yun?

Mr. YUN. I don't have a prediction on that, either.

Mr. CORREA. Ms. Melugin.

Ms. MELUGIN. It would be my same answer, I'm unsure.

Mr. CORREA. Dr. Ezrielev.

Mr. EZRIELEV. I don't know.

Mr. CORREA. Here we are as Members of Congress debating M&A, economic activity in this country, job creation, bread-and-butter, and we're still not quite sure what the effects will be of this M&A activity, is that what I am hearing today, or we're hearing it will create job losses, is that—

Mr. WOOD. Again, Congressman, we can only look to the past, we can't predict the future. Mergers are designed to save the company's money, and those efficiencies might be real for the shareholders, but they—

Mr. CORREA. You begin to understand why we have concerns by workers in this area when we don't have answers, and it sounds like maybe this is not going to be good.

Let me turn very quickly, my last 30 seconds, are these mergers going to lower the ticket, the amount I will pay monthly for entertainment at home? Mr. Wood?

Mr. WOOD. No, again, I don't think so. We've seen that prices have gone up historically.

Mr. CORREA. Dr. Yun?

Mr. YUN. For some users, yes. For some users, maybe not.

Mr. CORREA. Ms. Melugin?

Ms. MELUGIN. I agree, it will be probably mixed results.

Mr. CORREA. Mixed. Dr. Ezrielev?

Mr. EZRIELEV. I don't know.

Mr. CORREA. Here we go, we don't know, probably job losses. Now, we understand why people on Main Street are concerned. Thank you very much. Mr. Chair, I yield.

Mr. NADLER. Mr. Chair.

Mr. FITZGERALD. The gentleman yields back.

Mr. NADLER. I have three UC requests.

Mr. FITZGERALD. Before I would like to say that I did not know that Mr. Correa represented Disney Land, that sounds like a future field hearing for this Committee.

Mr. CORREA. Offer accepted, sir.

Mr. FITZGERALD. Mr. Nadler is recognized.

Mr. NADLER. Thank you. I ask unanimous consent for a statement for the record of the American Economic Liberties Project; for an article in *Planet Money* titled, "The Warner Bros. Curse;" for an article in the *Verge* titled, "There are no good outcomes for the Warner Bros. Sale." I have one more. Finally, I offer a unanimous consent request for an article in the *Free Press* titled, "A More Perfect Media, Saving America's Fourth Estate from Billionaires, Broligarchy and Trump."

Mr. FITZGERALD. Without objection. The gentlewoman from Wyoming is now recognized for 5 minutes.

Ms. HAGEMAN. Thank you, Mr. Chair. I want to talk a little bit about some definitions before I get into my questions, just so that I can understand what your testimony is.

Streaming services send video data through broadband internet to televisions, computers, phones, tablets, and other devices.

Linear streaming services deliver live channels over the internet, and are commonly considered as alternatives to cable, that would be your YouTube TV, Hulu, Live TV, Sling TV, et cetera.

Then, on-demand streaming services generally provide a catalog of shows and movies for consumers to watch without waiting for downloads, scheduled air times, or physical copies, like DVDs, and that would include Netflix, HBO Max, and Amazon Prime.

Warner Brothers Discovery, the company that owns HBO Max streaming services, Warner Brothers Movie and Television Production Studios, and linear cable television networks, including CNN, is currently up for sale, and at least two companies, Netflix and Paramount, are actively competing to buy it, looking at a sale of upwards of \$100 billion.

Profession Yun, I would like to start with you, and that is, as you noticed in your testimony, an initial challenge that antitrust official will need to overcome is how we actually define the relevant market in this new streaming world we live in.

Now, can you explain to us why some parties might want this definition to more broadly include linear TV and social media platforms, and why other parties would want a narrower definition, a list just on the streaming?

Mr. YUN. Yes, it's the classic struggle in antitrust cases. Narrow definitions obviously mean higher market shares for the merging parties, and that usually is what the challengers of a merger want. The agencies will probably challenge this merger if they find sufficient evidence that the market is just streaming and then they'll go forward.

The party's incentives clearly is to dilute their market share, their influence based off the competitors. They're going to want to have a broader market to include, as you mentioned, YouTube, YouTube TV, cable television, and satellite. The inclusion of YouTube onto the market will probably destroy any opportunity for this merger to be blocked because that will then mean that consumers have a viable option to move their attention to YouTube.

If the data is there, then I don't think this will be challenged. That is everything in terms of this debate.

Ms. HAGEMAN. OK. Do either the narrower definition or the broader definition, which would be better for the consumers?

Mr. YUN. For me, the consumers care about their options and choices, so I would hope that the market definition adopted by either the agencies or the parties map to truly what the consumers have options over.

If the data does show that consumers, when they see a higher price for Netflix, people leave Netflix. Data consistently shows that. Where do they go? Do they go to HBO Max, do they go to Amazon Prime Video, or do they move to YouTube, social media and other platforms? If the data shows that they move to the latter, that to me is a great deal of evidence that the merger does not consolidate market power because the consumers haven't given them that power.

Ms. HAGEMAN. OK. Well, then, consolidation of streaming services may appeal to consumers who are frustrated with the fragmentation of the current market across multiple absent platforms requiring different subscriptions.

Netflix is the original streaming service, and still today considered one of the premium on-demand streaming services. It is also one of the few that is actually profitable, so far.

While other platforms are trying to grow and turn profits, what are the potential negative effects for consumers by allowing the top premium service to acquire another? Mr. Yun?

Mr. YUN. What are the potential negative consequences.

Ms. HAGEMAN. Yes.

Mr. YUN. If I had to predict the negative consequence, it's most likely going to be those consumers who have no value for HBO Max, yet Netflix will most likely increase the price to those consumers to access the platform because it's going to integrate that content.

The winners are most likely HBO Max users today who also subscribe to Netflix. I would predict their bundle price would be lower. That's what I meant earlier that it will be a mixed bag, and it will depend on who's the bigger consumer base.

Ms. HAGEMAN. OK. Just one last question. Balance is obviously needed between preserving competition and responding to these fragmentation concerns. Does allowing the market's biggest player to acquire another major player appropriately strike this balance, or is there a better way? Mr. Yun.

Mr. YUN. Oh, gosh, it's a great question. I'm just so limited to whether this deal violates the law or not, and that's kind of my focus. There are counterfactuals that could possibly be better.

Ms. HAGEMAN. OK. Well, thank you. With that, I yield back.

Mr. FITZGERALD. The gentlewoman yields back. I now recognize the gentleman from Illinois for 5 minutes.

Mr. GARCIA. Thank you, Chair Fitzgerald. Everyone agrees that the rise in on-demand digital streaming has transformed and changed the media and entertainment industry. While the industry has been transformed, our goal remains the same, enforce antitrust laws, and ensure an open competitive market that protects work-

ers, consumers, allows new entrance, promotes creativity, and free speech.

Mr. Wood, thank you for being here today. Netflix and Warner Brothers argue that the industry has changed so much that the relevant market includes other forms of digital media, including social media. Are you skeptical of that definition?

Mr. WOOD. I'm listening, but I am skeptical, yes. As Dr. Yun was saying that is really the entire question here in the entire ball game. The question is not just will people switch to a different source, but will that behavior discipline the ability of the merging entities to raise prices or reduce output.

There's a couple different questions. There's lots of different metrics. Asking about all those metrics is valid, and that's really the job that we need the antitrust enforcers to do very carefully.

Mr. GARCIA. Thank you. Another important goal of antitrust enforcement is protecting workers from anticompetitive and abusive practices.

Of course, this deal is just the latest in a series of mega mergers in the entertainment industry. Every time those companies promise to protect workers and every time they betray workers.

After Disney, for example, acquired Fox, 4,000 jobs were lost. In the years after the AT&T Time Warner merger, 77,000 workers were laid off. Since merging with Skydance only months ago, Paramount has already laid off 1,000 workers, and promise to lay off 1,000 workers more in the coming months.

Mr. Wood, given this history, are you concerned that additional consolidation in this industry will harm workers through widespread layoffs, reduce compensation, and other anticompetitive practices?

Mr. WOOD. Yes. Thank you, Congressman. We are very concerned. As you said, "that's the track record," and that's the design of these deals, is to reduce the head count. That's how companies make a lot of the money that they can, in addition to being able to raise prices when they face less competition.

It was suggested earlier that antitrust should not be concerned with labor issues. I don't think that's true. I don't know that it historically has been enough, but there are courts that agree that labor issues are very much the province of antitrust law, and so we hope that the analysis will take that into account as well. As it's not exactly the same as a typical labor market, maybe, but the creators, the artists who are putting these products out there, it's almost a shame to call them products, because they are not employees of these companies, but they also would face reduced opportunities for places to find their work made and put on screen if these mergers go through and if the number of films made continues to dwindle.

Mr. GARCIA. Thank you. My criticism of the Netflix deal is not an endorsement of the offer by Paramount, a company that's controlled by Right-wing oligarch Larry Ellison and his son David. The Ellisons are already doing Trump's bidding at CBS by installing Right-wing ideologues who are swaying the network's content in favor of this administration in a very very clear way. Now they're telling Trump that if Paramount buys Warner Brothers, they'll turn CNN into a Trump news network.

Mr. Wood, are you concerned about the possibility of viewpoint discrimination at *CNN* if Trump blocks the Netflix deal and gives the green light to Paramount?

Mr. WOOD. I think you said it well, Congressman. If the new owners of *CBS* want to install a more Right-leaning newsroom and change their viewpoint, that's their prerogative. The problem is when they're doing that, not only at the President's request, but with the threat that their merger won't be approved unless they do so. That's the really chilling element here.

Companies, of course, have a right to change their politics, change their coverage, change their newsrooms, but when it's not only at the government's request, but under a threat from the government of withholding of benefits, or some other regulatory action, we've seen this at the FCC many times, investigations launch that sort of magically disappeared once companies made concessions, and that's the kind of interference, not only in the antitrust process, but with the First Amendment that gravely concerns us.

Mr. GARCIA. That's the warning about greater consolidation in the industry. Thank you. I yield back, Mr. Chair.

Mr. FITZGERALD. The gentleman yields back. The gentleman from New York is recognized for UC requests.

Mr. NADLER. Thank you, Mr. Chair. Mr. Chair, I ask unanimous consent to enter into the record an article from the *Progressive News Wire* entitled, "Press Freedom Groups Tell FCC: Media Consolidation Poses Grave Threat to Independent News and Information in the United States." Also, ask for unanimous consent to enter into the record a prepared statement for the record of Cinema United.

Mr. FITZGERALD. Without objection.

Mr. NADLER. Thank you, Mr. Chair.

Mr. FITZGERALD. The Chair of the Full Committee is now recognized for 5 minutes.

Chair JORDAN. Thank you, Mr. Chair. Ms. Melugin, it's about the consumer, right.

Ms. MELUGIN. One hopes so.

Chair JORDAN. Earlier it was said it was an economic analysis, it's a market analysis. That analysis is driven by the welfare of the consumer. If you go to any other standard, you start running into problems. You start saying, oh, it's about the content producers, it's about the unions, it's about the workers, it's about—if you go anywhere else, you're getting problems. Here is the good thing, when you focus on the consumer, in the long run it typically benefits the workers, the businesses, it benefits everyone, but you have to focus there.

You get anywhere else—you can create a monopoly where they hire a bunch more people, pay them huge salaries, but that's not good in the long run for the consumer, or, frankly, for the country, for the market, for everything else; is that right.

Ms. MELUGIN. Yes, I would say that antitrust can't serve more than one master, and any time you replace any worthy and understandably concerned group it's a special interest, and that will displace protecting the interest of consumers. There's only one person, and there's only one group that it can be focused on, and the great

thing about picking consumers is that at some point in the economy we're all—

Chair JORDAN. We're all consumers. That's a beauty that's standard. When you deviate from that standard, start playing games, start picking things, start basing it on anything else, I think you run into problems.

How is this going to shake out? We don't have to predict everything, but what's—I heard Dr. Yun talk about how the marketplace is going to be defined and all that. How are you guys—give us your sense. That's what we all want to know. Maybe you said that already. I was in another Committee hearing on this Minnesota fraud, so I apologize, but—

Ms. MELUGIN. It's a hardy, but a newy. Yes, listen, I agree with what's been said here. Getting that market definition set is going to be hugely important. That affects what market shares we're talking about, and that sets either challengers or these companies up for success depending.

Any deal that happens is going to be reviewed just because of the size of it, it's going to be reviewed by U.S. antitrust officials, regulators, and then you've heard it all here today, what are they going to be looking at.

Chair JORDAN. Who do you think is going to get the burden? Again, depends on how they define the market, but who is going to have the burden? Is it going to be on the companies, the merging parties, is it going to be on the government to show this is anti-competitive? That's sort of the fundamental step that takes place relatively early on in this process.

Ms. MELUGIN. Who knows what will happen, but since I got to testify today, I will make the prediction that hopefully we have a more expansive market, relevant market definition that takes into consideration the behavior of its consumers. Even if you didn't—you're really only hitting that 30 percent, so hopefully we have a broader view of how consumers actually—

Chair JORDAN. Even under the narrow definition, you're close to the threshold, the 30 percent criteria, but under the broad definition, no problem. I see the Doctor shaking his head. Do you want to weigh in as well.

Mr. YUN. That's 100 percent accurate.

Chair JORDAN. OK. I get it. Anyone else want to—we're going to let the Chair finish up here last, but anything else—I'll even go to the Democrat witness, Mr. Wood.

Mr. WOOD. How kind of you, sir. No, as you said, we want to focus on the consumer, and whether we focus on other things as well—

Chair JORDAN. No, you didn't say—the last round of questions you said you've got to focus on the worker.

Mr. WOOD. Well, we talked a lot about the markets, too. I said we can focus on the labor impacts as well, and I think that—

Chair JORDAN. That's a deviation. That's different. That's changing, that's changing the process. In the end, in the long run, I don't think that's beneficial. I want to focus on workers and make sure they have jobs, too, but you can't do that because in the long run it will end up skewing the market.

You said you weren't wedded to the welfare of the consumer standard, I think that's the right standard.

Mr. WOOD. Yes. Not solely to that, but I certainly understand your viewpoint, too. What I was going to say, in antitrust, too, it's always the government's burden to—

Chair JORDAN. All I'm saying is your viewpoint is going to get us in trouble, I believe, going forward. The viewpoint focusing on the consumer, as Ms. Melugin pointed out, because we're all consumers, is the safest, best, tried and true process. OK. I said I'll let you talk, so I'll let you talk now.

Mr. WOOD. I was going to say, it's the government's burden, but as Dr. Yun explained earlier, there is a presumption of illegality when the concentration levels hit a certain level.

To answer your question, it's not going to be the company's burden to get this through. It's the government's burden to make that case.

Chair JORDAN. That's my read.

Mr. WOOD. How they make that case will depend greatly on how we draw those market barriers, and we have concerns about competition here, for sure, but that work is yet to be done.

Chair JORDAN. Doctor, you get the last 33 seconds.

Mr. EZRIELEV. That if we focus on the most narrowest market, which is the subscription video on-demand market, the concentration level there, even though it's likely more than 30 percent, the market concentration in that market is not particularly high, anyway.

The 30 percent Philadelphia National Bank threshold has zero basis in economics. It's more seen as a necessary condition and as a sufficient condition. Even under that narrow market definition, I don't know if this is a slam dunk, but there are lots and lots of problems with that narrow market definition.

By definition, it's a relevant market, so whoever defines that market that says everything else is irrelevant, and that would include YouTube, and that's just—and others, and that's just not the case.

Chair JORDAN. Chair, thank you for this important hearing, and I yield back.

Mr. FITZGERALD. The Chair yields back. I just wanted to wrap up, I guess I'll recognize myself for 5 minutes, but what it comes down to is, and what we've heard a little bit today is let's actually think about how real people actually make the decisions on what they're going to use as their entertainment value.

If somebody now says that—it seems like one of the hotter shows right now is Landman, so if your neighbor or your friend says, hey, have you seen the latest episode of Landman, the first thing you're going to think is, I don't know because what's it on, what's it being streamed on—and then the family makes the decision as to, yes, we're going to sign up for Paramount Plus because we don't have it right now, but I do want to watch Landman. OK.

Then, you have the sports issue, which is you have NFL teams right now that are on five different streaming venues, so the level of frustration I hear from the constituents back in the 5th District is why are the Packers on Peacock three times this year.

I don't know if the mergers necessarily change that, because no one is shopping for the actual network. What they're doing is they're shopping for the content. Right.

From my perspective, the last administration really did not look favorably on mergers. Right. Every merger was suspect right out of the gate, and what we found was that's not always a bad thing. It depends on the market, it depends on the content, and it depends on how it's being delivered, and that was underscored again today.

I just want to thank the witnesses for participating today. We do have a couple of unanimous consents. An article published in *The Wall Street Journal* authored by myself titled, "A Merger Could Bring Better Streaming." The Ranking Member should have offered that one on my behalf. An article published in *Townhall* titled, "Netflix-Warner Bros. Deal is Free Market." An article published in *Townhall* title, "A Netflix-Warner Bros. Deal Puts America First." Without objection, those will be added.

We thank everybody for participating today, and certainly want to wrap up with not only thanking everyone for being here, but just hang on 1 second, without objection, all Members will have five legislative days to submit additional written questions for the witnesses, and additional materials for the record. Without objection, the hearing is adjourned.

[Whereupon, at 11:56 a.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=118797>.

