



The Daily Dish

The AT&T-Time Warner Decision

WILL RINEHART | JUNE 13, 2018

Eakinomics: The AT&T-Time Warner Decision

Guest authored by Will Rinehart, AAF's Director of Technology and Innovation Policy

Yesterday, U.S. District Court Judge Richard Leon [struck down](#) a Department of Justice (DoJ) lawsuit that was seeking the halt of the merger of AT&T and Time Warner. With the two companies allowed to go ahead with their \$85 billion deal over DoJ's objections, the department not only suffered a major blow, but the decision paved the way for other pending deals.

The DoJ [complaint](#) pushed a specific concern about the merger: "AT&T/DirecTV would hinder its rivals by forcing them to pay hundreds of millions of dollars more per year for Time Warner's networks, and it would use its increased power to slow the industry's transition to new and exciting video distribution models that provide greater choice for consumers."

Resting a case on that concern was a long shot since the Federal Communications Commission (FCC) already has two sets of regulations in place to stop this kind of behavior.

For one, Section 628 of the Communications Act makes it unlawful for a company like AT&T to "engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers." The FCC uses this statutory authority as a foundation for the Program Access rules, which could be used to constrain the merged company.

In a similar fashion, the FCC roots the Program Carriage rules in Section 616 of the Communications Act. This part of the law limits cable and satellite companies from "unreasonably restrain[ing] the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors."

So why has everyone been watching this case? If their stand against AT&T and Time Warner passed the courts, the DoJ could have sparked a new era of scrutiny for vertical mergers, i.e. mergers of companies in adjacent markets. Instead, other pending vertical mergers like Fox and Disney or Comcast, CVS and Aetna, and Cigna and Express Scripts might find it easier to get their deals approved. Judge Leon didn't budge much from the accepted legal wisdom, and shot down the case from lack of evidence. At least for now, nothing really changes.