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U.S. Sues to Block AT&T-Time Warner Merger

By **CECILIA KANG** and **MICHAEL J. de la MERCED** NOV. 20, 2017

WASHINGTON — The Justice Department sued to block AT&T's \$85.4 billion bid for Time Warner on Monday, setting up a showdown over the first blockbuster acquisition to be considered by the Trump administration and drawing limits on corporate power in the fast-evolving media landscape.

By challenging the deal, the Justice Department is taking an approach to antitrust issues that is starkly different from the Obama administration's. In 2011, for instance, the department approved a similar deal — Comcast's acquisition of NBCUniversal — after imposing numerous conditions on the transaction.

If AT&T's bid for Time Warner were to go through, the merger would create a media and telecommunications behemoth. By itself, AT&T is one of the nation's largest internet and telephone providers. With its 2015 acquisition of DirecTV, the country's largest satellite company, it also became the largest television distributor in the United States.

The combined company would have an unrivaled ability to reach consumers through news and entertainment programming. Among Time Warner's properties are HBO, the home to "Game of Thrones"; Warner Bros., the studio behind blockbusters like "Wonder Woman" and the Harry Potter film series; and

Turner Broadcasting, which includes the news channel CNN and the sports-heavy TNT network.

Makan Delrahim, the Justice Department's top antitrust regulator, said a union of the two companies would harm consumers and weaken competition.

"This merger would greatly harm American consumers," Mr. Delrahim, the assistant attorney general for antitrust, said in a statement. "It would mean higher monthly television bills and fewer of the new, emerging innovative options that consumers are beginning to enjoy."

AT&T said it would defend the proposed deal in court, arguing that companies don't directly compete against each other and that the government hasn't challenged a similar kind of merger in decades.

"It defies logic, and it's unprecedented," AT&T's chief executive, Randall L. Stephenson, said in a news conference on Monday after the suit was filed.

The complaint was filed in Federal District Court for the District of Columbia against AT&T, DirecTV and Time Warner.

In a call with reporters on Monday, a Justice Department official said the agency remained open to negotiating a settlement. To gain favor with the antitrust division, the official said, the companies would have to sell off some of their assets.

During the news conference, Mr. Stephenson said that the Justice Department had a long history of approving similar mergers and that the company was not willing to part with any assets to get the deal approved.

In its complaint, the Justice Department said consumers would most likely face higher prices for cable or satellite television subscriptions because AT&T would be able to charge more for licensing of valuable programming like the N.C.A.A. men's basketball tournament, which is broadcast in large part on Turner networks.

The government argued further that AT&T's acquisition of Time Warner would stifle innovation from online streaming firms like SlingTV, which competes with AT&T's DirecTV Now service. AT&T could withhold programs from those online providers.

A combined AT&T and Time Warner, the complaint said, would be more harmful to consumers and larger in scope than Comcast-NBCUniversal. Comcast's cable and broadband service reaches more than one-third of the nation.

"Both AT&T/DirecTV's video distribution services and Time Warner's TV networks are available nationwide, so the harm would occur throughout the country," the Justice Department said in its complaint.

Mr. Stephenson has argued that AT&T needs media content in order to compete against internet firms like Google and Facebook for digital advertising dollars. With a big stock of television programming, it would also compete more effectively for subscribers against companies like Comcast and Verizon, which both own content.

While speaking with reporters on Monday, Mr. Stephenson obliquely raised the issue of possible interference by the White House. President Trump, a frequent critic of news coverage by CNN, said during the 2016 presidential campaign that the deal should be blocked. Mr. Stephenson called the issue of CNN the "elephant in the room" and speculated about its role in Mr. Delrahim's decision.

"Frankly, I don't know," Mr. Stephenson said.

Mr. Delrahim has spoken at length about how Justice Department officials should handle mergers involving two companies that don't compete against each other, like the one between AT&T and Time Warner. Problems with those mergers have traditionally been resolved by adding conditions known as consent decrees, which restrict the new company's behavior or operations.

Mr. Delrahim has argued that those remedies are not effective. Instead, he has spoken in favor of so-called structural remedies, like forcing a company to sell assets before a merger or acquisition.

On Sept. 29, he was put in a position to act on that theory, when he was sworn in at the Justice Department.

Throughout the summer, Justice Department officials and AT&T lawyers had discussed conditions that would allay antitrust concerns. During the talks, AT&T

representatives said the combined company would abstain from anticompetitive business practices. At least some Justice Department staff members seemed open to the idea, according to two people familiar with the government review.

The antitrust staff, which included holdovers from the Obama administration, presented Mr. Delrahim with three options: Accept the deal with conditions, accept the deal with divestitures, or block it altogether.

Five weeks later, it became clear to AT&T that the deal was in trouble.

An article by *The Wall Street Journal* on Nov. 2 reported that the Justice Department was considering filing a lawsuit against the deal. The next day, according to a company official, AT&T asked for a meeting with Mr. Delrahim and senior staff.

Mr. Stephenson and the company's general counsel flew from Dallas to Washington a few days later to meet with the officials. After the meeting, the two sides were far from reaching a deal.

According to AT&T sources, the Justice Department asked the company to rid itself of Turner or DirecTV, the satellite TV provider.

Government officials, however, said AT&T had offered to sell CNN. By the end of the day's talks, Mr. Stephenson put out a statement saying he had never offered to sell CNN.

The next day, on Nov. 9, Mr. Stephenson, speaking at *The New York Times's* DealBook conference, said the company was prepared to defend itself in court. He added that a significant merger of companies that were not direct competitors with each other had not been challenged in 40 years.

In recent weeks, the Justice Department reached out to several state attorneys general who had been investigating the transaction to see if they would join the lawsuit as plaintiffs. None of them have yet joined, leaving the Justice Department as the sole plaintiff.

Whether or not Mr. Trump played a role in the Justice Department's attempt to block the deal will remain a subject of debate, fanned in part by the president himself. On Nov. 15, he wrote on his @realDonaldTrump Twitter account: "While in the Philippines I was forced to watch @CNN, which I have not done in months,

and again realized how bad, and FAKE, it is. Loser!” The tweet was retweeted on the official @POTUS account.

In July, Senator Amy Klobuchar of Minnesota, the ranking Democrat on the Senate Judiciary antitrust subcommittee, wrote a letter to Attorney General Jeff Sessions that asked, “Has any employee of the White House or adviser to the president (either official or unofficial) had any contact with any Department of Justice employee regarding the AT&T/Time Warner transaction?”

Mr. Delrahim has strongly denied there has been interference by the White House or Mr. Trump.

Legal experts were divided on the merits of the suit.

Gene Kimmelman, the president of Public Knowledge, a nonprofit consumer advocacy group and a former senior antitrust official at the Justice Department, said, “We believe the Justice Department has presented a persuasive case that should satisfy any federal judge that this transaction is illegal and should be blocked, regardless of any politics surrounding the deal.”

Ryan Radia, a legal and regulatory expert at the Competitive Enterprise Institute, took a different view. “The AT&T-Time Warner merger is a vertical transaction that wouldn’t reduce competition in any distinct market,” Mr. Radia said. “Under established antitrust principles, the government will have a difficult time showing a court that the deal is likely to harm consumers.”

Anxiety over the merger has simmered in the CNN newsroom for months, with staff members speculating about the role of the president’s animosity toward the network.

On Monday, CNN was the only cable news channel to broadcast the AT&T news conference. Anchors reminded viewers that Mr. Trump had once tweeted a video that portrayed him body-slammng a wrestler with a CNN logo for a head.

AT&T’s general counsel, David R. McAtee, said in a statement on Monday: “Today’s D.O.J. lawsuit is a radical and inexplicable departure from decades of antitrust precedent. We are confident that the court will reject the government’s claims and permit this merger under longstanding legal precedent.”

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