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**"BEYOND THE POPCORN:"
ANTITRUST LAW FAILS TO KEEP PACE WITH THE EVOLVING ENTERTAINMENT
INDUSTRY**

❖ Note ❖

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I. INTRODUCTION

What happens when one of the most famous streaming services attempts to purchase another large streaming service with world-renowned titles such as *Harry Potter*, *The Lord of the Rings*, *The Hobbit*, and more? A vigorous antitrust investigation by the DOJ, political considerations, and business agendas may prevent a benefit to consumers.

Warner Brothers originally agreed to an \$82.7 billion takeover by Netflix in December.¹ However, due to an increased purchase price and political threats to stall the DOJ investigation,² the deal fell through. Paramount objected to the takeover while also attempting to purchase Warner Bros.³ Netflix offered to buy the shares at \$27.75 in cash and stock, while Paramount offered \$30 per share.⁴ After months of offers from both Netflix and Paramount, and continuous investigations

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¹ See Molly Schuetz & Sabrina Willmer, *Paramount Sues Warner Bros., Aims to Nominate Directors to Board*, *Bloomberg Law* (Jan. 12, 2026), <https://news.bloomberglaw.com/california-brief/paramount-sues-warner-bros-aims-to-nominate-directors-to-board>.

² See Dominick Mastrangelo, *GOP attorneys general ask DOJ to block Netflix-Warner Bros. Discovery deal*, *The Hill* (Feb. 25, 2026), <https://thehill.com/homenews/media/5754970-republicans-urge-doj-to-block-netflix-warner-merger/>.

³ See Schuetz & Willmer, *supra* note 1.

⁴ See Schuetz & Willmer, *supra* note 1.

by the DOJ, Warner Bros. and Paramount recently agreed to a \$111 billion merger.⁵ In addition, Paramount will pay a \$2.8 billion fee that Warner Bros. owes Netflix for leaving the original deal.⁶

The issue for the DOJ was defining the correct market for this investigation, something the DOJ has often struggled with when faced with mergers in evolving technologies.⁷ The DOJ could have investigated this merger against a broader entertainment market, or limited its investigation to streaming video on demand (SVOD), in which there would have been a larger antitrust concern.

With a merger of this magnitude, an antitrust issue gets flagged when the DOJ investigates the following questions: (1) whether the merger complied with the Clayton Act and (2) whether it substantially decreased competition and led to increased prices above the equilibrium for a sustained period. In answering them, however, the DOJ continues to struggle to place new emerging markets squarely into already defined product categories. Furthermore, the Paramount deal demonstrates that political rationales are factors in antitrust claim analysis.

This note argues the importance of the DOJ's ability to adapt to evolving technologies and ensure the agency is prepared to deal with mergers in innovation-driven industries. Part II discusses the Paramount deal and the evolution of the entertainment industry that continues to challenge the existing legal framework for antitrust claims. Part III further examines the gap between the existing framework that the agency relies on and the court's attempt to incorporate the transformations in the market. Part IV recommends expanding on the court's new interpretation and more holistic and qualitative approach in antitrust inquiry. It also denies that the political agenda should be a factor included in an antitrust claim. While the Paramount deal presented numerous benefits to consumers, it was clear there was more than just business negotiations involved in the merger.

II. BACKGROUND

Warner Bros. and Paramount are two large production companies, while Netflix is one of the largest streaming services in the world and has become a player in the

⁵ Reuters, *DOJ sends subpoenas in Warner-Paramount antitrust review as probe picks up steam*: Reuters, CNBC (Mar. 27, 2026), <https://www.cnbc.com/2026/03/27/wbd-paramount-doj-subpoenas-antitrust-probe.html>.

⁶ Lillian Rizzo & Alex Sherman, *Netflix ditches deal for Warner Bros. Discovery after Paramount's offer is deemed superior*, CNBC (Feb. 27, 2026), <https://www.cnbc.com/2026/02/26/warner-bros-discovery-paramount-skydance-deal-superior-netflix.html>.

⁷ See Mike Musgrove, *Blockbuster withdraws Hollywood merger bid*, Seattle Times (Mar. 26, 2005), <https://www.seattletimes.com/business/blockbuster-withdraws-hollywood-merger-bid/#:~:text=Blockbuster%20officials%20had%20said%20earlier,senior%20subordinated%20debt%20of%20No.>

production industry. A merger between Paramount and Warner Bros. will have a drastic impact on the production, availability, and costs of movies and shows. The Department of Justice (DOJ) investigated the merger and determined it complied with the Clayton Act on June 12, 2026.⁸ Typically, antitrust concerns are implicated at a threshold increase of 100 points on the Herfindahl-Hirschman Index (HHI).⁹ The Department of Justice then investigates whether this would substantially decrease competition or lead to increased prices above the equilibrium for a sustained period of time.

This large market share will not only affect consumers but also harm other suppliers of films and shows. Paramount might now be able to set market prices for production costs, leading to less variety of films. Additionally, costs of these productions may rise, and this could be passed on to consumers, harming an already struggling movie theater industry still recovering from decreased turnout since COVID. However, there are also benefits to consumers that should be considered in an antitrust investigation. Consumers will have fewer subscriptions to pay; Paramount will have access to a larger content library; and the production studios will be able to attract larger stars for films, leading to better quality movies for theatrical releases.

The HHI is the first evaluation in an antitrust case. Here, the HHI does not create a presumption of illegality under the Merger Guidelines and is unlikely to implicate any antitrust concerns in the streaming market. However, multiple markets are involved in this merger which complicates this deal for the DOJ. Additionally, the DOJ has struggled to define new markets that involve innovative technology and this often results in too narrow of a relevant market. The DOJ evaluated the impact of the merger in the SVOD, linear television, and theatrical markets.¹⁰

A. DOJ's Investigation into Paramount

Paramount's proposal includes purchasing Warner Bros.' studio, cable networks, and streaming assets such as HBO Max along with the film library. Paramount will now control 32% of the North American box office, as well as

⁸ Yasmin Khorram, *Justice Department approves Paramount's acquisition of Warner Bros.*, Politico (June 12, 2026), <https://www.politico.com/news/2026/06/12/paramount-acquisition-warner-bros-approved-00960300>.

⁹ U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines § 2.1 (2023).

¹⁰ Brian Stelter, *Trump's DOJ approves Paramount-Warner Bros. merger, as potential state lawsuits loom*, CNN Business (June 12, 2026), <https://edition.cnn.com/2026/06/12/media/paramount-wbd-merger-doj-approve-trump-cbs-ellison>.

multiple major news outlets including CBS News and CNN.¹¹ High market concentrations typically require divestitures before approval.¹²

Paramount began its quest to acquire Warner Bros. with a pre-merger notification as required under the Hart-Scott-Rodino Act.¹³ On December 23, 2025, the DOJ issued a Second Request for Information regarding the deal, signaling a deeper investigation was forthcoming.¹⁴ Paramount submitted the requested information on February 9, 2026.¹⁵ This enacted a ten-day waiting period required by the Hart-Scott-Rodino Act that expired with no response from the DOJ. However, the DOJ released a public statement clarifying this was not a signal of approval and the merger was still under investigation.¹⁶

On March 27, 2026, the DOJ sent subpoenas to learn how the merger might affect studio output, content rights, and competition in the streaming market.¹⁷ In a possible attempt to avoid DOJ denial, Paramount has already agreed to produce at least 30 films for theatrical releases and maintain a release window of at least 45 days.¹⁸ On June 12, 2026, the DOJ officially approved the merger and stated consumers and competition wouldn't be harmed in the SVOD, linear television, and theatrical release markets.¹⁹

While the DOJ approved the merger, many state attorneys general are still investigating the merger.²⁰ The merger may lead to both horizontal and vertical anticompetitive effects. With a large market control and selection of movies as well

¹¹ Corey Martin, *Warner Bros. Sale: Paramount Has Edge, But Regulatory Hurdles Loom*, Forbes (Nov. 26, 2025), <https://www.forbes.com/sites/legalentertainment/2025/11/26/warner-bros-sale-paramount-has-edge-but-regulatory-hurdles-loom/>.

¹² Jake Townsend, *Inside M&A*, McDermott Will & Schulte (Aug. 2016), <https://www.mcdermottlaw.com/it/insights/inside-ma-august-2016/>.

¹³ Fed. Trade Comm'n, *Premerger Notification Program*, (2026), <https://www.ftc.gov/enforcement/premerger-notification-program#:~:text=These%20numbers%20are%20preliminary.,information%20about%20each%20company's%20business>.

¹⁴ U.S. Sec. & Exch. Comm'n, Exhibit 5(a)(b) (Feb. 2026), https://www.sec.gov/Archives/edgar/data/1437107/000110465926012397/tm2533570d52_exa5ab.htm.

¹⁵ *Id.*

¹⁶ Todd Spangler, *DOJ Will 'Absolutely Not' Fast-Track Approval Process for Paramount-Warner Bros. Deal Because of Politics, Antitrust Chief Says*, Variety (Mar. 19, 2026), <https://variety.com/2026/film/news/doj-paramount-warner-bros-deal-review-fast-track-review-political-reasons-1236693308/>.

¹⁷ Reuters, *supra* note 5.

¹⁸ Tim Dams, *How long will regulators probe Paramount WBD merger, and what remedies might they ask for?*, ScreenDaily (Apr. 10, 2026), <https://www.screendaily.com/news/how-long-will-regulators-probe-paramount-wbd-merger-and-what-remedies-might-they-ask-for/5215479.article>.

¹⁹ Stelter, *supra* note 10.

²⁰ Dominic Patten & Ted Johnson, *DOJ Gives Thumbs Up To Paramount's \$111B WBD Acquisition; Par Touts "Pro-Competitive" Merger As States Ponder Next Move*, Deadline (June 12, 2026), <https://deadline.com/2026/06/paramount-warner-bros-merger-approved-doj-1236955152/>.

as TV shows, Paramount could restrict availability and increase prices. Warner Bros.' catalog features many well-known franchises that normally rotate between streaming services. Paramount's new expanded catalog will force fans to subscribe to Paramount to watch their favorite shows and movies. Furthermore, decreased availability and variety, increased prices on production and subscriptions, and reduction in jobs are all concerns under the merger. However, there are benefits for consumers, such as a larger selection of shows and movies and decreased costs by having both production and streaming under one company. Clearly, the DOJ has determined regardless of the market, there will be no harmful effects on consumers, but state attorneys general remain wary.

B. DOJ's Antitrust Process and 2023 Merger Guidelines

Antitrust law has developed for decades. A key issue in nearly every antitrust case is defining the correct relevant market under Section 7 of the Clayton Act.²¹ Under Section 7, no person, or company, shall acquire another company in any line of commerce in the country where "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."²² This creates two separate questions: the identification of the correct product market; and the correct geographic market.²³ The Supreme Court decided *Brown Shoe Co. v. United States*²⁴ in 1962 and this case became the foundation for future merger cases. *Brown Shoe* determined the relevant product market is "determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and the substitutes for it."²⁵ It also established both the product market and geographic market may have submarkets that can be identified by "examining such practical indicia."²⁶ However, courts have struggled to use this framework when faced with innovative markets such as streaming services.²⁷

In 2023, the DOJ and FTC released the 2023 Merger Guidelines, an update to their previous merger guidelines. While not binding authority, most courts follow the guidelines, and they remain extremely persuasive in merger cases. In the guidelines, the DOJ and FTC state that there is a presumption of illegality when a merger significantly increases concentration in a highly concentrated market.²⁸ To measure concentration levels, the DOJ and FTC use HHI. Currently, a market with

²¹ 15 U.S.C. § 18.

²² *Id.*

²³ *Brown Shoe Co. v. United States*, 370 U.S. 294, 324 (1962).

²⁴ *Brown Shoe Co.*, 370 U.S. at 294.

²⁵ *Id.* at 325.

²⁶ *Id.*

²⁷ Musgrove, *supra* note 7.

²⁸ U.S. Dep't of Justice & Fed. Trade Comm'n, *supra* note 9.

an HHI greater than 1,800 is considered highly concentrated, and any increase of more than 100 points is considered a significant increase.²⁹

In these guidelines, the agencies established the Hypothetical Monopolist Test (HMT), which is a test used to define the relevant market in antitrust cases. The HMT asks, “whether eliminating the competition among the group of products by combining them under the control of a hypothetical monopolist likely would lead to a worsening of terms for customers.”³⁰ If the answer is yes, then that is the relevant market.

C. DOJ’s Struggle to Define a Market for Streaming Services

Unlike the geographic market, classification of streaming service as a separate market or as part of a larger entertainment industry is where the DOJ continues to face issues. The DOJ and courts consistently struggle to define the relevant product market in a variety of antitrust cases. However, the DOJ and courts especially struggle to define markets involving new technology. This merger presented an additional issue since these companies operate in multiple markets including movie production, streaming services, cable networks, and theatrical film distribution. The major issue in this case for state attorneys general will be formulating an argument that streaming services should be considered a separate market, instead of a broadly defined entertainment market. The definition of the relevant product market could determine the outcome of this case if the state attorneys general file suit. A narrow definition will likely lead to a high HHI and would require Paramount to rebut any anticompetitive effects. The geographic market would be simple in this case as streaming services and movies are released throughout the country.

III. ANALYSIS

A. Herfindahl-Hirschman Index for Streaming Services

A merger between Paramount and Warner Bros. will have a 20% market share in the SVOD market.³¹ This ties Paramount for second with Netflix (20%) behind Prime Video (21%).³² The pre-merger HHI is approximately 1,418, and the post-merger HHI will be approximately 1,600.³³ Since the pre-merger HHI is less than

²⁹ *Id.*

³⁰ U.S. Dep’t of Justice & Fed. Trade Comm’n, Merger Guidelines § 4.3.A (2023).

³¹ JustWatch, *U.S. Streaming Market Report – Acquisition Scenarios for Warner Bros. Discovery*, JustWatch (2026), <https://www.justwatch.com/us/press/netflix-paramount-warner-bros?utm>.

³² *Id.*

³³ *Id.*

1,800 and there is no firm with market share greater than 30%, this merger would be unlikely to create a presumption of illegality under the Merger Guidelines. However, the DOJ was originally concerned with other effects of the merger such as the combination of Paramount and Warner Bros. studios and labor concentration issues.³⁴ Additionally, this merger will allow Paramount to maintain control over a strong content library featuring numerous famous films and shows that consumers pay to access in streaming services.

These numbers only represent the HHI for the SVOD market. The DOJ also investigated the market for movie production, theatrical releases, and linear television. As mentioned, the DOJ and courts have been unpredictable in defining the relevant product market since *Brown Shoe Co.*

B. Struggle of the DOJ and FTC to Identify New Markets

The agencies often struggle to identify new markets with innovative technologies. In 2005, Blockbuster proposed to acquire Hollywood Entertainment, but faced issues from the FTC.³⁵ The FTC considered the market to only include video-rental companies, even though this market was becoming increasingly stagnant and facing competition from other entertainment markets, including Netflix, which had not yet introduced its streaming service.³⁶ Since the market was defined as only video-rental companies, there was an obvious antitrust concern.³⁷ However, had the FTC opted for a broader market, which, looking back, it should have, the merger would have likely been allowed. Now, twenty years later, it is clear Blockbuster and the entire video-rental industry faced more competition than just each other; they faced a market that was about to blossom in streaming services. Unfortunately, the FTC struggled to realize this new market and chose a narrow relevant product market for Blockbuster.³⁸ This is the same issue that faced Paramount's merger and continues to affect the deal.

Recently, in *FTC v. Meta Platforms, Inc.*,³⁹ the United States District Court for the District of Columbia took a broad approach to defining the social media market.⁴⁰ The Court used three main findings to make this determination. First, the

³⁴ U.S. Dep't of Justice, *Statement of the Department of Justice Antitrust Division on the Closing of Its Investigation of the Merger of Paramount Skydance and Warner Bros.*, Office of Public Affairs (June 12, 2026), <https://www.justice.gov/opa/pr/statement-department-justice-antitrust-division-closing-its-investigation-merger-paramount>.

³⁵ Musgrove, *supra* note 7.

³⁶ *Id.*

³⁷ Musgrove, *supra* note 7.

³⁸ Musgrove, *supra* note 7.

³⁹ *Fed. Trade Comm'n v. Meta Platforms, Inc.*, 775 F. Supp. 3d 16 (D.D.C. 2024).

⁴⁰ Snell & Wilmer, *Meta Prevails in FTC Antitrust Litigation*, Snell & Wilmer (Dec. 16, 2025), <https://www.swlaw.com/publication/meta-prevails-in-ftc-antitrust-litigation/>.

Court used natural experiments, looking at how users in countries with a TikTok ban substituted their usage.⁴¹ Next, the Court looked at the key features of Meta's app compared to other companies.⁴² Finally, the Court evaluated internal documents and testimony to determine how the companies view each other in the market.⁴³

The DOJ considered the multiple markets and approved the deal, but state attorneys general might argue the merger will harm consumers in the SVOD market as case law remains weak in this product market. While Paramount has some precedent to defend the merger, this will be the first litigation in the SVOD and entertainment production market. It is yet to be seen if a court would expand the entertainment market to include social media apps and SVOD or movies in the same market definition.

C. DOJ also Focused on Consumer Benefits

Experts believed a merger between Netflix and Warner Bros. would have led to fewer movie releases and shorter runs in theaters.⁴⁴ This occurred in 2019 when Disney purchased 20th Century Fox and film production decreased.⁴⁵ However, the merger between Paramount and Warner Bros. does not face as large of a concern. As mentioned, Paramount has already agreed to a minimum number of theatrical releases.⁴⁶ Paramount will now control intellectual property for DC shows, Harry Potter, Game of Thrones, Friends, and more well-known titles.⁴⁷

While there is debate over whether or not this merger will lead to a monopoly, there still may be some benefits to consumers. First, consumers have one less subscription to worry about each month. Most Americans subscribe to multiple streaming services to watch their favorite shows and movies.⁴⁸ Each service can cost between \$10 to \$25 per month. With more staff, more productions, and the need for more sustainable servers, Paramount will likely have to raise the price of its services. However, if after the merger, Paramount were to raise its monthly

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Sarah Whitten, *Netflix's Plan to Buy Warner Bros. Throws the Theater Industry Into Upheaval*, CNBC (Dec. 5, 2025), <https://www.cnbc.com/2025/12/05/netflix-warner-bros-deal-theater-industry-upheaval.html>.

⁴⁵ *Id.*

⁴⁶ Dams, *supra* note 18.

⁴⁷ Nellie Andreeva, *And Just Like That... Netflix's Warner Bros. Takeover Will Reshape the Business, End the Streaming Wars & Likely Bring Another Culture Clash*, Deadline (Dec. 4, 2025), <https://deadline.com/2025/12/netflix-warner-bros-takeover-analysis-reshape-business-1236637120/>.

⁴⁸ David Satin, *Survey: 86% of Customers Have Multiple Streaming Subscriptions, but 47% Pay for Some they Don't Use*, IMDb (Mar. 2023), <https://www.imdb.com/news/ni63997529/>.

subscription, it is likely to still be cheaper than paying for both Paramount and HBO separately.⁴⁹ This merger will allow Paramount to challenge the lead Netflix and Disney maintain in their available content to consumers.⁵⁰ This will create more competition in the streaming market and may force these companies to continue to innovate, a goal of competition in the United States.

The combination of Paramount and Warner Bros. will lead to more competition in both the studio market and streaming market. Some benefits include decreased movie production costs; greater variety of content for a larger audience; access to leaders in production and acting which will lead to better quality content; and the ability to create better infrastructure to support more users.⁵¹ A benefit of the Paramount deal also guarantees continuous theatrical releases, ensuring a large market for employees.⁵² Had Netflix purchased Warner Bros., there was a real chance at a duopoly in the market, but the deal with Paramount puts more pressure on Netflix, Disney, and Paramount to continue to innovate and fight for money from consumers.⁵³

While the DOJ may be concerned with an increase in the HHI, the streaming market is currently not in the “highly concentrated” area as defined by the guidelines. This merger will also lead to increased competition and a greater ability to innovate and create superior services for consumers.

D. Political Involvement in the Merger

The DOJ is meant to be an independent agency, but there are numerous political factors involved in this merger. While the DOJ denied political factors would play a role in fast tracking approval of the deal,⁵⁴ it would be a disservice not to at least discuss the politics involved with this deal. David Ellison is the CEO of Paramount and son of Oracle co-founder Larry Ellison. The Ellison family has close ties to

⁴⁹ Milana Vinn & Dawn Chmielewski, *Exclusive: Netflix, Warner Bros Discovery combo seen lowering costs for consumers, sources say*, *Reuters* (Dec. 2025), <https://www.reuters.com/business/media-telecom/netflix-warner-bros-discovery-combo-seen-lowering-costs-consumers-sources-say-2025-12-03/#:~:text=Summary,a%20bundle%20by%20either%20company>.

⁵⁰ *Id.*

⁵¹ See Paramount, *Paramount to Acquire Warner Bros. Discovery to form Next-Generation Global Media and Entertainment Company*, Paramount Press (2026), <https://www.paramount.com/press/paramount-to-acquire-warner-bros-discovery-to-form-next-generation-global-media-and-entertainment-company>.

⁵² Michael Nathanson, *What the Paramount-Warner Bros. Merger Means for Streaming*, Yale Insights (Mar. 23, 2026), <https://insights.som.yale.edu/insights/what-the-paramount-warner-bros-merger-means-for-streaming#:~:text=Nobody%20wants%20assets%20that%20are,the%20Paramount%20and%20Warner%20Bros>.

⁵³ *Id.*

⁵⁴ *Reuters, supra* note 5.

President Trump and his administration.⁵⁵ In fact, President Trump previously discussed the potential Warner Bros. sale and indicated he favored Paramount over Netflix before Paramount finalized its deal.⁵⁶ Additionally, President Trump warned Netflix of consequences if a Democratic board member didn't resign.⁵⁷ While it is true Paramount's \$111 billion offer was superior to Netflix's \$83 billion offer and Netflix walked away due to an unwillingness to pay more, it is worth noting President Trump's potential influence on a DOJ antitrust investigation.

The DOJ, as an independent agency, must ensure politics do not play a role in any merger. The goal of the DOJ and FTC is to protect consumers, not benefit CEOs or corporate boards. If a deal truly benefits consumers, then the business will benefit as well.

E. The Evolution of the Entertainment Market

Corporations today are unlike any corporation in the past, as companies continue expanding their reach into numerous markets, and the Paramount merger is another example of this trend. Companies are no longer content with being successful in one market and instead are diversifying their reach. This merger will position Paramount to be one of the dominant companies in cable news networks, SVOD, and theatrical releases.⁵⁸ It is for this reason the agencies and courts struggle to keep up with innovative markets and technologies. Our legal system is rooted in common law and precedent.⁵⁹ However, these principles become less effective when the world refuses to maintain the status quo. There is little recent precedent addressing how courts should define a product market when two merging companies operate across a broad range of entertainment markets. The most recent attempted acquisition was the Blockbuster merger, which was blocked due to the FTC's unwillingness to expand the product market definition.⁶⁰

This issue will continue to compound until a product market definition is challenged in court. Blockbuster withdrew its merger due to the FTC's opposition, and other merger cases in the entertainment industry have focused on vertical

⁵⁵ Scott Nover, *The Ellisons are building a media empire. Trump keeps cheering them on.*, The Washington Post (Mar. 17, 2026), https://www.washingtonpost.com/business/2026/03/17/trump-hegseth-praise-ellisons-approval/?_pml=1.

⁵⁶ Stelter, *supra* note 10.

⁵⁷ Joanna Partridge, *Trump warns Netflix of 'consequences' unless it pulls top Democrat from board*, The Guardian (Feb. 22, 2026), <https://www.theguardian.com/media/2026/feb/22/trump-warns-netflix-of-consequences-unless-it-pulls-top-democrat-susan-rice-from-board>.

⁵⁸ Stelter, *supra* note 10.

⁵⁹ Marjorie Richter, *Overview of US Common Law for Legal Professionals*, Thomson Reuters (Mar. 25, 2026), <https://legal.thomsonreuters.com/blog/what-is-common-law/>.

⁶⁰ Musgrove, *supra* note 7.

integration.⁶¹ No merger in the entertainment market of this size has previously been proposed or challenged.⁶² The court must determine, as the DOJ already has, whether there is any anticompetitive concern in each individual product market. The court should analyze the HHI of each market, as well as any benefits to consumers. A possible remedy would be a divestiture in one or more of the product markets to ensure consumers are protected.

If the state attorneys general decide to challenge this merger, they will need to use clever legal arguments and will be unable to rely on precedent, as none truly exists for a merger of this size in the entertainment market. The court must analyze this as a novel legal issue, as our economy and the entertainment market have greatly changed since the proposed Blockbuster merger. The entertainment industry is no longer restricted to cable television and movies, as it now includes SVOD, social media, and other emerging technologies as innovation continues to advance.

IV. RECOMMENDATION

In order to ensure the DOJ and FTC are capable of regulating mergers in innovative industries, there must be properly defined product markets. As was seen with Blockbuster's attempted acquisition of Hollywood Entertainment, the agencies often struggle to account for future competition that can harm current companies. The FTC chose to ignore the innovative competition from Netflix and the start of streaming and restricted the relevant product market to only video-rental companies.⁶³ The current merger between Paramount and Warner Bros. could face the same fate, and numerous other mergers have fallen victim to a narrow product market definition. The agencies must look to future markets and include innovative companies in their determination of the relevant product market.

The 2023 Merger Guidelines attempt to protect innovative ideas in markets, but this falls short and once again is too narrow. The 2023 Merger Guidelines discuss a "maverick" in an industry and provide more protection for these companies from a merger. "A maverick is a firm with a disruptive presence in the market."⁶⁴ A maverick can only disrupt a market if it exists, so a merger that involves the acquisition of a maverick is therefore considered a primary factor in proving an increased risk of coordination in a market.⁶⁵ While the guidelines discuss a maverick and provide more protection for an innovative company, it does not go

⁶¹ See *United States v. Paramount Pictures*, 334 U.S. 131 (1948).

⁶² Anan Ashraf, *Paramount Skydance Advances \$110B Warner Bros. Deal, Reportedly Seeks EU Approval*, Yahoo! Finance (June 2, 2026), <https://finance.yahoo.com/markets/stocks/articles/paramount-skydance-advances-110b-warner-171258793.html?guccounter=1>.

⁶³ Musgrove, *supra* note 7.

⁶⁴ U.S. Dep't of Justice & Fed. Trade Comm'n, Merger Guidelines § 2.3.A. (2023).

⁶⁵ *Id.*

far enough. It may limit the merger of two smaller companies with similar goals since each could be considered a maverick, but they are too small to make any impact separately. The agencies must look towards the market as a whole as well as to future possible competitors. Disney and Apple did not create their own streaming services until 2019, and HBO Max wasn't released until 2020, but it was likely these production studios would enter this market.⁶⁶

This can apply to Paramount's merger because while the two firms are still substantial competitors in the streaming market, separately they lack a diverse content library that features famous shows and films compared to Netflix or Disney. Additionally, as industries continue to innovate, a singular company may involve many separate markets. As discussed earlier, the merger between Paramount and Warner Bros. includes streaming services, movie production, theatrical releases, and more. The DOJ must determine the proper market for this merger or decide to evaluate each industry as a separate market. As companies continue to diversify their portfolio and invest in new markets, this will present a bigger issue for the agencies when faced with mergers. Another example of this diversification is Amazon, which owns online retail shops, a streaming service and brick-and-mortar grocery stores.

While the merger between Paramount and Warner Bros. passed the DOJ's investigation, the fate of the merger is still questionable. State attorneys general may challenge the merger, and with no clear precedent in the SVOD market, it is unclear how the court would rule. The *FTC v. Meta Platforms, Inc.* case signals a willingness to approach innovative markets with a broad market definition, but this has yet to be seen for the SVOD market. However, one thing is clear, the streaming and entertainment market has changed forever. Currently, Paramount's merger has been approved, and there will be a substantial market change and increase in competition. Paramount views this merger as an ability to compete against technology platforms in a market that continues to become more technologically advanced.⁶⁷

Paramount will own the intellectual property to multiple successful franchises and can make these shows and movies available exclusively on Paramount's streaming service, resulting in Netflix, Disney, and other streaming services having to innovate to attract new customers.⁶⁸ Furthermore, Paramount will own two of the largest news networks, as well as expanded movie production capabilities. Paramount+ will be more attractive to consumers looking to cut costs on streaming services. Paramount will compete with Netflix and Disney as the top competitors

⁶⁶ See Shentel, *A Detailed Look At The History Of Streaming Services* (Jan. 16, 2025), <https://www.shentel.com/en/news/2025/january/history-of-streaming-services>.

⁶⁷ Stelter, *supra* note 10.

⁶⁸ See Vinn & Chmielewski, *supra* note 49.

in streaming services and force other companies to continue to innovate for customers.⁶⁹

V. CONCLUSION

Streaming services have become the main choice for consumers of television and movies. Over 80% of Americans watch shows on streaming services, compared to only 36% of Americans who pay for cable or satellite TV.⁷⁰ Streaming services will soon own more of the market for television due to their popularity among young adults. The Paramount and Warner Bros. merger will have a tremendous impact on creating or eliminating competition and innovation in the market. The merger will close the gap and create three firms with approximately 20% market share,⁷¹ leading to greater competition among these firms. One question remains: will this lead to the acquisition of smaller streaming services, leaving the market to only three dominant firms? The DOJ's investigation determined there is no risk to consumers, and this decision may change the future of the streaming industry.

⁶⁹ JustWatch, *supra* note 31.

⁷⁰ Eugenie Park & Colleen McClain, *83% of U.S. adults are streaming services, far fewer subscribe to cable or satellite TV*, Pew Research Center (July 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/>.

⁷¹ JustWatch, *supra* note 31.