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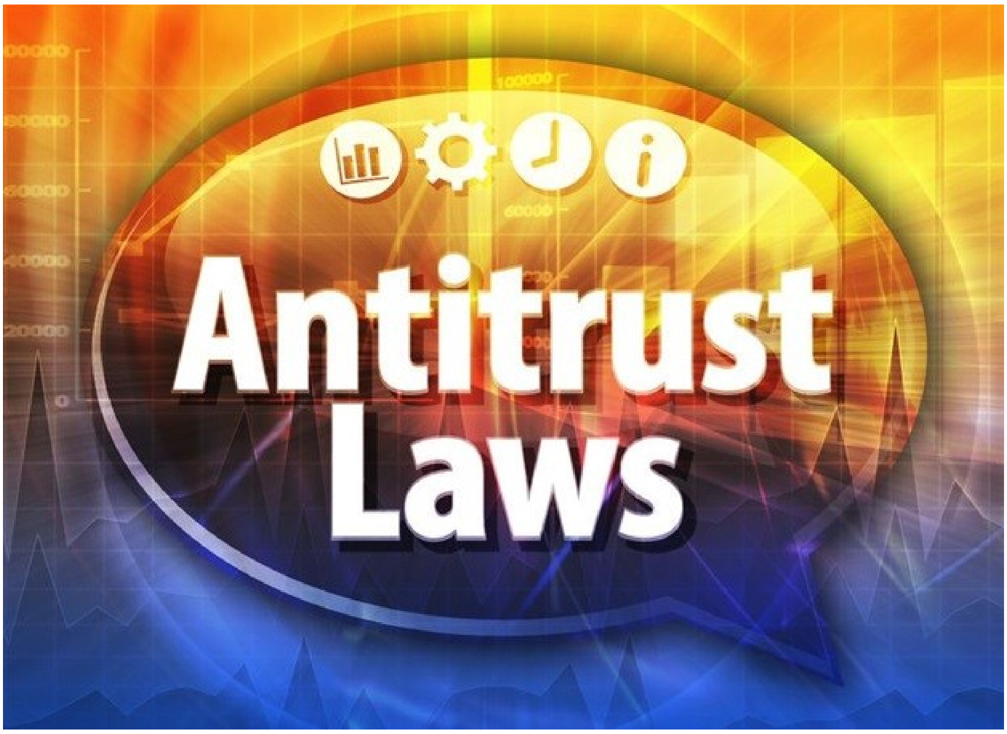
In blockbuster antitrust trial, Big Tech looms in background

WASHINGTON, USA - In the biggest antitrust court battle in decades, the US government will seek to block the merger of AT&T and Time Warner to prevent the creation of a powerful new television behemoth.



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With opening arguments set for Wednesday, AT&T will be pointing to the new landscape in which media is increasingly domination by Big Tech giants like Netflix, Amazon and others.

The Justice Department filed suit in November to block the planned $85 billion tie-up of AT&T, one of the dominant telecom and internet firms, with media-entertainment powerhouse Time Warner.

The deal had been under review since late 2016, and the move by the Trump administration represents a test for antitrust enforcers in the digital age.

The case has also been clouded by politics, notably the feud between President Donald Trump and Time Warner unit CNN

- which the White House regularly attacks as "fake news."

Unconfirmed reports have suggested the government sought the sale of CNN as a condition for approval of the merger.

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2 Feb 2018

The Justice Department argues in its trial brief that the tie-up would be bad for competition and raise prices.

If the deal goes through, government lawyers said in the brief, "American consumers will end up paying hundreds of millions of dollars more than they do now to watch their favorite programs on TV."

The brief argues that AT&T could withhold or demand higher prices for prime television content like Time Warner unit HBO's "Game of Thrones," or sports from Turner Broadcasting.

The Justice Department will use a study from Professor Carl Shapiro of the University of California at Berkeley showing consumers could pay $436 million more per year if the merger is consummated.

AT&T meanwhile argues competition concerns are overblown because the two companies operate in different segments: one is a distributor, the other a creator of content.

The deal, according to AT&T, will help competition amid "a revolutionary transformation that is occurring in the video programming marketplace."

Disney-Fox deal puts antitrust enforcers in bind over Trump ally
18 Dec 2017

The AT&T brief maintains the television landscape is being dramatically changed by "the spectacular rise of Netflix, Amazon, Google, and other vertically integrated, direct-to-consumer technology companies."

It said a combined AT&T and Time Warner would create a stronger competitor for Netflix, Google, Amazon, and Facebook.

Time Warner, according to the AT&T argument, cannot effectively compete without a digital partner against tech giants, which can gather data for personalized ads and content.

Complicating the case is the 2011 approval of a similar tie-up between Comcast and NBCUniversal, with some conditions.

AT&T argues the same precedent applies to its "vertical" merger and evidence will show the Comcast/NBCU merger "resulted in no harm to competition whatsoever."

Legal experts are divided on the odds of the case - while noting that blocking the deal would go against a decades-long precedent of allowing these kinds of vertical tie-ups.

Steven Salop, a Georgetown University law professor and former Federal Trade Commission official, said the government has an "excellent chance" of showing the merger could stifle competition.

The tie-up "could give Time Warner the power to demand higher prices from competing video distributors," Salop said in a blog post.

"Time Warner could also raise prices on its video content for AT&T's broadband or wireless competitors, or withhold content altogether. Facing weaker or higher-cost competitors, AT&T might raise its prices to subscribers."

Most antitrust investigations are settled with an agreement calling for divestitures or other actions to preserve competition, so the court showdown represents a risk for both sides, analysts said.

Murdoch's Fox in talks with multiple buyers for TV, film assets
20 Nov 2017

It will be the most high-profile antitrust case to hit the courtroom since the 1990s Microsoft litigation.

While some analysts have claimed the case is politically motivated, Judge Richard Leon denied to hear evidence showing AT&T was singled out for prosecution.

"The case is going to trial without that political overlay," said Daniel Lyons, a Boston College Law School professor and visiting fellow at the American Enterprise Institute.

Lyons said the case could suggest new approach to antitrust by the Justice Department's new division chief, Makan Delrahim.

"This is a rethinking of vertical mergers," Lyons said.

Still, Lyons said the government has an uphill battle to reverse decades of judicial precedent of a largely laissez-faire approach to mergers.

"If I were a betting person I would say the odds are in AT&T's favor," he said.

"But the fact that it's a loose standard gives some room for the government to win."

A key question in the case is whether it represents a new approach to antitrust which could chill future mergers and acquisitions.

Ryan Radia of the Competitive Enterprise Institute, a Washington policy group, expressed concerns about a growing trend toward what some call a "hipster" antitrust approach based on the notion that big business is bad and that any concentration could be harmful.

"It's hard to say whether this portends a different direction for antitrust," Radia said.

"There is a chance that some in this administration want to take antitrust in a different direction, but also that a future administration could use this as precedent."

Source: AFP