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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

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[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),

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[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

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[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

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[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

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[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.

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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

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[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

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[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

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[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

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[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 horizonal 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.

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[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.