



"Netflix Defense of Its Warner-Bros-Discovery Merger Distorts Reality and Well-Established Law"

Statement of Makan Delrahim, Chief Legal Officer, Paramount Skydance Corporation

Before the

House of Representatives Committee on the Judiciary

Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

Regarding the Hearing

Full Stream Ahead: Competition and Consumer Choice in Digital Streaming

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We thank the House Judiciary Committee and its members for its interest in the competition policy implications of the proposed Netflix-Warner Bros. Discovery merger and for the opportunity to provide this statement for the record.

Since this proposed merger was announced in December, experts across the ideological spectrum have recognized that it is clearly anticompetitive, and not a close call. Netflix would further cement its dominance in streaming video on demand to a degree that, by any metric, triggers a presumption of unlawfulness. Faced with this reality, Netflix's defense rests on a tortured and absurd definition of the market that no serious regulator would ever accept. It asserts, for example, that free, user-generated videos on YouTube and TikTok should be considered an adequate substitute for premium produced content available on Netflix or HBO Max. This is what some call "psychedelic antitrust"—it has no grounding in market or legal reality. Netflix itself, until this deal, did not take that argument seriously, as Netflix co-CEO Ted Sarandos referred to YouTube as a "farm league" for content creators, and omitted YouTube entirely from public securities filings in which it compared itself to actual competitors in streaming video on demand.

Netflix's only remaining hope is to persuade the public and corporate board members that the Paramount deal is equally risky. That is flatly untrue. The Netflix proposed deal is presumptively unlawful. Paramount's proposed deal is not. Those who reflexively oppose all mergers generally



might find this view attractive, but it ignores truth. And those who support all mergers and view antitrust enforcement as inconvenient, should appreciate the consumer harm from lack of enforcement of mergers particularly involving dominant firms. Red herring arguments should be ignored as a distraction from the unavoidable illegality of the current Netflix/Warner Bros. Discovery deal. We are confident that the Justice Department and regulators around the world will conduct a careful review of each deal and reach their respective decision on the merits.