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Hearing on “Full Stream Ahead: Competition and Consumer Choice in Digital Streaming”

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Chair Fitzgerald, Ranking Member Nadler, and distinguished members of the subcommittee, thank you for holding this hearing and inviting me to testify today. My name is Jessica Melugin. My work focuses on technology and antitrust at the Competitive Enterprise Institute, a nonpartisan public policy organization that concentrates on regulatory issues from a free-market perspective. I am also an Antitrust and Competition Fellow at the Innovators Network Foundation.

It is sometimes said that history does not repeat itself, but it often rhymes. Certainly, there is a familiar resonance in today’s conversation around the merits of antitrust intervention in digital streaming markets to what we have heard before in calls to intervene in entertainment mergers of the past.

In 2005, after what the *Wall Street Journal* then described as, “the not-so-gentle prodding of federal antitrust authorities,” the movie-rental chain Blockbuster dropped its bid to purchase its rival, Hollywood Entertainment.¹ Defenders of antitrust restraint at the time pointed to the emerging competitive threat of an up-and-comer who had, by then, signed up three million subscribers to rent DVDs through the mail. That disruptor was, of course, Netflix. While regulators fretted about the combined market power of two brick-and-mortar DVD rental chains, the market was busy shifting the paradigm.

¹ “Blocking Blockbuster,” *Wall Street Journal*, March 30, 2005, <https://www.wsj.com/articles/SB111214522098992704>.

The increasingly widespread internet soon disrupted traditional models of distribution once again. Netflix was adept enough to navigate the transition from the post office to telecommunications, and the company now finds itself more directly targeted in the conversation around preserving competition in the entertainment industry. The focus has shifted from purely distributional issues to the integration of distribution with content and the resulting effects on consumers.

While the details of these cases have changed, the lessons of regulatory restraint still remain relevant. Just as the Federal Trade Commission could not anticipate the technological shifts that have rendered physical DVD rentals nearly obsolete, antitrust regulators still cannot predict what will come next. They can, however, observe current market dynamism to better understand how allowing economies of scale and vertical integration could benefit consumers.

As digital streaming companies and adjacent market participants adjust to a landscape where consumers' time and attention are the most important remaining scarcities, regulators will evaluate attempts to merge, adapt, and compete. This process should follow well-established methodologies, using economic evidence to determine the relevant market and possible anticompetitive effects while, equally, assessing the potential pro-consumer consequences.

Determining the proper relevant market will be the initial step of any antitrust litigation. However, that task will not be easy in this context. Government efforts to block mergers will likely attempt to establish the narrowest possible definition of the affected market. That may be defined as subscription video-on-demand exclusively, but does that provide an accurate reflection of how consumers view possible substitutions? Do broadcast, cable, and satellite channels still provide ample competitive pressures to restrain prices, output, or quality for merged streaming services?²

And looking forward rather than backward, does YouTube TV, or even the standard YouTube platform, sufficiently compete with streaming for consumer attention? YouTube's vast and 'free to the company' content may well constitute a sufficient competitive threat to streaming services to justify their need to bolster their position through the acquisition of the more evergreen, rewatchable content libraries and production capabilities of traditional studios. Perhaps concerns about preserving competition are less about horizontal issues between merging streaming services and more about the ability of those companies to survive and compete with social media giants.

Even the narrowest relevant market will prove challenging for regulators to defend in court. If opponents of a merger succeed in defining the market as confined exclusively to subscription video-on-demand only, market shares will be difficult to establish.³ Muddying the waters of

² "The Gauge: TV Viewing Trends in the U.S.," Nielsen, accessed January 3, 2026, <https://www.nielsen.com/data-center/the-gauge/#viewing-by-platform>.

³ Eric Fruits, "Streaming Market Shares: Error 404, Data Not Found," Truth on the Market, December 11, 2025, <https://truthonthemarket.com/2025/12/11/streaming-market-shares-error-404-data-not-found/>.

market share are the widespread practices of consumers maintaining many subscriptions simultaneously, known as ‘multi-homing’; bundled subscriptions like Disney+ that might also include ESPN and Hulu—or not; third-party bundles offered through mobile carriers, internet service providers, or credit cards; Amazon Prime subscriptions that might result from e-commerce consumer motivation more than from streaming entertainment interest; and different tiered offerings with or without advertising offered for different prices.

Regardless of the relevant market and the market shares agreed upon, courts will then be required to evaluate the competitive effects of the merger.⁴ Proposed mergers may hold the promise of significant economic efficiency gains and commensurate benefits for consumers, particularly those with vertical aspects.⁵ But even the horizontal aspects of mergers, such as those involved in the Netflix and Warner Bros. Discovery deal, may benefit consumers. Increased selection, cost savings, and more accurate recommendations are all possible outcomes.⁶

Regulators must recognize that traditional media companies require the flexibility to adapt to prevent meeting the same fate as the Blockbuster dinosaur. Constraining these entities from pursuing such arrangements by pretending the market is static will benefit neither consumers nor competition in the long run.

Thank you for this opportunity and I look forward to your questions.

⁴ Josh Wright, “Just How Much Antitrust Risk Is There in a Netflix - Warner Brothers Merger?,” *Competition on the Merits*, Substack, December 29, 2025, <https://competitiononthemerits.substack.com/p/just-how-much-antitrust-risk-is-there>.

⁵ Fred Ashton, “Netflix/WBD Deal Likely to Face Antitrust Investigation, American Action Forum, December 9, 2025, <https://www.americanactionforum.org/insight/netflix-wbd-deal-likely-to-face-antitrust-investigation/>.

⁶ John M. Yun, “Evaluating the Sale of Warner Bros Discovery to Netflix from an Antitrust Perspective,” Truth on the Market, December 8, 2025, <https://truthonthemarket.com/2025/12/08/evaluating-the-sale-of-warner-bros-discovery-to-netflix-from-an-antitrust-perspective/>.