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AT & T - Time Warner Merger Challenge Might Signal Policy Change on Vertical Mergers

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The Department of Justice ("DOJ") recently sued to block AT&T's $85.4 billion bid for Time Warner, stating that such a merger would harm consumers by weakening competition. The lawsuit signals a policy change that "vertical mergers" will be more heavily scrutinized by U.S. regulators going forward. Businesses should therefore consider this development when merging with or purchasing another business.

What is a vertical merger?

Vertical mergers involve businesses in a buyer-seller relationship, such as a manufacturer merging with a distributor of its finished products. Vertical mergers involve non-competing businesses. These mergers can generate significant cost savings and improve distribution for the combining businesses. The DOJ has given the green light to nearly every vertical merger in the last 50 years, while, at most, placing limitations on the resulting companies' behavior.

In contrast, horizontal mergers receive much more scrutiny from U.S. regulators. Horizontal mergers involve the consolidation of competing businesses operating in the same space, like airlines or banks. Horizontal mergers increase the resulting businesses' market share while, many times, decreasing competition. The DOJ watches horizontal mergers carefully, ensuring that acquiring companies do not attain too much market power.

AT&T-Time Warner Merger

The DOJ's challenge to the AT&T-Time Warner vertical merger signals a policy change, alluding to the DOJ keeping a closer eye on similar vertical mergers. In the AT&T-Time Warner case, the DOJ argues that the potential merger prevents competition in two ways. First, consumers could face higher monthly television prices because AT&T would control and be able to charge more for valuable programing. Second, the merger would stifle the innovation of online streaming businesses, which continue to be fierce competitors of AT&T, through withholding programs from those online providers. The DOJ concludes that the decrease in competition will be detrimental to consumers.

AT&T has publicly stated it will defend the proposed deal in court. AT&T will highlight that the merger will make it easier to stream movies and TV shows on mobile devices, while likely lowering content pricing. AT&T will also point to the rapidly developing streaming services, such as Amazon and Netflix, and argue that this merger will not slow those growing companies, resulting in no decrease in competition. The AT&T trial is set to begin in early March.

What does this mean?

The DOJ challenging this vertical merger might signal a policy change that vertical mergers will no longer be rubber stamped by U.S. regulators. Businesses should be sensitive to this possible policy change when contemplating a vertical merger. If you have any questions or would like more information, please contact Mark Wagoner at 419.321.1412.

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