

October 12, 2017

Makan Delrahim
Assistant Attorney General
U.S. Department of Justice
Antitrust Division
Washington, DC

Dear Assistant Attorney General Delrahim:

I am writing to reiterate my concerns regarding your previous public comments about the proposed AT&T-Time Warner merger and to urge you to recuse yourself from the matter. On September 6, 2017, I met with you in my office to discuss your nomination to serve as Assistant Attorney General of the Justice Department's Antitrust Division (the "Division"). During that meeting, I asked about the statement you made last year, following the announcement of AT&T's proposed merger with Time Warner, that a merger between the two companies did not pose a "major antitrust problem."¹ Because the merger is currently before the Division, which will determine whether to block or approve the proposed merger, I asked whether, if you were confirmed to lead the Division, you would recuse yourself from the matter. You refused to commit to do so. Now that you have been confirmed to lead the Division, I am writing to request that you reconsider your decision.

I am concerned both by your comment about the merger, which implies an underappreciation of the impact of a merger of that size on the media market, and your refusal to recuse yourself from the case despite the fact that, prior to taking office, you appeared to have reached and publicly stated a conclusion about the matter. Your refusal to recuse yourself will undermine public confidence in the Division's ability to reach an unbiased final decision in the matter.


There is ample reason to be concerned about a potential merger of AT&T and Time Warner, which would combine the nation's largest pay-TV provider with one of the nation's largest content providers. A combination of these two companies would create a media behemoth with the potential to squeeze out competition in the entertainment industry. A combined AT&T and Time Warner, for example, could favor its own content over that of other entertainment companies and limit the ability of other content distributors to provide Time Warner content. Such actions would not only harm smaller competitors and discourage innovative entrepreneurs from entering the market, but could leave American households with higher bills and a reduced variety of program options. This proposed merger could have significant consequences for the media and entertainment industry.

¹ Business Day AM, *No big worries in AT&T deal for Time Warner* (Oct. 24, 2016), <http://www.bnn.ca/video/no-big-worries-in-at-t-deal-for-time-warner~978794> (last visited Oct. 11, 2017).

The Division's role is to examine all of the facts of the case and determine whether a merger could have substantial anti-competitive effects. But you have already stated that the merger does not pose a "major antitrust problem." As a result, regardless of the final outcome, if you remain involved in the case, the public cannot have full confidence that the Division's final decision will not be colored by your prior comments.

A merger of AT&T and Time Warner would have an enormous impact on the media and entertainment industry, and the American public deserves to know that the Division has not prejudged this matter. That cannot happen if you are involved in the case. I therefore urge you to recuse yourself from consideration of the merger.

Sincerely,



Elizabeth Warren
United States Senator