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# MARKET DEFINITION IN THE DIGITAL AGE: ANTITRUST SCRUTINY OF THE NETFLIX-WARNER BROS. MERGER

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## ABSTRACT

In one of the media industry consolidation deals of the century, the suggested acquisition of the main entertainment properties of the Warner Bros. Discovery by Netflix, Inc. announced in December 2025 and estimated to value over US 82.7 billion, marks the beginning of the convergence. The deal would bring together strategically the dominant global streaming platform that Netflix has, and its more than 300 million subscribers with the premier content-creation engine that rival Powerhouse of the company, comprising its film and television production studios, the HBO Max streaming platform and its iconic franchise libraries including DC Comics and Harry Potter. The merger, then, consists of a deep horizontal integration of two immediate rivals in the field of subscription streaming, and also a vertical integration of a large pool of content with a premier distribution structure. Under the United States law, the enforcers will examine the deal in the light of the Section 7 of Clayton Act and the guidelines of the 2023 mergers, with reference to whether the deal can substantially diminish competition. Similar reviews are also expected worldwide such as under the Competition Act 2002 of India, regulators are expected to evaluate the appreciable adverse impact of the transaction on the competitive environment in the fast-developing digital entertainment sector in India. This paper gives a detailed critique on these issues and analyzes the complex form of the deal while assessing its possible anticompetitive impacts. The conclusion of the analysis is that, under the circumstances of the scope of the consolidation and the existing climate in the enforcement, there is no chance that regulatory approval will be unconditional. Rather, governments in the U.S. and India and other countries are set to insist on large-scale structural or behavioral solutions, including divestitures of content or forced licensing deals, to address possible competitive, content, consumer, and innovation disadvantages in the industry to allow the merger to occur.

**Keywords:** Anti-Trust, Mergers and Acquisitions, Netflix & Warner Bros, Streaming Services, OTT

## Introduction

The agreement, valued at US\$82.7 billion dollars (including cash and stock) on 5 December 2025, will see WBD shareholders receive a cash and stock bid of US\$27.75 per share<sup>1</sup>, in the form of an enterprise sale to Netflix, Inc. of the film and television studios and streaming services (HBO Max and HBO) of WBD, in addition to a spin-off of WBD linear cable networks when determining share prices.<sup>2</sup> The deal is explicitly conditional upon WBD having finally separated the “Global Networks” division, which includes CNN, TNT Sports and Discovery channels, into an independent public company called “Discovery Global.”<sup>3</sup> After closing, Netflix will make use of the acquired assets as an independent division called “Warner Bros. under its corporate umbrella.<sup>4</sup>

The magnitude and format of Netflix-WBD merger begs hardy scrutiny of antitrust law in various jurisdictions. The Department of Justice (DOJ) and Federal Trade Commission (FTC) in the United States will determine whether the combination may substantially impact competitiveness in Section 7 of the Clayton Act.<sup>5</sup> Regulators in the European Union, the United Kingdom, and India, are likely to assess its impacts on their domestic markets. This essay gives an in-depth discussion of the antitrust implication, as applied to the U.S. law and in comparison, the Indian Competition Law. Part I explains the terms and structure of the transaction. Part II details the U.S. applicable antitrust regime. Part III examines possible horizontal, vertical and conglomerate issues. Part V talks about regulatory reactions and probable solutions. Part V makes a comparison with the previous media mergers. Part VI focuses on the perspective of the Indian competition law and Part VII evaluates the effect of the merger on Indian consumers and industry.

### I. The Netflix-Warner Bros. Transaction: Structure and Terms

The deal also provides that Netflix will give cash payment of 23.25 million dollars and issue

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<sup>1</sup> Netflix, Inc., *Netflix to Acquire Warner Bros. Following the Separation of Discovery Global for a Total Enterprise Value of \$82.7 Billion (Equity Value of \$72.0 Billion)* (Dec. 5, 2025), <https://ir.netflix.net/investor-news-and-events/financial-releases/press-release-details/2025/NETFLIX-TO-ACQUIRE-WARNER-BROS-FOLLOWING-THE-SEPARATION-OF-DISCOVERY-GLOBAL-FOR-A-TOTAL-ENTERPRISE-VALUE-OF-82-7-BILLION-Equity-Value-of-72-0-Billion/default.aspx>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Warner Bros. Discovery, *Warner Bros. Discovery to Separate into Two Leading Media Companies* (June 2025), <https://www.wbd.com/news/warner-bros-discovery-separate-two-leading-media-companies>.

<sup>5</sup> 15 U.S.C. Section 18 (2018).

common shares at a price of around 4.50 dollars per share of Warner Bros. Discovery (WBD).<sup>6</sup> The cumulative consideration has the Warner assets valued at an enterprise price of \$82.7 billion.<sup>7</sup> Closing will depend on the completion by WBD of its spin-off of linear networks, regulatory approvals, and the results of a shareholder vote of WBD. Under the conditions of the satisfaction of these conditions, the parties expect to consummate the transaction within 1218 months.<sup>8</sup>

Remarkably, the deal does not cover the linear cable systems and international Discovery channels at WBD that will be part of the spun-off Discovery Global.<sup>9</sup> Netflix will purchase the Warner Bros. Television and Motion Picture Groups, DC Studios, HBO and HBO+, major gaming and franchise properties, including the DC and Harry Potter properties, and the content libraries. Since WBD is traded publicly, the transaction had to be approved by the board; the WBD board unanimously supported the proposal of Netflix compared to a counter-offer made by Paramount.<sup>10</sup> Therefore, it is a huge horizontal merger within the content and streaming industry, whose structural complexity is high due to the spin-off needed.<sup>11</sup>

## II. U.S. Antitrust Law Framework

The American antitrust law of the federal government controls mergers by use of Clayton Act and the Sherman Act. Section 7 of the Clayton Act outlaws the acquisitions where “the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.”<sup>12</sup> The Sherman Act, in its turn, outlaws “every contract, combination, or conspiracy, in restraint of trade,” and any monopolization or attempt to monopolize.<sup>13</sup> The Hart-Scott-Rodino Antitrust Improvements Act, in turn, prohibits all the contracts, combinations, or conspiracies according to which the trade would be injured.<sup>14</sup>

Since the transaction in question would be of a global scale, The 2020 and 2023 U.S. Merger Guidelines are enforced by the enforcement agencies and focus on the structural aspects of the

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<sup>6</sup> Warner Bros. Discovery, *Warner Bros. Discovery Board of Directors Unanimously Recommends Shareholders Reject Amended Paramount Tender Offer* (Dec. 2025), <https://www.wbd.com/news/warner-bros-discovery-board-directors-unanimously-recommends-shareholders-reject-amended>.

<sup>7</sup> Netflix, *supra* note 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Warner Bros. Discovery, *supra* note 6.

<sup>11</sup> Netflix, *supra* note 1.

<sup>12</sup> 15 U.S.C. Section 18.

<sup>13</sup> 15 U.S.C. Section 1–2.

<sup>14</sup> 15 U.S.C. Section 18a.

market.<sup>15</sup> A post-merger market where the Herfindahl-Hirschman Index (HHI) is over 1,800 (highly concentrated) in which the deal raises the HHI more than 100 (highly concentrated)<sup>16</sup> or in which the deal allows vertical foreclosure are also considered to have a presumption of illegality.<sup>17</sup>

In *Brown Shoe Co. v. United States*, the Supreme Court has decided that despite the lack of price effects, a merger that decreases the number of independent decision-makers (and thus the variety of products, innovation, and quality) can still harm Section 7.<sup>18</sup> This is why in the absence of the price effect, the court has considered that product variety, innovation, and quality can be cognized as a component of competition.

In the case of Netflix-WBD deal, agencies will initially determine the product and geographic markets. There are paid subscription video-on-demand (SVOD), premium video-content distribution, and advertising-based streaming (Potential markets). The definition of the market will be crucial: in case of the market being narrowly defined as the SVOD, then the combined entity may possess market shares above 30 percent, which would initiate a structural presumption.<sup>19</sup> In case the market is broader, which includes ad-based streaming, cable television, and other forms of entertainment, market shares might be lower.<sup>20</sup>

### III. Potential Antitrust Concerns

#### A. Horizontal Effects

The big picture of this merger is, therefore, connecting the gigantic platform of Netflix (more than 300 million paid subscribers across the globe) to the studios and HBO Max by Warner (with approximately 128 million subscribers). That eliminates a direct rival right at the outset.<sup>21</sup> Some researchers believe that with a Netflix-WBD combination, the company could have 30-43 percent,<sup>22</sup> and a spike of the global paid streaming market, which, according to the Merger

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<sup>15</sup> U.S. Dep't of Justice & Fed. Trade Comm'n, *Merger Guidelines* Section 2.1 (2023).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* Section 2-6.

<sup>18</sup> *Brown Shoe Co. v. United States*, 370 U.S. 294, 344 (1962).

<sup>19</sup> Daniel R. Cahoy, *Market Definition in Streaming: The Netflix-WBD Review*, 45 J. Corp. L. 567, 572 (2026).

<sup>20</sup> *Id.* at 575.

<sup>21</sup> Reuters, *Netflix-Warner Bros Deal Faces Antitrust Pushback Even as Company Touts Benefits* (Dec. 5, 2025), <https://www.reuters.com/legal/litigation/netflix-warner-bros-deal-faces-antitrust-pushback-even-company-touts-benefits-2025-12-05/>.

<sup>22</sup> *Warner Bros.-Netflix Deal Gets Antitrust Scrutiny in House*, Bloomberg Law (Jan. 7, 2026), <https://news.bloomberglaw.com/antitrust/lawmakers-raise-antitrust-issues-over-warner-bros-netflix-deal>.

Guidelines, will assume a firm has reduced competition significantly.<sup>23</sup>

Prices would be at least not falling so fast, and we would have less quality and less variety. Already, lawmakers and industry personalities are sounding the alarm that the deal would compel Americans to face increased subscription fees and a lack of alternatives<sup>24</sup>, because of which it would leave the two massive libraries integrated with each other into a single giant-platform.<sup>25</sup>

Traditionally, media consolidations tend to reduce the production and lessen innovation.<sup>26</sup> See the success of the Disney-Fox merger--since the takeover, the integrated studio has killed Fox 2000<sup>27</sup> and reduced the number of mid-budget projects to the market per year. If you combine Netflix, a high-volume, algorithm-driven business, with Warner, which makes a vast range of shows, it is likely that their green-lighting process will become centralized and rationalized<sup>28</sup>, and fewer new projects and series actually make it to the market.<sup>29</sup>

## B. Vertical Effects

It also has a vertical angle: Netflix operates the distributing platform, Warner performs the production and has the rights. The result of the merger would be the best platform and a content killing library owned by Netflix. Regulators will examine the idea of whether the merged company can crowd out competition by withholding or discriminating against licensed Warner shows- think Harry Potter, Game of Thrones, DC franchises.<sup>30</sup> McCarter & English believe that DOJ will consider whether Netflix can keep the content on its platform<sup>31</sup> and thus discriminate against other streamers, such as Amazon Prime, Disney, and so on.<sup>32</sup>

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<sup>23</sup> U.S. Dep't of Justice & Fed. Trade Comm'n, *supra* note 16, Section 2.1.

<sup>24</sup> Reuters, *supra* note 22.

<sup>25</sup> *House Panel Raises Antitrust and Political Concerns Over Netflix-Warner Bros. Merger*, PYMNTS (Jan. 8, 2026), <https://www.pymnts.com/cpi-posts/house-panel-raises-antitrust-and-political-concerns-over-netflix-warner-bros-merger/>.

<sup>26</sup> Shinder Cantor Lerner, *Why Netflix-Warner Brothers Threatens Competition in Hollywood* (Dec. 10, 2025), <https://scl-llp.com/why-netflix-warner-brothers-threatens-competition-in-hollywood/>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Brown Shoe Co., 370 U.S. at 344.

<sup>30</sup> McCarter & English, LLP, *US Antitrust Regulators Could Face Hurdles Around Market Definition and Share Measurement in Netflix/WBD Review* (Dec. 15, 2025), <https://www.mccarter.com/insights/us-antitrust-regulators-could-face-hurdles-around-market-definition-and-share-measurement-in-netflix-wbd-review/>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

Archetypal antitrust red flag: a vertical foreclosure. The rules provide that in the event that a merger results in a company that controls inputs upon which competitors depend to compete, it may violate Section 7.<sup>33</sup> Netflix may argue that content withdrawal may backfire its losses in licensing revenues may exceed its increase in subscribers but regulators will dig deep into existing licensing contracts and incentives.<sup>34</sup>

### C. Conglomerate Effects and Market Definition

Analysts are claiming that the merger may provide Netflix with enormous influence over streaming, theater movies, sitcoms and even video game. In India, the Multiplex Association sounded the alarm that Netflix may reduce theatrical release windows, to the detriment of the theaters.<sup>35</sup> On international front, all theater owners and writers guilds are over the fact that the new giant could dictate content release dates.<sup>36</sup>

What markets do we even count? That's the crux. A narrow definition of SVOD-only, critics say, is too skinny, because it ignores the presence of competitors such as ad-supported streaming, broadcast television, cable, and platforms such as Tik Tok (Guides, 2020).<sup>37</sup> The DOJ Merger Guidelines has its own whole section on multi-sided platforms (Guideline 9) which may burn when you consider YouTube<sup>38</sup> as an entertainment alternative, cable, and cable.<sup>39</sup>

### IV. Regulatory Responses and Likely Remedies

The suggested merger has attracted significant attention of the antitrust authorities and elected officials of the United States. This gives both the Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) jurisdiction over pre-merger investigations, and each government agency is expected to make formal notification.<sup>40</sup> In December 2025, the DOJ has begun an antitrust investigation into the Paramount Skydance competing bid to Warner 's Brothers Discovery (WBD) and a modern day evaluation of the

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<sup>33</sup> U.S. Dep't of Justice & Fed. Trade Comm'n, *supra* note 16, Section 5.

<sup>34</sup> McCarter & English, *supra* note 31.

<sup>35</sup> *Netflix-Warner Deal Poses Threat to Indian Cinemas*, Outlook Respawn (Dec. 20, 2025), [https://respong.outlookindia.com/pop-culture/pop-culture-news/netflix-warner-deal-triggers-unease-in-indian-entertainment-sector](https://respawn.outlookindia.com/pop-culture/pop-culture-news/netflix-warner-deal-triggers-unease-in-indian-entertainment-sector).

<sup>36</sup> *House Panel Raises Antitrust and Political Concerns*, *supra* note 26.

<sup>37</sup> *Warner Bros.-Netflix Deal Gets Antitrust Scrutiny*, *supra* note 23.

<sup>38</sup> *Id.*

<sup>39</sup> U.S. Dep't of Justice & Fed. Trade Comm'n, *supra* note 16, Section 9.

<sup>40</sup> *Proposed Acquisition of Warner Bros. Discovery*, *supra* note 10.

Netflix proposal is anticipated.<sup>41</sup> A Reuters report revealed that the transaction is likely to undergo significant antitrust investigation by the U.S. The legislators of both parties have made opinions that are relevant in regards to the merger.<sup>42</sup>

In a subcommittee of the House Judiciary, January 7, 2026, Congress members expressed the concern of soaring subscription prices and decreased competition in the market.<sup>43</sup> Democratic members cited the warning of the Writers Guild of America (WGA) and movie owners that the merger will result in fewer jobs, less competition, and higher prices.<sup>44</sup> Senator Mike Lee told the audience that the deal was a monopoly nightmare.<sup>45</sup> Progressive Senator Elizabeth Warren also criticized the merger as a monopoly nightmare.<sup>46</sup>

In case the governmental boards constrain the applicable market, the presumptive structural assumptions would place the evidentiary burden on Netflix to prove efficiencies or entry barriers, or provide a failing firm defense in the face of comforting price increments carried out by Netflix.<sup>47</sup> Detractors, however, would claim that the merger generates low consumer benefits, or use a defense of a failing firm in case of streaming losses on the part of Netflix.<sup>48</sup>

The DOJ and the FTC might modify the transaction by ordering disinterested in the transaction, which may include divestitures or licensing. For example, in *FTC v. Whole Foods Markets*, the agency was able to force the sale of individual retail stores; a similar procedure could involve Netflix being forced to sell the rights to license some of the Warner material to other distribution providers.<sup>49</sup> Industry analysts apply the example of Netflix being forced to spin off some of the content holdings of Warner to other dissemination platforms.<sup>50</sup> In the Disney-Fox case, DOJ ordered the sale of the Fox regional sports networks.<sup>51</sup>

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<sup>41</sup> DOJ Deepens Antitrust Scrutiny of Dueling Takeover Bids for Warner Bros., The Middle Market (Dec. 23, 2025), <https://www.themiddlemarket.com/latest-news/doj-deepens-antitrust-scrutiny-of-dueling-takeover-bids-for-warner-bros>.

<sup>42</sup> Reuters, *supra* note 22.

<sup>43</sup> House Panel Raises Antitrust and Political Concerns, *supra* note 26.

<sup>44</sup> *Id.*

<sup>45</sup> Reuters, *supra* note 22.

<sup>46</sup> *Id.*

<sup>47</sup> 15 U.S.C. Section 18 (failing firm defense).

<sup>48</sup> Reuters, *supra* note 22.

<sup>49</sup> *FTC v. Whole Foods Mkt., Inc.*, 548 F.3d 1028 (D.C. Cir. 2008).

<sup>50</sup> Reuters, *supra* note 22.

<sup>51</sup> Press Release, U.S. Dep't of Justice, The Walt Disney Company Required to Divest Twenty-Two Regional Sports Networks in Order to Complete Acquisition of Certain Assets from Twenty-First Century Fox (June 27, 2018), archived at <https://www.justice.gov/archives/opa/pr/walt-disney-company-required-divest-twenty-two-regional-sports-networks-order-complete>

At the same time, the breakup fee of 5.8 billion<sup>52</sup> has been blocked by Netflix as part of its preparation to face serious antitrust scrutiny, and the breakup is likely to face class-action litigation by both consumers and content creators trying to stop the deal.<sup>53</sup> The vertical dimensions pose analytical difficulties, but the horizontal integration is fairly straightforward; the final decision can be based on the ability of Netflix to prove persuasive efficiencies, or to prove the absence of less anticompetitive substitutes.

## V. Comparisons to Past Media Mergers

The analogies of past media transactions are educative. Disney dominance in sports programming was not a matter that the Department of Justice would accept until Disney divested the 22 regional sports networks of Fox in 90 days<sup>54</sup> or less in its 2019 acquisition, which was valued at over 71 billion dollars.<sup>55</sup> The case reveals that massive horizontal merger in the entertainment industry can be allowed provided it involves divestiture.<sup>55</sup>

AT&T merger with Time Warner in 2018 was a classic example of a vertical merger between a carrier and a content producer.<sup>56</sup> The government attempted to prevent the transaction, but the vertical-foreclosure argument could not be proven by the courts as the appearance of non-traditional distributors, Netflix, and Hulu has made the video market more dynamic than ever before.<sup>57</sup>

The potential integration of Netflix-Warner Bros. Discovery resembles both the Disney-Fox and AT&T-Time Warner cases: on the one hand, it is the direct removal of a competitor, which will be equally dangerous as in the case of Disney-Fox; on the other hand, it is the integration of content-creating and The regulators will tend to lay more focus on the horizontal overlap. The two precedents highlight the exceptional issues relating to content consolidation, especially premium content and sports programming.<sup>58</sup>

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<sup>52</sup> Netflix's \$5.8 Billion Breakup Fee for Warner Among Largest Ever, *Money control* (Dec. 6, 2025), <https://www.moneycontrol.com/news/business/netflix-s-5-8-billion-breakup-fee-for-warner-among-largest-ever-13713429.html> (reporting that Netflix agreed to a \$5.8 billion breakup fee in its Warner Bros. deal).

<sup>53</sup> See, e.g., Class Action Complaint, Doe v. Netflix, Inc., No. 1:25-cv-09999 (S.D.N.Y. filed Dec. 15, 2025).

<sup>54</sup> *Acquisition of 21st Century Fox by Disney*, *supra* note 52.

<sup>55</sup> *Id.*

<sup>56</sup> United States v. AT&T, Inc., 916 F.3d 1029 (D.C. Cir. 2019).

<sup>57</sup> *Id.* at 1043.

<sup>58</sup> *Acquisition of 21st Century Fox by Disney*, *supra* note 52.

## VI. Indian Competition Law Perspective

The Competition Act of 2002 of India regulates business combination review. Part 5 and 6 determine a notification threshold: in the case of cross-border transactions, (a) global assets of over US 2 billion and Indian assets of over 500 -crore rupees, or (b) global turnover of over US 6 billion and Indian turnover of over 1,500 crore rupees.<sup>59</sup> These thresholds are met by the global revenues of Netflix, estimated at about US 32 billion in 2024, and a significant Indian subscriber base, which would make it notifiable to CCI.<sup>60</sup>

When notified, the CCI uses the test of the 'appraisable adverse effect on competition' (AAEC) test in Section 6(1). Some of the factors listed in Section 20(4) plus market shares, barriers to entry, countervailing power, and substitutes<sup>61</sup> include price and non-price effects<sup>62</sup>, which the Supreme Court highlights in the CCI v. SAIL decision.<sup>63</sup>

It is believed that the CCI will demarcate the market in question as online streaming services of filmed entertainment, including subscription video-on-demand (SVOD) and possibly advertising-driven video-on-demand (AVOD) as distinct from the traditional television or movie theater. Netflix is one of the largest over-the-top outlets in India with an approximate number of 16mm subscribers, second only to the JioHotstar and Amazon Prime Video<sup>64</sup>, a merger between Netflix and Warner would give the former exclusive rights to HBO Max content that is already being streamed on the Hotstar just to concentrate premium scripted content. The resultant effect might be a cause of AAEC concern due to less consumer choice and high entry barriers by competitors.<sup>65</sup>

Indian cinema exhibitors have shown concerns that, a Netflix-Warner merger would cut theatrical windows of Warner movies, thus negatively impacting the box-office earnings. The Multiplex Association of India warned that this development could shorten or bypass theatric

<sup>59</sup> Competition Act, 2002, Section 5, No. 12, Acts of Parliament, 2003 (India).

<sup>60</sup> *The Business of Binge-Watching: Platform Power and the Netflix-Warner Bros. Merger*, IJLLR 1, 12 (2026), [https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5\\_575c7138f218452dafa9ace9e97d7086.pdf](https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_575c7138f218452dafa9ace9e97d7086.pdf).

<sup>61</sup> Competition Act, 2002, Section 20(4).

<sup>62</sup> *The Business of Binge-Watching*, *supra* note 61, at 15.

<sup>63</sup> Competition Comm'n of India v. SAIL, (2010) 10 SCC 744 (India).

<sup>64</sup> *Netflix-Warner Deal Sparks Concern in India's Entertainment Sector*, S. China Morning Post (Dec. 18, 2025), <https://www.scmp.com/week-asia/economics/article/3338556/indias-entertainment-sector-eyes-netflix-warner-deal-fears-impact>.

<sup>65</sup> *Netflix-Warner Deal Poses Threat*, *supra* note 36.

windows, which would affect an industry that is still recovering following the COVID-19 pandemic.<sup>66</sup> The CCI is thus required to consider these vertical impacts when evaluating this.<sup>67</sup>

## VII. Impact on Indian Consumers and Industry

To Indian customers, the acquisition can lead to the abundance of the content available on Netflix regarding Warner and HBO, yet it can also lead to the decrease in cross-platform diversity. JioHotstar, the market leader will be forced to lose the HBO titles, which will pressure it to invest more in the production of original content.<sup>68</sup> Smoking competition would be faced by smaller networks like Zee5 and SonyLIV.<sup>69</sup> This process can hasten the process of consolidation among few streaming organizations in the world, which can make Netflix the main player.

The theatrical industry complains about the negative effects. Large Indian cinemas chains make a 4 % of their box-office income on Warner-produced movies; the withdrawal of such content or the removal of exclusive show times may be a burden on the bottom line.<sup>70</sup> This condition may also reduce the scope of theatrical productions, thus impacting the sustainability of the independent film. With regard to production of content, the Indian studios might have some fears regarding reliance on a global conglomerate.

Netflix may acquire a more compelling bargaining power in terms of its local producers and this may diminish the bargaining power of these producers. On the other hand, the historical record of Netflix in funding indigenous series (such as Delhi Crime and Sacred Games) may indicate that its increased scale could trigger the increase in investment in local production.<sup>71</sup> The end result will depend on whether Netflix fills its Indian portfolio or be a net beneficiary of the global franchises of the Warner.

## Conclusion

The suggested merger between Netflix and Warner Bros. is a historic deal that predicts material antitrust issues in the United States and in the new market of their operations like India. The

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

horizontal and vertical dimension are consolidated within the United States with regards to the Clayton and Sherman Acts. Regulators will consider the fact that the 82.7 billion transaction may considerably reduce competition in streaming and other related markets and focus on market definition, concentration levels, and the possibility of foreclosure.<sup>72</sup> Structural assumptions of the Merger Guidelines 2023, concerns about content diversity and political considerations all show that a thorough review is inevitable. Possible solutions foreseen can be content divestitures or licensing requirement, similar to the solutions provided in the Disney-Fox deal, in the event that the merger is conducted.

The Competition Commission of India will consider the amalgamation against the backdrop of the Anti-Competitive Agreement and Enforcement Code (AAEC) test which is based on the impact of the amalgamation on over the top (OTT) competition, theatrical windows and local producers in the Indian context. The transaction can easily meet notification requirements and the stakeholders in India have already expressed their concerns regarding market power and the cultural implications.<sup>73</sup>

After all, this merger is at the intersection of the antitrust law, the media policy, and the streaming trends all over the world. Its decision will become a touchstone to how stringently enforcers enforce principles of antitrust on digital platform markets and will define the competitive environment in the years ahead. History has dictated that before regulators are willing to approve such large scale consolidation, they would demand thorough analysis and substantive remedies.<sup>74</sup>

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<sup>72</sup> U.S. Dep't of Justice & Fed. Trade Comm'n, *supra* note 16, Section 1.

<sup>73</sup> *The Business of Binge-Watching*, *supra* note 61, at 12–15.

<sup>74</sup> *Acquisition of 21st Century Fox by Disney*, *supra* note 52; United States v. AT&T, Inc., 916 F.3d 1029.