The Netflix Merger with Warner Bros: Presumptively Anticompetitive

by Joel Thayer and Ken Buck

Capitalism depends on competition—not consolidation. As Adam Smith—the father of modern economics—recognized, free markets fail when the "wretched spirit" of a monopolist becomes so large that others cannot meaningfully compete.[1]

That warning is more relevant today than ever. The Netflix–Warner Bros. merger is not a routine media transaction. It is a case study in how modern consolidation—especially consolidation driven by Big Tech—can permanently entrench market power, reduce consumer choice, and weaken the competitive conditions that make markets work.

This merger has drawn bipartisan ire. Senator Mike Lee (R-UT) stated it that the deal has "a lot of antitrust red flags." Rep. Becca Balint (D-Vt.) said, "We want choices, more choices. When these companies merge, things get better for the people at the top over and over again and worse for the rest of us."

And for good reason. Netflix, armed with an acquisition of Warner Bros., would be able to raise prices with impunity, reduce consumer choice, and dictate the terms of distribution not only in Hollywood but across global markets. Once Netflix becomes the dominant platform worldwide, there's no reason to think it will behave differently from other tech monopolies we've spent years trying to rein in.

This paper explains why the Netflix–Warner Bros. merger should be presumed anticompetitive. First, we show that even under narrow market definitions the transaction materially increases concentration in an already consolidating industry. Second, we discuss how this merger means higher prices or lower quality of products for consumers. Third, we explain how this merger will likely mean higher ticket prices and fewer options for theater goers. Finally, we explain why the appropriate policy response is to stop this merger and draw a clear line against further consolidation of cultural distribution power into the hands of a single dominant platform.

I. Netflix's Merger with Warner Bros's Is Anticompetitive

The DOJ and FTC's 2023 Merger Guidelines recognize that consolidation trends matter. Guideline 7 states clearly that "[w]hen an industry undergoes a trend toward consolidation, the [DOJ and FTC] consider whether . . . a merger may substantially lessen competition or tend to create a monopoly." That describes today's streaming market.

As courts have long recognized, the first step in merger analysis is defining the relevant market. The definition of a relevant market "is the most critical tool in antitrust enforcement."[2]

Unfortunately, Congress did not provide courts with any single test to determine a particular industry's relevant market. *See Brown Shoe v. U.S.*, 370 U.S. 294, 321 (1962). Instead, three leading cases have served as the triumvirate for courts engaging in relevant market analysis: *United States v. E.I. du Pont de Nemours & Co.* (hereinafter, *Cellophane*); *Brown Shoe Co. v.*

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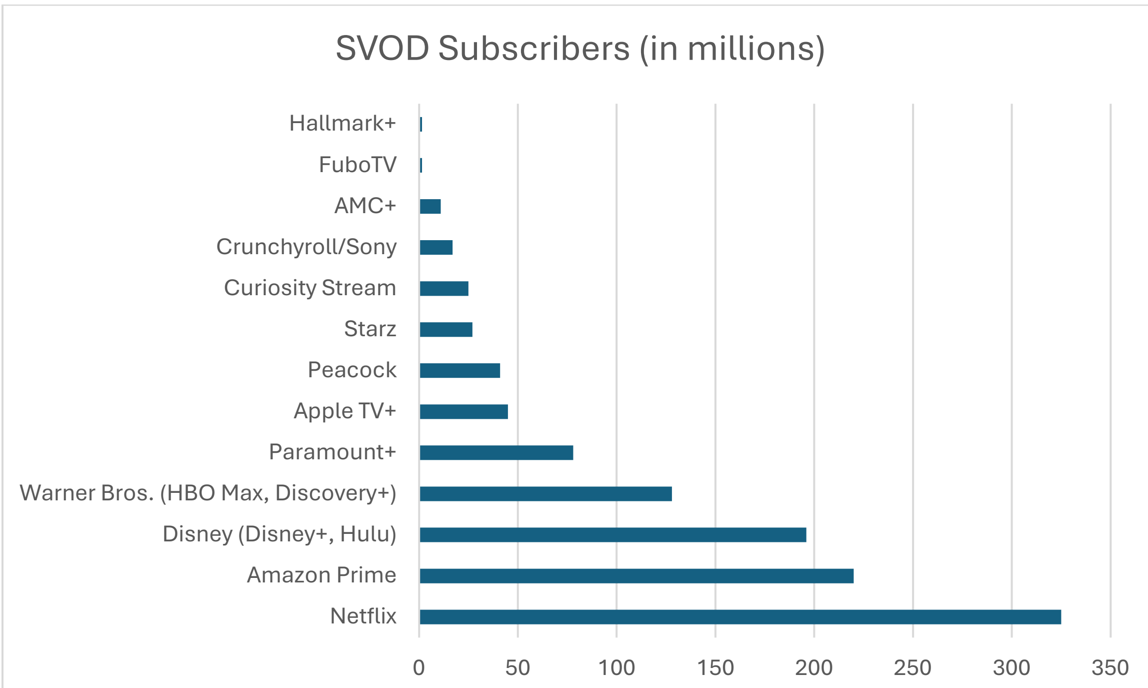
[1] Adam Smith, Wealth of Nations, IV, ch. iii, p. 494.

[2] Pitofsky, Robert, New Definitions of Relevant Market and the Assault on Antitrust, 90 Colum. L. Rev. 1805, 1806-07 (1990).

U.S., 370 U.S. 294 (1962); and *United States v. Grinnell Corp*., 384 U.S. 563 (1966). Courts look to the elasticity of demand in the entire market and the cross elasticity of supply of substitutes. *Cellophane*, 351 U.S. 377 (1956). In the case of a product, a court must assess the availability of a substitute product for the customer to determine the relevant market. *Grinnell*, 384 U.S. at 571-72. This ensures that the customer may turn to that substitute product if there is a slight increase in price of the main product. *Id.*

Here, the relevant market can be defined conservatively as premium subscription video on demand (SVOD)—the services consumers pay for monthly to access a large catalog of film and television content. And there, Netflix is already top dog with 325 million subscribers, making it the clear global leader. It's only actual competitors with over 100 million subscribers are Amazon Prime Video, Disney+, and Warner Bros.—no one else is even a quarter Netflix's size.



Frankly, Netflix has long been a monopoly under even the most generous market definition. Allowing it to take control of Warner Bros. would hand it overwhelming dominance of the video streaming space. Just consider the properties included in the deal. Warner Bros. isn't just another studio; it owns the DC Universe, Harry Potter, Looney Tunes, Turner Classic Movies, HBO's prestige catalog, and generations of American cultural heritage. Netflix's growth strategy has always been simple: Get big fast, build a global moat, and use scale to squeeze out smaller rivals.

That scale matters because scale is power. In streaming, scale translates into the ability to outbid rivals for content, subsidize losses longer than competitors can endure, bundle services or tiers to lock in customers, and use pricing and distribution leverage to make it harder for competitors to grow. Netflix's dominance is not simply the product of being popular. It is the product of network effects, brand entrenchment, and global distribution reach that rivals struggle to match.

This is exactly the kind of consolidation antitrust law exists to prevent: a transaction that strengthens an already dominant firm, raises barriers to entry, and accelerates a trend toward market tipping—where competition becomes impossible not because consumers lack alternatives today but because rivals cannot survive tomorrow. Allowing a Netflix-Warner Bros. merger would be like the Department of Justice, rather than breaking up AT&T in the 1980s, blessing its purchase of rival long-distance carrier Sprint—a red flag of anti-competitive behavior.

II. The Merger Will Predictably Raise Prices and Degrade Consumer Welfare

The Supreme Court defined market power as "[the seller's] ability to raise prices above those that would be charged in a competitive market." *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 109 n.38 (1984). Monopoly power is the "power to control prices and exclude competition." *Cellophane*, 351 U.S. 377, 391 (1956).

Netflix has already demonstrated that it can do so. To start, Netflix has already won the streaming war. As one commenter argues:

> You want to know why Netflix keeps raising prices? Because it can. Because Netflix won. The rest of the streaming industry is competing ferociously over a finite pool of money, dealing with carriage disputes because of dwindling subscriber numbers, and panicking over the future of TV. Netflix is the future of TV.[3]

The logic is straightforward: as streaming consolidates, consumers face fewer credible substitutes for the "must-have" platform, and switching becomes more costly in practice even if cancellation is technically easy. Consumers do not just subscribe to a platform—they subscribe to the platform that holds the most culturally central content and releases.

With Warner Bros. folded into Netflix, the incentive and ability to raise prices only increases. Warner's catalog contains franchise properties and evergreen programming that consumers return to repeatedly. Some commenters have argued that increased prices are "inevitable" once Netflix has access to such "bingeable" properties as Harry Potter, Friends, Stranger Things, and even classics, like Casablanca and Citizen Kane.[4]

And consumers will pay—because the merger reduces the number of effective alternatives. A consumer who cancels Netflix after a price increase may still want access to Warner's catalog. Under this merger, they would have no choice but to return to Netflix to get it. That is not competition. That is rent extraction.

The merger would also predictably degrade quality. The modern streaming playbook is familiar: higher prices, more ads, more fragmentation, and fewer consumer-friendly features. When platforms become gatekeepers, they stop competing to serve customers and start competing to extract maximum revenue from customers. Consumers then face a false choice: pay the monopoly price, or accept a degraded ad-supported product that is worse than what the market would deliver under real competition.

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[3] Nick Barclay, *Netflix Won the Streaming Wars, and We're All About to Pay for It*, The Verge (Jan. 26, 2025), https://www.theverge.com/2025/1/26/24351302/netflix-price-increase-streaming-wars.

[4] Andren McCarty, *Netflix Price Increase 'Inevitable' After Warner Bros. Deal – Here's When It Could Happen*, Men's Journal (Dec. 6, 2025), https://www.yahoo.com/entertainment/tv/articles/netflix-price-increase-inevitable-warner-001959001.html.

III. The Merger Would Harm Downstream Markets and the Broader Ecosystem

The harm from this merger would not stop at streaming subscribers. As Guideline 10 makes clear, impacts to secondary markets play a key role in determining a merger's unlawfulness. Indeed, Guideline 10 asks "whether [a merger] may substantially lessen competition for workers, creators, suppliers, or other providers." This deal impacts all of the above.

The most obvious and immediate impacts will be on movie distributors, especially theaters. This is not the first time this market has been in the limelight. Although not a merger case, the issues surround the so-called "Paramount Decrees" may prove instructive on how this merger can complicate downstream distribution and competition in secondary markets.

In *U.S. v. Paramount*, the Supreme Court ruled 7-1 held that the "Big Five" and three "Little Three" (including Warner Bros. mind you) studios had violated the Sherman Antitrust Act. *See United States v. Paramount*, 334 U.S. 131 (1948). In 1938, the DOJ sued the eight major motion picture companies for conspiracy of horizontal competitors "to control the motion picture industry through their ownership of film distribution and exhibition." The district court overseeing the case found that the studies had engaged in a wide-spread conspiracy to illegally fix motion picture prices and monopolize both the film distribution and movie theatre markets. The Supreme Court upheld the District Court's decision.

Afterward, each defendant entered into a consent decree with the DOJ (collectively, "the Paramount Decrees"). They mandated studios had to separate their production/distribution arms from their theater ownership. The consent decrees also prevented studios from forcing independent theaters to buy a "block" of lower-quality films to get access to one major hit. They also prohibited studios from setting minimum admission prices for theaters and stopped studios from forcing theaters to bid on films without seeing them first.

The DOJ designed the Paramount Decrees to ensure the studios could not use their respective monopolies over their properties to exert total control over the distribution of film to squeeze out competition by independent creators. Even though the decrees have since been terminated, they still serve as a strong demonstration that the DOJ need to take these facets into consideration as the SVOD market gets even more concentrated (exponentially more than Tinseltown was in the 30s).

A Netflix-controlled Warner Bros. could reshape release windows, reduce theatrical runs, or redirect major releases toward streaming-first distribution. The result would be less competition in distribution channels and fewer viable paths for film producers and exhibitors. This would be a major restructuring of the market—not driven by consumer demand but by the strategic incentives of a dominant streaming platform to internalize distribution and control the full monetization pipeline.

Think about that implication.

As Cinema United lamented, this acquisition represents an "unprecedented threat to the global exhibition business," and it will damage the "biggest circuits to one-screen independents in small towns." The primary reason is that Netflix's business model "does not support theatrical exhibition." The group also claimed that it may even lead to a decrease in annual domestic box offices by "25%" now that Warner Bros. films would "not [be] given proper theatrical runs."[5]

This doesn't just hurt theaters but also local economies as movie theaters generate about 399,500 jobs across the U.S.[6]

And this merger would increase Netflix's leverage over creators, production labor, and suppliers. A dominant buyer can impose take-it-or-leave-it terms. It can compress compensation, standardize contracts, and shift risk onto workers and creators who have fewer alternative buyers. That is not a hypothetical. It is a predictable feature of consolidated markets: when sellers and workers face fewer counterparties, bargaining power collapses. The result is lower pay, less creative risk-taking, and a market that rewards scale and algorithmic predictability over innovation and diversity.

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The question regulators face is not whether Netflix is successful. The question is whether success becomes a license to absorb the next major competitor, consolidate the next critical input, and permanently entrench dominance.

In short, the Netflix–Warner Bros. merger is unnecessary for business, harmful to consumers, and anticompetitive. It should be presumed unlawful and blocked.

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[5] Conor Murray, *What Does Netflix's Planned Acquisition of Warner Bros. Mean for Theaters And Titles Like HBO, CNN?*, Forbes (Dec. 5, 2025), https://www.forbes.com/sites/conormurray/2025/12/05/what-does-netflixs-planned-acquisition-of-warner-bros-mean-for-theaters-and-titles-like-hbo-cnn/.

[6] EY, Economic Contributions of the U.S. Movie Theater Industry, Report (2019), https://cinemaunited.org/wp-content/uploads/2021/08/NATO-Econ-Impact-Final-Report-2021-August-16th.pdf.