



The American Antitrust Institute

April 4, 2014

The Honorable Patrick J. Leahy
Chairman
U.S. Senate Committee on the Judiciary
437 Russell Senate Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
U.S. Senate Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Amy Klobuchar
U.S. Senate Committee on the Judiciary
Chairman
Subcommittee on Antitrust, Competition
Policy and Consumer Rights
302 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Michael S. Lee
U.S. Senate Committee on the Judiciary
Ranking Member
Subcommittee on Antitrust, Competition
Policy and Consumer Rights
316 Hart Senate Office Building
Washington, D.C. 20510

**RE: APRIL 9TH HEARING: EXAMINING THE COMCAST-TIME WARNER CABLE
MERGER AND THE IMPACT ON CONSUMERS**

Dear Chairman Leahy and Honorable Committee Members:

The American Antitrust Institute (AAI) commends the Senate Judiciary Committee for convening a hearing to address Comcast’s proposed merger with Time Warner Cable (TWC).¹ The deal would create an entity with a vastly larger footprint – covering over one-third of cable and broadband internet subscribers nationwide – and put control of essential content distribution “pipes” into the hands of a single company. Together with Comcast-TWC’s enormous content holdings, the merged company would have control over the production and distribution of important news, opinion, sports, and entertainment video programming to tens of millions of American consumers. The economic, political, and social implications of such control are potentially concerning.

The AAI believes that the proposed merger raises pressing issues related to competition, consumer welfare, and the protection of free speech that a diverse and independent media ensures. A merged Comcast-TWC could potentially exercise undue control over: (1) the timing, method, quality, and pricing of content and its distribution; (2) the rivals that produce and distribute content; (3) the scope and nature of content; and (4) the pace of innovation in broadband development. Moreover, the proposed merger comes strategically at a time when the U.S. is grappling with fundamental policy questions regarding network

¹ The AAI is an independent non-profit education, research, and advocacy organization. Its mission is to advance the role of competition in the economy, protect consumers, and sustain the vitality of the antitrust laws. For more information, see www.antitrustinstitute.org.

neutrality and the role of increasingly larger and more powerful broadband gatekeepers.

The AAI is currently completing research based on publicly available information on the likely effects of a Comcast-TWC merger. We anticipate releasing a White Paper in late April that provides an analysis of the major competitive and consumer effects of the proposed transaction. The AAI White Paper will cover a number of possible issues. For example, how might combining the cable television and broadband distribution systems of Comcast and TWC enhance the merged company's ability to restrict competing content providers' access to a significant base of consumers through distribution channels controlled by the merged company? The White Paper may also address how the combination of TWC's content assets with Comcast's vast content portfolio may enhance the ability of the merged company to frustrate access by rival cable, digital broadcast satellite, broadband, and telco rivals to valuable content controlled by the merged company.

The AAI White Paper will be made available to this Committee, the Federal Communications Commission, and the U.S. Department of Justice Antitrust Division. In the interim, the upcoming hearing is a key venue in which to vet a number of critical questions. We respectfully submit to the Committee the following questions that the AAI believes are particularly important.

1. The merger may shift relative bargaining power between the merged company and rival content providers. How will this affect the competitive landscape, pace and type of innovation, and benefits to consumers? How could the merged company's enhanced bargaining power lead to superior outcomes for consumers, relative to preserving existing competition between content providers and distributors?
2. The deal comes at a time when regulatory policies regarding network neutrality are in flux. What role will current and probable future regulatory protections play in addressing the merged company's ability to engage in restrictive practices, particularly toward online content providers and content delivery networks? How does the proposed transaction affect competition in the market for "last mile" interconnection services?
3. The size of a combined Comcast-TWC, coupled with very limited competition in video programming distribution in the U.S., means that rival video programmers could be foreclosed from access to a sizable share of the distribution market, potentially affecting tens of millions of consumers. How should this concern be addressed?
4. In light of the merged company's vast content holdings, there is a significant risk that distributors of video programming that currently and potentially compete with TWC could be foreclosed from access to competitively valuable Comcast-TWC content. How should this concern be addressed?
5. The merged company will control an even larger set of cable and broadband "pipes" than it currently does. How is the transaction likely to change Comcast-TWC's decisions regarding the nature and pace of innovation and competition involving the two distribution channels?

6. The merging parties state that Comcast and TWC do not overlap or compete with each other. If this is true, then how might the merged company realize claimed operating efficiencies such as scale economies in video and high-speed data for TWC customers? More generally, how credible are the merging parties' claims of cost savings and consumer benefits, and how would they be passed through to consumers in the light of reduced horizontal and vertical competition? What are the implications of Comcast's claims regarding competition and efficiencies for future mergers and acquisitions that the company might propose?
7. There is very limited existing head-to-head competition in pay television and broadband access. How, therefore, will the merger enable Comcast-TWC to better compete against larger rivals (regionally and nationally), as claimed by the merging parties? How does Comcast-TWC's logic apply in the context of Regional Sports Networks?
8. Limited competition in U.S. broadband development is known to have produced higher prices, lower quality, and less innovation than in Europe and elsewhere. The American public seems to be particularly unhappy with its cable companies. How will an even larger Comcast-TWC possess competitive incentives to provide pro-consumer bundles of services and to offer more choice in the pricing and quality of products and services?
9. Cable and broadband rivals have a history of agreeing to forbear from entering each other's markets. How would the proposed merger – by further concentrating the market for video programming distribution – change incentives for entering into such agreements? How might the merger affect competition and innovation in wireless broadband, in light of past agreements between cable and wireless competitors?
10. The remedies imposed in the DOJ consent decree and FCC order in Comcast-NBCU are controversial. How have those remedies been challenged, modified, violated, or litigated since the Comcast-NBCU transaction? If such conditions are extended to the even more complex and significant competitive concerns in Comcast-TWC, why should they be expected to be effective?

We would be pleased to discuss these questions and issues with the Committee Staff in advance of the April 9th hearing.

Respectfully,

Albert A. Foer



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The Honorable Richard Blumenthal

The Honorable Al Franken

The Honorable Elizabeth Warren

The Honorable Sheldon Whitehouse

The Honorable Bob Goodlatte

The Honorable John Conyers Jr.