The War Bid between Netflix and Paramount: An Antitrust Overview

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Summary: This note examines the "war-bid" dynamic surrounding Netflix's planned $82.7bn move for Warner Bros. Discovery (WBD), framing the transaction as a strategic pivot away from Netflix's historical reliance on licensed content and toward direct ownership of premium intellectual property. In this paper, it is argued that controlling WBD's portfolio (e.g., HBO and Warner Bros. film/TV assets) would improve Netflix's ability to plan content investment. However, antitrust concerns are critical to the success of the deal.

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1 Introduction

The Pivot to In-House IP: The "Consensus Shift"

Netflix's planned $82.7bn acquisition marks a decisive shift away from its long-standing "rent-and-burn" strategy, which depended heavily on licensing content from external studios to drive subscriber growth. Although this model worked well in the early days of streaming, it has become less viable as studios increasingly seek to retain control and ownership of their intellectual property and as competition for top-tier content has intensified.

As reported by Reuters, industry analysts argue that a potential combination between Netflix and Warner Bros. Discovery would allow Netflix to gain direct control over a vast premium content library, including HBO and Warner Bros.' film and television assets, reducing reliance on recurrent licensing negotiations in an increasingly competitive environment. This greater degree of ownership is viewed as a way to improve the predictability of content investment and strengthen Netflix's long-term strategic position rather than as a purely growth-driven expansion.

Indeed, Reuters highlights that direct ownership of Warner Bros. Discovery's assets would give Netflix greater pricing control, more stable content planning cycles, and enhanced flexibility to monetize intellectual property across streaming, theatrical releases and ancillary revenue streams. In this context, the transaction is best interpreted as a defensive repositioning aimed at stabilizing Netflix's content economics and mitigating the structural limitations of licensed-content dependence. The deal therefore reflects a broader industry shift in which sustainable scale in streaming increasingly depends on ownership of high-quality intellectual property rather than distribution reach alone.

The Counter-Bid Landscape: Paramount-Skydance's $108.4bn Hostile Bid

In late 2025, Paramount Skydance launched a hostile all-cash bid valued at approximately $108.4bn, offering $30 per share for the entirety of Warner Bros. Discovery. As reported by Reuters, the proposal was supported by a combination of debt financing commitments and a substantial equity backstop from Larry Ellison, co-founder of Oracle, which bidders presented as a means of improving financing certainty and execution speed relative to more complex transaction structures.

However, Warner Bros. Discovery's board unanimously rejected the Paramount proposal. According to reporting by Financial Times and Reuters, the board concluded that the offer was inferior to Netflix's proposal, citing concerns over financing structure, reliance on leverage and execution risk. The board reaffirmed its support for the Netflix transaction, which it characterized as offering greater value certainty and a more credible path to completion.

Notably, the decision to reject the Paramount bid, even though it carried a superficially higher headline valuation and Ellison's financial backing, highlights the difference between price and deal certainty in major transactions. From a fiduciary perspective, the board's judgment indicates that execution risk and the proposed financing structure outweighed the premium embedded in the Paramount proposal, undermining the notion that a higher nominal offer automatically equates to greater dependability.

Market Sentiment: The "Regulatory Hedge"

Despite the competing bids, Warner Bros. Discovery's share price has persistently traded below the implied value of both takeover offers. At current trading levels, Warner Bros. Discovery reflects an equity market capitalization of approximately $69bn, implying a spread of roughly $13.7bn relative to Netflix's $82.7bn offer. This corresponds to an approximate 16.5% discount to the bid-implied valuation, which can be interpreted as the market's quantitative pricing of regulatory and execution risk rather than disagreement over fundamental valuation.

Within merger-arbitrage dynamics, such a spread usually signals investor doubt about the likelihood of closing the transaction, rather than a dispute over intrinsic value. Here, the discount indicates that investors are assigning a significant probability to regulatory delays or enforcement actions, with a particular focus on potential challenges from the U.S. Department of Justice (DOJ) and foreign competition regulators.

According to Reuters, all leading suitors for Warner Bros. Discovery, including Netflix and Paramount Skydance, are encountering a "barrage of political and regulatory risks," with antitrust scrutiny and political opposition influencing investor expectations and undermining market confidence. As a result, regulatory unpredictability has emerged as a central factor in valuation, leading investors to build in a risk-adjusted discount to the anticipated deal value instead of fully arbitrage the takeover premium.

These concerns are amplified by the scale of consolidation implied by both transaction scenarios. Reuters reports that a Netflix–Warner Bros. Discovery combination is expected to trigger intense antitrust scrutiny in both the United States and Europe, driven by concerns over market concentration and competitive dynamics within the media and streaming landscape. As a result, Warner Bros. Discovery's shares remain anchored below bid levels, effectively embedding a regulatory hedge in the stock price. Reuters further notes that investors and analysts remain divided on the likelihood of regulatory clearance, reinforcing caution and contributing to the persistence of the pricing gap between market value and offer value.

2 The War Bid: Strategic Dynamics

Asset Segregation: Netflix's "Premium-Only" Strategy

The engineering logic of Netflix's bid is best understood as selective acquisition with de-risked legacy separation, not a classic "take-all-and-integrate" merger. Reuters' reporting on the deal structure indicates that the Netflix–WBD agreement is explicitly conditioned on WBD first spinning off its global networks / linear unit ("Discovery Global") into a separate listed entity, with Netflix acquiring the studios + streaming core (HBO Max, Warner Bros. studios) post-separation.

This architecture matters because it addresses the market's dominant fear: that linear TV cash flows (and their leverage, volatility, and secular decline) could contaminate Netflix's capital allocation model. Paramount itself has attacked the cable spinoff as "worth zero (or less)" due to leverage and performance drag, an attack that, ironically, underscores why Netflix wants those assets off the consolidated perimeter.

Operationally, the "premium-only" design concentrates Netflix's consideration on the scalable IP flywheel: HBO's brand equity, Warner's film/TV production engine, and globally monetisable franchises. Reuters describes the deal as enabling multi-year cost synergies and content control advantages, while the spinoff ring-fences legacy networks from Netflix's balance sheet.

The Hostile Playbook: Paramount–Skydance's All-Cash Offer and the CNN Wedge

Paramount–Skydance's approach is structurally different: a hostile, all-cash $30/share bid for the entire WBD perimeter, explicitly including cable/news assets (Reuters notes WBD's valuable portfolio includes HBO and other major franchises; Paramount's offer targets the whole company).

The tactical addition is not only price and speed; it is regulatory framing. By bidding for the "whole company" (rather than a premium allocation), Paramount implicitly pushes regulators toward a politically significant comparison: is it preferable for Netflix (a dominant global streamer) to own HBO/Warner's crown jewels, or for Paramount (a legacy media operator with a broadcast footprint) to consolidate a broader media package that includes high-profile news assets? Reuters' ongoing coverage shows this contest is being fought not just in valuation terms but via litigation, disclosure demands, and board replacement threats, classic hostile levers designed to shift the shareholder vote environment.

Importantly, this does not mean the CNN angle is a "guaranteed" cross-ownership breach by itself (U.S. rules are nuanced by platform and market). But it does elevate public-interest and ownership rule scrutiny around concentration in news and broadcast ecosystems, an arena where the FCC has historically imposed structural constraints on network combinations and media ownership rules.

Ellison's Guarantee: Why $40.4bn Reprices Closing Risk (But Not Antitrust)

The most decisive mechanical feature in Paramount–Skydance's package is Larry Ellison's personal guarantee of $40.4bn of the equity financing, explicitly reported by Reuters as a backstop designed to strengthen financing certainty.

How this changes the board's decision calculus is straightforward in corporate finance terms:

- In an all-cash hostile bid, the probability-weighted value to shareholders is often dominated by financing failure risk (banks pull, debt markets gap wider, equity backers wobble).
- A large personal guarantee from an ultra-high-net-worth sponsor functions as a quasi-"hard equity" commitment: it compresses the left tail of the closing distribution by making the funding package materially less contingent on market conditions.

Although the transaction structure isolates WBD's declining linear networks into the Discovery Global spinoff, this separation does not materially reduce the core antitrust concerns of the DOJ. The regulatory analysis is not centred on overlap in the linear TV segment, now ring-fenced, but on whether Netflix's acquisition of HBO, Warner Bros. Studios, and the associated premium IP would reinforce its position in the streaming and scripted-content markets.

As highlighted by analysts cited by Reuters, the DOJ's recent enforcement priorities focus on ecosystem consolidation, control of must-have IP, and the potential foreclosure of rival streamers. For this reason, the spinoff primarily operates as a financial and balance-sheet safeguard for Netflix rather than a structural concession intended to increase regulatory acceptability.

This distinction is what creates the "war-bid" dynamic: Paramount–Skydance can credibly argue that its offer carries higher funding certainty; Netflix can credibly argue its structure carries higher asset- quality certainty via separation of legacy networks.

3 Antitrust and Regulatory Analysis

The main concern with the deal would be the **possible concentration** of market share between the merger of Netflix and WBD, especially if we consider the Subscription Video on Demand (SVOD) market.

The conflict is straightforward: if two important SVOD competitors are brought under common ownership, the merged firm may face weaker competitive pressure to win and retain subscribers through lower prices, better service quality, and sustained content, diminishing the competitiveness of that sector.

In line with the Department of Justice's merger guidelines, several key factors must be considered when examining the primary issues associated with the formation of a monopoly.

For instance, Guideline 1 sets out a structural presumption: where a merger materially increases concentration in a market that is already highly concentrated, the Agencies may infer an elevated risk of competitive harm. In applying this screen, the Guidelines rely on specific concentration thresholds, based on the HHI and changes in the HHI, to identify transactions that warrant a presumption of illegality. For understanding the market concentration with the Herfindahl-Hirschman Index, it is useful to consider the definition of the DOJ: ”The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm”.

The thresholds are the following:

Indicator	Threshold for Structural Presumption
Post-merger HHI	Market HHI greater than 1,800 **AND** Change in HHI greater than 100
Merged firm's market share	Share greater than 30% **AND** Change in HHI greater than 100

Table 1: Structural presumption screens under the 2023 DOJ/FTC Merger Guidelines. Source: U.S. Department of Justice, Antitrust Division & Federal Trade Commission (2023).

For this analysis, the market under consideration is the Q4 2024 SVOD subscriber base across the different platforms.

Platform	**Quota %**	**Quota²**
Amazon Prime Video	22	484
Netflix	21	441
Max (Warner)	13	169
Disney+	12	144
Hulu	11	121
Paramount+	9	81
Apple TV+	7	49
Peacock	1	1
Other	4	16

Table 2: Streaming platforms market shares and squared shares before Netflix - WBD merger (for HHI calculation). Source: Statista, prepared by the authors.

Based on the pre-transaction market shares in Table 1, the pre-merger Herfindahl–Hirschman Index (HHI) is obtained by summing the squared market shares of all firms:

$$\begin{aligned} HHI_{\text{pre}} &= 22^2 + 21^2 + 13^2 + 12^2 + 11^2 + 9^2 \\ &\quad +7^2 + 1^2 + 4^2 \\ &= 1{,}506 \end{aligned} \tag{1}$$

An HHI of 1,506 indicates a moderately concentrated market under the DOJ/FTC merger analysis (i.e., between 1,000 and 1,800), implying that competitive conditions are neither fully fragmented nor highly concentrated prior to the contemplated transaction. With the data, it is possible to calculate the different quotas for the SVOD market with the merger between Netflix and Warner Brothers Discovery, using the information in Table 1.

Platform	**Share %**	**Share²**
Amazon Prime Video	22	484
Netflix + Max (Warner)	34	1156
Disney+	12	144
Hulu	11	121
Paramount+	9	81
Apple TV+	7	49
Peacock	1	1
Other	4	16

Table 3: Streaming platforms market shares and squared shares after a hypothetical Netflix–WBD merger (for HHI calculation). Source: Statista, prepared by the authors.

It is now possible to calculate the HHI index post-merger:

$$\begin{aligned} HHI_{\text{post}} &= 22^2 + 34^2 + 12^2 + 11^2 + 9^2 + 7^2 \\ &\quad +1^2 + 4^2 \\ &= 2{,}052 \end{aligned} \tag{2}$$

$$\text{Merged firm share} = 34\% \ (> \ 30\%). \tag{3}$$

$$\Delta HHI = HHI_{\text{post}} - HHI_{\text{pre}} = 546. \tag{4}$$

Based on Q4 2024 U.S. SVOD market shares, a hypothetical merger between Netflix and Warner Bros. Discovery would increase the market share of the

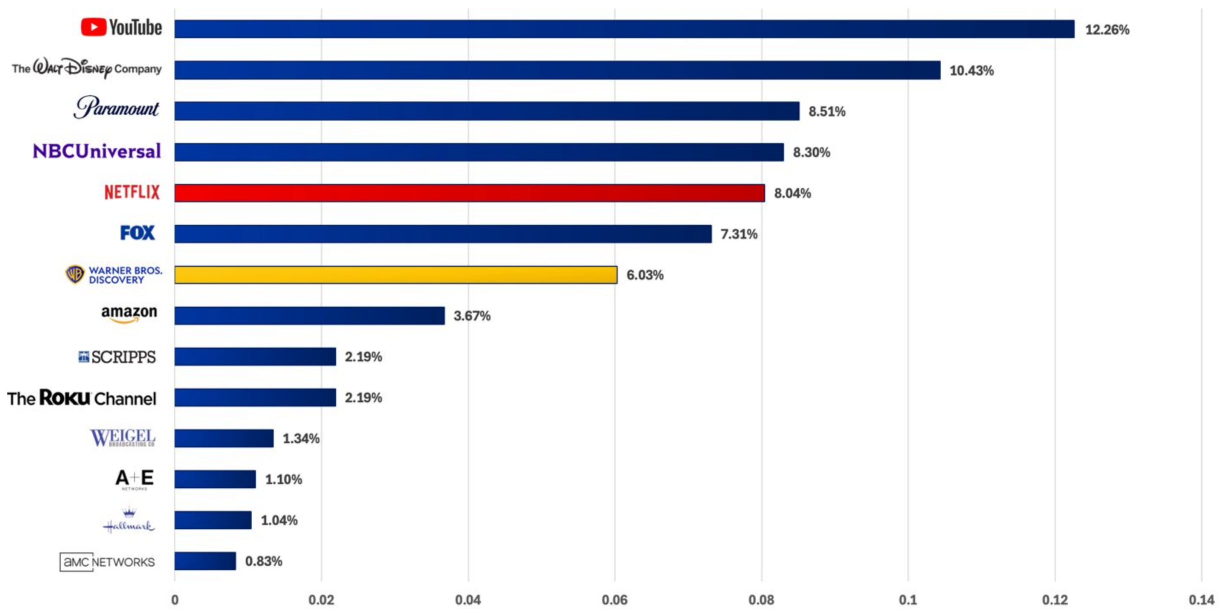

Figure 1: Average monthly TV viewing share by distributor (Nov. 2024–Nov. 2025). Source: Nielsen

merged entity to 34%, exceeding the 30% threshold commonly used as a screening indicator of potential market power in merger analysis. The transaction would raise market concentration from a moderately concentrated level ($\text{HHI}_{\text{pre}} = 1{,}506$) to a highly concentrated level ($\text{HHI}_{\text{post}} = 2{,}052$), implying a ΔHHI of 546 points.

Although the HHI calculations suggest that the transaction could be the cause for anti-competitive concerns, the deal exhibits characteristics of both horizontal and vertical mergers, and the DOJ's enforcement could depend heavily on which dimension it emphasizes.

According to the Merger Guidelines, horizontal mergers eliminate head-to-head competition between firms in the same relevant market and increase concentration, while vertical mergers involve firms at different levels of the supply chain and are assessed based on their potential to foreclose rivals, increase rival costs, or strengthen market power.

If the transaction was considered as a pure horizontal merger, HHI measures and market definition would play a central role. Framed in this way, the transaction would resemble the Disney-21st Century Fox merger (2019), in which the DOJ defined a narrow content distribution market and ultimately required structural divestitures to preserve competition.

At the same time, the transaction resembles the vertical merger occurred between AT&T-Time Warner (2017), in which a dominant distribution platform (AT&T) acquired control over upstream content assets. In this respect, the DOJ did not rely primarily on HHI or traditional concentration metrics, but rather alleged that vertical integration would enable foreclosure, raise rivals' costs, and entrench market power. Although the DOJ ultimately lost the case, it demonstrated a willingness to pursue a theory of harm based on incentive and ability to restrict access to must-have content, even in the absence of a clear structural presumption.

Accordingly, the central question for antitrust enforcement is not simply whether the SVOD market is highly concentrated, but whether the DOJ chooses to treat the transaction as a horizontal merger eliminating a close competitor or as a vertical merger that risks entrenching Netflix's position by combining distribution scale with control over premium content. That choice will determine both the relevance of alternative competitors and the likelihood of enforcement action.

4 Political and Ecosystem Risks

The potential deal between Netflix and Warner Bros. has not only raised regulatory concerns from the US Department of Justice (and its European counterpart, where Netflix holds a higher market share than in the US), but has also become the subject of political scrutiny, with consumers raising concerns about the deal's impact on the ecosystem.

President Trump specifically mentioned the matter in December at a conference, and not in a positive tone. His concern stems from Netflix's potential market share, exceeding 30%, as discussed in the previous paragraphs. Such a high market share would only further consolidate Netflix's market power at the expense of competition and consumers. Not even the meeting between Trump and Ted Sarandos, Netflix's co-chief executive, seems to have led to any improvement in the situation, with the president declaring that Sarandos did not give him any guarantees regarding the Warner Bros. deal when they met. The same would have been true had Paramount been the winner of the bid; nevertheless, according to various media reports, the relationship between Trump and Larry Ellison (a well-known Trump supporter, owner of Paramount, and CTO of Oracle) could have been a key factor, favoring the DOJ's acceptance of the deal, influenced by the US president's decision.

As for the ecosystem-related risks, they would clearly be far from insignificant. Holding such a dominant market share would create difficulties not only for the SVOD market but for the broader entertainment and content production industry as a whole. It would likely lead to reduced competition, job cuts, higher prices, and a pushback from Hollywood unions.

In such a context, it will be interesting to see how the situation evolves. For now, it is known that there will be an 18-month period during which the parties will attempt to obtain regulatory approval. Should this fail, Netflix has agreed to pay Warner a penalty of $5.8 billion as a break-up fee.

5 Conclusion and Deal Possibility

Under a Scenario Analysis, the most likely outcome involves a period of intense regulatory scrutiny where the Department of Justice may treat the deal as either a horizontal merger that eliminates a primary competitor or a vertical integration that risks foreclosing rivals' access to ”must-have” content. In a consolidated dominance scenario, Netflix successfully integrates the HBO and Warner Bros. studio core after spinning off WBD's linear networks, thereby stabilizing its content economics and increasing its market share to 34%.

Alternatively, a “Hostile Pivot” scenario remains on the table if shareholders ultimately view the board-rejected $108.4bn Paramount–Skydance proposal as more compelling, largely because Larry Ellison's $40.4bn equity backstop materially lowers financing risk, even in the face of current board resistance. At present, the deal's likelihood reflects a tension between strong financial attractiveness and substantial regulatory and political headwinds, especially given that the transaction would push market concentration from a moderate level to a highly concentrated HHI of 2,052. In addition, political unknowns—such as President Trump's publicly voiced doubts about Netflix's market dominance—introduce further uncertainty into the roughly 18-month regulatory review timeline.

Regarding long-term implications, this merger signals the end of the ”Streaming Wars” era characterized by fragmented distribution and marks the beginning of a consolidated ”Platform Era” where sustainable scale depends on IP ownership rather than reach alone. This transition effectively ends the ”Independent Studio” era, as the removal of a major player like Warner Bros. Discovery from the licensing market reduces the ability of creators to spark bidding wars, likely leading to reduced competition, potential job cuts, and a shift toward globally scalable franchises at the expense of creative diversity.

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