AT&T and Time Warner

Dropped connection

As media giants look to consolidate, the climate for mergers gets chillier

THE titans of media in America have decided this is an opportune moment to join together in mega-mergers, the better to take on the giants of Silicon Valley. The problem for them is that the Department of Justice (DOJ), and President Donald Trump himself, are less keen.

On November 8th reports surfaced that the DOJ is preparing to block a proposed $109bn acquisition by AT&T of Time Warner, owner of CNN, HBO and the Warner Brothers film studio—a deal that was announced a year ago and which had been expected to win approval by the end of 2017. The DOJ have reportedly told AT&T executives that to get the merger through they would have to sell off assets: either Time Warner's Turner Broadcasting division, including CNN, which Mr Trump has repeatedly attacked as "fake news", or DirecTV, the wireless giant's satellite-TV business. Randall Stephenson, AT&T's chief executive, said on November 8th he would not sell CNN to secure the deal.

In the eye of a storm

Time Warner's share price fell by 6.5% in one day, to nearly $20 below the agreed acquisition price of $107.50 per share. A possible court battle looms, at a time when other industry players are eyeing consolidation. It was also reported this week that Disney has had talks with 21st Century Fox about buying much of the group; although the discussions ended inconclusively, Rupert Murdoch and his sons, James and Lachlan, who together oversee Fox, may be open to the idea of selling. The travails of AT&T and Time Warner could give clues to the fate of other possible media deals.

Some suggest politics is at work: that Mr Trump intervened with the DOJ to scuttle a deal that he criticised during his election campaign as a symbol of unfair concentration of media power. But if Mr Trump is not directly involved, what else is going on? The acquisition does not involve conventional antitrust concerns, in that it is a vertical integration of distribution (wireless, broadband and satellite-TV) and content (TV networks, HBO and films). In the past the DOJ has been more concerned with horizontal mergers that create market dominance in one industry.

Yet there is legitimate reason for scrutiny. AT&T's commanding presence in distribution, especially in wireless—it has but one like-sized rival, Verizon—raises the potential for abuse as it sells content. It is true that regulators could seek a promise from AT&T that it not favour its own networks, such as HBO, and that it not discriminate against rival companies' networks as it sets carriage terms. Similar assurances were extracted from Comcast when it bought NBC Universal in 2011, a vertical merger that went through. But it is difficult to enforce such behavioural conditions.

Nor would a forced sale of assets necessarily solve competition issues. Selling DirecTV would not dent the carrier's strength in wireless. Selling the Turner networks would still leave AT&T with the firm's most valuable content brand, HBO. Either sale might be so onerous to execute, however, that it would probably stop the merger.

Whatever the DOJ decides, the logic of mergers remains. Netflix delivers content to 109m customers; Amazon is doing the same for tens of millions of Prime customers. To compete in the future TV market, media executives believe that they need to achieve scale in both distribution and content. They may have persuaded Wall Street of their case but not, it seems, the right people in Washington, DC. ■