AMERICAN ECONOMIC LIBERTIES PROJECT

Fact Sheet: The Antitrust Cases Challenging The Paramount/Warner Bros. Discovery Merger

August 2026

Since July 13, 2026, three lawsuits have been filed seeking to block the proposed $110 billion merger of Paramount-Skydance and Warner Bros. Discovery. Two are federal antitrust challenges in the Northern District of California, one brought by a coalition of 12 state attorneys general and one brought by the Writers Guild of America. A third, brought by a Paramount shareholder in Delaware Chancery Court, is not an antitrust case and is not covered here.

In recent days Paramount agreed not to close the acquisition until June 2027 or five days after the court rules on the antitrust challenges, whichever comes first. Both the states' case and the case filed by WGA East/West have been assigned to Judge Araceli Martínez-Olguín in the Oakland division of the Northern District of CA.

This fact-sheet is for reporters to better understand the two antitrust cases.

A QUICK RECAP OF ANTITRUST LAW

Section 7 of the Clayton Act prohibits mergers where the impact "may be to substantially lessen competition, or to tend to create a monopoly." Both suits below are brought under it and argue the deal creates "presumptively illegal" levels of concentration.

The states focus on what consumers and businesses buy -- theatrical films and basic cable channels -- and plead that there are three markets that would be in violation of Section 7 should the deal go through. The WGA suit focuses on what studios buy from writers and plead that there are three different affected markets that would be in violation of Section 7 if the deal isn't blocked.

A court finding harm in a single one of the six markets can block the deal.

How concentration is measured

There are different measures of market power. There is, for instance, raw market shares. The Supreme Court has held that undue market share as a result of a merger rests at roughly 30%. Anything above that 30% threshold is presumptively unlawful.

A different measure of market concentration in antitrust cases is called the Herfindahl-Hirschman Index ("HHI"), which takes each company's share of the market, squares it, and then adds up the results. The sum is the market's HHI score.

The scale runs from near zero -- where many small companies compete -- to 10,000, where a single company holds the entire market. A market with four companies each holding 25% of the market, for example, would result in a score of 2,500 (25 x 25 = 625, and 625 + 625 + 625 + 625 = 2,500). Ten companies at 10% each would result in a score of 1,000. Federal antitrust agencies have used this measure in their merger guidelines since the 1980s, and it is widely adopted by federal courts.

Two HHI figures matter when reviewing a merger:

1) Post-merger HHI: how concentrated the market would be after the deal. A market is considered highly concentrated when the HHI exceeds 1,800.
2) Delta HHI: how much the deal *increases* concentration. It is considered a significant increase in concentration when the increase in HHI exceeds 100.

When is a merger "presumptively illegal"?

Two routes lead to this presumption, both grounded in the Supreme Court's decision in *United States v. Philadelphia National Bank* (1963), and set out in the 2023 Merger Guidelines. Either test can be used to declare a market " presumptively illegal."

Test	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

Being “presumptively illegal" does not mean a deal is automatically blocked. It means the burden of proof flips. Instead of plaintiffs proving the merger will harm competition, the companies must prove it won't. Triggering that burden shift is the central goal of both antitrust complaints described below.

A note on the numbers below. When we say a market exceeds the threshold "by 3 times," (for example) we mean the delta HHI is more than 3 times the 100-point trigger. A bigger multiple means the merger changes the market more, not that the market ends up more concentrated.

A note on comparing the two suits. The states measure product markets (i.e. what theaters and cable providers buy). The WGA measures labor markets (i.e. what studios buy from writers). Figures from the two suits describe different marketplaces and should not be read against each other.

THE STATES’ CHALLENGE (link to complaint)

Filed on July 13 by 12 states (California, Arizona, Colorado, Connecticut, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, and Washington) and led by California Attorney General Rob Bonta, the States’ Challenge alleges that the proposed merger violates Section 7 of the Clayton Act and the deal is presumptively illegal for transgressions in **three distinct markets.** The states are asking the court to declare the merger unlawful and permanently block it; they are not seeking damages. Read more about the three allegedly impacted markets below:

1. **Wide-release films (aka movies opening in 600+ theaters)**

- Wide-release films account for approximately 98% of U.S. box office revenue. This is where the money is in the theatrical film business.

- Currently, five major studios (Paramount, Warner Bros., Disney, Universal, and Sony) distribute the vast majority of these films.

- If the merger isn’t blocked, just four major studios would control 86% of the distribution of wide-release films by revenue, and just three would control 75% of the market. These are combined figures for multiple studios, not the merged company’s own share, so they aren’t what triggers the presumption, but the states argue that concentrations at this level invite what antitrust law calls “tacit cooperation.” The remaining studios can settle into parallel behavior that dampens competition without any explicit agreement.

- The proposed merger is presumptively illegal under the HHI test: concentration would rise by 359 points -- more than three times the trigger -- and the merger would lead to a post-merger HHI of 2,074.

2. **Anticipated top grossing films (aka tent-pole, or "blockbuster" films)**

- Anticipated top grossing films are the major film events that drive theatrical revenues. Think Barbie, Top Gun, Oppenheimer, and basically any Marvel movie. These are movies with campaigns designed to reach every demographic, and they bring in the money. Every film that has grossed $100 million or more in the last four years opened in at least 3,000 theaters.

- These films fall under the wide-release category as well. But they are bigger. These "blockbusters" open in 3,000+ theaters, and even though they represent only 15% of films by title count, they generate 88% of total box office revenue. It is not unusual for plaintiffs to allege alternative "submarkets" that are well-recognized by industry participants.

- Similar to wide-release films, the merger would contract the number of studios releasing these blockbuster films. If the merger isn't blocked, four studios would control 93% of distribution of anticipated blockbusters.

- The proposed merger is presumptively illegal under both tests. Concentration would rise by more than 445 points, more than four times the trigger, to a post merger HHI of 2,427. Additionally, Paramount-WBD alone would hold more than 30% of the blockbuster market.

- Why this is an antitrust issue: blockbusters drive theater bookings, marketing budgets, union employment on major productions and creative decisions across the industry. When one merged company controls 30% of the blockbuster market alone, it gains extraordinary leverage over the theaters (which need blockbusters to fill seats), unions (which depend on major productions for stable employment), and independent creators (who lose bidding pressure between studios).

3. **Basic cable channels**

- Basic cable channels are the channels that come with your cable package. Think CNN, TBS, TNT, Nickelodeon, Discovery to name just a few. These are separate from premium cable channels like HBO, which requires an additional subscription fee, and different from broadcast channels like CBS, NBC, ABC, which are acquired by distributors and hold FCC licenses.

- If the merger isn't blocked Paramount-WBD would own 50+ channels spanning every major genre: news (CNN), kids programming (Nickelodeon, Cartoon Network), documentary and lifestyle (Discovery, TLC, HGTV, Food Network), music and youth (MTV, BET, Comedy Central), and general entertainment (TBS, truTV, Turner Classic Movies, Travel Channel, TV Land).

- Currently Warner Bros. is the second-largest owner of basic cable channels and Paramount is the third-largest. The combined company and Disney — the only other basic cable owner of a similar scale — would control 59% of all basic cable in the U.S.

- The proposed merger is presumptively illegal. According to the HHI test, concentration would rise by more than 321 points, more than three times the trigger, to a post-merger HHI of 2,007. Additionally, Paramount-WBD alone would alone hold more than 27% of the market by affiliate fees, or 34% of viewership.

- Why this is an antitrust issue: The merger and control over so many of these stations would give Paramount-WBD enormous pricing power (the ability to charge higher prices) over the cable providers, who would likely pass down these costs to customers via higher cable bills. The threat is not hypothetical: Disney pulled its channels from Charter in 2023 and in 2025 removed ESPN, ABC, NatGeo, FX, Freeform, SEC Network and ACC Network from YouTube TV for two weeks during a carriage dispute.

Recap of states' challenge:

Market	Merged share	Four-firm share	Post-merger HHI	Delta HHI
Wide-release theatrical films	27%+	86%	2,074	+359
Anticipated top-grossing films	30%+	93%	2,427	+445
Basic cable licensing	27% (affiliate fees) / 34% (viewership)	N/A	2,007	+321

All figures are from the complaint paragraphs 71-73. Share calculations use box office revenue for 2022-2025 (600+ theaters for wide release, 3,000+ for top-grossing, measured

within the first four weekends after release), and total 2025 affiliate fees as reported by S&P Global.

Analysis of the states' challenge:

This is a textbook antitrust case. It applies well-established legal standards to the merger's competitive effects across three markets. There are no novel legal theories, or untested applications of the law, just a standard Section 7 challenge to a deal that would result in multiple highly concentrated markets. This is actually a strength of the lawsuit. The states have designed a complaint intended to survive judicial scrutiny, not to break new legal ground.

All three markets identified by the states would exceed the concentration levels that are presumptively illegal under the HHI test. Under the alternative market share test, the merged company clears the 30% threshold in the market for anticipated top-grossing films, and on the viewership measure in basic cable. The presumption of illegality may be triggered by either the HHI test or the market share test.

The strongest evidence in the complaint is historical. In 2019 Disney acquired 20th Century Fox, then one of six major Hollywood film distributors. Fox had been releasing 12 to 17 new theatrical films a year. On his first earnings call after the deal closed, Disney's then-CEO announced the company would cut Fox's slate by more than half, to five or six films a year, and Disney's then-CFO confirmed the merger would lead to a reduction in output. The complaint notes those plans predated the COVID pandemic.

Disney and Fox together distributed 112 wide-release theatrical films from 2015 to 2018; the merged company distributed 54 from 2022 to 2025. The complaint argues that a slow pandemic recovery does not explain the drop. Disney/Fox output fell 52% while output from the other major distributors fell only 13% over the same period. More than 4,000 Fox employees were terminated after closing.

The states also raise harm to writers, actors, directors, crews, and craftspeople, but as a basis for their standing to sue on behalf of their residents, and not as a market they are asking the court to analyze. The three markets they plead are all product markets. Labor harm is the WGA's case.

What people are saying about the states' challenge:

"The complaint of the states is good enough to give Paramount and Warner Brothers a hard time," **William Kovacic, the Director of the Competition Law Center at George Washington University and the former FTC Chair (2008-2009) told Deadline, adding:** "The companies know that they must take this challenge seriously. That is why they have mobilized a high-powered legal team (including Paul Clement and Jeff Kessler) to

fight off the lawsuit. The states also have a capable team, so both sides are well represented."

"[The] complaint turned out to be a fairly conventional antitrust challenge focused on the competitive harms — fewer films, canceled projects, higher cable bills — that may arise when one company controls an outsize share of Hollywood's blockbuster pipeline," **Puck News's Eriq Gardner wrote adding**: "This seems like a complaint designed to survive judicial scrutiny, not merely dominate a news cycle."

"I spent the last month meeting with the workers and business owners who'd be hit with this deal. The rich guys who run Paramount can say what they want, but the people who actually work for them know that this will kill jobs and screw over the small businesses that are the lifeblood of this industry. I hope the states win and win fast, because these people need it," **said Alvaro Bedoya, former FTC Commissioner and Senior Advisor at American Economic Liberties Project, who just completed town halls on the merger in Los Angeles, New York, and Atlanta.**

"This illegal merger would mean layoffs for artists and workers, higher prices for consumers, and the death of Hollywood. State enforcers have done the right thing in seeking to block it. It is time to stop oligarchs from strip-mining our culture and selling America off for parts. Blocking this mega-merger is the first step in doing so," **said Matt Stoller, Research Director at American Economic Liberties Project.**

THE WRITERS GUILD CHALLENGE (link to complaint)

The Writers Guild of America West and Writers Guild of America East (together called the WGA) represent 18,000 professional writers (approximately 11,000 at WGAW and 7,000 at WGAE). On July 14 they filed a challenge in the Northern District of California, alleging that the merger would substantially harm **three distinct labor markets** for film and television writing services:

1. **Writing services for WGA-covered anticipated top grossing films (aka the market for screenwriters who work on major studio blockbusters)**

   - These are jobs on movies with production budgets of $100 million or more (the blockbusters, franchise films and event films that anchor major studios' theatrical calendars).

   - Screenwriters in this tier, according to the suit, represent a distinct labor pool as having "a demonstrated capacity to execute the commercial, narrative, and tonal demands of projects designed to perform across thousands of screens simultaneously."

- The proposed merger is presumptively illegal under both tests. Concentration would rise by 408 points, more than four times the trigger, to a post-merger HHI of 2,172. Additionally, Paramount-WBD would hold 35% of the market.

- Why this is an antitrust issue: A screenwriter's leverage comes from their ability to walk away from an unfavorable offer and pitch a competing studio. When five major studios shrink to four that leverage evaporates. The complaint quotes screenwriter David Koepp (Spider-Man, Jurassic Park, Mission: Impossible) to illustrate how consolidation has impacted screenwriter leverage. In 2001 Koepp brought his Panic Room script to 19 viable buyers. Today, that universe has "contracted to only a handful of companies," he said. Fewer buyers means lower pay, worse terms, and fewer projects being greenlit.

2. **Writing services for episodic television series (aka the market for TV staff writers and showrunners)**

- These are the jobs in the writers' room: the staffed creative unit, led by a showrunner, that breaks story and writes scripts for 30- and 60-minute series, whether made for a broadcast network, a cable channel or a streaming platform.

- The complaint treats this as a separate labor pool from screenwriting. Film writing builds toward a single self-contained story; episodic writing requires sustaining characters and plot across episodes and seasons, and it is typically collaborative work in a room. Agencies reinforce this distinction by maintaining separate television departments.

- The relevant buyers here are the seven Major Television Studios: Disney, NBCUniversal, Paramount, Warner Bros., Netflix, Apple and Amazon MGM. This is a different roster than the Major Film Studios named in the first market, and the distinction matters when comparing figures across the two.

- Sony is notably absent from this market since, according to the complaint, in earning calls from 2023-2026 neither Paramount or Warner Bro. even names Sony as a TV competitor.

- The proposed merger is presumptively illegal under both tests. Paramount-WBD would hold 36% of WGA-covered episodic projects and 36% of the writers working on them. The concentration for both projects and writers would rise by more than 600 points, more than six times the trigger, to a post-merger HHI of 2,408 for projects and 2.596 for writers.

- Why this is an antitrust issue: the studios here are vertically integrated, so a rejection isolates a writer from the entire distribution ecosystem. The complaint

calls this the “walled garden” effect. When a merged Paramount-WBD passes on a series the writer loses access not only to the studio but to Paramount+, HBO Max, and every affiliated platform.

3. Writing services of writers under overall deals (aka the market for top-tier TV talent)

- An overall deal makes a writer’s services exclusive to one studio for a defined term -- typically two to four years -- in exchange for a guaranteed annual salary, commonly several million dollars a year. The writer is expected to create and develop new series for the studio and work on existing shows.

- This is the top of the TV career ladder. Overall deal writers are proven creators with track records, industry relationships, and the capacity to function as de facto creative executives. Smaller and mid-size studios generally cannot afford these deals, so the buyer pool is limited to the seven Major Television Studios.

- The proposed merger is presumptively illegal under both tests. Concentration would rise by 727 points, more than seven times the trigger, the largest increase in either suit, to a post-merger HHI of 2,496. Paramount-WBD would also hold 38% of the writers under overall deals at the Major Television Studios.

- Why this is an antitrust issue: Overall deals exist because studios have to pay to take a writer off the market. Take away the competition and exclusivity comes for free. Michael Schur (The Office, Parks & Recreation, The Good Place) puts it like this in the complaint: “Overall deals are, at their core, a competitive instrument.”

Recap of WGA challenge:

Market	Merged share	Post-merger HHI	Delta HHI
Writing services: top-grossing films (2021-2024, all film studios)	35%	2,172	+408
Writing services: episodic TV (project/writers) (2022-2025, Major Television Studios)	36%/36%	2,408 / 2,596	+639 / +644
Writing services: overall deals (2021-2024, Major Television Studios)	38%	2,496	+727

These figures come from the WGA complaint, paragraphs 172, 173 and 183. Note the three markets use different date ranges and different studio universes. The film market is measured across all film studios, while the two TV markets are measured across the seven Major Television Studios.

Analysis of the WGA challenge:

Where the states' complaint is a conventional product-market case, the WGA's is a labor-market case. It deals with monopsony theory rather than monopoly theory. The buyers here are the studios, the sellers are the writers and the harm is suppressed wages and lost opportunity rather than higher prices.

Antitrust has long protected competition in labor markets, even if such enforcement is less common. But the WGA's legal theory has recent - and strikingly similar - legal precedent. The WGA anchors its suit in the 2022 decision blocking Penguin Random House's acquisition of Simon & Schuster, where a federal court found the combined publishers would dominate the market for buying top commercial books, depressing author advances and reducing the number of titles released.

The concentration figures are consistent across all three markets. The merged firm lands between 35% and 38% in each, clearing the Supreme Court's 30% threshold, and the delta HHI runs four to seven times the 100-point trigger. The WGA satisfies both presumption tests in every market it pleads.