Insight

To Save the Paramount–Warner Merger, Make Hollywood Short Itself

Sept. 9, 2026, 4:30 AM EDT

The biggest media deal in a generation is stuck. Paramount Skydance Corp.'s $111 billion bid for Warner Bros. Discovery Inc. has cleared the Justice Department's mandatory antitrust review, which concluded the merger was unlikely to harm consumers. But a dozen state attorneys general — led by California's Rob Bonta — and the Writers Guild of America have sued to block it, warning that the merged company would control roughly a third of wide-release theatrical distribution. A federal judge has frozen the deal, a trial is set for March, and Paramount is paying Warner shareholders about $7 million a day while everyone waits.

The case has become an all-or-nothing fight because antitrust law's standard fix doesn't fit. When regulators worry that a merger would soften competition, they usually demand divestiture: Sell off the overlapping assets, and the problem goes away.

But the logic for this merger lies in the combination of overlapping assets — two storied studios, two subscale streaming services, and two content libraries that together might rival Netflix Inc. and Walt Disney Co. Carving off a studio or a streaming platform to appease the suing states would remove exactly the synergies that promise to make the merged company a stronger competitor.

There is a better tool available for mergers like this, and it comes from an unlikely place: the stock market. In 2024, we proposed that merging firms at times be required, as a condition of regulatory approval, to take a negative ownership position in their remaining rivals — most simply, to bet against competitors by shorting their stock.

The idea may sound like a Wall Street gimmick. But it repairs the incentive that makes mergers between major rivals dangerous in the first place.

We worry about Paramount absorbing Warner, because a merged firm can profit from acting less competitively. A subscriber who cancels Paramount+ is no longer a pure loss. Many might simply switch to a Warner service the merged firm also owns. And if the combined company raises streaming prices or slackens its film output, its rivals might profitably follow suit. If the stock prices of Disney and Netflix jumped up after the merger, that jump would be evidence that the merger hurt consumers.

A short position would reverse the arithmetic. Suppose the merged Paramount–Warner were obliged to hold short positions in Netflix, Disney, and Comcast Corp. (which owns NBC Universal). Any move that softened competition — higher subscription prices, thinner theatrical slates, quieter bidding for talent — would then fatten rivals' profits, lift their share prices, and inflict a direct loss on the merged firm's short position.

The temptation to compete less aggressively would be offset, dollar for dollar if the positions were sized correctly, by a penalty for letting rivals prosper. The merged firm would be pushed to behave as it did before the merger — as if every customer it loses were a pure loss again.

Our proposed remedy also does something no divestiture can: It makes the merging parties reveal what they really believe. Paramount insists this deal is procompetitive, arguing that the combined company would inject fresh rivalry into streaming, not drain it. If that is true, a short position in Netflix and Disney is a bet Paramount should be eager to place, as genuine competition from a stronger Paramount–Warner would erode rivals' value. Only a company quietly counting on the opposite — cozier markets, fatter margins all around — would balk.

Making the commitment is a credible signal; refusing it invites a damning inference. Regulators, who can never see a merger's true motive, would finally have a device that sorts good deals from bad ones by their sponsors' own behavior.

Negative ownership dissolves what economists call the Williamson tradeoff, named after Nobel Prize laureate Oliver Williamson, who observed that mergers often bundle genuine cost savings with genuine market power, forcing regulators to accept higher prices as the toll for efficiency. With such a condition, there is no toll. The synergies of a combined studio survive intact, while the incentive to exploit market power is contractually neutralized. And if the savings are real, competition can push prices below where they started.

The entertainment industry is particularly well suited to this approach. The remedy works best when rivals are publicly traded and their share prices track the contested markets. Netflix's and Disney's valuations turn heavily on exactly the streaming and theatrical battlegrounds at issue here.

Before spending 2027 in a San Francisco courtroom, the states and Paramount should consider a settlement that no one has yet put on the table: Approve the merger, and make Hollywood's newest giant bet against its rivals. If the deal is as procompetitive as its architects claim, they would make money on the trade. If it isn't, consumers would be protected all the same.

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