UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of	)	
	)	
America Online, Inc.,	)	
a corporation,	)	
	)	Docket No. C-3989
and	)	
	)	
Time Warner Inc.,	)	
a corporation.	)	
	)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (the "Commission"), having reason to believe that respondents America Online, Inc. ("AOL"), a corporation, and Time Warner Inc. ("Time Warner"), a corporation, both subject to the jurisdiction of the Commission, have agreed to merge, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. Respondent America Online, Inc.

1. Respondent AOL is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 22000 AOL Way, Dulles, Virginia. AOL operates two internet service providers ("ISPs"): AOL, the nation's leading ISP, and CompuServe. In addition, AOL operates such internet brands as Digital City, Inc.; ICQ; the Netscape Netcenter and AOL.com internet portals; the Netscape Communicator client software, including the

Netscape Navigator browser; AOL MovieFone, the nation's top movie listing guide and ticketing service; and Nullsoft, Inc., developer of the Spinner, Winamp, and SHOUTcast brands.

2. Respondent AOL is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. Respondent Time Warner Inc.

3. Respondent Time Warner is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 75 Rockefeller Plaza, New York, New York. Time Warner operates a variety of businesses, including cable television systems; cable television networks, such as HBO, Cinemax, CNN, TNT, and TBS Superstation; magazine franchises, including Time, People, and Sports Illustrated; copyrighted music that is produced and distributed by record labels such as Warner Bros. Records, Atlantic Records, Elektra Entertainment, and Warner Music International; and film, television, and animation libraries owned or managed by Warner Bros. and New Line Cinema. Some of Time Warner's cable systems, HBO, Cinemax, and Warner Bros.' filmed entertainment business belong to Time Warner Entertainment Company, L.P. ("TWE"), a limited partnership. Time Warner owns general and limited partnership interests in TWE consisting of 74.49% of the pro rata priority capital and residual equity capital and 100% of the junior priority capital.

4. Respondent Time Warner is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. The Merger

5. On or about January 10, 2000, Respondents AOL and Time Warner entered into an Agreement and Plan of Merger regarding the proposed transaction. Under the proposed transaction, common stockholders of Time Warner will receive 1.5 shares of AOL Time Warner Inc. ("AOL/Time Warner") common stock for each share of Time Warner common stock they hold, and common stockholders of AOL will receive one share of common stock of AOL/Time Warner for each share of AOL common stock they hold.

IV. Trade and Commerce

A. Broadband Internet Access Service:

6. Internet access is an important service demanded by an increasing number of Americans. The vast majority of residential users currently access the internet via dial-up modems: their computers use standard telephone lines to connect to an ISP, which in turn connects the user to the internet. This service is referred to as "narrowband" access.

7. A rapidly growing number of residential users access the internet through "broadband" networks and transmission facilities. Broadband internet access allows users to send and receive data at rates substantially faster than is possible using narrowband access.

8. Time Warner provides broadband internet access service to customers in areas served by its cable television systems through a controlling interest in its partially-owned Road Runner subsidiary. Road Runner is the only ISP available on Time Warner's cable systems, and is a significant competitor in each of those areas. AOL provides broadband internet access service over non-cable broadband transmission facilities, including areas served by Time Warner's cable television systems. AOL is the leading provider of narrowband internet access, with a share of approximately 50 percent of narrowband subscribers. AOL is positioned and likely to become the leading provider of broadband internet access as well.

B. Broadband Internet Transport Service:

9. In order to provide broadband internet access service, an ISP must have access to broadband transmission facilities that can carry data at high speeds between the ISP's

because of technical constraints.

12. Satellite and fixed wireless technologies also can provide broadband transmission to residential users. However, these technologies have a much smaller share of the broadband internet transport market than cable modems or DSL, and consumers are unlikely to perceive them as adequate substitutes for cable modems or DSL in the next few years.

13. Most residential broadband subscribers access the internet over cable. DSL services are the second most frequently used. Though the number of DSL users is growing rapidly, DSL still lags substantially behind cable modem service in market penetration and acceptance.

14. AOL's principal means of providing broadband internet services is through DSL. AOL broadband subscribers on DSL frequently represent lost revenue opportunities for cable broadband transport services. AOL will have less incentive to promote DSL as a transport medium in TW cable areas after the merger.

C. Interactive Television Service:

15. Because of the rapid growth in the number of residential broadband subscribers and the expectation that there will soon be very large numbers of such subscribers, many firms are developing content that may be particularly attractive to residential broadband consumers. Residential broadband transmission capacity allows customers to access content that contains larger quantities of data, such as high-quality streaming video and various forms of interactive entertainment, including enhanced programming that enables the viewer to interact with the programming. Narrowband connections cannot take advantage of much of this broadband content because it takes much longer to receive the requested content and the slower speeds of narrowband adversely affect the quality of the received pictures and video.

16. Interactive Television ("ITV") combines television programming and internet functionality, and requires special hardware and software to blend data with video signals for display on a television screen. The first-generation technology, which is now on the market, uses a separate set-top box that sits between the cable set-top box and the television and contains a modem for connection to the internet by telephone.

17. AOL recently launched AOL-TV, a first-generation ITV product, and is well positioned

services.

19. As a cable operator, Time Warner can control the interactive signals, triggers, and content that can be delivered over its cable systems.

V. **Anticompetitive Effects**

COUNT I: LOSS OF COMPETITION IN BROADBAND INTERNET ACCESS SERVICE

20. Paragraphs 1-19 are incorporated by reference as if fully set forth herein.

A. Relevant Product Market

21. The relevant product market in which to assess the effects of the proposed merger is the provision of residential broadband internet access service.

B. Relevant Geographic Markets

22. The relevant geographic markets in which to assess the effects of the proposed merger are Time Warner cable service areas and the United States.

C. Concentration

23. The relevant markets are, or are likely to become, highly concentrated and the proposed merger, if consummated, will substantially increase that concentration.

D. Conditions of Entry

24. Entry into the relevant markets would not be timely, likely, or sufficient to prevent the anticompetitive effects of the merger.

E. Effects

25. The merger will eliminate existing and potential competition between AOL and Time Warner nationally and in Time Warner cable service areas, and will increase AOL/Time Warner's ability to exercise unilateral market power.

27. The relevant product market in which to assess the effects of the proposed merger is the provision of broadband internet transport service.

B. *Relevant Geographic Markets*

28. The relevant geographic markets in which to assess the effects of the proposed merger are Time Warner cable service areas and the United States.

C. *Concentration*

29. The relevant markets are, or are likely to become, highly concentrated and the proposed merger, if consummated, will substantially increase that concentration.

D. *Conditions of Entry*

30. Entry into the relevant markets would not be timely, likely, or sufficient to prevent the anticompetitive effects of the merger.

E. *Effects*

31. The merger will substantially lessen or reduce competition between cable television broadband transport service and DSL broadband transport service nationally and in Time Warner cable service areas, and increase AOL/Time Warner's ability to exercise unilateral market power.

COUNT III: LOSS OF COMPETITION IN THE PROVISION OF ITV SERVICE

32. Paragraphs 1-19 are incorporated by reference as if fully set forth herein.

A. *Relevant Product Market*

33. The relevant product market in which it is appropriate to assess the effects of the proposed merger is the provision of ITV service.

B. *Relevant Geographic Markets*

34. The relevant geographic markets in which it is appropriate to assess the effects of the proposed merger are the Time Warner cable service areas and the United States.

C. *Concentration*

35. The relevant markets are, or are likely to become, highly concentrated and the proposed merger, if consummated, will substantially increase that concentration.

D. *Conditions of Entry*

36. Entry into the relevant markets would not be timely, likely, or sufficient to prevent the anticompetitive effects of the merger.

E. *Effects*

37. The merger will increase barriers to entry and increase AOL/Time Warner's ability to exercise unilateral market power nationally and in Time Warner cable service areas.

VI. Violations Charged

38. The agreement entered into between Respondents AOL and Time Warner for their merger constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Further, the agreement, if consummated, would be a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this fourteenth day of December, 2000, issues its complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

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