Department of Justice

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JUSTICE DEPARTMENT CLOSES ANTITRUST INVESTIGATION INTO THE MOVIELINK MOVIES-ON-DEMAND JOINT VENTURE

Department Does Not Find that the Joint Venture Harms Competition or Consumers

WASHINGTON, D.C. - The Department of Justice's Antitrust Division issued the following statement today after the closing of its investigation into Movielink, a joint venture formed by five major movie studios - Sony (Columbia-TriStar Pictures), Warner Bros., MGM, Paramount and Universal - to provide video-on-demand services:

"The Division's substantial investigation of Movielink does not indicate that the formation of this joint venture by five of the major movie studios harmed competition or consumers of movies. The investigation focused on whether formation of the joint venture facilitated collusion among the studios or decreased their incentives to license movie content to competing video-on-demand (VOD) providers. The Division considered several theories of competitive harm but ultimately determined that the evidence does not support a conclusion that the structure of the joint venture increased prices or otherwise reduced competition in the retail markets in which Movielink competes. The Division will continue to monitor activity in these emerging markets as part of its ongoing enforcement of the antitrust laws."

(Background information is attached.)

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DEPARTMENT OF JUSTICE ANTITRUST DIVISION STATEMENT ON THE CLOSING OF ITS INVESTIGATION OF MOVIELINK, A STUDIO-OWNED VIDEO-ON-DEMAND MOVIE DISTRIBUTION JOINT VENTURE

The Antitrust Division of the Department of Justice recently closed its investigation of Movielink, a joint venture formed by five movie studios - Sony (Columbia-TriStar Pictures), Warner Bros., MGM, Paramount and Universal - to provide video-on-demand (known as "VOD") services to consumers. After a thorough review, the Antitrust Division has determined that the evidence does not show that the formation of the Movielink venture has reduced competition or harmed consumers.

The Antitrust Division began investigating the Movielink joint venture when it was publicly announced in August 2001 (at the time, the joint venture was known as "Moviefly"). Shortly after that, the Division also began investigating another studio-owned VOD joint venture, Movies.com, which was announced by Disney and Fox in September 2001. Disney and Fox announced that they were abandoning their collaboration on the Movies.com joint venture in Spring 2002, and consequently, the Division's investigation since then has focused on the Movielink joint venture. The Division has obtained extensive information from Movielink's studio partners and interviewed numerous industry participants, including cable and satellite providers, technology providers, home video retailers, and other VOD distributors.

The Division provides this statement pursuant to its policy on the issuance of investigation closing statements, available at http://www.usdoj.gov/atr/public/guidelines/201888. htm. This statement is limited by the Division's obligation to protect the confidentiality of certain information obtained in its investigations. As in most of its investigations, the Division's evaluation has been highly fact-specific, and many of the relevant underlying facts are not public. Consequently, readers should not draw overly broad conclusions regarding how the Division is likely in the future to analyze other collaborations or activities, or transactions involving particular firms. This statement does not bind the Division in any future enforcement action.

Post-Theatrical Film Distribution and the Development of VOD

Following a movie's initial release and exhibition in movie theaters, movie studios typically license films for in-home viewing by consumers through a variety of different types of distribution methods. The primary methods for in-home viewing are home video (which includes VHS and DVDs), pay-per-view (PPV), video-on-demand (VOD), pay television, and basic television (such as broadcast and basic cable). Historically, the studios have attempted to stagger the release dates to these different distribution methods, and each sequential release period is referred to in the industry as a viewing "window." For example, a film is generally available in the home video window on VHS and DVD for a certain period of time before it is released to PPV, with pay cable and eventually basic television following later in the sequential release pattern.

VOD is a new technology that has enabled the studios to distribute their films in digital format to consumers over two primary platforms, the Internet and digital cable. VOD is similar to existing PPV services in that it enables consumers to order a movie for viewing at home, direct to their televisions (or, in the case of Internet services, to their PCs). Unlike PPV, though, which has set start times and cannot be stopped, paused or rewound during viewing, VOD allows consumers to have VCR-like functionality while watching a film.

The Movielink Joint Venture

Movielink was formed in August 2001 as a joint venture between five equal studio partners - Sony Pictures Entertainment, Inc., Paramount Pictures Corp., Metro-Goldwyn-Mayer Studios Inc., Warner Bros., and Universal Studios - each of which is one of the major movie studios in the United States. Collectively, these five studios account for approximately 50% of the domestic box office revenues each year in the United States. Each partner studio entered into a content licensing agreement with the joint venture, authorizing Movielink to deliver new release films, as well as older “library” titles, over the Internet. Movielink began delivering movies to consumers over the Internet on November 12, 2002. It offers films distributed by its five studio equity partners, as well as films from other studios who have entered into licensing agreements with the joint venture.

The terms of the Movielink agreements provide that each studio determines pricing and release dates for its own films. To date, the Movielink studios have been releasing titles for viewing over the service during the PPV window, and pricing has ranged from $1.99 to $4.99 per film. Customers can pay by credit card to download films from Movielink’s website. Once a customer pays for a film, he or she has 30 days to watch the film. Once the customer begins watching the film, he or she can keep it for 24 hours.

The Division’s Analysis

Although a joint venture may be procompetitive, any agreement among major horizontal competitors in a concentrated industry to collaborate and jointly market their products or services raises potential antitrust concerns.

Because the Movielink joint venture involves vertical integration, the Division analyzed the product market at two levels of distribution: the upstream VOD licensing level and the downstream consumer retail level. With respect to upstream VOD licensing, the Division examined whether Movielink diminished competition among its partner movie studios in the terms on which they licensed their movies to third-party services that sought to compete with the joint venture. With respect to the downstream retail level, the Division considered not only the potential exchange of information, but also the extent to which VOD products compete with other products, such as home video and PPV.

Conclusion

The Division devoted substantial resources to the investigation into whether the Movielink joint venture is likely to result in potential anticompetitive effects harmful to consumers. The Division concluded that the evidence did not support a finding that Movielink had adversely affected competition through increased prices or decreased output. Accordingly, the Division has closed its investigation. The Division will continue to monitor licensing and other activities of the studios and Movielink in this evolving industry as part of our vigilant enforcement of the antitrust laws.