

enforce the provisions of the proposed Final Judgment and punish violations thereof. Entry of this judgment would not constitute evidence against, or an admission by, any party with respect to any issue of fact or law involved in the case and is conditioned upon the Court's finding that entry is in the public interest.

II. Description of the Events Giving Rise to the Alleged Violations of the Antitrust Laws

A. The Defendants and Their Merger

GTV is a Delaware corporation with its principal place of business in Pasadena, California. GTV is, as was its predecessor Gemstar, an international media and communications company that, among other things, develops, markets, and support interactive program guides ("IPGs") and IPG technology to providers of multi-channel subscription television services ("service providers") as well as to manufacturers of consumer electronics ("CE") hardware, such as televisions and video cassette recorders. An IPG is a software application that allows television viewers to display and sort program listings on the TV screen.

TV Guide is a Delaware corporation with its principal place of business in Tulsa, Oklahoma. TV Guide is a leading provider of IPGs to service providers. In addition to its sales of IPGs, TV Guide offers several other television guidance products, including the TV Guide magazine.

In Spring 1999, Gemstar and TV Guide were negotiating a settlement of pending patent infringement and antitrust litigation. By June 1999, settlement discussions focused on the possible formation of a joint venture through which Gemstar and TV Guide would jointly market IPGs to service providers. By early August, the parties found that they could not reach final agreement on the proposed joint venture. By August 12, 1999, negotiations between Gemstar and TV Guide had shifted to the possibility of merging or entering into a cross-license agreement.

On October 4, 1999, Gemstar and TV Guide announced an agreement to merge, pursuant to which Gemstar would acquire substantially all of the outstanding TV Guide stock and the two companies would form a new entity. They also entered into an optional agreement to cross-license their patents (the "Back-Up Cross License"). The Back-Up Cross License would take effect only if the merger failed to close by a certain date and if TV Guide, at its sole option, elected to trigger the agreement.

Gemstar and TV Guide filed the pre-acquisition Notification and Report forms required by section 7A of the Clayton Act in November 1999. After reviewing the parties' filings, the DOJ opened an investigation into the competitive effects of the proposed transaction. The mandatory statutory waiting period expired on June 19, 2000, although the parties voluntarily extended the time for the DOJ to conduct its investigation.

The DOJ ultimately did not file a Complaint seeking to enjoin the merger, and the parties consummated their agreement to merge on or about July 12, 2000. TV Guide is now a wholly owned subsidiary of GTV.

B. Competition in the Relevant Product Markets

A relevant product market defines the boundaries within which competition meaningfully exists. In this instance, one relevant product market consists of the provision of IPGs to service providers for use in providing digital cable and satellite television services in the United States. Service providers offer their subscribers multi-channel packages of television programming. The adoption of digital transmission allowed these providers to offer hundreds of programming options. Service providers considered an IPG—which allows the viewer to sort through these options—a navigational tool for which there was no realistic substitute.

Another relevant market is the market for providing IPGs to cable television service providers with systems committed to the GI/Motorola digital technology platform. In this context, a "platform" consists of hardware installed at various points in the cable television system, including digital set-top boxes deployed in television viewers' homes. Once a service provider has committed a system to a particular platform, it can only use IPGs that are compatible with the chosen platform on that system.

The relevant geographic market is the United States, given the need for close technical cooperation and support between IPG providers and U.S.-based set-top box manufacturers, service providers, and software companies.

Gemstar and TV Guide were direct competitors in these markets. Indeed, during the relevant 1999–2000 period, Gemstar and TV Guide were the only two established providers of IPG technology and services compatible with the GI/Motorola digital platform.

C. Illegal Sherman Act Agreements

1. The "Slow Roll" Agreement

In late Spring 1999, Gemstar was in the final phases of negotiating a long-term IPG agreement with Cox Communications, Inc. ("Cox"), a large service provider. TV Guide was also vying for Cox's business, having sent a draft IPG contract proposal to Cox in April. Similarly, both Gemstar and TV Guide were competing to sign Charter Communications, Inc. ("Charter") to a long-term IPG deal.

On June 10, 1999, Peter C. Boyland III, then President and Chief Operating Officer of TV Guide, met with Henry Yuen, then Chief Executive Officer of Gemstar, to discuss the possibility that the two firms could settle their litigation by forming a joint venture that would market their IPG products and services. In a contemporaneous memorandum summarizing the June 10 meeting, Mr. Boylan stated that Dr. Yuen and Mr. Boylan had "both acknowledged the need to slow roll Charter and Cox." What he meant was to cease or suspend competing for these customers' business until Gemstar and TV Guide could act jointly. Three days later, Dr. Yuen backed away from a draft contract with Cox, and thereafter ceased negotiating with Cox and Charter. TV Guide also stopped competing for their business during the joint venture discussions.

2. Market and Customer Allocation Agreements

At almost the same time that Gemstar and TV Guide announced their agreement to merge, they reached a broad agreement that Gemstar would phase out its marketing operations in the relevant markets in order to focus on sales and licensing of IPGs to consumer electronics ("CE") firms while TV Guide negotiated IPG agreements with most service providers. Pursuant to this agreement, Gemstar stopped actively marketing its IPG to service providers, except for certain very small systems that used technology platforms that were different from those used by traditional cable and satellite television service providers. TV Guide had not previously sought to compete for this business and had not adapted its IPG to the platforms used by these companies.

Gemstar and TV Guide also agreed to allocate specific customers between them, reaching understandings as to whether TV Guide or Gemstar would approach and negotiate with particular customers during the period between the merger agreement and the consummation of the merger (the "interim period"). Specifically, Gemstar and TV Guide agreed that TV Guide