DAF/COMP/GF/WD(2013)49

Unclassified

English - Or. English

5.

10. In the event of a licensing dispute between the joint venture and an OVD, the Division may seek court enforcement of the settlement or permit, in its sole discretion, the aggrieved OVD to pursue a commercial arbitration procedure established under the settlement. The FCC order also required the joint venture to license content to OVDs on reasonable terms and included an arbitration mechanism for resolving disputes. In contrast to the consent decree's arbitration process, the FCC process contains a right of appeal. If timely arbitration is available for resolution of disputes under the FCC order, the Division ordinarily will defer to the FCC's arbitration process to resolve such disputes. The FCC order also allows Comcast's traditional competitors, such as satellite and telephone companies, to invoke arbitration at the FCC to resolve program access and retransmission consent disputes. The FCC has experience with arbitration involving programming disputes between traditional MVPDs, making it unnecessary for the Division to impose similar relief. OVDs are nascent competitors, however, and consistent with the Division's competition law mandate, the Division reserv3a(lv) t42.5 (ngit)g(lv)

13. As originally proposed, the joint venture between NBCU and Comcast would have allowed Comcast, the largest cable company in the United States, to limit competition by either withholding or raising the price of NBCU content and effectively stifling new competition in the online video market. The parties agreed to a consent decree that included a variety of conduct provisions that preserved existing and potential competition in the nascent online video market but without regulating how the market should work.[8]

The Division hosted a Symposium in November 2007 focusing on competition among providers of video
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