

Brussels, 26 October 2004

Commission closes investigation into contracts of six Hollywood studios with European pay-TVs

*The European Commission decided to close its investigation into the so-called **Most Favoured Nation (MFN)**¹ clauses found in the contracts of the Hollywood film studios with a number of pay television companies in the European Union after the studios decided to withdraw the clauses. The case remains open with regard to NBC Universal and Paramount Pictures Corp. Inc., that still hold on to them. The Commission's competition services believe that these clauses have the effect of aligning the prices of the broadcasting rights bought by the television companies.*

Commenting on the matter, Competition Commissioner Mario Monti says: "I welcome the constructive approach taken by six Hollywood Major Studios concerning MFN clauses. I also invite Universal and Paramount to follow this reasonable path as soon as possible, so as to avoid adverse effect on competition"

The Commission started looking into the MFN clauses in May 2002 after it discovered that they featured in most of the 'output deals' between the major Hollywood film studios (the 'Majors') and the European pay-TV broadcasters that bought the broadcasting rights. Output deals are common in the Hollywood film industry where the studios typically agree to sell to broadcasters their entire film production for a given period of years.

The MFN clause gives the studios the right to enjoy the most favourable terms agreed between a pay-TV company and any one of them.

According to the Commission's preliminary assessment, the cumulative effect of the clauses is an alignment of the prices paid to the Majors. This is particularly because any increase agreed with a Major triggers a right to parallel increases in the prices of the other studios. The Commission considers that under these circumstances of cumulative effect such anomalous way of setting prices is at odds with the basic principle of price competition.

The Commission found a proliferation of these clauses, with many similarities, in the contracts of the distribution arms of the eight "Majors": NBC Universal, Paramount Pictures Corp. Inc. (subsidiary of Viacom), Buena Vista International Inc. (subsidiary of The Walt Disney Company), Warner Bros Entertainment Inc, 20th Century Fox Film Corp., Sony Pictures Entertainment Inc., MGM Studios Inc., and Dreamworks LLC.

¹ In the Hollywood Studios' output deals, the term "most favoured nation" clauses (MFN clauses) is borrowed by analogy from international commercial law. In actual fact these clauses establish a most favoured supplier principle.

The Major Studios have not admitted a violation of EU Competition law, or the above-mentioned preliminary assessment. However, at an early stage of the investigation, one of them withdrew its clauses, also indicating that it would not seek to implement such provisions in future agreements. The Commission welcomes this decision allowing it to close the case concerning this company. Later on, five other Studios also decided to waive their clauses in their existing agreements. Insofar as they will not deviate from this new behaviour, it is not envisaged to take further action against them concerning this issue.

The investigation remains open in respect of NBC Universal and Paramount Pictures Corp. Inc., since they have not accepted to withdraw their clauses in their own contracts.