



AND WHEREAS defendants agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

NOW THEREFORE, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

### **I. JURISDICTION**

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states claims upon which relief may be granted against defendants under Section 1 of the Sherman Act (15 U.S.C. § 1) and Section 7A of the Clayton Act (15 U.S.C. § 18a).

### **II. DEFINITIONS**

As used in this Final Judgment:

- A. "Agreement" and its variants means any agreement, mutual understanding or mutual plan, written or unwritten.
- B. "Competing Product" means (i) any product, service or technology offered for sale, license or distribution by any defendant that is primarily used for the same purpose as any product, service or technology offered for sale, license or distribution by any other party to a proposed transaction with any defendant, or (ii) any product, service or technology offered for sale, license or distribution by any other party to a proposed transaction with any defendant that is primarily used for the same purpose as any product, service or technology offered for sale, license or distribution by any defendant.

- C. “Defendants” means Gemstar-TV Guide International, Inc. and TV Guide, Inc.
- D. “Interactive Program Guide,” or “IPG,” means the software and/or technology that allows television viewers to access and organize programming information on their television screens and then view a channel corresponding to a selected program.
- E. “IPG Agreement” means any agreement to provide or license IPGs.
- F. “Negotiation And Interim Period” means the period between the commencement of negotiations with respect to an offer to enter into an Agreement, and the date when negotiations are abandoned or when any resulting Agreement is consummated or abandoned.
- G. “Person” means any individual, partnership, firm, corporation, association or other legal or business entity.
- H. “Pre-consummation Period” means the period of time between the signing of an Agreement for a transaction that is reportable under Section 7A of the Clayton Act and the rules, regulations and interpretations implementing Section 7A, and the earlier of the expiration or termination of the waiting period under Section 7A or the closing or abandonment of the reportable transaction.

### **III. APPLICABILITY**

This Final Judgment applies to Defendants, including each of their directors, officers, managers, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who have received actual notice of this Final Judgment by personal service or otherwise.

#### **IV. PROHIBITED AND REQUIRED CONDUCT**

- A. When any Defendant has entered into a transaction that is reportable under Section 7A of the Clayton Act, and the rules, regulations and interpretations implementing Section 7A, the Defendants are enjoined and restrained from entering into any Agreement with any other party to the transaction that would, during the Pre-consummation Period, combine, merge, or transfer (in whole or in part) any operational or decision-making control over the marketing or distribution of any to-be-acquired product, service or technology.
- B. During the Negotiation And Interim Period of any contemplated Agreement to acquire any voting securities or assets, form a joint venture, settle litigation, or license intellectual property, with any person offering a Competing Product, Defendants are enjoined and restrained from,
1. entering into any Agreement with that Person to fix, raise, set, stabilize or otherwise establish price or output for any Competing Product offered during the Negotiation And Interim Period;
  2. entering into any Agreement with that Person to delay or suspend during the Negotiation And Interim Period sales efforts with respect to any Competing Product;
  3. entering into any Agreement with that person to allocate any markets or customers during the Negotiation And Interim Period with respect to any Competing Product; or
  4. disclosing or seeking the disclosure of information about current or future

prices for, information or projections relating to future prices of, or contract offers related to Competing Products, except as such disclosures may be permitted in subsection V. D., or to the extent that such information is publicly available at the time disclosure occurs.

- C. For a period of nine (9) months following the date that this Final Judgment is filed pursuant to 15 U.S.C § 16(b) , each Defendant shall permit the following service providers, each of which entered into an IPG Agreement with TV Guide between June 10, 1999, and July 12, 2000, or their successors, to terminate, without penalty, said IPG Agreements:

Cameron Communications (Carlyss, LA)  
Millennium Telcom, LLC (Keller, TX)  
Sweetwater Cable TV Co., Inc. (Rock Springs, WY)  
Coast Communications Co. (Ocean Shores, WA)  
Florida Cable, Inc. (Astor, FL)  
Pioneer Communications (Ulysses, KA)  
Standard Tobacco Co. (Maysville, KY)  
Pine Tree Cablevision (Wayne, PA)

Such termination shall be at the sole option of these service providers, or their successors. GTV or TV Guide shall, within twenty (20) days of the date that this Final Judgment is filed pursuant to 15 U.S.C § 16(b), distribute to each such service provider, or its successor, a letter containing the notice set forth in Exhibit A.

## **V. PERMITTED CONDUCT**

Nothing in this Final Judgment shall prohibit Defendants from:

- A. agreeing that a party to a transaction shall continue to operate in the ordinary course of business during the Pre-consummation Period;

- B. agreeing that a party to a transaction forego conduct that would cause a material adverse change in the value of to-be-acquired assets during the Pre-consummation Period;
- C. including a nonexclusive field of use restriction, or reaching an Agreement for a royalty fee, in any intellectual property license Agreement;
- D. before closing or abandoning a transaction, conducting or participating in reasonable and customary due diligence, provided however, that no disclosure covered by subsection IV(B)(4) shall be permitted unless (1) the information is reasonably related to a party's understanding of future earnings and prospects; and (2) the disclosure occurs pursuant to a non-disclosure agreement that (a) limits use of the information to conducting due diligence and (b) prohibits disclosure of any such information to any employee of the person receiving the information who is directly responsible for the marketing, pricing or sales of the Competing Product(s); or
- E. disclosing confidential business information related to Competing Products, subject to a protective order, in the context of litigation or settlement discussions.

## **VI. COMPLIANCE**

- A. GTV shall maintain an antitrust compliance program which shall include designating, within thirty (30) days of entry of this order, an Antitrust Compliance Officer with responsibility for achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of current and proposed activities to ensure compliance with this Final

Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

- (1) distributing within forty-five (45) days of entry of this Final Judgment, a copy of this Final Judgment to each current officer and director, and each employee, agent or other person who has responsibility for or authority over mergers and acquisitions;
- (2) distributing in a timely manner a copy of this Final Judgment to any officer, director, employee or agent who succeeds to a position described in Section VI (A)(1);
- (3) obtaining within sixty (60) days from the entry of this Final Judgment, and annually thereafter, and retaining for the duration of this Final Judgment, a written certification from each person designated in Sections VI(A)(1) & (2) that he or she: (a) has received, read, understands, and agrees to abide by the terms of this Final Judgment; (b) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (c) is not aware of any violation of the Final Judgment; and
- (4) providing a copy of this Final Judgment to each merger partner before the initial exchange of a letter of intent, definitive agreement or other agreement of merger.

B. Within sixty (60) days of entry of this Final Judgment, GTV shall certify to Plaintiff that it has (1) designated an Antitrust Compliance Officer, specifying his or her name, business address and telephone number; and (2) distributed the Final

Judgment in accordance with Section VI (A) (1).

- C. For the term of this Final Judgment, on or before its anniversary date, GTV shall file with Plaintiff an annual statement as to the fact and manner of its compliance with the provisions of Sections IV and VI.
- D. If any GTV director or officer or the Antitrust Compliance Officer learns of any violation of this Final Judgment, GTV shall within three (3) business days take appropriate action to terminate or modify the activity so as to assure compliance with this Final Judgment, and shall notify the Plaintiff of any such violation within ten (10) business days.

#### **VII. PLAINTIFF'S ACCESS AND INSPECTION**

- A. For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the United States Department of Justice shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to GTV, be permitted:
  - (1) access during GTV's office hours to inspect and copy or at Plaintiff's option, to require GTV to provide copies of all records and documents in its possession or control relating to any matters contained in this Final Judgment; and
  - (2) to interview, either informally or on the record, GTV's directors, officers, employees, agents or other persons, who may have their individual counsel present, relating to any matters contained in this Final Judgment.



The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by GTV.

- B. Upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, GTV shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.
- C. No information or documents obtained by the means provided in this section shall be divulged by the Plaintiff to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.
- D. If, at the time information or documents are furnished by GTV to Plaintiff, GTV represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and GTV marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which GTV is not a party.

#### **VIII. CIVIL PENALTY**

Judgment is hereby entered in this matter in favor of Plaintiff, United States of America,

and against defendants, GTV and TV Guide, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. § 18a(g)(1), the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461), and Federal Trade Commission Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54549 (Oct. 21, 1996), defendants are hereby ordered jointly and severally to pay a civil penalty in the amount of five million, six hundred and seventy-six thousand United States dollars (US \$5,676,000). Payment shall be made by wire transfer of funds to the United States Treasury through the Treasury Financial Communications System or by cashier's check made payable to the Treasurer of the United States and delivered to Chief, FOIA Unit, Antitrust Division, Department of Justice, Liberty Place, 325 7th Street, N.W., Suite 200, Washington, D.C. 20530. Defendants shall pay the full amount of the civil penalties within thirty (30) days of the entry of this Final Judgment. In the event of a default in payment, a reasonable interest rate shall accrue thereon from the date of default to the date of payment. The portion of the Final Judgment requiring the payment of civil penalties for violation of Section 7A of the Clayton Act is not subject to the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h)).

#### **IX. RETENTION OF JURISDICTION**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish any violations of its provisions.

**X. EXPIRATION OF FINAL JUDGMENT**

Unless extended by this Court, this Final Judgment shall expire ten years from the date of its entry.

**XI. COSTS**

Each party shall bear its own costs of this action.

**XII. PUBLIC INTEREST DETERMINATION**

Entry of this Final Judgment is in the public interest.

DATED: \_\_\_\_\_

Court approval subject to  
the Antitrust Procedures and  
Penalties Act, 15 U.S.C. § 16.

\_\_\_\_\_  
United States District Judge

**EXHIBIT A**

**NOTIFICATION OF AVAILABLE OPTION TO RESCIND CERTAIN CONTRACTS**

Gemstar-TV Guide International, Inc. and TV Guide, Inc. (“TV Guide”) (collectively “Gemstar”) have consented to the entry of the attached proposed Final Judgment to resolve a civil suit brought by the Antitrust Division of the Department of Justice. Under the proposed Final Judgment, Gemstar is required to permit your company to terminate, without penalty, the IPG agreement your company entered into with TV Guide between June 10, 1999 and July 12, 2000. Your company has the sole option to terminate its agreement with Gemstar so long as it makes its election no later than nine calendar months after February 6, 2003, which is the date that the proposed Final Judgment was filed with the Court. Please note that your option to terminate begins immediately and does not require final entry of the proposed Final Judgment.

You may exercise this option to terminate the contract by sending a letter to that effect to Gemstar at the following address:

Stephen H. Kay, Esq.  
General Counsel  
Gemstar-TV Guide International, Inc.  
135 North Los Robles Avenue, Suite 800  
Pasadena, CA 91101

Please contact Stephen H. Kay, Esq. at Gemstar 626-792-5700 if you need more information.