Sudden Detour at the Finish Line: Fubo's Fight against the Live Sports Streaming JV

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1. Introduction

A lawsuit between a streaming service and three streaming service providers ended in a surprising way on January 6, 2025, with a merger between the plaintiff (Fubo) and one of the defendants (Disney). Only hours before the defendants were due for a court appeal, Fubo settled with Disney and two other defendants for a total of $220 million, and an additional loan of $145 million provided by Disney in 2026; in return, Fubo agreed to be combined with Disney's Hulu+ Live TV business, run by Fubo's leadership with Disney controlling roughly 70% of the service. [1] Further a couple of days later the providers announced they would be ending the joint venture at the centre of the lawsuit. [2]

Fubo sued Disney, Fox, and Warner Brothers earlier in 2024, alleging that a live sports streaming joint venture created by the three broadcasters was an attempt to drive rivals out of business, which would ultimately harm consumers. The January 6, 2025 decision was likely influenced by a preliminary injunction granted to Fubo in August 2024. This article summarizes the background and the economic reasoning used in that decision by Judge Margaret M. Garnett of the Southern District of New York. The case was FuboTV Inc. et al. v. The Walt Disney Company et al. [3]

The two key economic arguments in the case were 1) the relevant market definition and 2) whether an incumbent, that relied on distributors for content, would be harmed by those distributors launching a competitor. Relatively little of the decision focused on harm to consumers, instead focusing on whether the effect of the new competitor "may be to 'substantially to lessen competition, or to tend to create a monopoly' in 'any line of commerce.'" [4] The opinion presumed that this would be to the detriment of consumers but did not devote much space to investigating this possibility. [5]

2. Background

In February 2024, three broadcast companies (Disney, Fox, and Warner Brothers or "the JV Defendants") entered into a joint venture agreement to create a new television streaming service focused on offering live sports content, to be branded as Venu or Venu Sports. Disney is the owner of ESPN and is a majority shareholder of the streaming service Hulu, Fox provides sports broadcasting through its Fox Sports division and operates the streaming service Tubi, and Warner Brothers owns TNT Sports and the streaming service Max

The live sports program value chain has three major (sometimes integrated) tiers: creation, programming, and distribution. [6] First, the governing bodies of major sports (such as the NFL, NBA, or NHL) control the telecast rights to their events, which they contract to TV networks. [7] Second, television networks program these live sports events, adding value by combining the live sports content with their own produced content such as commentary, editing, and interviews. [8] Third, these programs are then

distributed to viewers by distributors. [9] Fubo sits at the third tier of the value chain, while the defendants are also vertically integrated throughout the second and third tiers and the newly created JV sits at the third tier.

Television networks have traditionally bundled their live sports coverage along with other content. [10] For example, Disney could require distributors to provide Nat Geo Wild (a Disney channel) to at least 85 percent of all its subscribers and pay affiliate fees regardless of the number of customers who actually watch the channel. [11] One point of difference of Venu relative to the existing offerings would be that Venu would only offer Live Sports, and would not offer other content that other distributors would normally be required to include. [12]

Fubo is a distributor that offers a specialized streaming service focused on live sports. [13] It contracts with the JV Defendants for the rights to license and distribute their programming and based on these contracts carries both live sports and other bundled content. [14] Fubo alleged that the JV violated federal and state antitrust law and sought a permanent injunction. Specifically, Fubo alleged that the JV Defendants have violated Section 7 of the Clayton Act, Section 1 of the Sherman Act, and New York state law. [15]

3. What legal standard was used?

In deciding whether to grant the preliminary injunction, Judge Garnett used a four-part legal test, which required that Fubo show: 1) it was likely to succeed on the merits, 2) it was likely to suffer irreparable harm if a preliminary injunction were not granted, 3) the "balance of equities tips in its favor," and 4) an injunction would be in the public interest. [16]

Judge Garnett applied this test only to Fubo's Section 7 claims, finding in part that Fubo would likely succeed in demonstrating that the JV will substantially lessen competition and restrain trade. The next section will discuss in detail the economic reasoning behind this.

Given that the Section 7 claims passed the test, there was no need to further consider the Section 1 claims. [17] Judge Garnett had previously expressed skepticism that Section 1 claims could constitute an emergency requiring injunctive relief. [18]

4. How was economics applied in the decision?

This decision primarily relied on economic reasoning in the first two parts of the test — that is whether Fubo was likely to succeed on the merits and whether it would face irreparable harm if a preliminary injunction were not granted.

Judge Garnett first determined whether Fubo was more likely than not to ultimately succeed in its claims. To do so, she considered three questions – whether Fubo had shown a relevant market, whether Venu represented the JV Defendants granting an exclusive license to unbundled sports content, and whether this exclusive license would allow the JV Defendants to potentially realize anticompetitive effects. [19]

Fubo had proposed three relevant product markets for the Court's consideration — (1) a "Skinny Sports Bundle Market," (2) a "Live Pay TV Market," and (3) a "Sports Licensing Market." [20] In contrast, the JV Defendants contended that the relevant market was a broader "Pay TV Market." [21] The court found that Fubo would be likely to be able to show the JV would tend to substantially lessen competition in the Live Pay TV Market. [22] Judge Garnett's reasoning was that there were a large variety of consumers of live sports who would view various offerings in this market as potential substitutes. [23] The key product excluded from this market was "Streaming Video on Demand" ("SVODs") like Netflix or Amazon Prime. [24] While Judge Garnett acknowledged that some SVODs offer some live sports programming, she reasoned that many sports fans would not view SVODs as an "acceptable substitute" for other Live Pay TV products as they would not be able to get all the lives sports they wanted purely from SVODs. [25]

Judge Garnett reasoned that Venu was able to show that the JV Defendants would grant an exclusive license to unbundled sports licensing: i.e., the JV Defendants would grant the JV unbundled services that they did not make available to Fubo or other TV distributors. [26] Judge Garnett then argued that this unique offering could potentially give the JV Defendants a way to "capture demand" in the Live Pay TV Market that "only exists as a byproduct of their own historical (and ongoing) bundling practices". [27]

For the second part of the four-part test, Judge Garnett had to determine whether Fubo had shown it would face imminent and irreparable harm if the JV were allowed to proceed. [28] She found the answer is yes: Fubo demonstrated that it would likely go out of business if the JV were allowed to proceed. In determining so, the judge considered two main potential defenses put forward by the JV Defendants, that Fubo's claims lacked credibility, and that Fubo's failure was likely regardless of the JV. [29]

Fubo presented sworn declarations, live witness testimony, ordinary course business documents, and statistical data to support its position. [30] In particular, Judge Garnett

relied heavily on evidence Fubo put forward purportedly showing that most of its customers are primarily interested in its sports offerings. For example Judge Garnett pointed to evidence that Fubo mainly acquired customers during periods where they offer live sports broadcasts, that customers first and longest viewed programming tends to be live sports broadcasts, and that a significant number of customers tend to cancel their subscriptions at the end of sports seasons. [31] Judge Garnett found this evidence particularly credible as it had been kept for years in the ordinary course and was consistent with the testimony of experienced Fubo employees. [32] On this basis Judge Garnett found that Fubo relied on customers interested in live sports and would likely suffer from Venu providing the same services at half of Fubo's price. [33]

The JV Defendants argued that Fubo was a "weak competitor" that would likely be at risk of insolvency and collapse even absent the JV. [34] Judge Garnett rejected this argument noting that Fubo was in its "relative infancy" having only existed for nine years. [35] Judge Garnett also relied on projections by Fubo that it was likely to be profitable in 2025. She found that these projections were compelling as they had been announced to shareholders in advance of the litigation and Fubo presented evidence that its internal model underlying these projections was credible. [36]

Having established that she was convinced the first two parts of the test were likely to be satisfied, Judge Garnett was able to cover the last two parts quickly. For the third part, i.e., the balance of hardships, the JV Defendants had failed to offer any witness testimony or documentary evidence on the harms they might face from a delay, while Fubo had already shown it was likely to suffer irreparable harm absent the injunction. [37] Therefore Judge Garnett ruled that "the balance of the hardships tips firmly in Fubo's favor." [38] Finally for the last part of the test, Judge Garnett ruled that an injunction would not harm the public interest, indeed, given that Fubo had shown that they were likely to succeed in their Section 7 claim and that the launch of the JV was likely to result in it exiting the market, Judge Garnett found that a preliminary injunction was likely to serve the public interest. [39]

5. Mixed reactions from the public

Following the preliminary injunction, several parties submitted amici curiae briefs. In September, six Republican state Attorneys General and several economists submitted amici curiae briefs opposed to the preliminary injunction. In their brief the Attorneys General noted that antitrust complaints made by competitors "should be viewed with skepticism," and claimed that the district court erred in viewing the joint venture's

procompetitive effects as an antitrust problem. [40] The economists noted that the "district court [had] denied consumers access to a desirable product (i.e. Venu) [that was] likely to increase consumer welfare" and had "improperly assumed that consumers [would] be harmed." [41] In December, the Department of Justice and seventeen Democratic state and district Attorneys General submitted amici briefs. The Department of Justice stated that Supreme Court precedents on unilateral refusals to deal with rivals under Section 2 of the Sherman Act were irrelevant to Fubo's claims under Section 7 of the Clayton Act and that Fubo was likely to succeed on its Section 7 claim. [42] The Democratic State AGs stated that "no duty to deal" claims only applied to unilateral conduct, not joint conduct, and thus did not apply to the joint venture. [43] Ultimately, these arguments are now rendered moot by the end of the joint venture. It remains uncertain how the courts may deal with similar issues in future.

Matthew Calvin is a Manager in Cornerstone Research's New York office. The views expressed herein are those of the author and do not necessarily represent the views of Cornerstone Research.

Endnotes

1. Bryan Koenig, "Disney Buy Ends Fubo Sports Streaming Suit," Law360, January 6, 2025, available at https://www.law360.com/competition/articles/2279881/disney-buy-ends-fubo-sports-streaming-suit. ("Disney and Fubo announced a deal Monday morning to combine the streaming startup with Disney's Hulu + Live TV business, in an agreement that ends Fubo's lawsuit that had so far successfully challenged a three-way live sports streaming joint venture between Disney's ESPN, Fox and Warner Bros. Discovery. The price of that settlement: the three broadcasters will pay Fubo a total of $220 million, while Disney will also provide Fubo a $145 million term loan next year. If the deal falls through, Fubo could be eligible for a $130 million termination fee, according to the announcement.")

2. Byran Koenig, "ESPN, Fox, Warner Bros. Abruptly Scrap Sports Streaming JV," Law360, January 10, 2025, available at https://www.law360.com/competition/articles/2282323/espn-fox-warner-bros-abruptly-scrap-sports-streaming-jv ("ESPN, Fox and Warner Bros. Discovery called off their Venu joint live sports streaming venture Friday, just days after ESPN parent company The Walt Disney Co. used the acquisition of a majority stake in streaming startup FuboTV Inc. to nix Fubo's challenge to Venu on the courthouse steps.")

3. Opinion and Order, *FuboTV Inc. et al. v. The Walt Disney Company et al.*, Document 290, Case 1:24-cv-01363-MMG, August 16, 2024, ("Opinion and Order"), available at https://nysd.uscourts.gov/sites/default/files/2024-08/Fubo%20Opinion.pdf

4. Opinion and Order at p. 54. ("For Fubo to succeed in its Section 7 claim, it is not required to prove with certainty that all of the above anticompetitive risks will come to fruition, or that the JV Defendants 'intended'in forming the JV to profit from any such anticompetitive effects... It need only show that the effect of the JV may be to 'substantially to lessen competition, or to tend to create a monopoly" in "any line of commerce.'").

5. Opinion and Order at p. 47. ("For these reasons at least, the launch of the JV will tend to lessen competition in the Live Pay TV market by allowing the JV Defendants an unobstructed runway to establish market dominance over future submarkets and drive out competitors within the rapidly changing Live Pay TV Market, all to the detriment of consumers and competition when compared to a world without the JV.")

6. Opinion and Order at p. 8. ("The three tiers described above generally operate as follows with respect to the live sports segment of the pay TV industry: (1) the sports leagues and governing bodies create content by developing and scheduling sporting events and then license the rights to televise those events to (2) sports-focused television networks, like ESPN, TNT, and Fox Sports, as well as traditional broadcast networks like ABC and Fox, who typically provide commentators and other packaging elements to the sporting event telecast, and then in turn license the rights to distribute the programming content to (3) distributors that package and deliver the network channels to the consumer for viewing, such as traditional multichannel video programming distributors ('MVPDs') like Comcast, Charter, or DIRECTV, and, increasingly, virtual MVPDs ('vMVPDs') such as YouTube TV, Hulu + Live TV, and Fubo.")

7. Opinion and Order at p. 8. ("Creators: The Sports Leagues. The governing bodies of the major sports leagues control the telecast rights to their events. They include the U.S.-based NFL, NBA, NHL, MLB, PGA Tour, NCAA, NASCAR, as well as international sports entities such as the English Premier League and Fédération Internationale de l'Automobile, which governs Formula One Racing ('F1'). ")

8. Opinion and Order at p. 9. ("Programmers: Television Networks. The programmers of these live sports events include pay TV networks owned by the JV Defendants, such as ESPN (Disney), TNT (WBD), and FOX Sports 1 (Fox), among others such as CBS Sports and USA, which are owned by CBS Broadcasting Inc. (itself a subsidiary of ViacomCBS) and Comcast's NBCUniversal, respectively. Programmers add value by combining the live sports content from the leagues with programmer-produced content, such as play-by-play or color commentary, proprietary editing, and on-field interviews. They then package that content into linear channels for distribution.")

9. Specifically Multichannel Video Programming Distributors ("MVPDs"). MVPDs can be either be traditional, distributing content to consumers either through specialized wired or wireless network (e.g. Comcast or DIRECTV) or virtual distributing content through the internet ("vMVPDs") (e.g. YouTube TV, Hulu+ Live TV, or Fubo). See Opinion and Order at pp. 9–10. ("Distributors: MVPDs and vMVPDs. MVPDs are services that distribute multiple linear television networks directly to consumers. Some of the most well-known MVPDs in the United States include cable and satellite companies like Comcast, DISH, DIRECTV, and Verizon Fios. vMVPDs

are—practically speaking—the same as MVPDs, except virtual. This means that rather than delivering the aggregated live and on-demand TV content by satellite or cable boxes like traditional MVPDs, vMVPDs stream the content to consumers over broadband internet. Popular vMVPDs include Hulu + Live TV, Fubo, and YouTube TV. MVPDs and vMVPDs negotiate directly with the networks described above—such as Disney, Fox, WBD, NBC, and CBS—for the rights to license television networks, including those that host live sports content")

10. Bundling is usually achieved through so-called "minimum penetration requirements." See Opinion and Order at p. 11. ("These carriage agreements, in addition to setting forth the bundling requirements, typically contain what are referred to as "minimum penetration requirements" (in industry shorthand, 'min pens') for those bundled networks. Minimum penetration requirements specify the proportion of subscribers that a distributor is obligated to make a particular network available to.")

11. Opinion and Order at p. 11. ("For example, in a hypothetical agreement between Fubo and Disney, a minimum penetration requirement of 85% for Nat Geo Wild (a Disney-owned entertainment channel) would mean that Fubo is contractually obligated to distribute the Nat Geo Wild channel to 85% of all Fubo subscribers and pay the corresponding affiliate fees for Nat Geo Wild regardless of the number of subscribers who actually watch the channel.")

12. Opinion and Order at p. 45. ("Finally, the record is also unambiguous that the JV will mark the first time that the JV Defendants are offering their live sports content on an unbundled basis.")

13. Opinion and Order at p.2. ("In 2015, in recognition of the stable and growing demand for live sports content, Fubo launched as a relatively specialized streaming service, initially focused on soccer fans but with aspirations to grow into a broader 'sports-forward' multi-channel streaming service.")

14. Opinion and Order at p. 2. ("But Fubo claims that its original goal of providing a streaming service focused on live sports has been hampered or thwarted by restrictive terms in the contracts with the television programming networks, including the JV Defendants. Among these complaints is the claim that the contracts force Fubo to carry (and pay for) unwanted non-sports networks that its customers rarely watch, as a condition of securing the rights to carry must-have sports channels.")

15. Complaint, *FuboTV Inc. et al. v. The Walt Disney Company et al.*, Document 1, Case 1:24-cv-01363-MMG, August 16, 2024, ("Complaint"), available at https://nysd.uscourts.gov/sites/default/files/2024-08/Fubo%20Opinion.pdf at ¶ 21. ("Defendants' anticompetitive practices, including their bundling practices, anticompetitive terms, collusion through MFN clauses, and contemplated JV, violate multiple provisions of the U.S. antitrust laws, including Sections 1 of the Sherman Act and Section 7 of the Clayton Act, as well as New York's Donnelly Act.")

16. Opinion and Order at p. 3. ("To get a preliminary injunction, one of the most powerful tools in the arsenal of judicial remedies, Fubo must show that it is likely to succeed on the merits of its

claims, that it will suffer imminent irreparable harm in the absence of an injunction, that the balance of equities tip in its favor, and that the injunction does not harm the public interest. In their defense, the JV Defendants say any purported harm to Fubo from the JV is either the result of factors independent of the JV, derives from legitimate competition at work, or can be remedied by money damages later.")

17. Opinion and Order at p. 54. ("In pursuit of its alternative remedy of an injunction prohibiting the JV Defendants from enforcing the bundling, packaging, and penetration requirements in their carriage agreements with distributors, Fubo asks the Court to determine its likelihood of success in proving that these restraints constitute unlawful 'tying' under Section 1 of the Sherman Act. See Mot. at 20–23; Reply at 44–45. Because the Court herein finds Fubo is likely to succeed on the merits of its Section 7 claims and grants the primary preliminary injunction Fubo seeks, the Court declines to analyze its Section 1 claim further.")

18. Opinion and Order at n. 37. ("Furthermore, the Court noted on multiple occasions—including during the Initial Pretrial Conference, the numerous discovery conferences preceding the Hearing, and once more at the Hearing—that Fubo's Section 1 tying claims do not constitute an emergency and therefore should not be addressed on a motion for preliminary injunction.")

19. Opinion and Order at p. 34, 37. ("The Clayton Act § 7 Claim… The Relevant Market: The Live Pay TV Market,… The JV Defendants Have Granted the JV an Exclusive License to Unbundled Sports Programming…. The JV Provides an Anticompetitive Runway for the JV Defendants to Control the Future of the Live Pay TV Market.")

20. Opinion and Order at p. 38. ("Fubo proposes three markets for the Court's consideration of the JV's potential anticompetitive effects: (1) the 'Skinny Sports Bundle Market,' (2) the 'Live Pay TV Market,' and (3) the 'Sports Licensing Market.'")

21. Opinion and Order at p. 38. ("The JV Defendants encourage the Court to instead look to the broader 'Pay TV Market,' which includes not only MVPDs, vMVPDs, and DTCs, but also SVODs.")

22. Opinion and Order at p. 38. ("At this preliminary stage of the case, the Court need not perform a comprehensive market analysis. However, the Court does find, even on an incomplete record, that the JV Defendants are unlikely to be successful in their claims that the broader Pay TV Market is the relevant market. The Court also finds, for the reasons discussed herein, that Fubo has offered evidence sufficient for a finding that it is likely to succeed in showing that the JV will at least tend to lessen competition in the Live Pay TV Market.")

23. Opinion and Order at pp. 38–39. ("One of the only undisputed issues in this case is that the relevant consumer is the sports fan who watches, or would like to watch, sports on a live telecast. Consumers of live sports, however, vary in their preferences. Some sports fans are omnivorous and want to watch as much sports content as possible, regardless of the type of sport or the team playing…. Some sports-watchers are team-loyal, and choose which product they will purchase based on which product will allow them to watch as many of their favorite team's games as possible… And yet another category of sports-watching fans includes those

who have a deep interest in one or two specific sports, either niche sports like F1, cricket, or golf, or major sports like college basketball…. The only current market that serves all these consumers of live sports is the Live Pay TV Market, which includes traditional MVPDs, vMVPDs, and some limited newer DTCs such as NFL Sunday Ticket, and YES. MVPDs (both traditional and virtual) tend to have a broader range of sports programming but also include, due to widespread programmer industry practices, a required range of non-sports programming that customers must accept and pay for, even if they are only interested in the sports.") See also n. 32. ("These examples are illustrative and do not necessarily exhaust the various preferences among all potential watchers of live sports.")

24. Opinion and Order at p. 39. ("A smaller and newer selection of DTC options tend to cost consumers less but also provide access to a much narrower subset of live sports events. SVODs, currently, carry very few live sports.")
25. Opinion and Order at n. 33. ("SVODs include some live sports programming, to be sure. But the key analysis for antitrust purposes whether the relevant products are 'acceptable substitutes.'… Because no sports fan who falls into any of the above categories would be able to purchase a Netflix or Amazon Prime Video subscription and get all the live sports he or she wanted without also purchasing a MVPD, vMVPD, or DTC subscription, SVODs are not acceptable substitutes for those services. Thus, the broader Pay TV Market is inapt.")
26. Opinion and Order at p. 40. ("The JV Defendants Have Granted the JV an Exclusive License to Unbundled Sports Programming.")
27. Opinion and Order at pp. 35, 46. ("Applied to the facts of this case, these principles lead inexorably to the conclusion that a joint venture between three horizontal competitor programmers, in a market segment with high barriers to entry and dominated by a relatively small number of companies, who together control 'one-half of the essential product of the industry' in a downstream distribution market, must be enjoined as anticompetitive.… As discussed above, the JV Defendants are granting the JV an exclusive right to license their sports networks unbundled from their general entertainment channels. This exclusive license allows them to use the JV to 'capture demand' in the market: demand that is the byproduct of their own historical (and ongoing) bundling practices.")
28. Opinion and Order at pp. 55. ("All parties agree that "[i]rreparable harm is 'the sine qua non for preliminary injunctive relief… The Court finds that the JV's risk of imminent harm to Fubo and to consumers justifies a preliminary injunction.")
29. The JV Defendants also argued that any purported harm could be remedied by monetary damages. Judge Garnett rejected this claim. Opinion and Order at pp. 3, 62. ("In their defense, the JV Defendants say any purported harm to Fubo from the JV is either the result of factors independent of the JV, derives from legitimate competition at work, or can be remedied by money damages later… Fubo has made a credible showing that, if the JV is permitted to launch, its business will likely cease to exist shortly thereafter. The JV Defendants' final argument fails, therefore, for the simple reason that this harm is exactly the kind that money cannot repair.")

30. Opinion and Order at p. 57. ("Fubo has submitted sworn declarations, live witness testimony, ordinary course business documents, and statistical data all uniformly evidencing that the launch of the JV will precipitate the imminent downfall of its business.")

31. Opinion and Order at pp. 58–59. ("The vast majority of Fubo's customers come from its seven-day free trial offer, 70% of which join Fubo for a sports-related broadcast… Moreover, on major sports days, Fubo's free trials spike dramatically, often just before the start time of the sporting event… Fubo closely tracks its customers' "first views," which is the first program that Fubo's new subscribers watch for at least five minutes following their first encounter with Fubo (whether through an initial free trial or signing up for a paid subscription)... Fubo also tracks its customers' 'longest views' as a 'gut-check' on the accuracy of its first view data… The share of Fubo's customers whose first view is a live sports program is extraordinarily closely correlated to the proportion of Fubo's customers whose longest view is a live sports program, often only deviating within a percentage point, if at all… Fubo's ordinary course data reveals not only that most customers join Fubo to watch sports programming, but also that they stay for sports programming, and then sometimes leave when their particular sports season is over. Approximately 75% of Fubo's free trials occur during football season, from September to February.")

32. Opinion and Order at p. 57. ("Ample documentary evidence kept in the ordinary course of Fubo's business corroborates Mr. Gandler's and Mr. Janedis' testimony. The record is replete with unrebutted evidence that Fubo successfully markets itself as a sports-focused vMVPD to a sports-focused audience.")

33. Opinion and Order at p. 60. ("These documents and the related testimony clearly support the common-sense conclusion that when the JV launches as an option for customers to get those networks at half of Fubo's price, they will have little to no reason to choose a Fubo free trial over a JV one.")

34. Opinion and Order at p. 60. ("The JV Defendants next argue that Fubo's harms are not the result of the JV but are instead the consequences of Fubo's status as a 'weak competitor.'… They argue that "Fubo's precarious financial condition predates the JV," and that its 'self-inflicted' wounds are not irreparable harm.")

35. Opinion and Order at p. 60. ("Unlike other, more-established distributors in the market like DIRECTV or DISH, Fubo has only existed for nine years… Fubo is essentially a startup and, having gone public only four years ago, remains in its relative infancy.")

36. Opinion and Order at pp. 61–62. ("Fubo credibly anticipates, though, that profitability is just around the corner… This prediction was not fabricated for this litigation; Fubo announced it to shareholders back in August 2022... Even ignoring these insiders' public statements, Fubo's internal model for predicting subscriber trends (and therefore its predicted revenue and cash flow) indicates that Fubo's expectations of profitability by 2025 are credible.")

37. Opinion and Order at pp. 64–65. ("Absent an injunction, Fubo has made a clear showing that it faces imminent subscriber loss, likely followed by bankruptcy, delisting, and the collapse of its business. Should an injunction wrongly issue, however, the JV Defendants face a mere delay in the launch of their JV. To be sure, the JV Defendants have invested substantial resources in the JV and will not be able to capitalize on any such investment unless and until the preliminary injunction is lifted. But the JV Defendants offered no witness testimony or documentary evidence on the harms (economic or otherwise) that they may face from any such delay. Apart from obvious, general conclusions, such as the fact that it would be comparatively better, one assumes, for the JV to launch prior to the NFL season rather than after and that it is generally better to have money in the bank now than later, the Court cannot divine a quantifiable harm to the JV Defendants where the record illuminates none.")

38. Opinion and Order at p. 65.

39. Opinion and Order at pp. 65–66. ("The injunction sought by Fubo will not harm the public interest. On the contrary, because Fubo has established a likelihood of success on the merits of its Section 7 Clayton Act claims, and that the launch of the JV will likely cause the exit of a current market option for consumers, the public interest is served by an injunction preserving the status quo pending full adjudication of these matters.")

40. Brief Of Florida, Alabama, Iowa, Kentucky, Mississippi, And South Carolina As Amici Curiae Supporting Appellants And Reversal at p. ii.

41. Amicus Curiae Brief for Prof. Aaron Hedlund, Prof. R. Glenn Hubbard, Prof. Jeff Prince, Prof. Richard Schmalensee, Prof. Steven Tadelis, And Prof. David J. Teece In Support Of Appellants at p. i.

42. Brief For the United States Of America As Amicus Curiae In Support Of Plaintiffs-Appellees at p. i.

43. Brief For the States Of New York, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington, And The District Of Columbia, As Amici Curiae In Support Of Appellees And Affirmance at p. i.

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