Why Sony's Bid for Paramount Is a Regulatory Action Movie Waiting to Happen

Jeremy Fassler, April 29, 2024

Quick look at potential antitrust concerns around a proposed Sony/Paramount merger. Sony Group (SONY) has teamed up with private equity firm Apollo Global Management (APO) and Legendary Pictures to make an all-cash bid to acquire Paramount Global (PARA). If successful, the acquisition would reduce the number of major Hollywood film studios from five—Paramount, Sony, Warner Bros. Discovery (WB), Disney (DIS) and Universal—to four and likely trigger antitrust scrutiny.

"The DOJ and the FTC will absolutely be taking a hard look at this, and I predict a challenge," says Megan Gray, a former senior counsel at the FCT's Bureau of Consumer Protection and founder of GrayMatters Law & Policy. "It's pretty self-evident that this adversely impacts competition in the media and entertainment industry, given the overlap in film/TV studios. So, the question will be: What is the upside and how can that impact be justified?"

Paramount Global, whose parent company is National Amusements, owns several prominent media assets, including Paramount Pictures, CBS and MTV. Apollo has made overtures to the tune of $26 billion toward purchasing Paramount, and the announcement said it would team up with Sony and Legendary, in which Apollo has a minority stake. This has made it a serious rival to David Ellison's Skydance Media, widely seen as the front-runner to acquire the financially beleaguered company (An updated bid from Sony-Legendary-Apollo hasn't been made public.

Sources within the film and TV industry fear that his merger would eliminate Paramount Pictures, which earned $2 billion in global box-office revenue in 2023, as a competitor.

"What would Paramount Pictures be?" asked a former agent at one of the top talent agencies. "If Sony buys Paramount, what would really exist? A place that once made a lot of movies will somehow be no more."

By contrast, sources say Skydance's actions won't lead to a similar investigation, as Ellison plans to acquire the company by buying out National Amusement Chari Shari Redstone's voting shares for $2 billion, after which Skydance itself would be folded into the Paramount Global umbrella. (As of this writing, Skydance is reportedly revising its deal after Paramount shareholders criticized their original plan.)

Recent FTC guidelines emphasize monopsony power as a reason to investigate mergers. Regulators looking at a Sony/Paramount deal could use such concerns to build a case that the merger would harm the labor market by eliminating a significant player, leaving filmmakers and TV production companies with one less buyer of their services.

DOJ's success in blocking the merger between book publishers Simon & Schuster (which coincidentally Paramount owned until last October) and Penguin Random House could serve as useful precedent. In that case, regulators relied on a labor monopsony theory to argue that if these two rivals merged, according to Attorney General Merrick Garland, "American authors and consumers will pay the price of this anticompetitive merger – lower advances for authors and ultimately fewer books and less variety for consumers."

In reviewing the Sony/Paramount deal, "the main thing regulators will be looking at is the concentration in the film industry in terms of film studios," Assistant Professor of Strategy Sruthi Thatchenkery of Vanderbilt's Owen Management School said. "They're going to be thinking about if Sony acquires Paramount, what is the concentration in the market? I think that would be a pretty major increase in concentration in an industry that some people think has already become a bit too concentrated."

The last acquisition between film studios to cause similar shock waves was Disney's purchase of 21st Century Fox, which included 20th Century Studios, reducing the market from six major film studios to five. The DOJ approved the merger in 2018, with then-DOJ antitrust chief Makan Delrahim calling it "a victory for American consumers."

The merger has had mixed results: although Disney acquired several major Fox-owned properties, including James Cameron's "Avatar" franchise, it incurred billions in debt from the purchase. The merger also eliminated jobs: The month it became official, Disney laid off 4,000 Fox employees. Now, Fox has been reduced to "a label where you can release more adult fare than on Disney," the former agent said.

However, experts argue that the Biden administration's approach to merger oversight has created a tougher regulatory landscape than the one under which Disney and Fox merged. "Disney and Fox might as well be from 1818," said Gray. "It's an entirely different antitrust approach now that considers all facets of the impact – on the workers, on ancillary markets, future innovation, current competition and incipient rivals. Antitrust authorities have a much greater appreciation on the impact of mergers on other markets."

Apollo declined to comment. Sony, Paramount, and Legendary did not respond to quests for comment.