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StreamCast Suffered No Antitrust Injury by Kazaa's Transfer of P2P Tech to Rival

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A peer-to-peer network operator that lost its ability to use a key technology when the license to use that technology was transferred to a rival has no recourse under federal antitrust law, the U.S. District Court for the Central District of California held Jan. 19. **StreamCast Networks, Inc. v. Skype Technologies, S.A., 2007 ILRWeb (P&F) 1045 [CD Cal, 2007].**

StreamCast Networks Ltd., operator of the Morpheus file-sharing network, licensed its technology (known as FastTrack) from Kazaa BV, beginning in 2001. In 2002, Kazaa decided to switch allegiances. Kazaa activated hidden code within FastTrack that disabled the Morpheus network. Kazaa then partnered with Sharman Networks to form a rival P2P network, which attracted millions of StreamCast's disaffected users. This slight of hand, StreamCast alleged, created a "networks effect" momentum that catapulted Kazaa to worldwide dominance in the P2P space. StreamCast stumbled in the years following its split with Kazaa. Though it acquired a substitute file-sharing technology, StreamCast was only able to recapture about six million of its original 28 million users.

Eventually, Kazaa sold the FastTrack technology to the founders of Skype Technologies, who adapted the code for Internet telephony services (VoIP). Skype caught on fast, and, in September 2005, eBay bought the company for over \$4 billion.

A few months later, StreamCast filed its lawsuit against Kazaa, Skype, and the various principals involved with those companies and related entities. Its complaint asserted over a dozen causes of action, including claims of conspiracy to restrain trade and conspiracy to monopolize.

Niklas Zennstrom, co-founder of Skype, joined Sharman Networks and Kevin Bermeister, CEO of Brilliant Digital Entertainment, in a motion to dismiss the antitrust claims for failure to state a claim.

Injury to Competitor Is Not Enough. From the court's perspective, there was one overriding defect to the antitrust claims: no antitrust injury.

"The mere fact that StreamCast was unable to immediately convert its Morpheus network from FastTrack to another application and, accordingly, lost users and advertising revenue, is insufficient to establish 'antitrust injury,'" said Judge Florence-Marie Cooper in dismissing the antitrust claims with prejudice.

While Kazaa's maneuver may have diminished a rival, there is no evidence that it hurt consumers, she continued. Consumers still enjoyed no-cost access to FastTrack (through Kazaa's partnership with Sharman Networks) and to other P2P networks. That StreamCast enjoyed a comeback after developing a substitute file-sharing technology to replace FastTrack shows that "Defendants' actions actually served to increase innovation within the relevant market and to improve the quality of consumer choices."

Another defect with StreamCast's complaint was its definition of the relevant market, which StreamCast described as: "the worldwide market for the provision of FastTrack P2P file-sharing services and the selling of advertising directed to users of such services."

The court found this definition to be far too narrow.

"[W]hile StreamCast pleads that FastTrack possesses some unique attributes and components that may make it more attractive and efficient, it still does not (and undoubtedly cannot) plead that other P2P applications and networks do not permit users to accomplish the same basic task of searching for and downloading a variety of media files from the Internet," said the court.

Instead, the court opted for an alternative market proposed by StreamCast, the market for "the provision of P2P file-sharing applications and services and the selling of advertising directed to users of such services."

Charles Baker of Porter and Hedges, Houston, represented StreamCast Networks, Inc.

Benjamin Chapman of Cooley Godward Kronish, San Diego, represented Skype Technologies, S.A.

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