

Movie industry on a good behaviour bond

The ACCC's report into movie distribution strategies has revealed a widespread view among exhibitors of inconsistency and arbitrary decision-making from movie distributors

In March 1997, the Australian Competition and Consumer Commission (ACCC) requested a report on developments in the cinema distribution and exhibition industries which may be having an impact on competition in the industry. The request followed an increase in the number of complaints received by the commission from cinema exhibition interests relating mostly to access to first release and conditions of film hire imposed by distributors on small independent exhibitors.

The report, carried out by consultant Ross Jones, was completed in March 1998. Its key recommendation was that the ACCC seek assistance from the exhibition and distribution side of the industry to establish an industry code of conduct and a dispute settling mechanism. The voluntary code of practice and a dispute resolution apparatus along the lines of the independent Film Complaints Panel in the U.K. are understood to be in the process of agreement between distributors and exhibitors.

The report, titled "*Developments in the cinema distribution and exhibition industry*", is broken into six sections examining industry structure, market size and definition, changes in demand and supply, exhibition and distribution market structure and overall performance. Specific distribution behaviour such as film rental fees, minimum exhibition periods as well as individual distributors are examined, as are the changes in the exhibition industry and their impact on competition. The report compares the Australian situation to the U.K. situation where similar charges were levelled at distributors in 1994, and sets out its conclusions and recommendations.

Cinema exhibition in Australia is dominated by three companies: Greater Union (131 screens), Village Roadshow (117 screens) and Hoyts (155 screens). The fourth largest exhibitor is Birch, Carroll and Coyle, concentrated largely in Queensland and a wholly owned subsidiary of Greater Union. Greater Union is a major shareholder in Village Roadshow and a joint venture between Greater Union, Village Roadshow and U.S. studio Warner Bros operates 148 screens, mainly in suburban multiplexes.

Independent cinemas are not operated by or franchised to the major cinema groups. They are often owner-operated and have one or two screens. Of a national total of 1,151 screens, about 600 are independently owned and operated. Some are second-release sites - cinemas which get films after they have played the first release cinemas. Others are arthouse cinemas playing independent and foreign language films.

Distribution is highly concentrated, dominated by four large firms: Roadshow Distributors, United International Pictures, Columbia TriStar and Twentieth Century Fox. They generally hold in excess of 90 per cent of the Australian market.

Distribution strategies were at the heart of some of the most strident complaints from exhibitors. Most related to arrangements regarding film hire and access to first and later release. Distributors typically charge fees as a percentage of box office revenue rather than a flat fee with the cost of film hire to a cinema negotiated between the film distributor and the exhibitor. The cost typically drops from week to week, by week five the exhibitor paying 25 per cent of the gross compared to 55 per cent in the first week.

Minimum exhibition periods - sometimes described as "no share" - typically require that an exhibitor screen a title for a minimum number of sessions and weeks. The effect of this varies between multiplex operators and those operating a few screens. The former generally have little difficulty in complying with the minimum period, screening new titles on other screens to make up for the last two weeks' poorer return but exhibitors with only a few screens do not have the same flexibility and, according to the report, are disadvantaged.

UIP's behaviour toward country exhibitors was criticised during the inquiry, particularly with regard to the company's alleged lack of consistency in argument. But more com-

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plaints were received about Roadshow's behaviour than any other distributor, particularly with regard to its stringent conditions on session times and its minimum season and session requirements. There were no specific complaints regarding Twentieth Century Fox and Columbia TriStar.

"Even though there appear to be no breaches [of the Trade Practices Act], the concentrated market structure in distribution does give the four major distributors (especially the two largest, Roadshow and UIP), considerable market power," stated the report. "Film distribution is more concentrated in Australia than in the U.S., Japan and most European countries. It is unlikely that any exhibitor could survive in a competitive market if that exhibitor were refused supply by Roadshow or UIP, given their market shares in this country.

"The highly concentrated structure gives small exhibitors almost no leverage in their negotiations with major distributors over film hire terms and conditions. Where they believe they are being victimised they often cannot afford legal remedies and are afraid of retaliation such as a refusal to supply."

In the chapter of the report detailing changes in exhibition and their impact on competition, it is noted that the rapid expansion of Hoyts and the Greater Union/Village/Warner Bros venture into the suburbs has increased competition to independent exhibitors but that the latter survive and thrive providing they have access to first-run product from distributors.

"Those independents who receive first run, while not being able to take every major title day and date, appear to be prospering. Many independents are undertaking the investment in additional screens to give them greater flexibility in exhibition."

Following an examination of the distribution and exhibition markets, the role of independents and individual companies, plus a comparison of a similar report in the U.K. from 1994, the inquiry found that overall there were insufficient breaches of the Trade Practices Act with respect to complaints from smaller exhibitors. It stated that often the film distributors' strategies were found to be consistent with commercial objectives and not aimed at damaging particular competitors who claimed that they were.

But in conclusion, the inquiry did find that the concern of some independent exhibitors that many of the major film distributors' policies are designed to eliminate independent exhibition was justified. And while the report did not definitively reach that conclusion, it stated that there was little doubt that independent exhibitors - particularly those single-screen country locations - were sometimes disadvantaged by those policies. Arbitrary behaviour on the part of distributors, favouring the larger exhibitors, was of some concern to the ACCC.

The ACCC decided against recommending a two-week cap to the minimum seasons that distribution can demand, stating that it could be detrimental to choice and pricing for exhibitors and cinema goers. But it recommended that distributors develop more flexible contracts to allow exhibitors to have differing agreements

on release requirements in return for higher or lower film hire terms.

"Those independent exhibitors who are disadvantaged by minimum session requirements are generally the small operators who are unable or unwilling to increase the number of screens. It is unlikely that such exhibitors provide significant competition in the exhibition market...it is unlikely that in the absence of distributor restrictions such exhibitors would provide any greater competitive discipline to major exhibition interests."

In recommending that the industry take onboard a code of conduct to provide rules for fair and equitable terms and conditions for access to first release films, and a dispute resolution mechanism, the ACCC has in effect fired a shot over the bows of Australian cinema distributors and exhibitors.

"What is needed is a more open process so that exhibitors can be certain the distributors are not working to arbitrary rules. While the expected returns vary from film to film, distributors work with certain principles in the allocation of prints. These principles need to be understood by exhibitors and be available for scrutiny. Many small exhibitors have claimed that reasons for refusal to supply are not adequately explained by distributors, and this is the cause of much dispute".

The ACCC intends to monitor the process and after 12 months conduct a review to ensure the code and mediation processes are working effectively with active participation by film distributors. If it's found to not be working successfully, the ACCC said it will "consider other options to improve industry practices...mandatory codes and/or action against possible anti-competitive structural features of the distribution and exhibition industry."

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