

7 Views of the leading exhibitors

Contents

	<i>Page</i>
Introduction	157
Observations on the market	158
Views on complex monopoly situation	159
Alignment	161
Exclusivity and refusal to supply	166
Minimum exhibition periods and restrictions on screen use	169
Influence or control over admission prices	171
SFD <i>Standard Conditions</i>	172
Vertical links to US production companies	173
Overseas decision-making	174
Domination of the UK markets by US films	175
Co-ordination of release dates	176
Exercise of market power by leading distributors	177
Code of practice and associated machinery	178
Prohibiting contracts based on box office receipts	179
Distributors to commit revenues to independently-produced films	180
Distribution/exhibition of films with a predominantly European theme or cultural content	180
Divestment or reduction of interests in exhibition	182
Termination of the UIP joint venture	183
Prohibition on distribution joint ventures	184
Termination of the UCI joint venture	184
Third party complaints	185

Introduction

7.1. In this chapter we summarize the views of MGM Cinemas, Natl Amusements, Rank,¹ UCI and Warner Theatres (the leading exhibitors). We first give their observations on the market and then their views on the matters raised in our issues letter of 14 February 1994. At the start of each of the sections dealing with these matters in turn, we summarize those views which are common to all, or the majority, of the leading exhibitors (though expressed by them individually). This is followed by a summary of the other views they put to us. All the leading exhibitors submitted written evidence; MGM Cinemas, Rank and UCI also attended hearings. We held a video conference with Mr Sumner Redstone, who with members of his family owns Natl Amusements.

¹Rank submitted evidence on behalf of both Odeon and RFD. This evidence was partly common to both subsidiaries and partly covered one or the other respectively. We summarize in this chapter all of Rank's evidence other than that relating to RFD exclusively; the latter is summarized in Chapter 9.

Observations on the market

7.2. The leading exhibitors recalled that at the time of the MMC's 1983 report the future of the UK film distribution and exhibition industry seemed bleak. The long-term and continuing decline in cinema admissions, together with the rapid growth in sales of video recorders, raised serious questions about the future viability of cinemas. This situation had been turned around since 1984, mainly as a result of major investment in the exhibition sector which had as a result become much more competitive. Since 1985 over £600 million had been invested in cinemas. New multiplex cinemas had been built, in particular by the leading exhibitors (MGM Cinemas, Natl Amusements, Odeon, UCI and Warner Theatres), and many existing cinemas had been upgraded and converted to multi-screen sites by new entrants and incumbents alike. Almost half the screens in the UK were now owned by exhibitors who had entered the market since 1983. Audience numbers had increased from 54 million in 1984 to approximately 114 million in 1993. Despite this, the UK remained, by international standards, under-screened relative to the number of admissions. With the exception of Rank, the leading exhibitors all saw considerable scope for additional multiplex cinemas to be built in the UK. While exhibitors sought to avoid building multiplex cinemas close to each other, there was keen competition for sites in areas of high population density.

Nature of the market

7.3. Rank argued that it would be a mistake to consider the market for cinematic exhibition in isolation from the markets for pay television and video rental and sell through. Neither distributors nor exhibitors could operate without regard to the other media for viewing films. In particular, if cinema prices were to rise relative to the price of pay television or video cassettes, Odeon expected that more consumers would watch films in their homes. This conclusion was, it said, based on empirical evidence that consumers considered other media for watching films as substitutes for going to the cinema. Substitution into other leisure activities should also be expected if cinema prices rose.

7.4. UCI said that the exhibition of films in cinemas was not a separate market from video and television. Video and television were not perfect substitutes for the cinema but they did compete. A film which had a wide cinematic release and did well would go on to do well on video, satellite and other forms of television. The cinema was, it said, the launch pad for the life of a film.

Market power

7.5. MGM Cinemas told us that when buying a distinctive, creative product such as a film, there was no alternative to that product. In the final analysis, therefore, the balance of market power must favour the distributor of the film rather than the exhibitor. The exhibitor had the freedom to refuse to show a major film if it was unhappy with the terms required by the distributor. In reality, however, it would agree to show the film. Smaller, independent exhibitors had no market power at all.

7.6. MGM Cinemas recognized that the fact that distributors wanted to show their films gave some bargaining power to the exhibitor. It cited *Jurassic Park* as a recent example of a situation in which the exhibitors were able to moderate the distributor's demands for special terms. If, however, MGM Cinemas was not able to negotiate adequate terms with a major distributor, that distributor could afford to refuse to supply it with any films. This was because the revenue generated by MGM Cinemas in the UK was insignificant to the distributor in terms of the overall world-wide revenue generated by each film.

7.7. MGM Cinemas did not accept that rental terms were largely determined by the exhibitors. It referred to the difficulty it experienced in obtaining increases in nut figures. It attributed the growth over recent years in the exhibitors' share of box office returns to the increase in the number of multiplex cinemas. These cinemas operated higher nut figures than did the more traditional type of cinemas. Also the ability to move a film between screens as audience numbers diminished tended to reduce the distributor's average share of the box office, while increasing the absolute level of rentals by prolonging the period of exhibition.

7.8. Rank told us that, from Odeon's perspective, the balance of market power was fairly even between exhibitors and distributors. It said that the exhibitors' share of box office returns in the UK was roughly equivalent to the average level in other European countries. It also said that rental terms were subject to negotiation and it was only rarely that an exhibitor would get the terms that it wished; indeed on an increasing number of films the distributors were able to negotiate special terms.

7.9. UCI described the relationship between distributors and exhibitors as symbiotic. UCI traded on equal terms with all distributors and realized the importance of maintaining good relationships. The balance of power between distributors and exhibitors varied from week to week depending upon the number of films on offer and the success of the films on release. On occasions the distributors would have the advantage; at other times it lay with the exhibitors.

7.10. UCI said that its share of box office receipts (ie the percentage of box office UCI retained after payment of film rental) had remained fairly flat over the last five years. It believed that multiplex cinemas paid a lower average rental percentage than had other cinemas. As more multiplex cinemas were built, therefore, it expected the overall average to decrease.

Views on complex monopoly situation

7.11. We asked the leading exhibitors for their views on our provisional finding that a complex monopoly situation existed in respect of the supply of films for exhibition in cinemas in the UK in that they engaged in one or more of the following practices:

- (a) distributors systematically offering their films to the cinemas of either MGM Cinemas or Odeon in places where they are in competition one with the other, but not to both (alignment by distributors);
- (b) MGM Cinemas and Odeon accepting films from distributors in accordance with the practice of alignment (alignment by exhibitors);
- (c) distributors supplying, and exhibitors accepting, individual films on the basis that a particular cinema will have the exclusive right to show a film within a specified area and for a specified period (exclusivity);
- (d) distributors refusing to supply individual films to exhibitors who request them, either at all or at the time requested, for reasons other than creditworthiness and the need to cover the costs of supply (refusal to supply);
- (e) distributors requiring exhibitors to show a film at particular cinemas for a minimum period exceeding seven days (minimum exhibition periods);
- (f) distributors requiring exhibitors to show a film at all times during the licence period at which films are normally shown at the cinema in question, except for children's matinées and late night shows (restrictions on screen use);
- (g) distributors supplying, and exhibitors accepting, films on terms which require exhibitors to charge such admission prices during licence periods as shall be agreed by the distributors (distributors' influence over exhibitors' admission prices);
- (h) distributors and exhibitors observing the *Standard Conditions* for the licensing of the exhibition of films issued by the SFD (observance of SFD *Standard Conditions*); and
- (i) distributors and exhibitors with related companies based overseas reserving important decision-making functions (for example, as regards which films should be released or shown in the UK and as regards release strategies) to such companies (overseas-based decision-taking).

7.12. MGM Cinemas and Natl Amusements made no comment on our provisional finding. UCI said that it did not believe the practices listed were complex monopoly practices which were restrictive and/or affected the public interest but it did not challenge the complex monopoly finding as such or UCI's inclusion in it.

7.13. Warner Theatres argued that most of the practices listed related to the activity of distributors rather than exhibitors. Of the others, Warner Theatres did not engage in alignment or, with the exception of a single film at one of its cinemas, in negotiating exclusivity; nor did its overseas parent company influence its decisions on which films to show and for how long, or the rental terms. Warner Theatres argued that the two remaining practices-concerning distributors' influence over exhibitors' admission prices and the observance of the *Standard Conditions*-should not be classified as conduct engaged in by exhibitors as well as distributors. It therefore submitted that there was no justification for including Warner Theatres in the complex monopoly.

7.14. Rank submitted that Odeon was not a party to a complex monopoly. In its view, the reference market was highly competitive and the practices identified by the MMC did not prevent, restrict or distort competition. Rank commented on each of the practices in turn:

- (a) and (b) To the extent that distributors systematically made the first offer of their films to Odeon rather than to other exhibitors, they did so from choice in order to secure the efficiencies available through establishing an ongoing working relationship with a national chain which could provide a basis for planning the release of their product nation-wide. Such distributors were not in any way restricted from choosing other routes for distributing their product and they did indeed regularly choose other routes. The existence of these working relationships could not of itself be regarded as preventing, restricting or distorting competition. Exhibitors had to be competitive with each other to retain the business of their respective aligned distributors.
- (c) The grant of exclusive rights was a fundamental means of exploiting intellectual property. Supplying films on a basis that gave contractual or *de facto* exclusivity did not, in Rank's view, prevent, restrict or distort competition; rather it represented an efficient and pro-competitive means of distribution. For many films, simultaneous exhibition in neighbouring cinemas was likely to be inefficient, increasing the overall costs of exhibition without a corresponding increase in the revenue generated; as a result, the returns for exhibitor and distributor alike would be reduced to the ultimate detriment of the cinema-going public. In addition, simultaneous exhibition in neighbouring cinemas would reduce the choice of film available to consumers.
- (d) For similar reasons, the ability of distributors to choose the mix of outlets through which they distributed their products was important to the efficient operation of the market. That necessarily involved the possibility of refusal to supply in certain circumstances. Such refusals were as likely to occur with the smallest distributor as with the largest. In such circumstances, refusals that were intended to achieve the most efficient release of the film, in competition with other films being released, should not be regarded as conduct that prevented, restricted or distorted competition.
- (e) The duration for which a film was to be exhibited was a necessary part of any licensing contract between a distributor and an exhibitor, defining an essential element of the rights and duty of the parties. In circumstances where a film was sufficiently attractive for the distributor to believe that it could be offered for periods of more than seven days, then in conditions of effective competition it was to be expected that the distributor would indeed seek to obtain periods of more than seven days, thereby optimizing the use of the print. The offer of films on such terms did not prevent, restrict or distort competition; it was again a manifestation of competition.
- (f) Another necessary part of the contract between distributor and exhibitor was that the frequency with which the film was to be shown should be agreed: the distributor needed to maximize the extent to which the print would be put to work. Agreeing that the film would be shown with the normal frequency of the cinema in question did not prevent, restrict or distort competition; it merely defined a part of the contract between the parties. The parties could agree upon a different frequency where that was appropriate or suited their respective requirements.

- (g) A distributor had a legitimate interest in the admission prices charged by the exhibitors in respect of the distributor's films where those films were supplied on a risk-sharing basis under which the rental was calculated by reference to the box office take. Rank believed supply of films on such a risk-sharing basis was entirely consistent with conditions of effective competition and represented the most effective means of financing and charging for films. In the absence of some provision giving the distributor a say over admission prices, the exhibitor would be free to reduce the rental payable, and undermine the basis of the contract, by reducing admission prices with a corresponding rise in charges for ancillary items in which the distributor did not participate (eg refreshments). The existence of a contractual provision guarding against such conduct could not be regarded as preventing, restricting or distorting competition.
- (h) The *Standard Conditions* were agreed between representatives of both distributors and exhibitors as a reasonable basis for the conduct of business. Use of those conditions was in no sense obligatory and parties could and did agree different terms. The existence of standard conditions did, however, permit business to be contracted without the need on each occasion to negotiate new terms; it was common in many industries and did not prevent, restrict or distort competition.
- (i) There were many companies in the UK that were owned by overseas parents. It was inevitable that for such subsidiaries some important decisions would be taken by the overseas parent. In Rank's view it would be a novel proposition to conclude that the taking of decisions by the parent of itself prevented, restricted or distorted competition. In any event, Rank said that whether or not a distributor had overseas related companies, decisions about such matters on the film to be released to the UK would inevitably be taken overseas to the extent that the rights in such films were owned overseas.

7.15. We also asked the leading exhibitors for their views as to whether it might be preferable to identify two complex monopoly groups, one comprising exhibitors and the other distributors, rather than one group comprising both exhibitors and distributors. None of the leading exhibitors objected to the identification of one group. Three of the leading exhibitors (Odeon, UCI and Warner Theatres) argued that their ultimate holding companies had no involvement in their business and no other interest beyond that of controlling shareholders and should, therefore, not be regarded as persons in whose favour the monopoly situation existed.

Alignment

7.16. We asked the leading exhibitors whether the practice of alignment, by restricting the competition between MGM Cinemas and Odeon in negotiating for exhibition rights, made the market less responsive to consumer preferences. We also asked them to comment on the possibility that distributors and exhibitors might be prohibited from entering into any agreement or arrangement with each other relating to the showing of a film at a cinema, other than an agreement or arrangement which covered one cinema only, was made solely on the merits of that cinema and contained no condition as to the showing of that or any other film in any other cinema; and that distributors might be required to submit information to the OFT at six-monthly intervals showing, for each film distributed in the preceding period, all the cinemas of MGM Cinemas and Odeon to which prints had been supplied (a) on first release and (b) on subsequent dates. As an alternative, we asked them to comment on the possibility that the practice of alignment might simply be prohibited.

7.17. Most of the leading exhibitors told us that the practice of alignment was less widespread than at the time of the MMC's 1983 report, affecting MGM Cinemas and Odeon in approximately 20 locations. They said that the number of locations would continue to decline as more multiplex cinemas were built and as more of the older MGM Cinemas and Odeon sites closed. They did not accept that the practice had adverse effects. MGM Cinemas and Odeon argued that they had to be competitive to retain the business of their aligned distributors. Moreover, they also faced competition from other cinemas, particularly multiplex cinemas, in several of the aligned locations.

7.18. MGM Cinemas was strongly of the view that there was no detriment to customers through the operation of alignment. Its principal effect was to simplify negotiation with distributors, avoiding

arguments on a day-to-day basis over particular films. It also provided a greater choice of product for customers. MGM Cinemas agreed that it had, to a degree, a preferential relationship with its aligned distributors which extended to its whole circuit. It also accepted that alignment gave it a say in the setting of release dates but denied that this gave it an unfair advantage over other exhibitors. MGM Cinemas also told us that differentials in rental terms applied to leading and independent distributors, which had favoured UIP and Warner Distributors, had been largely eliminated as a result of a recent review of its nut figures (see paragraph 4.142).

7.19. MGM Cinemas was concerned about the effects of alignment in two London locations. Its Fulham Road cinema did not receive films from Odeon's aligned distributors because it was considered to be in competition with Odeon's High Street Kensington cinema. MGM Cinemas did not accept this. It stated that its King's Road cinema was the same distance from Odeon's High Street Kensington cinema but was able to show films released by Odeon's aligned distributors. MGM Cinemas told us that its Trocadero cinema was a purpose-built multiplex cinema and by normal industry practice should be given free access to all films. It did not, however, receive films from Odeon's aligned distributors because it was considered to be in competition with Odeon's Leicester Square cinema.

7.20. Regarding the first proposed remedy, MGM Cinemas wondered whether the criteria for choosing a cinema on its merits would be customer-based (choice, size and comfort) or supply-side based (which screens paid the highest percentage rental). The additional difficulty with a merit criterion would be that it was self-fulfilling, with all of the top films going to the 'best' cinema and competitors making do with everything else. The effect would be that the 'best' would become better, with the weaker cinemas finding it increasingly difficult to compete. MGM Cinemas said that its principal concern was that if agreements were to be made on a cinema-by-cinema basis, with no individual booking being contingent on another, this should apply equally to the owners of the Leicester Square 'premiere' cinemas and outlaw their ability to insist on their cinemas being used in a general release in return for use of their prestige locations.

7.21. It seemed to MGM Cinemas that the overall effect of outlawing alignment would be a short-term hiatus while the dust settled. This would, it suggested, be followed by a new steady state in which the 'best' cinema in each location, whichever circuit it came from, would attract the most popular films.

7.22. The proposal would, according to MGM Cinemas, not only add to administrative overheads, but would greatly distort the balance of bargaining power in favour of the distributors. Currently, MGM Cinemas' aligned distributors would supply prints to all of its cinemas directly affected by alignment. Operating under the proposed remedy, they would decide on a film-by-film basis which of those cinemas to supply, thereby making it more difficult for MGM Cinemas to project which of them would be supplied. This would make entry to the exhibition market considerably less attractive to independent (ie not vertically integrated) exhibitors such as MGM Cinemas. It made no additional comments on the alternative remedy.

7.23. While not sufficiently familiar with the alignments of MGM Cinemas and Odeon to comment specifically, Natl Amusements said that, under certain circumstances, alignment could increase the number of films available to the consumer. This arose because whenever a film was licensed to an aligned exhibitor, the non-aligned exhibitor would have a screen available for showing a different film.

7.24. Rank argued that alignment was little more than a description of the working relationship between supplier and customer. In the film industry, as in all other industries, the customer was free to choose its supplier and the supplier free to choose its customers. Rather than restricting competition between exhibitors, the working relationships were the product of that competition. They did not make the market less responsive to consumer preferences. Rank cited the growth in cinema audiences as proof that Odeon and other exhibitors were succeeding in meeting consumer preferences. There was no evidence that the market was unresponsive to consumer preferences.

7.25. Rank denied that Odeon had a preferential relationship with its aligned distributors. It accepted that alignment gave it a say in the setting of release dates but denied that this gave it an unfair advantage over other exhibitors. Even if in those locations directly affected by alignment, the aligned distributors did not choose between circuit cinemas on the basis of their relative attractiveness, nevertheless that factor

was of crucial importance in competing for customers and for the business of distributors across the circuits as a whole. Rank said that in those locations, the number of which had not changed since 1990, Odeon was particularly concerned to maintain a competitive edge over MGM Cinemas.

7.26. Rank went on to say that even if alignment in some way restricted competition between Odeon and MGM Cinemas, the market was not less responsive to consumer preferences as a result. To compete with other exhibitors, other methods of watching films and other leisure activities, Odeon had to be responsive to consumer preferences. Odeon decided on the extent to which it would show each film offered to it by reference to the commercial potential of the film in each of its locations. This assessment was based on its interpretation of consumer preferences and applied equally to films offered by aligned and non-aligned distributors.

7.27. Rank argued that alignments benefited the public in that they helped to minimize costs arising from negotiation and from the consequences of parties being unfamiliar with each other's working practices. They facilitated forward planning and permitted more effective marketing. Thus, alignments increased the efficiency of distribution and held down costs to the benefit of consumers.

7.28. Rank believed the first suggested remedy would be highly detrimental and should not be adopted. In particular:

- it would seriously undermine the efficiency of film distribution;
- it would be unworkable and pose major problems of compliance;
- it would be likely to distort competition; and
- it would be disproportionate and misdirected.

7.29. The suggested remedy would, Rank said, preclude distributors from operating efficiently by dealing with exhibitors on a multi-cinema basis and impose additional cost burdens on both distributors and exhibitors. To the extent that it proved impossible to negotiate the desired release pattern, the effective marketing and distribution of films would be undermined.

7.30. Rank argued that dealing on a multi-cinema basis was not a function of alignments but of efficiency in negotiation and booking. Thus, distributors dealt with the multiplex chains as chains, although they were outside any alignments. Equally, distributors who were aligned to MGM Cinemas, when they dealt with Odeon, did so on a multi-cinema basis, as did Odeon-aligned distributors when dealing with MGM Cinemas. It believed substantial additional costs would be incurred if each Odeon cinema had to negotiate separately. The costs would be even higher if it was necessary for each cinema to view films before booking. Moreover, without co-ordinated releases through the chain, the costs of Odeon's advertising would be increased and its effectiveness reduced.

7.31. In Rank's view, the suggested remedy would be unworkable and it would be impossible for the parties to demonstrate compliance. For example, when Odeon, with 73 cinema sites, was negotiating with a distributor for the exhibition of a popular film at one cinema only in accordance with the suggested remedy, it would necessarily expect that, having regard to the spread and location of its sites, the film in question would be booked into a least some of its other locations. But when that happened, how could it show that there was no agreement or arrangement to that effect? Equally, how could the distributor show that the film was booked into the cinema 'solely on the merits' of the cinema in question?

7.32. Rank suggested that the requirement that bookings be made solely on the merits of the cinema in question was unworkable. First, there were likely to be circumstances where a booking was made not on the merits of the cinema concerned but because no other screen in the relevant locality was available on the dates required. Secondly, the merits of a cinema, in terms of, for example, its location, appearance and efficiency of management (including reliability, integrity and adherence to contracts), were likely to be difficult to assess and compare in a way that could be relied upon to demonstrate compliance, particularly since different people might attach different weightings to the various elements and also since the merits of an individual cinema might vary according to the type of film concerned. Thirdly, such 'merits' could not be separated from the terms negotiated for a booking; apparent disadvantages in the 'merits' might be outweighed by advantages in the terms offered, or *vice versa*, making it still more difficult to demonstrate compliance in any particular case.

7.33. Rank said that because of the problems of compliance, it was likely that the imposition of the suggested remedy would force the participants in the industry to make choices that were determined not by the merits of the film or cinema in question but by the desire to be able to show compliance. For example, Odeon believed that each of its cinemas ought to be selected over neighbouring cinemas on its merits; but Odeon could foresee that, if the suggested remedy were implemented, distributors currently aligned to it might feel the need, at least on occasions, to select an alternative cinema not on the merits of that cinema but to satisfy the regulator. Thus, the suggested remedy would itself distort the working of the market.

7.34. Further, the suggested remedy would remove a significant aspect of competition. At present the exhibitor chains, including Odeon, competed with each other in offering distributors attractive networks of cinemas. The suggested remedy would remove the ability of distributors to respond to that competition by booking on a multi-cinema basis and would thus further distort competition. In addition, selection of cinemas solely on their respective merits would be likely to make it more difficult for the smaller independent cinemas to compete.

7.35. Rank submitted that, although raised in the context of alignments, the suggested remedy would bite irrespective of alignments and, as indicated in paragraph 7.30, would bite on agreements between parties who were not aligned. However, to limit the proposed remedy only to the two national circuits and their aligned distributors would produce a major distortion of competition. Further, alignments essentially constituted a practice of distributors in the choice they respectively made as to the exhibitors to whom they would first offer their films: as such, alignments were not dependent upon any agreement or arrangements between distributor and exhibitor. Thus, the suggested remedy, which focused on such agreements or arrangements, was in any event misdirected.

7.36. Moreover, as formulated, the suggested remedy would preclude an agreement between distributor and exhibitor which granted contractual exclusivity in any film (since the remedy would prohibit any condition 'as to the showing of that ... film in any other cinema'). Rank believed it would be against the public interest to remove the freedom to contract on that basis, which in any event was unconnected to the issue of alignment.

7.37. Rank submitted that, for these additional reasons, a remedy that would impose major adverse consequences on the industry would be wholly disproportionate to any perceived adverse effects of the practice of alignment, which was already of much reduced significance. Rank also argued that the suggested requirement for distributors to supply six-monthly data to the OFT would be administratively burdensome. In any event, such monitoring would be of no necessary assistance in seeing whether 'the pattern of supply was ... determined by the alignments that currently exist', as the MMC envisaged.

7.38. As to the alternative remedy, Rank said that this appeared to permit distributors to reach agreements with exhibitors on a multi-site basis, but envisaged that distributors would approach all chains and would select the appropriate mix of cinemas from amongst those on offer; this, it was apparently suggested, would lead to greater competition as between chains in order to ensure that as many of those cinemas as possible were selected. In fact, it was already the case that distributors approached the various chains and selected a mix of cinemas from amongst them. And it was already the case that there was highly effective competition as between exhibitors and with other forms of entertainment to provide cinema facilities of the highest standard. Rank said that the difference between the existing position and the suggested alternative was that distributors approached one or other of the two national chains first. By doing so they were able to secure the basic framework of a release pattern on which subsequently to build, without the logistical problems that would be involved in negotiating with more than one exhibitor in tandem to arrive at an acceptable release date and basic release framework. That each distributor habitually first approached one of the national chains rather than the other reflected their respective perceptions of the advantages to them of dealing with one rather than the other, whether that arose from the quality of the cinemas concerned, the number and location of the sites or the basis on which rentals were calculated (ie preferring MGM Cinemas for its use of the house nut or Odeon for its use of the sliding scale).

7.39. In Rank's view, the alternative remedy and the apparent rationale for it presented the following paradox: if the prohibition of alignments led to more intensive competition between the national chains with the result that one was perceived as clearly preferable to the other, it was to be expected that distributors, or at least those who perceived such a preference, would habitually approach the preferred chain rather than the other for their desired release patterns. Yet such habitual dealing was apparently the very conduct that the proposed remedy would be intended to prohibit. The problem was that the current arrangements were entirely consistent with being the product of fully effective competition and in fact were the product of such competition.

7.40. Rank submitted that in such circumstances it was impossible to identify the conduct to be prohibited. If a remedy was to be recommended, it must be capable of being implemented by some workable means. It could not be suggested that distributors should be prohibited from making the first offer of successive films to the same chain in preference to another, even if they were satisfied that the one was more competitive than the other. If nevertheless such pro-competitive conduct were to be prohibited, so that distributors were obliged to offer to both chains simultaneously, Rank believed that would not meet the perceived problem since it would leave distributors free to continue to contact their preferred chain. If distributors were prohibited from contacting a chain unless they were satisfied that it was the most competitive for their requirements, there was no reason to suppose that that would alter the status quo. If, on the other hand, distributors were prohibited from contacting the same chain for successive films in any circumstances, that would patently distort competition and remove the incentive for the exhibition chains to compete with each other. The difficulty of formulating a workable remedy itself called into question the desirability of introducing any such remedy and the need to do so. In Rank's view, there was no need to do so and it would be detrimental to seek to do so.

7.41. UCI said that it was not aligned to any distributor, nor was it affected by alignments. To the limited extent that alignments still existed, they reduced competition between MGM Cinemas and Odeon. Further investment in cinemas would continue to erode the practice which, it believed, would cease within five years.

7.42. UCI did not believe it would be affected by the first proposed remedy. Nevertheless, it doubted that regulatory intervention was necessary to hasten the demise of alignment. UCI would be concerned if the proposed remedy prevented central booking departments from holding discussions with distributors in relation to each of their cinemas; and if all exclusivity arrangements were prohibited. UCI made no further substantive comments on the alternative remedy other than to question the practicability of enforcement.

7.43. Warner Theatres believed that consumer preferences were currently well served by the market. Alignments did not, in its opinion, operate to make distributors or exhibitors less responsive to changes in consumer tastes. This was particularly the case as the multiplex cinemas were not affected by the practice. Alignments did not diminish the need for films to compete against each other or against the many other leisure pursuits available to the public. It was this competition which ensured that the market remained in touch with what the public wished to see.

7.44. Although Warner Theatres foresaw that alignment would wither away over the next few years, this did not mean that the MMC should try to speed up that process. If alignment were abolished without an adequate number of screens being available across the country, there was a risk that all exhibitors, including those operating multiplex cinemas, would be required to bid for films. It told us that this had happened when alignments were broken up in the USA. Film distributors sought 'best bids' from exhibitors stating the minimum number of weeks they would undertake to screen the film, the advance on rentals they were prepared to guarantee and the percentage rental they would offer. This proved very damaging for the smaller independent exhibitors who would stake a great deal of money on their bid for a major film; their business could not survive if their bid was successful and the film did not live up to expectations. A number of small exhibitors lost their businesses this way and the bidding system had to be replaced by a system of regional alignments. Warner Theatres feared that it would suffer if, like other chains, it was forced to bid for films even though at present it was not affected by alignment.

7.45. Warner Theatres said that the first remedy as worded would prevent it from negotiating centrally for the release of films in all its multiplex cinemas since to do so would not fulfil the requirement that it

cover one cinema only. It assumed that it was not the intention to prevent the multiplex chains from negotiating centrally for the licensing of screens in all their cinemas.

Exclusivity and refusal to supply

7.46. The leading exhibitors were asked whether exclusivity and refusal to supply unduly restricted consumers' choice of cinemas to see a given film on first release; were harmful to certain independent exhibitors, to the extent in some cases of causing their withdrawal from the market; and deterred new entry and investment in the exhibition sector. We also asked them to comment on the possibilities that the granting by distributors of exclusive rights to show a film might be prohibited, and that distributors might be required to supply prints to all competing cinemas in a given area which requested one, subject only to considerations of creditworthiness and the exhibitor guaranteeing as a minimum to cover the distributor's costs and a profit margin.

7.47. With the exception of Rank, the leading exhibitors said that they did not seek exclusivity. The three specialist multiplex operators nevertheless did not believe exclusivity had anti-competitive effects. Nor did they favour the suggestion that the practice should be prohibited. They believed that the market should decide.

7.48. Regarding refusal to supply, the leading exhibitors accepted that the distributors needed to have the ability to determine, on commercial grounds, the optimal number of prints for each release and the allocation of those prints. This fostered competition among exhibitors to attract audiences by the quality of their cinemas and hence persuade distributors to supply first-run prints. They said that refusal to supply cinemas which did not meet the commercial criterion had no anti-competitive effects. The leading exhibitors generally had no difficulty in obtaining prints of most films, especially for their multiplex cinemas (but see paragraph 7.51).

7.49. The leading exhibitors opposed the suggested remedy referred to in paragraph 7.46. They believed such a remedy would require them to bear more risk than they did at present, leading them to be more cautious about booking films of uncertain appeal. Because substantially the same total box office receipts would be spread over more cinemas, individual exhibitors' returns would suffer. This would harm the prospects for further investment in exhibition. Returns to distributors and producers would also decrease, leading to reduced investment in production. Their general view was that the existing methods of calculating rentals were necessary to reduce exhibitors' risks that a film would not attract audiences. The idea of switching to a flat percentage rental, a method which was used in a small minority of cases, did not commend itself to them.

7.50. Alone among the leading exhibitors, MGM Cinemas argued that exclusivity was anti-competitive and should be banned. It told us that it did not request exclusivity and considered the negotiation of exclusivity arrangements to be against the spirit of the 1989 Order on barring.¹ The practice was a means by which a large exhibitor could misuse its power to damage smaller competitors by pressurising distributors into refusing to supply them. It wanted decisions as to which cinemas received prints to be in the hands of distributors. MGM Cinemas said that it suffered from Odeon's demands for exclusivity only in London, however (see paragraph 7.19).

7.51. MGM Cinemas told us that it regularly experienced difficulty in acquiring prints for some of its smaller cinemas because the distributors were not happy about the level of film rental generated by those cinemas. It made no complaint about this, which it regarded as the normal operation of a commercial market. It also found it difficult to exhibit certain British or European films for which only a limited number of prints were available. These were usually allocated to the BFI cinemas. Responding to Warner Distributors' comments on *The Witches of Eastwick* (see paragraph 8.103), MGM Cinemas described the behaviour of Cannon and Odeon on that occasion as Canute-like and as pointless.

¹MGM Cinemas said that, from time to time, it had agreed to exhibit marginal films in the West End on the understanding that they were not played concurrently in competing cinemas. It did not regard these as exclusivity arrangements because it would be happy to pass on the films to another exhibitor rather than show them itself.

7.52. Natl Amusements told us that the grant of exclusivity by a distributor might increase the diversity of films being exhibited in any particular market. While Natl Amusements did not seek to play films on an exclusive basis, it could conceive of situations where exclusivity might be justified as being pro-competitive. There was, it said, no way to determine whether either practice restricted consumer choice of cinemas without undertaking a close examination of the circumstances in each case. It recognized that the practices could impact on exhibitors. However, although certain exhibitors might not be able to obtain some films on first run, they were generally not prevented from showing such films later at a significantly lower charge to the public. Nor were they prevented from showing films on a first-run basis which were not being shown elsewhere by competing cinemas. It said that this resulted in a greater diversity of films, allowing smaller distributors access to screen time. It also argued that it allowed consumers to view films at a significantly reduced charge by waiting for a short time.

7.53. According to Natl Amusements, the distributors' ability to refuse to supply exhibitors and to supply on an exclusive basis encouraged new entry, investment and quality in the exhibition sector. By and large, however, distributors preferred to license films to multiplex cinemas, though Natl Amusements had been refused first-run prints from certain smaller distributors. This had encouraged a significant amount of new construction. Requiring distributors to supply prints would, it argued, virtually eliminate the second-run market which provided consumers with the ability to view films at significantly lower prices; reduce the ability of smaller distributors to have their films exhibited, since exhibitors would prefer to show more commercially viable and widely distributed films; and virtually eliminate any incentive to improve the quality of existing cinemas. It would also have the effect of discriminating against those exhibitors who had invested in new cinemas for the purpose of attracting larger numbers of patrons and better-quality films.

7.54. Mr Sumner Redstone told us of difficulties which Natl Amusements had experienced in obtaining films in the early stages when there were very few multiplex cinemas in the UK. The two circuit exhibitors had said to the distributors that, if they gave prints to new multiplex cinemas, their films would not be shown in other parts of the country where there were no multiplexes. Natl Amusements had made strong representations to the distributors about these problems, stressing that it was in the distributors' interests to encourage the development of multiplexes in order to reinvigorate the market and hence generate greater revenues.

7.55. Rank said that the grant of exclusive rights was a fundamental and widely recognized means of exploiting intellectual property. It argued that the possibility of granting exclusivity and refusing to supply were of fundamental importance in securing the efficient distribution and exhibition of films. They constituted a vital part of the machinery by which a distributor could tailor the release pattern for a film with a view to generating the necessary returns. They also maximized the audience reached by each print, minimized the costs of exhibition and maximized the variety of films exhibited in any locality at any given time. Showing the same film in neighbouring cinemas reduced the choice for customers; it would also be likely to reduce efficiency and increase costs. Rank cited the unprecedented level of new entry and the high level of investment in the exhibition sector over the last decade as proof that no significant deterrents to entry had operated.

7.56. Rank claimed that other exhibitors, including MGM Cinemas, also requested exclusivity. It also told us that, in Odeon's experience, all distributors granted contractual exclusivity in some circumstances; it was not aware of any differences between them in their attitude to exclusivity. Odeon sought exclusivity for many of the films it exhibited and usually succeeded in negotiating some exclusivity against neighbouring cinemas, although rarely against multiplex cinemas. It listed 30 cinemas, out of its total of 76, where it sought exclusivity and named the competing cinemas against which it did so. Odeon agreed that its negotiation of contractual exclusivity was to some extent a matter of 'belt and braces' since, in most cases, the distributor would in any event be likely to give *de facto* exclusivity as it would dilute its returns to show the film concurrently elsewhere in the locality. But it added that the practice also provided greater certainty, particularly in border-line cases where the distributor, left to itself, might choose to book a film into a competing cinema concurrently.

7.57. Rank described as wholly unworkable the suggestion that exhibitors should agree to cover a distributor's costs and a profit margin. The costs would include not only the acquisition of rights in the film but also prints and advertising, distribution, central administration and accounting and credit control.

If these were to be passed on to exhibitors, guaranteeing distributors a profit on all films, the financial burdens on exhibitors would be substantially increased and many would rapidly go out of business. The whole basis of risk-sharing would be altered. Even if it were intended that exhibitors cover only the costs of the print and associated distribution costs, which would be inequitable for the distributors, it was likely that exhibitors would have to pay significantly more than under existing arrangements.

7.58. Providing prints on first release to all cinemas that requested one would, in Rank's view, reduce the choice of films available in a given area. It would require more prints to be produced, thereby increasing distribution costs, and it would be likely to fragment the audience for each film, dividing it between more cinemas and thereby increasing exhibition costs. Rank believed that the ability to exhibit a newly-released film concurrently with a neighbouring cinema would be unlikely to benefit many independent cinemas. Almost certainly each would achieve lower box office receipts.

7.59. It would, in Rank's opinion, be highly detrimental to the future of cinematic exhibition to introduce changes of the kind suggested. There was no more reason for giving exhibitors the right to obtain any film they wanted, regardless of the effects on the distributors' ability to maximize their returns, than there would be for giving distributors the right of access to any exhibitor's screens, regardless of the effect on the exhibitor's ability to maximize its profitability. It would be particularly inequitable to impose obligations in one direction only. Rank told us that Odeon had no knowledge of the incident concerning *The Witches of Eastwick* referred to by Warner Distributors (see paragraphs 7.51 and 8.103).

7.60. UCI told us that exclusivity should be a matter for negotiation between distributor and exhibitor on a case-by-case basis. A distributor had the discretion to agree supply on exclusive or non-exclusive terms. An exhibitor's ability to persuade a distributor to grant exclusivity would depend on its ability to offer more by way of return than the distributor would lose by forgoing revenue from competing cinemas. Provided that it was negotiated bilaterally, there should not be adverse effects. UCI believed the ability to grant exclusivity could encourage competition among exhibitors for the supply of films.

7.61. UCI saw no reason why distributors and exhibitors should be restrained by regulatory intervention from negotiating and agreeing exclusivity as part of the competitive process of supplying and acquiring prints. It should be left to the distributor, not the regulator, to choose whether to supply on an exclusive basis. Likewise, the exhibitor should remain free to seek exclusivity.

7.62. UCI said that refusal to supply meant inevitably that a film might not be played by all exhibitors who wished to do so. It did not, however, unduly restrict consumers' choice of cinemas in which to see a film on first release. This was because the distributor's discretion to refuse supply of a print where it believed a cinema's attendances would not generate adequate returns reflected the aim of matching the supply of prints with consumer demand. The onus on the exhibitor, when competing for prints, was to ensure that the ability of its cinema to attract audiences and thereby achieve high box office revenues justified the supply of a print. The failure of some exhibitors to compete for prints and audiences and their subsequent withdrawal from the market did not mean that refusal to supply operated against the public interest. In UCI's view, the failure of these exhibitors arose because they did not take sufficient steps to meet consumer demands, for example by upgrading their cinemas.

7.63. UCI told us that it had experienced some difficulties in obtaining prints in the late 1980s but that those had been overcome, partly thanks to the 1989 Order. Since 1983, the growth in the number of prints produced for release and in the number of screens meant that consumers had greater access to films. It believed refusal to supply could not be said to deter new entry and investment.

7.64. UCI said that the MMC's report on *Refusal to Supply* (see paragraph 4.179) identified three situations in which refusal to supply was likely to damage the public interest: refusals made for the purpose of influencing resale prices, those which were the result of a threatened boycott of existing outlets, and those made in conditions which were not reasonably competitive. UCI said that neither the first nor the second situations applied in this case. As to the third, UCI said that the industry was now competitive, partly as a result of the significant changes that had taken place since the previous MMC inquiry. Most importantly, refusal to supply in the film industry was concerned with the legitimate commercial objective of maximizing revenues or profits. UCI concluded that refusal to supply did not, therefore, operate against the public interest.

7.65. UCI believed that requiring distributors to supply prints to all exhibitors, subject only to covering costs and a profit margin and considerations of creditworthiness, would eliminate the competition for prints which had been a major incentive for exhibitors to invest in improved quality and service.

7.66. Warner Theatres said that the practices of exclusivity and refusal to supply did not have the effects suggested. Its cinemas had been refused a print on first release only when the distributor had decided to release the film in question initially to a very small number of cinemas.

7.67. Warner Theatres believed the prohibition of exclusivity would amount to an unnecessary interference with the flexibility of release strategies. Some films which were aimed at an up-market audience benefited from a slow release pattern in which screening was limited to a few cinemas, allowing audiences to develop over a number of weeks. This did not operate as a restriction on competition. Nor was it detrimental to the public interest.

7.68. Warner Theatres said that the enforced distribution of prints would be likely to reduce the aggregate level of rentals received by the distributor because it would result in the same audience being spread more thinly among the competing cinemas. As a result, fewer cinemas would reach the break points of box office receipts at which rental became payable at the higher level and more exhibitors would pay the minimum rental terms. This would hit the distributors particularly badly if the obligation were extended to the Leicester Square cinemas. A reduction in rentals would cause the distributors to seek improved terms. The wider availability of prints would also reduce the chances for independently-produced films, or films of less certain appeal, to be screened. All cinemas would prefer to take the safer option of showing the latest blockbuster rather than taking a risk with a less mainstream film.

Minimum exhibition periods and restrictions on screen use

7.69. We asked the leading exhibitors to comment on whether the imposition by distributors of minimum exhibition periods and restrictions on screen use harmed smaller distributors by restricting their access to screens; harmed exhibitors by reducing their revenue; and unduly restricted consumer choice. We also asked them for views on the possibilities that minimum exhibition periods might be abolished or restricted to a maximum of two weeks on first release and one week subsequently, and that exhibitors might be given the right, as a minimum, to show other films on three occasions a week during licence periods, in addition to children's matinées and late night shows.

7.70. With the exception of MGM Cinemas, the leading exhibitors accepted the distributors' reasons for insisting on minimum exhibition periods and regarded them as part of a normal commercial relationship. They told us that while some distributors accepted that different locations had different potential for a film and would, accordingly, vary the length of the minimum playing time, others did not. Where a film's box office takings fell significantly below expectations, however, most distributors would reduce the minimum length of playing time.

7.71. Regarding restrictions on screen use, the leading exhibitors would prefer to have more flexibility to decide which films to show at any time but again they recognized why distributors insisted on such restrictions. They noted that most distributors were prepared to negotiate variations in screen use which allowed other films to be shown. With the exception of MGM Cinemas, they did not favour the suggestion that exhibitors should be free to show other films on three occasions a week during licence periods.

7.72. For its part, MGM Cinemas strongly opposed, and favoured the abolition of, minimum exhibition periods. At the very least it believed such periods should be restricted to a maximum of one week. It told us that, on major films which incurred heavy print and advertising costs, it was common practice for distributors to specify a minimum playing time before agreeing to supply a print. Two weeks was the norm. The practice was, in the opinion of MGM Cinemas, totally unsatisfactory. The distributor had made a commercial judgment regarding the amount of money to be spent on advertising a film and should let the market decide whether that judgment was correct. The policy of specifying minimum playing times could be interpreted as an attempt by distributors to prevent the competitive release of films

as screens would not be available during that period for competing product. This was, however, less of a problem with the construction of multi-screen cinemas.

7.73. MGM Cinemas said that it was common practice, during the first four weeks of a film's run, for a distributor to refuse to allow an exhibitor to exhibit another film on the same screen during the cinema's normal working hours. This was specified in the *Standard Conditions*. It recognized that sharing playing time had become much more common, particularly where a cinema had a limited number of screens, but still more flexibility was required on the part of the distributors. For example, films appealing principally to children often performed very badly on the main evening show. Only rarely, however, did distributors permit the film to be moved to a smaller screen or the screen to be shared with another film, despite the fact that this was demonstrably more efficient to both the distributor and exhibitor.

7.74. Natl Amusements implied that the distributors could be more flexible in exercising their contractual rights, but said to the extent that smaller distributors had problems in gaining access to screens, this was not attributable to minimum exhibition periods. The problem arose from factors relating to the quality and audience appeal of the films, the release strategy and the level of promotional support. As an alternative to the proposed remedy, Natl Amusements suggested that the SFD establish a procedure, applicable on a film-by-film basis, whereby exhibitor and distributor could negotiate an agreement based upon the performance of the film in question. As an alternative to the proposed remedy on screen use restrictions, it suggested a similar procedure for dealing with disagreements on screen usage.

7.75. Rank did not believe these practices were likely to harm exhibitors by reducing their revenue. In Odeon's experience, films for which distributors sought extended exhibition periods tended to be those which could sustain such periods. Where they did not, it was generally possible to agree a variation with the distributor. Given the number of films released, there was extensive choice available to exhibitors who were not prepared to agree an extended exhibition period.

7.76. Rank said that the proposed remedy for restrictions on screen use would be impracticable. Given that box office revenue was not the same for each performance, it was possible that the three best attended performances could represent over 50 per cent of the total revenue for the week. The scheme would significantly increase the administrative burden for exhibitor and distributor and greatly complicate the marketing of films and the task of bringing exhibition dates and times to the public's attention. Even if given the right to share screens in the way proposed, therefore, Odeon would not necessarily choose to exercise it.

7.77. UCI said that the inevitable effect of minimum exhibition periods and restrictions on screen use was to restrict access to screens. Whether the minimum exhibition period harmed exhibitors and restricted consumer choice depended upon whether it exceeded the period in which the exhibitor would have played the film in the absence of such a requirement. Whether the restriction on screen use had such effects depended upon whether it resulted in the number of screenings at which an exhibitor played the film exceeding the number of times it would have played in the absence of such a restriction. UCI said that distributors were, in general, prepared to allow a film to be taken off if it was not meeting box office expectations.

7.78. UCI told us that minimum exhibition periods and restrictions on screen use were negotiated on a film-by-film basis and were reviewed weekly when it considered programming changes for the following week. It had to use its commercial judgment as to whether to concede or to resist the distributor's requirements. Sometimes UCI lost out by making a concession that it would have preferred not to have made. On other occasions it gained by, for example, obtaining a shorter minimum exhibition period or fewer restrictions on screen use than the distributor originally required. Where the distributor and exhibitor shared the same view on the appropriate conditions, the practices had neutral effects. Thus, the position was the same as in any commercial customer/supplier relationship and did not operate against the public interest.

7.79. UCI stated that, whilst it would prefer not to have any minimum exhibition periods and restrictions on screen use, it recognized that distributors would be likely to require a price for allowing increased flexibility, for example by way of a revised basis for calculating the rental fee. Distributors and

exhibitors should be free to negotiate their own contractual terms and should not be circumscribed by minimum or maximum limitations imposed by regulation.

7.80. Warner Theatres did not feel that minimum exhibition periods or restrictions on screen use unduly limited its control over how it exhibited films. It showed films from smaller distributors, provided that they had commercial appeal. As an operator of multiplex cinemas, it had the capacity to show a variety of films, even if certain distributors imposed minimum exhibition periods for some films. It also had the flexibility to move films into smaller auditoria when admissions declined. If a film was not attracting audiences, Warner Theatres would not be held to the minimum agreed period, since the distributor recognized that to do so was not in its interest. Warner Theatres' revenue was not, therefore, materially reduced by the practices, nor did they affect its ability or willingness to screen films from smaller distributors. Consumer choice was not unduly restricted; an unsuccessful film would be withdrawn and replaced by another film.

7.81. Warner Theatres did not believe a remedy was necessary. If minimum exhibition periods were abolished, there would be greater pressure on exhibitors to take a film off during the early part of its run, even though experience suggested that some films took time to build up an audience. This might unfairly deprive the distributor and producer of revenue. There was a strong possibility that distributors would require a higher rental in the first two weeks of release if they thought this would be their only opportunity to recoup their expenditure. They would also be more likely to insist on the provision of minimum rental guarantees from exhibitors. Warner Theatres also believed that the existing ability to put on additional performances above those included in the nut calculations provided sufficient flexibility for exhibitors.

7.82. Two of the leading exhibitors told us that Buena Vista adopted an inflexible approach to requests to allow the showing of other distributors' films at certain times during the period that they were committed to a Buena Vista film, normally a children's film. One leading exhibitor, for example, told us that Buena Vista had refused to allow it to show a film of another distributor even though it had suggested an alteration in rental terms which would have been advantageous to Buena Vista.

Influence or control over admission prices

7.83. Asked whether the influence or control exercised by distributors over exhibitors' admission prices caused those charges to be higher than they otherwise would have been, the leading exhibitors told us that admission charges were set by the exhibitors and regular increases were not discussed with the distributors. However, they recognized that the distributors had a legitimate right to approve variations in the notified admission prices, by way of free or discounted tickets, because film rentals were based upon a percentage of box office returns and a change in admission prices could affect the distributors' revenue expectations based upon the deals negotiated with the exhibitors. The right to approve variations did not cause admission prices to be higher than they otherwise would have been.

7.84. MGM Cinemas told us that distributors had, on occasions, refused to supply certain of its cinemas whose admission prices they regarded as too low to warrant the supply of top-quality films. It described as invalid the argument-sometimes advanced by distributors-that exhibitors might cut admission prices in order to boost concession revenue, all of which was retained by the exhibitor. According to MGM Cinemas, the bigger the audience, the less was taken per head in concession sales.

7.85. It was not obvious to MGM Cinemas that more freedom on pricing matters would necessarily lead to lower average prices overall. It would, however, be desirable to provide for greater flexibility in the price variation procedures set out in the *Standard Conditions*. In other words, exhibitors should be able to lower prices without seeking prior permission, so long as the admission price remained above a minimum level agreed between distributors and exhibitors.

7.86. Rank told us that, in Odeon's experience, distributors exercised little influence over admission charges at its cinemas and there was nothing to suggest that prices were higher than they otherwise would be. In fact, average ticket prices in the UK were lower than elsewhere in Europe. If rental payments were

not based on risk sharing, calculated by reference to box office takings, and instead the exhibitor bore the risk of box office success or failure, admission charges might rise to reflect the increased risk.

7.87. Rank believed there was price competition between cinemas and that admission charges reflected the competitive position of each cinema. It cited examples of situations in which Odeon had reduced admission prices at cinemas in order to counter competition from another exhibitor.

7.88. UCI told us that distributors usually responded favourably to proposals for price cuts if an exhibitor could show that they were part of a well-thought-out commercial strategy. It recognized that it would be unacceptable for an exhibitor to have complete flexibility to alter admission prices without the distributor's consent. The distributor needed to protect its returns from box office revenues where those revenues were shared with the exhibitor. UCI believed this issue should be a matter for individual negotiation between distributors and exhibitors.

7.89. Warner Theatres said that, ideally, it would like to have complete flexibility to determine its own admission charges. However, it recognized that the distributors' ability to influence prices was the corollary of the nut system of determining film rentals. In practice, distributors were not able to dictate the level of ticket prices. In general, the nut system worked well and Warner Theatres would be reluctant to change to another method which might, for example, include fixed fees on a sliding scale. To do so might lead to an increase in the overall level of rental and in turn put pressure on admission prices.

SFD *Standard Conditions*

7.90. We asked the leading exhibitors whether the widespread observance of the *Standard Conditions* strengthened the market power of distributors and exacerbated the anti-competitive effects of certain practices which were covered by the *Standard Conditions*. We also asked them to comment on the possibility that the SFD might be required to withdraw the *Standard Conditions* and that the future issue of such conditions might be prohibited.

7.91. While most of the leading exhibitors generally favoured the retention of some form of standard conditions, they also felt that the existing conditions were drafted in favour of the distributors. They did not agree that the *Standard Conditions* should be withdrawn and that the future issue of such conditions should be prohibited.

7.92. MGM Cinemas said that the observance of the *Standard Conditions* strengthened the power of the distributors. It was, however, necessary to operate within a mutually agreed framework. Some basis for negotiation needed to exist in an industry where both the supplier and the retailer participated in the retail takings.

7.93. Natl Amusements believed distributors should exercise greater flexibility, particularly in varying the terms of the *Standard Conditions* to reflect the actual performance of the film being exhibited. It said that the use of a standard form quickly and efficiently set out the legal relationship between parties. This was particularly beneficial in the film industry where numerous films were licensed on a day-by-day basis. The use of a standard form did not, however, mean that the terms could not be negotiated. Indeed, many of the critical terms were negotiated film by film. In view of the ability to negotiate particular terms with each distributor, Natl Amusements believed the use of the *Standard Conditions* did not strengthen the market power of the distributors.

7.94. Rank believed the existence of standard terms was important for the running of its business. Widespread use of some form of standard terms in an industry characterized by a high volume of similar contracts was, it argued, a symptom of business efficiency rather than of anti-competitive practices. Because the *Standard Conditions* were negotiated and used industry-wide, small exhibitors and distributors contracted on substantially the same terms as did their larger competitors. To this extent they facilitated the ability of such exhibitors and distributors to compete efficiently. Rank said that restrictions on screen use and influence or control over admission prices would be likely to arise irrespective of the use of the *Standard Conditions* and were not exacerbated by their use.

7.95. UCI described the *Standard Conditions* as a kind of 'highway code' which assisted distributors and exhibitors to resolve serious disputes. As UCI had never resisted a distributor's incorporation of the *Standard Conditions* into licence agreements, nor challenged a distributor's reliance upon them, it could not say whether they strengthened the distributors' market power. To the extent that the *Standard Conditions* had the effect of standardizing the terms upon which distributors dealt with exhibitors, they might discourage the kind of bilateral negotiation and contracts which were characteristic of many industries. UCI would prefer the background terms to licence agreements to be a matter for negotiation between exhibitors and distributors on an individual basis.

7.96. UCI told us that it was considering whether to adopt its own terms and conditions. But it believed that those distributors and exhibitors who wanted the convenience of using terms which they did not have to draft and update should be free, but not forced, to use any standard terms which could be agreed between the SFD and the CEA. The option for individual terms should concentrate the minds of the two trade bodies on finalizing terms agreeable to both sides of the industry which did not unduly restrict either side.

7.97. Warner Theatres said that the *Standard Conditions* did not operate in an anti-competitive way, nor could they be said to exacerbate the anti-competitive effects of any practices. If they were withdrawn, each distributor would be likely to develop its own standard terms which would cover the same aspects. The overall competitive position would not change materially. Warner Theatres would, however, welcome a review of the *Standard Conditions* which, it believed, were expressed in antiquated language.

Vertical links to US production companies

7.98. The leading exhibitors were asked whether distributors and exhibitors with vertical links to US production companies used their position in the interrelated markets for distribution and exhibition to keep out competition from independent producers operating outside North America. They were also asked to comment on the allegation (see paragraph 9.11) that exhibitors reserved dates, many months in advance, for specified titles to be released by the distribution subsidiaries of the major studios, often before the film had been released in the USA or even completed. We also put to them the assertion (see also paragraph 9.11) that independent distributors were unable to get dates for independent films without first being able to show the completed films to the exhibitors, by which time they found that much screen space had been reserved for the majors' films.

7.99. MGM Cinemas said that the major distributors had a known timetable of films coming out of their parents' studios. They were, therefore, able to schedule their films with the exhibitors in advance, typically by 8 to 12 months before release. An independent producer or distributor might find it hard to break into this process at short notice, unless it had films with obvious commercial appeal.

7.100. MGM Cinemas told us that it reserved dates for films on the same basis for independent distributors as for the major distributors. All reservations were made on basis of available information about the commercial potential of a film (eg the involvement of leading actors, identity of the director) and were provisional until it could view the film. It insisted on prior viewing of any film whose commercial prospects were unclear before it would reserve a date. Few independent releases had clear commercial potential.

7.101. Natl Amusements told us that it attempted to book as many films as it could in order to maximize its revenue and satisfy the varied tastes of consumers. It said that it was in constant contact with all distributors regarding the availability of films, regardless of whether such films had been previously released in the USA. Its evaluation of a film was based on variety of factors and it generally requested prior screening of a film about which it had little information. It was not unusual for minor distributors to give little or no information about their films until just prior to release.

7.102. As regards the acquisition of Paramount by Viacom Inc, Mr Redstone told us that he did not expect the relationships between UIP, Natl Amusements and UCI to be changed by the merger.

7.103. Rank thought it unlikely that the US vertically integrated companies used their position in the interrelated markets for distribution and exhibition to keep out competition from independent producers operating outside North America. It did not consider that Odeon's screens were foreclosed to independent producers; on the contrary, it was always looking for good films. It was a lack of suitable films with strong commercial potential, rather than a refusal to distribute, that explained why such films did not play such a prominent part in the exhibition sector.

7.104. Rank told us that Odeon treated all distributors alike. Its only criterion was the commercial potential of a film. It was quite usual to discuss films many months before they were available for release; this was not limited to the major distributors. All provisional reservations were subject to viewing the film in question; Odeon would not make a booking without having first having seen a film. Rank gave examples of independent films which Odeon had reserved up to a year ahead of release.

7.105. UCI told us that when negotiating for exhibition rights, it dealt with a film's distributor, not the producer. The decision to exhibit a film was made purely on an assessment of its merits and commercial prospects, irrespective of the identity of the distributor or the producer. Indeed, UCI might not know the identity of the producer at the time it decided whether to exhibit a film. UCI dealt with all films, other than certain blockbusters, on the same terms. Thus it would give a US-owned distributor the same terms, irrespective of whether it was distributing its owner's film or the film of an independent producer.

7.106. UCI said that, in general, the leading distributors made exhibitors aware of product sooner than did the independent distributors. Their films were, therefore, included in provisional booking schedules. The actual booking of films was done on a week-by-week basis. The fact that a film was provisionally scheduled would not hinder another film being booked closer to its release date. UCI gave examples of forward booking of films from independent distributors ranging from two to four months ahead.

7.107. As regards the acquisition of Paramount by Viacom Inc, UCI told us that it had received no direction from its partners that it should change its stance towards Natl Amusements, which it regarded as a competitor. MCA Inc pointed out that while it had a half share in UCI, it had no financial relationship with Viacom; it would therefore be very concerned to ensure that the relationship between UCI and Natl Amusements did not change.

7.108. Warner Theatres said that it treated its affiliated distributor no differently from other distributors. It gave Warner Distributors no preference in the allocation of screens, in the negotiation of minimum exhibition periods, or in decisions to take films off. Warner Distributors did not receive more favourable rental terms than other distributors, save that it had been given guarantees of minimum rentals higher than the normal 25 per cent on three major films (out of the four films for which Warner Theatres had agreed such terms in recent years).

7.109. Warner Theatres told us that it was committed to showing a broad range of films which appealed to all sectors of the cinema-going public. As an operator of multiplex cinemas, it had the necessary spread of screens and the flexibility to put this into practice. The Warner West End cinema was used as a showcase for Warner Bros films. Warner Theatres was keen that it should also be used as a showcase for the films of other distributors, but to date they had been reluctant to use it for this purpose. Warner Theatres had, for a number of years, and in all its cinemas, offered Thursday programmes with special screenings, generally of EC-produced films. It told us that it had exhibited increasing numbers of films distributed by independent distributors. In recent years, the number of films taken, for example, from Guild and Entertainment had been almost as high as the number taken from Columbia and Fox. It was usually able to exhibit a film on the release date announced by the distributor.

Overseas decision-making

7.110. We asked the leading exhibitors whether overseas-based decision-making made the market less responsive to consumer preferences than if decisions were made in the UK.

7.111. MGM Cinemas said that by definition, overseas decision-making must be less responsive to local customer needs. Generally, distributors used the performance of a film in the USA as a guideline to

its likely success in the UK. In the majority of cases this expectation was borne out. MGM Cinemas recognized, however, that a local distributor, such as RFD with *Reservoir Dogs*, could often see local potential more readily.

7.112. Natl Amusements told us that, in view of the fact that it generally attempted to exhibit all available films, there was no impact on consumer preferences arising from overseas-based decision-making. Consumer preference formed the basis of its decision-making since it was clearly reflected in box office receipts, which in turn guided decisions.

7.113. Rank said that it would expect to be at an advantage *vis-à-vis* its US-based competitors if there was any substance to this issue. In practice it did not find itself at such an advantage.

7.114. UCI noted that it was decisions by overseas companies to invest in the UK exhibition sector which had halted the decline in admissions and led to the revival of the industry. Decisions as to which films would be exhibited were taken by UK-based personnel and had regard to the demands and preferences of local cinema audiences.

7.115. Warner Theatres said that all day-to-day decisions were taken in the UK. In particular, all decisions concerning the choice of films to be shown were taken here.

Domination of the UK markets by US films

7.116. The leading exhibitors were asked whether the influence exercised by US companies in the UK markets for distribution and exhibition of films caused the markets to be dominated by US films, and whether the economic and cultural effects of this dominance were harmful. Those that commented on economic and cultural effects denied that the success of US films in the UK had adverse effects.

7.117. MGM Cinemas said that US films were the most commercially attractive products for the UK market and were rightfully popular. It made no comment on the economic and cultural effects.

7.118. Natl Amusements said that because it attempted to exhibit all available films, it did not have any particular influence on the exhibition of films. Its decisions were guided first and foremost by the consumer.

7.119. Rank said that it was no longer possible, other than for reasons of domestic legislation and regulation, to confine the market within purely national boundaries. There was a large international market for blockbuster films. The homogeneity of the market was particularly marked in English-speaking parts of the world. Thus, to focus on the influence exercised within the UK by US companies was to ignore the reality of the market. Rank argued that market homogeneity had been reinforced by the fact that the UK and US cultures were steadily becoming more alike. It was unclear whether the ever-increasing popularity of US films was the cause or effect of this. It was excessively paternalistic to argue that, by responding to demand in the UK market and supplying US films, distributors and exhibitors caused cultural damage. In any event, there was a large UK output of television product which reached a far greater audience in this country than did the cinema. This must limit any perceived cultural damage.

7.120. Rank said that RFD and Odeon supplied the films they believed the market wanted to see. The success of US films could not be attributed to the influence of US companies but to much wider cultural factors. Rank noted that, just as films of US origin were popular in the cinemas, so music of US origin had gained in popularity.

7.121. UCI argued that US films did not dominate the UK exhibition sector in a competition sense. A number of US studios had succeeded in ensuring that US films had achieved consistently high levels of box office revenue and admissions in recent years. There was no reason why this fact alone should operate against the public interest. Nor was the success of some US films surprising when US producers invested so much more and produced so many more films than producers in other countries. UCI did not accept that it was influenced by its US partners in such a way as to cause exhibition to be dominated by US films. It responded on a national and local level to consumers' wishes and selected films on

commercial grounds. It selected those films, including non-US films, which it believed the consumer wished to see and could not force audiences into its cinemas.

7.122. UCI said that certain US films generated high returns. Earnings on these films enabled it to take the risk of exhibiting films of more uncertain appeal. UCI willingly exhibited films which catered for popular taste and which were not US-produced, such as *Much Ado About Nothing*, and it offered films of a 'cultural' nature in its Director's Chair programme. There was no evidence that US studios had attempted, through their interests in exhibition, to secure preference for their own films. UCI reiterated that it gave no preference to UIP's films, nor did it give preference to films handled by US distributors in general. For those British films where it received sufficient prints, the share of box office receipts reflected UCI's market share of exhibition in general. This demonstrated that it did not discriminate against such films.

7.123. Warner Theatres did not believe that any US company was able to influence its business so as to favour US films or exclude UK and European films. It was able to screen any British films which it considered were commercially viable and would willingly show more commercially viable British films if they were available. The substantial increases in admissions demonstrated that exhibitors were showing films which the public wished to see. It did not accept that US films had any harmful effect on the economic or cultural health of the public.

Co-ordination of release dates

7.124. We asked the leading exhibitors whether leading distributors, by co-ordinating the release dates of their films, reduced consumers' choice of first-release films at any given time and crowded out other distributors. The leading exhibitors recognized that information about likely release dates was widely known within the industry but did not believe this had adverse effects.

7.125. MGM Cinemas said that a distributor might choose to alter the release date of a film in order to ensure that it did not clash with the release of another film. It did not accept that this involved any collusion between the distributors. In any event, the effects were generally beneficial to cinema-goers in that if two films which appealed to precisely the same market were released at the same time, patrons would be unlikely to see both. MGM Cinemas believed that a smaller distributor with an obviously commercial film would be able to have it exhibited. The leading distributors would probably reschedule their films to avoid clashing with such a film.

7.126. Natl Amusements said that to the extent the distributors were aware of the release dates of each other's films and scheduled dates to ensure minimal overlap, this was a logical and efficient business practice. It allowed for the maximization of revenues, with associated benefits to consumers. If distributors overlapped releases, exhibitors would have to make room to accommodate them. This would mean reducing the exhibition period of, or ceasing to exhibit, films that might, at that time, be of marginal appeal. Crowding out other distributors would be much more likely to result if larger distributors released films simultaneously; there would be an even greater impact if that were to occur during the peak periods.

7.127. Rank said that, as part of the service provided to distributors in assisting them to plan the release of a film, Odeon advised distributors of other films that would be on release on any proposed release date. In doing so, it gave no preference to any particular distributor. It believed a steady stream of releases would be more in the public interest than the simultaneous release of a large number of films.

7.128. Rank argued that, even if there were co-ordination of release dates, it could not affect the number of films released; it could only result in the release of those films being spread throughout the year rather than happening concurrently. Given the finite number of available screens and a finite number of films, the concentration of releases into one part of the year would not increase the overall choice of films available to consumers. On the contrary, it would be likely to reduce the frequency of cinema attendance and hence total admissions, thus increasing risks for investors and, in the long run, reducing the number of potential new films.

7.129. UCI told us that, whilst there was widely-held knowledge about release dates, distributors competed intensely for access to screens at particularly popular times of the year. There were, it said, times when it had to take off films that were doing reasonably well in order to make way for new releases. It believed a more even pattern of releases over the year might be desirable in order to avoid having to remove from its screens films which were performing well in order to make way for new releases at peak periods. The effect of the present system could be to deprive the public of the opportunity to see a film in a UCI cinema which UCI would otherwise have continued to show.

7.130. UCI said that the availability of information as to release strategies enabled all distributors, whether leading or otherwise, to decide whether to compete in the most crowded periods or to look for periods where there was less competition. This allowed each distributor to take its own competitive decision based on its individual strategy and assessment of the appeal of the film in question. The leading distributors received no particular benefit from this.

7.131. Warner Theatres said that, as a multiplex operator, it had no involvement in the setting of release dates. It was informed by the distributor of the date on which a film would be released. Warner Theatres said that, if several major films were released at once, most exhibitors, including those which operated multiplex cinemas, would not be able to show all the films. It was, therefore, in the exhibitors' interests that the leading distributors co-ordinated release dates. The leading distributors never opened more than two major films on the same day and even then the films would usually be of different genres, designed to appeal to different audiences. Over the long term, consumer choice would be enhanced because the public would have a greater opportunity to see films than if they were all released on the same date.

7.132. Warner Theatres said that it was able to show both blockbuster films and films of narrower commercial appeal. This did not adversely affect smaller distributors. There had been a number of recent examples of independently-released, up-market films where the distributor had been able to use the release dates it wanted and obtain the duration of playing time it wanted because of the strength of the film. The setting of the optimal release date was, Warner Theatres said, an important part of the competitive process. It would distort the market to place any restrictions on the ability of distributors to release films on the dates they thought most advantageous.

Exercise of market power by leading distributors

7.133. The leading exhibitors were asked whether leading distributors, by exercising market power over independent exhibitors to persuade them to screen films which they would not otherwise choose, made the exhibition market less responsive to consumer preference; harmed the exhibitors concerned by reducing their revenue; and harmed independent producers, whose films were handled by other distributors, by reducing their films' access to screens. The leading exhibitors told us that they were not aware of any improper exercise of market power by leading distributors in the manner suggested. MGM Cinemas, UCI and Warner Theatres said that they were unable to comment on a matter on which they had no information.

7.134. Natl Amusements was unaware of any instances of improper coercion. To the extent that distributors used their market power to coerce independent exhibitors into exhibiting any film against their wish, such a practice would be an improper use of market power. It would distort the market and should be restricted. Such a situation would, however, be significantly different from one involving attempted persuasion by the distributor. The latter case should not be restricted.

7.135. Rank said that Odeon did not see itself as being persuaded to take films which it otherwise would not have chosen.

Exercise of market power by leading exhibitors

7.136. We asked the leading exhibitors whether, by exercising market power over distributors in order to secure preference over other exhibitors, they harmed those exhibitors by reducing their access to

popular films, particularly on first release. The leading exhibitors did not accept that they acted in this manner.

7.137. MGM Cinemas agreed that other exhibitors would be harmed where this occurred. However, it did not negotiate exclusivity or conduct any other practice which might have this effect. To do so would not, in its opinion, be in the spirit of the 1989 Order. Natl Amusements said that on those occasions in which it had been unable to obtain a film, the distributor concerned had been able to give valid reasons for its decision.

7.138. Rank said that Odeon faced such a degree of competition that it could not be said to have any significant market power. To the extent that it was preferred over other exhibitors, this was due to the quality of service offered and its competitiveness. Rank denied that Odeon exercised market power when seeking exclusivity. It sought to define the terms on which a film would be licensed and to assess the audience potential and risks associated with the film. The circumstances in which Odeon secured contractual exclusivity would generally be those in which *de facto* exclusivity would likely be given in any event. Given that the grant of exclusivity was generally in the interests of both distributor and exhibitor, it was unlikely to be the product of the exercise of market power, even if Odeon had such power.

7.139. UCI said that it did not obtain preference because of any market power it might have over distributors. While it generally expected to receive prints of all films it wished to exhibit, the decision by a distributor to allocate prints to UCI in preference to, for example, an independent exhibitor reflected the demonstrated revenue-earning potential of the UCI cinemas. It was the quality of its cinemas, not market power, which distinguished UCI from exhibitors who were not given prints as frequently. Any harm suffered by other exhibitors was merely a result of competition between exhibitors for prints. UCI noted that in some cases, for example *The Remains of the Day*, it did not receive all the prints it wanted.

7.140. Warner Theatres said that it did not seek to obtain exclusive rights to exhibit any film. Nor did it attempt in any other way to deprive other exhibitors of access to films.

Code of practice and associated machinery

7.141. The leading exhibitors were asked to comment on the possibility that a code of practice, dealing with the supply of prints, minimum exhibition periods and restrictions on screen use, might be drawn up by agreement between the SFD and the CEA; and that machinery, for example a committee with an independent chairman, might be set up to resolve disputes between distributors and exhibitors concerning the application of the code to particular circumstances.

7.142. MGM Cinemas supported the idea, provided that guidelines were put forward as to the basis for a code to be agreed by the industry. Natl Amusements said that if any type of remedy was to be imposed, this type of mechanism would be preferable since it would be responsive to the unique circumstances of each film.

7.143. Rank believed that a code of practice, though unnecessary and burdensome, would be preferable to the alternative remedies which the MMC had been canvassing. Any such code should be flexible and informal. It should seek to decrease the administration and resources needed to distribute films and leave distributors and exhibitors free to reach agreements which reflected market conditions and respond to changing consumer demands and preferences. A system with a formal structure and independent chairman would be unlikely to meet these criteria.

7.144. UCI doubted whether a code of practice and arbitration scheme could effectively cater for disputes on refusal to supply, minimum exhibition periods and restrictions on screen use which tended to arise on Monday mornings and had to be resolved at short notice. It believed it was in the best interests of distributors and exhibitors to resolve disputes on an individual basis within the scope of their contractual terms. The distributor would wish to ensure that disputes on such matters did not lead to an irretrievable breakdown of its relationship with the exhibitor concerned; likewise the exhibitor would not wish to jeopardize the potential source of supply of future product. These were powerful commercial incentives in

a competitive market which ensured that disputes were resolved quickly and to the mutual satisfaction of distributors and exhibitors. Excessive regulatory intervention was unnecessary.

7.145. Warner Theatres did not object to a code of practice or a committee provided that it included representatives of the independent exhibitors and distributors as well as members of the CEA and the SFD. The usefulness of such a committee would necessarily be limited to major issues of principle. Most disputes related to the screening of particular films in particular weeks and had to be resolved very quickly.

Prohibiting contracts based on box office receipts

7.146. We asked the leading exhibitors to comment on the possibility that distributors and exhibitors might be prohibited from entering into contracts under which the consideration received by the distributor was linked directly or indirectly to the exhibitor's box office receipts.

7.147. The leading exhibitors saw no reason to change the basis upon which rental payments were calculated. It was, they said, important that distributors and exhibitors shared the risks and rewards associated with showing films. Exhibitors, if forced to pay a predetermined price for each film, would have no incentive to pay for films of uncertain appeal. They would instead concentrate on popular films, declining to play high-risk product. The leading exhibitors had trouble envisaging a system of rental payments that was not linked to box office returns.

7.148. MGM Cinemas described the suggested remedy as superficially attractive. It warned, however, that an auction of films would ensue, ensuring the survival of only the most powerful exhibitors.

7.149. Natl Amusements said that, if distributors could not share the box office, there would be little incentive for producers to make films that were commercially desirable, or for distributors to promote films. A licensing system linked to box office receipts also made sense since, in essence, the distributor was selling a unique product, the value of which was directly linked to its success.

7.150. Rank told us that such a prohibition would be massively against the public interest. The present system spread the risks between distributors and exhibitors. If the risk was not shared, either the smaller distributors or the smaller exhibitors would be forced to withdraw from the market. If the rental could not be linked to the success of the film, either the rental for unsuccessful films would be uneconomically high, or the rental for successful films would be uneconomically low. In either event, the ability of distributors to obtain films, and of producers to finance them, would be undermined. If sharing box office receipts was prohibited, Rank expected that companies would seek alternative ways of sharing risk. The obvious solution would be to integrate vertically. Thus, an artificial advantage would be created for those companies that were already vertically integrated. This would act as an incentive to other companies to become vertically integrated.

7.151. UCI said that the different methods of determining rental payments reflected the desire in the industry to manage and share the risk involved in the production, distribution and exhibition of feature films. It believed that the ability of an exhibitor to share with the distributor the risk and reward of showing a new film was crucial to new investment in the UK exhibition sector. It doubted whether its partners would have been prepared to undertake the level of investment they had made since 1985, or would continue with such investment, under a system which did not allow for the risk and reward to be shared.

7.152. UCI argued that if an exhibitor had to pay a predetermined price for each film, it would have no incentive to pay for films of uncertain appeal. There would be a reduction in consumer choice as exhibitors concentrated on popular films and as distributors were deprived of box office revenue which would otherwise be invested in production.

7.153. Warner Theatres strongly opposed the proposed change in the method of calculating rental payments. Experience in the USA had shown that a fixed fee rental payment was likely to lead to the demise of many independent cinemas. In the USA, the exhibitor provided a guaranteed advance payment

based on a certain level of expected box office receipts. Negotiations subsequently took place to settle on the final sum payable, taking account of the film's success. Many exhibitors had been unable to afford the initial guarantees and went out of business.

7.154. Warner Theatres argued that the current system benefited exhibitors in that payments were made in arrears and were limited to a proportion of the actual receipts. The cash flow benefits were very important to many marginal independent exhibitors.

Distributors to commit revenues to independently-produced films

7.155. The leading exhibitors were asked to comment on the possibility that distributors might be required to commit a specified proportion of their revenues from film rentals in the UK to the production of films by independent producers in the EC.

7.156. All the leading exhibitors opposed this idea. It would, they argued, have adverse effects on the exhibition sector, such as increased admission prices resulting from distributors passing on the costs arising from the remedy or a reduction in choice as production was cut back in response to reduced returns to distributors and producers.

7.157. MGM Cinemas said that consumer preference and, therefore, commercial potential should be the only determinant for investment in film production. Natl Amusements said that the proposal would lead the distributors to increase the licence fee. Exhibitors would then be under pressure to increase ticket prices.

7.158. Rank said that it would be unlikely to be in the interests of UK consumers if the costs of distribution were to be increased by a levy designed to fund, at least in part, foreign language productions which, by their very nature, would have limited appeal in the UK. The availability of funds from such a levy would not guarantee that the films produced would be ones that the public wished to see. Indeed, such funds were likely to be used for uncommercial films, since those with commercial potential were likely to find funding in any event. The general public would, it argued, be little served by increased production of films of limited appeal.

7.159. UCI said that the suggested measures could have significant effects for exhibitors, since distributors would seek to pass at least part of the costs involved to exhibitors and, ultimately, the consumer. Admission prices could increase, thereby discouraging cinema-going. If there was no scope for increases in admission prices, the exhibitors and/or the distributors would have to bear the cost. This would inevitably threaten continued investment in the exhibition sector.

7.160. UCI argued that it should not be the responsibility of those currently participating in the industry on a commercial basis to finance the production of independent films for cultural purposes. Reallocating revenues to independent European production would not by itself encourage the promotion of commercially successful films. Whilst it would assist producers to make more European cultural films, it would not necessarily, and was unlikely to, encourage the production of commercially successful films as it would reduce by subsidy the incentive on a producer to have regard to consumer preferences. The remedy was, UCI argued, unjustified and inequitable.

7.161. Warner Theatres did not believe the imposition of a levy was likely to improve the position of the British film industry. A levy could be counter-productive, since it was likely to lead to an increase in rental payments and thereby ticket prices. This would threaten the continued expansion of the exhibition sector. It would also influence the expansion plans of exhibitors, such as Warner Theatres, who were considering the scope for further investment in the UK's cinema infrastructure.

Distribution/exhibition of films with a predominantly European theme or cultural content

7.162. We asked the leading exhibitors to comment on the possibility that distributors might be required to distribute, and exhibitors to exhibit, a specified proportion of films with a predominantly European theme or other cultural content. The leading exhibitors responded that such a requirement would damage the exhibition sector by reducing revenues and discouraging cinema-going. This would result in reduced investment in exhibition.

7.163. MGM Cinemas told us that a previous quota system, abolished in the early 1980s, had achieved very little and led to what it described as 'nonsense screenings in order to make quota'. It said that the way to get a higher percentage of European films on to its schedules was to encourage the production of more films with commercial appeal to UK audiences. Whoever such films were distributed by, UK exhibitors would be very keen to obtain prints if they were likely to improve admission levels.

7.164. Natl Amusements said that the distribution and exhibition of such films should be responsive to consumer desires. Numerous avenues existed and were utilized for the exhibition of such films. In addition, they could also be made available on video and by way of pay and cable television. Consumers had the opportunity to see even those films which had an extremely narrow appeal and did not warrant cinematic exhibition.

7.165. Rank said that any such film which was likely to appeal to audiences would be exhibited without recourse to the suggested remedy. If a film had no audience appeal, a requirement that it be shown would serve only to increase costs unnecessarily and reduce the number of screens available for exhibiting films that consumers did want to see. Such a requirement would, in Rank's view, be against the public interest.

7.166. Rank told us that many of the films currently distributed by the major US producers could be said to be of predominantly European theme, for example *Robin Hood: Prince of Thieves* and *The Three Musketeers*. It warned that any attempt to discriminate against US films could have potentially damaging repercussions for continued US financing of 'British' productions such as *Shadowlands*, *The Remains of the Day* and *The Secret Garden*.

7.167. UCI argued that simply because US films had achieved consistently high levels of box office revenue and admissions in recent years, reflecting their attractiveness to consumers, it did not follow that the public interest was adversely affected. The suggested remedy assumed that consumers had, or ought to have, a greater cultural affinity with European than with US films. This ignored European-theme films, for example *The Remains of the Day*, *Dangerous Liaisons*, *In the Name of the Father* and *Schindler's List*, which were available without artificial stimulus. It also ignored the appeal of certain US films, the common language shared between the UK and the USA, and the extent to which British talent was employed in US productions. There was, UCI said, no evidence to suggest that UCI or other exhibitors favoured US films to the detriment of consumer preferences. Certain US films simply generated high returns for the exhibitors. Such films enabled exhibitors to take the risk of accepting films of more uncertain appeal, which might include non-US films.

7.168. UCI argued that quotas would damage UK exhibition. Films which were commercially successful were generally US-produced. There was no guarantee that European films would generate the same level of admissions or revenue. Indeed the comparative lack of audience support for European films suggested the opposite. The imposition of quotas would be bound to reduce exhibitors' revenues unless, and UCI thought this inconceivable, they could charge higher admission prices on successful commercial films to generate sufficient additional revenues to compensate for the sacrifice imposed by the quota system. Any increase in prices would, in the longer term, tend to discourage cinema-going and would not be in the interests of consumers.

7.169. UCI said that the loss of revenue would mean less investment in building and upgrading cinemas. In some cases this could lead to cinema closures, which would have the effect of reducing consumers' access to films. Less revenue available to exhibitors would lead to lower rentals available to distributors and, ultimately, producers. This would reduce investment in the very films which, on the basis of box office records, consumers preferred.

7.170. UCI submitted that the price of promoting cultural objectives in this manner would be high, causing substantial damage to the industry and to the public interest. There was no reason why a quota system should be applied to the film industry to pursue cultural objectives, when other commercial activities having a cultural dimension, such as book publishing, the music industry and the theatre, were free from the distortions that a quota system would bring.

7.171. Warner Theatres believed that any form of screen quota system designed to favour British or EC films was likely to reverse the steady increase in cinemas attendances which had occurred since the MMC's last inquiry. It was aware of no evidence that potentially successful EC films were denied access to screens, either by shortage of screens or by any conduct on the part of distributors or exhibitors. The remedy would require distributors and exhibitors to substitute unpopular films for popular ones, with the loss of revenue which that would entail for both. A film which benefited from the quota system would be *ex hypothesi* a film which neither distributor nor exhibitor believed had the potential to bring in an audience. The public would not benefit from having screens occupied by films in which they were not interested, with the consequent reduction in the number of screenings of films which they wished to see.

7.172. Warner Theatres said that the only possible beneficiaries would be producers and financiers of films which had little or no commercial value and which would not be distributed or exhibited but for the quota. But since producers would still earn only a proportion of box office receipts, they were unlikely to recoup their investments if the film failed to attract an audience.

7.173. Warner Theatres believed, if the British film industry was to flourish, it must be because it made films which were able to compete internationally, not because it had protected status in its home territory. There was clearly a market for successful British films. But consumers would not go to see a film simply because it was being shown, as there were many other forms of entertainment available. Warner Theatres could not see any legitimate goal which was likely to be achieved by the suggested system. The imposition of a quota system would also be likely to dissuade existing exhibitors from expanding their cinema networks or investing in refurbishment since income would become more uncertain if they were not allowed to maximize revenues by showing the films that they believed would attract audiences.

Divestment or reduction of interests in exhibition

7.174. The leading exhibitors were asked to comment on the possibility that companies with interests in film production and/or distribution might be required to divest any interests in exhibition, or to reduce such interests below a specified level, for example 10 per cent of the total number of screens in the UK.

7.175. MGM Cinemas believed competition between exhibitors would be best maintained by ensuring that exhibitors made all investment decisions on the basis of exhibition alone. If stand-alone exhibition was unprofitable or showed an inadequate return on shareholders' funds, the market would ensure that distributors' rentals and restrictions were adjusted to permit a healthy exhibition sector to continue to develop in the UK.

7.176. Natl Amusements said that it had not been harmed by the existence of vertically integrated companies. It did not favour the suggested remedy.

7.177. Rank told us that RFD and Odeon operated independently of each other and without giving rise to any cause for public interest concern.[]

Details omitted. See note on page iv.

]

7.178. Rank suggested that any large-scale divestment of cinemas would lead to closure of at least some, reducing the number of screens available to the public.

7.179. UCI said that vertical integration, in the loose sense that it applied in the film industry, did not operate against the public interest. UCI did not favour the films of Paramount and MCA/Universal, the producers who were partners in UCI, nor the films of Paramount, MCA/Universal and MGM Inc, the partners in UIP, over those of other distributors. It argued that there was no evidence to demonstrate that such a remedy should be considered, let alone recommended.

7.180. UCI said that, in their 1983 report, the MMC concluded that vertical integration between producer and distributor was not something that should be condemned. No evidence had been presented to alter this conclusion. It said that the suggested remedy would have the serious adverse effects of halting the companies' significant investment programmes in the exhibition sector and depriving them of the opportunity to earn future revenues from their existing investment. Not only was the remedy unjustified, it would halt the industry's revival and risk a return to stagnation and decline.

7.181. UCI stated that Paramount and MCA/Universal had believed exhibition was a viable investment which would revive theatrical exhibition in the UK by attracting customers back to the cinemas; it was an investment which would thereby produce a direct return as well as stimulate interest and return on their studios' films. This investment had benefited both their films and the films of other studios. UCI rejected the charge that the investment was not commercial. UCI told us that it sought to achieve a minimum rate of return of 20 per cent on its cinema investments and a pay-back period of five years. Most of its cinemas were on target to meet this return. In assessing the suitability of a site it gave no consideration to the likely impact on its partners' films.

7.182. Warner Theatres did not believe vertical integration had any effect on its business, though it too agreed that its investments had been designed to help revitalize UK exhibition with a view to benefiting its parent studios' films, among others. It rejected the charge that its investments were not commercial. It assessed its investments purely on a stand-alone commercial basis and looked for at least 20 per cent return on investment on a cash flow basis. Again, most of its cinemas were on target to meet this return. There was no justification for imposing such a remedy.

Termination of the UIP joint venture

7.183. We asked the leading exhibitors to comment on the possibility that the UIP joint venture in the distribution of films to cinemas in the UK might be terminated. Without exception they did not object to the continuation of the UIP joint venture.

7.184. MGM Cinemas told us that, if UIP were replaced by three distribution companies, the result would be increased costs and no advantage to exhibitors. It said that UIP already faced significant competition from other distributors. Natl Amusements said that it had not been harmed by UIP, nor did it believe UIP had harmed competition or the consumer. Rank told us that the removal of UIP would not increase the availability of suitable films from UK or other EC production sources.

7.185. UCI perceived no benefit that would accrue to exhibitors if the remedy were to be recommended. It told us that its pattern of trading with UIP was no different from its pattern and terms of trading with other studios which distributed only their own films. If the three studios whose product was distributed through UIP were to appoint separate distributors, UCI's task of booking films would be administratively more cumbersome. UCI could see little point in holding three sets of different discussions each week when the terms it received from UIP were consistent with those it received from the rest of the industry and when the service provided by UIP was efficient.

7.186. UCI was concerned that terminating the UIP arrangements could damage UK exhibitors and the public interest if UIP's three partners were obliged to cut film production or distribution in the UK as a result of increased costs of operating separate distribution organizations.

7.187. Warner Theatres said that the existence of UIP did not affect its business. There was no reason to propose its termination.

Prohibition on distribution joint ventures

7.188. The leading exhibitors were asked to comment on the possibility that the formation of joint ventures in distribution between parties which together had more than 20 per cent of the market, measured by share of rental receipts over a rolling four-year period, might be prohibited. All the leading exhibitors believed joint venture distributors operated in the same way as other distributors and should not be prohibited.

7.189. MGM Cinemas opposed this suggestion on the grounds that it would increase distribution costs with no advantage to exhibitors. Natl Amusements said that approval of such joint ventures should be on a case-by-case basis, after a full examination of the relevant facts and the circumstances surrounding its operation.

7.190. Rank argued that, to meet the challenges of competing in the industry, all participants needed to be as free as possible to enter into commercial transactions as they sought fit. Given that existing legislation allowed the Secretary of State considerable powers over any merger which created or enhanced a market share of more than 25 per cent, there would be no evident benefits from the suggested prohibition. In fact, the inability to assess each case on its merits would be likely to be damaging in a rapidly changing market.

7.191. UCI could not see that any exhibitor would benefit from such a recommendation. Since it dealt with distributors on a film-by-film basis, the terms negotiated were unaffected by whether the distributor was a joint venture. It said that competition law was fully capable of dealing with joint ventures and unacceptable concentrations of market power which were shown to have detrimental effects on competition and/or consumers. To add a further layer of regulatory control was unnecessary and burdensome.

7.192. Warner Theatres did not object to joint ventures between distributors. They contributed to reducing costs and, therefore, ensured that rental payments were kept at a reasonable level.

Termination of the UCI joint venture

7.193. We asked the leading exhibitors to comment on the possibility that the UCI joint venture in cinema exhibition in the UK might be terminated. The leading exhibitors either did not support the remedy or had no view.

7.194. MGM Cinemas said that it was happy with any competition which operated within reasonable norms within the exhibition market. Natl Amusements told us that it had not been harmed by UCI, nor did it believe UCI had harmed competition or the consumer. Rank expressed no view.

7.195. UCI argued that there was nothing to indicate that it operated or might be expected to operate against the public interest by virtue of the fact that it was a joint venture or that its ultimate parent companies were foreign companies. There was also nothing to indicate that it operated differently from any other UK exhibitor. It would be wholly unjustified to reach an adverse public interest finding in the absence of any facts which distinguished UCI from other exhibitors.

7.196. UCI said that the effect of the joint venture was neutral in competition terms. There was nothing to suggest that its market share was of such size as to create unacceptable distortions of competition which operated against the public interest. Moreover, the remedy ignored the public interest benefits that the joint venture had brought to UK exhibition, for example by promoting the development of new multiplex cinemas, facilitating new entry, and to employment and other business activities such as construction and retailing.

7.197. UCI reminded us that the EC Commission was considering the UCI partners' request for exemption under Article 85(3) of the Treaty of Rome. UCI said that our ability to apply national competition law should not prejudice the full and uniform application of EC law or the effects of measures taken, or to be taken, to implement it.

7.198. The MMC had, UCI argued, failed to show how the UCI joint venture might operate against the public interest and why break-up would be an appropriate remedy. Termination of the joint venture would be detrimental to the public interest. The remedy had no foundation in fact or in law, was unjustified and should not be recommended.

7.199. Warner Theatres said that the existence of UCI did not affect its business. There was no reason to propose its termination.

Third party complaints

7.200. We asked the leading exhibitors to respond to the various complaints raised by third parties and summarized in Chapter 6. Their comments on the supply of prints, minimum exhibition periods, restrictions on screen use and the *Standard Conditions* are summarized earlier in this chapter. Their responses on other matters are summarized below. Warner Theatres had no additional comments to make in response to the complaints.

Independent exhibitors

7.201. Responding to complaints about the availability of prints (see paragraphs 6.20 to 6.27), MGM Cinemas described as totally without foundation the claim (see paragraph 6.27) that it had a stranglehold over smaller distributors which acted to the detriment of independent cinemas. It said that its only cinema in Belfast was not accorded favourable treatment by distributors. The cinema did not compete with arthouse cinemas save to the extent that it had attempted to increase the range of films on offer.

7.202. With reference to the complaint from Richmond Filmhouse (see paragraph 6.23), Rank told us that the Odeon cinemas complemented the Richmond Filmhouse cinema; they did not compete with each other. Rank said that Odeon was surprised that Richmond Filmhouse, which had described itself as an arthouse cinema, chose to show more popular films. It denied that Odeon had sought to take films away from Richmond Filmhouse and suggested that distributors would be cautious about using Richmond Filmhouse for two reasons. First, Richmond Filmhouse charged higher admission prices than Odeon, which might reduce the level of admissions sufficiently to reduce box office revenues. Secondly, it had only one screen, which would inevitably limit its ability to hold over successful films.

7.203. Rank suggested that Richmond Filmhouse's experience as an operator of a single-screen, 150-seat town centre cinema was unlikely to be relevant to those contemplating the building of multiplex cinemas. Given the investment in new multiplex cinemas in recent years and the fact that such cinemas had access to all films, Rank believed the suggested deterrent was without foundation.

7.204. UCI said that it too had difficulties in obtaining prints where only limited numbers were released. UCI believed that an independent exhibitor willing to invest in building a multiplex cinema should obtain films from the distributors if it could demonstrate that the cinema was of sufficient quality and standard to appeal to local audiences. This belief was, it said, borne out by the experience of AMC and Natl Amusements, each of which had started out as an independent multiplex operator and was successful in obtaining films.

7.205. Responding to complaints about the calculation of rental payments (see paragraphs 6.32 and 6.33), Rank told us that Odeon did not believe there had been an increase in recent years in distributors demanding special terms for the most popular films. In any event it would always attempt to negotiate more favourable terms than those demanded by the distributors. However, these were always subject to negotiation and it was open to exhibitors to reject such terms.

7.206. Regarding the availability of British films (see paragraph 6.34), Rank told us that Odeon faced strong competition and made every effort to face that competition by exhibiting those films for which there was the greatest public demand. It did not give priority to films distributed by RFD and had every reason to exhibit as wide a diversity of films as it believed to be commercially sustainable.

7.207. UCI did not agree with the suggestion that independent multi-screen exhibitors were more likely to show a wider range of films than multiplex owners by reason of the latter's interest in distribution 'or other vested interests'. It pointed out that it had no distribution activities. Its only link with distribution was through its partly common ownership with UIP; relations between the two were carried out on an arm's length basis.

7.208. Responding to Mr Henshaw's comments on the supply of prints to multiplex cinemas (see paragraph 6.35), UCI told us that it was seldom supplied with two copies of popular films. In 1993 only seven films exhibited by UCI were supplied on the basis of two prints per cinema. Even then, less than half of UCI cinemas received two prints. UCI said that it used the practice of interlocking prints, whereby one print was shown in more than one screen simultaneously, significantly more often than it received two prints. UCI said that it retained prints for the period of time which offered good revenue-earning potential in comparison with other films. It never retained a print once it had decided to take off a film.

7.209. Responding to Mr Henshaw's complaint that distributors gave priority to their in-house interests without any concern for the traditional British-owned cinemas (see paragraph 6.37), Rank told us that Odeon had been a chain of traditional British-owned cinemas for many years and had consistently received high-quality films from all distributors. Odeon attributed this to the fact that it competed vigorously for films by offering a high quality of service and auditoria. UCI described as unfounded Mr Henshaw's comments on vertical integration securing preference for multiplex cinemas.

PACT

7.210. Responding to PACT's comments on bias against independently-produced UK and European films (see paragraphs 6.53 to 6.55), MGM Cinemas said that the only bias that existed was in favour of the most popular films, wherever they came from. US market exposure was not the reason for UK films receiving a narrow release. To the extent that the implied assumption that UK and US films had the same commercial appeal was true: exposure in the USA and consequent 'weeding out' of the unsuccessful films reduced risk from showing US films in the UK. The extent of the theatrical release of a film was determined by the distributor's and exhibitors' commercial expectation of a film; this expectation was determined solely by the appeal of the film and not because of previous exposure in the USA.

7.211. Rank denied that Odeon preferred US-made films over any other film. Each film was regarded on its own merits. It considered any allegation that it was less willing to book a non-US film as false. Whilst it was clear that films which had already been market tested in the USA were likely to perform well in the UK, considerable expenditure was incurred in advertising a film in the UK. Increased expenditure on advertising and publicity reflected the strength of competition between exhibitors and between distributors. A film could only realize its potential if supported by a vigorous marketing campaign. It was not in the interests of Odeon to give little support to any of the films which it showed.

7.212. UCI acknowledged that it used publicly-available market information from the USA to assess the commercial potential of a film in the UK. The success of a film in the USA would often, although not always, be a measure of its likely success in the UK. UCI denied that it was biased against, or in favour of, particular films. It judged each film on its perceived commercial potential.

7.213. Responding to PACT's comments on reduction in choice (see paragraphs 6.56 and 6.57), MGM Cinemas attributed the difference in the number of films produced in the UK and other European countries to the common language and culture shared by the UK and the USA. Rank said that Odeon would book films into its multiplex cinemas if it considered that they had commercial potential. It believed that, within multiplex cinemas, it was possible to show films with minority appeal; the development of such cinemas had increased opportunities for these films.

7.214. UCI told us that the investment in UK exhibition by the UCI partners was made with a view to stimulating cinema-going in this country, which in turn would benefit their films. The investment did not, however, improve access for, or extend the life of, their films in preference to others. To the extent that investment increased audiences and screens, thereby creating improved opportunities for viewing films, it did so for all films.

7.215. Responding to PACT's comments on concentration of exhibition in the UK (see paragraphs 6.58 to 6.60), MGM Cinemas said that it had trouble seeing how the conclusion reached in respect of the number of cinema screens would of itself indicate that significant barriers to entry existed or that there was any detriment to the public. The fact that the proportion of screens to head of population in the UK was relatively low when compared with other western European countries implied, in its opinion, that the UK industry operated at a more efficient level of capacity. The UK tended to have an exceptionally low number of all kinds of retail outlet per million population, compared with other countries, because of the density of its population. It had never been suggested to MGM Cinemas that there was a shortage of exhibition capacity. There were, MGM Cinemas said, no significant barriers to entry arising from technology, goodwill or track record. Anybody could enter the exhibition market by investing in or constructing premises. Distributors would always want to supply an exhibitor who could show a reasonable commercial return on the prints supplied.

7.216. In relation to PACT's assertion that exhibitors in the UK retained an unusually large share of box office revenues (see paragraph 6.59), MGM Cinemas said that the cost of a new cinema in this country was typically 50 per cent higher than in the USA. In addition, operating costs were inflated by strict licensing requirements which were not to be found elsewhere in Europe or the USA. As a result, the fixed and operating cost of UK exhibitors were higher than elsewhere, dictating the need for a correspondingly larger share of box office receipts.

7.217. Regarding PACT's comments on transfer pricing (see paragraph 6.59), MGM Cinemas pointed out that not all the major US distributors owned cinemas. MGM Cinemas would have thought it commercially more beneficial for producers owning cinemas to transfer price the other way around. Revenues earned on the distribution of a film were subject to participation by, for example, actors and producers; it was likely to make better commercial sense to keep 100 per cent of the revenue within such of the cinemas as were vertically owned.

7.218. Rank agreed that the UK contained fewer screens per capita than many other countries; it doubted whether that justified a conclusion that the UK was under-screened. The number of screens was steadily rising as demand recovered and as the result of the high level of new investment that had taken place over recent years. In the light of the substantial level of new entry, it believed there were no substantial barriers to entry.

7.219. Rank did not accept PACT's claim that exhibitors in the UK charged relatively high prices for cinema tickets (see paragraph 6.59); it also believed that the assertions about the division of box office revenues between distributor and exhibitor were mistaken. RFD and Odeon operated at arm's length and the level of rental paid by Odeon reflected the market, both for films supplied by RFD and for all other films. Neither company believed their links in any way reduced competition, nor that opportunities for other exhibitors to take films from RFD were limited.

7.220. UCI queried PACT's comments on the barriers to entry which existed to prevent growth in the number of screens (see paragraph 6.58). It also queried what was meant by a natural level of growth in screens. UCI said that the investment which had taken place since 1983 showed that there had been, and continued to be, opportunities to invest. It questioned the usefulness of comparing the UK with other markets on the basis of screens per capita only. For example, in Italy about one-third of all cinemas were open fewer than 60 days a year; only just over one-third were open more than 240 days a year. It argued that this demonstrated that screen capacity did not necessarily reflect accessibility by consumers.

7.221. UCI disputed PACT's statement that, in the UK, the exhibitor's share of the total ticket price was 70 per cent. The actual figure was closer to 60 per cent, which was the norm suggested by PACT. UCI denied that it participated with its associated companies in internal transfer pricing and was aware of no evidence to support the PACT assertion.

7.222. UCI noted that PACT had failed to specify what restraints were exercised by distributors over exhibitors. It said that, as a result of the investment by new entrants, the exhibition sector was less concentrated than in 1983.

Producers

7.223. Responding to the comments on the distribution of *Orlando* (see paragraph 6.71), Rank told us that Odeon did exhibit the film. Despite the shortage of prints, the film was shown in cinemas outside London. Rank said the complaint exaggerated the shortage of cinemas outside London which exhibited arthouse films, though there was no doubt only limited demand for such films.

BFI

7.224. Responding to the BFI's comments on the current state of the British film industry (see paragraphs 6.93 and 6.94), MGM Cinemas attributed the dominance of US films in the UK to a lack of investment in UK films. This lack of investment had come about not because of the abolition of the Eady Levy but rather because of the poor returns achieved by investors in film production. It referred to the losses made in the mid-1980s by Thorn EMI Screen Entertainment which had attempted to compete directly with the US major studios in terms of its production and distribution budgets. It also noted that all the Hollywood studios had at some time been effectively bankrupt and suggested that the growth in earnings from videos and other ancillary markets sustained most of the studios.

7.225. MGM Cinemas did not understand the BFI's contention that there were fewer opportunities for UK films in the international market. The international market existed only for films that had universal appeal. Films of purely UK cultural significance would not necessarily appeal to this market. This situation was not unique to the UK. Small-town US films similarly did not do well on the international market.

7.226. Rank argued that the market for English language films was, at all levels of production and distribution, an international one. It was no longer possible readily to define a British film, except by the use of arbitrary criteria. For its part, Odeon would exhibit any film which it considered would make a worthwhile return, regardless of nationality.

7.227. Rank told us that Odeon did not favour the return of the Eady Levy or of any similar subsidy, even if it were used for the production of British films (as defined in the Films Act). It calculated that if such a levy were reintroduced at 2.5 per cent of net box office, the total sum available (£7.5 million) would not be sufficient to finance major film production. It should also be borne in mind that, since the termination of the Eady Levy, VAT had increased from 8 to 17.5 per cent. Therefore the tax on the box office had substantially increased and been passed on to the customer. Any reimposition of a levy would likely be passed on to customers through admission prices, with a consequent effect on admission levels, particularly given the competition from other media.

7.228. It seemed to Rank that the BFI's real complaint was about the taste of the cinema-going public in the UK rather than about any defect in the operation of the industry. Odeon was always willing to negotiate in respect of any film offered to it and, almost without exception, reached agreement as to the dates and terms on which the film would be shown.

7.229. UCI told us that US films accounted for approximately 80 per cent of admissions in the UK throughout the 1980s, with the exception of 1987. Thus it was not necessarily correct to say, as was suggested by the BFI, that removal of the Eady Levy and other elements of industry support had led the market to be increasingly dominated by US-produced films.

7.230. Regarding the BFI's comments on vertical integration (see paragraphs 6.95 to 6.97), MGM Cinemas said that the BFI seemed to assume that the 51 locally-produced films had the same commercial appeal as the US films that were shown. This was not the case. If British producers moved away from

esoteric films to films with general appeal they would have more success. As for the BFI's claims about good films which did not receive appropriate distribution, with the exception of *Riff Raff*, MGM Cinemas had been unable to get as many prints as it wanted of the films cited.

7.231. Rank did not know on what basis the BFI stated that films from other European countries were rarely distributed in the UK (see paragraph 6.95). In 1991 the market share for national films (including co-productions) was 13.8 per cent; the market share for European films (not including national films) was 15.7 per cent.

7.232. UCI said that the BFI had offered no explanation or evidence as to how, by virtue of common ownership links between exhibitors, distributors and/or producers, independent producers' access to distribution was limited. Independent distributors did not always offer their films to UCI, particularly where only a few prints had been released. In the case of *Enchanted April* and *Riff Raff*, only one or two prints were available at any time. UCI was offered neither film on first release but played both at later dates at a limited number of its cinemas.

7.233. Responding to the BFI's comments on control of the UK market (see paragraphs 6.98 to 6.100), MGM Cinemas did not accept that, in terms of shares of box office receipts, the UK was dominated by the US film industry to a far greater extent than other large Western European countries. In Germany, for example, US films accounted for a similar percentage of box office receipts as in the UK. To the extent that there were differences, this might largely be the result of the lack of a common language which made the UK closer culturally to the USA than other European countries.

7.234. Rank acknowledged that revenue from UK cinemas would, in part, have gone back to those who invested in the films shown. But it did not accept the BFI's argument that this had starved British production of capital. Indeed, productions such as *Shadowlands* and *The Remains of the Day* were financed by US capital. Rank did not accept that the evidence supported the BFI's assertion that the UK was dominated by the US film industry to a far greater extent than other large Western European countries.

7.235. UCI said that its investment of £100 million in cinemas reflected the extent of investment into, rather than a drain on revenues away from, the UK. It did not remit its profits overseas via any kind of fee or commission arrangement and to date it had not made any dividend payments to its immediate parent company.

7.236. Responding to the BFI's comments on restriction of choice and diversity (see paragraphs 6.102 and 6.103), MGM Cinemas said that the industry had been concentrating into fewer cinemas each with more screens. This had resulted in more commercial films receiving a wider airing; consumers therefore had more opportunity to see them. More films were readily available to its customers. MGM Cinemas also rejected what it described as the assumption that the arthouse audience wished to see films in the same cinemas as the mainstream cinema-goer. Arthouse cinemas were generally inferior in quality to the multiplex cinemas but were still preferred by arthouse audiences. MGM Cinemas had concluded that mainstream and arthouse audiences were not compatible. The exhibition of British films was being marginalized because the bulk of British films fell into the arthouse category.

7.237. Rank did not accept the BFI's assertion that fewer films were being shown on more screens. It said that the number of films released in the UK rose from 278 in 1981 to 390 in 1990; the 1992 figure was in the region of 320. It appeared that the public had access in 1990 to 113 more new films than it did in 1981 and in 1992 to 42 more new films than in 1981. There were both more screens and more films.

7.238. Nor did Rank accept the BFI's claim that the exhibition of British films was being marginalized. It told us that Odeon monitored carefully the demand for films from each of its audiences and there had been no feedback requesting a greater number of UK- or European-produced films. Rank suggested that because the BFI specialized in exhibiting arthouse and UK-produced films, it was unlikely that its audiences were representative of mainstream commercial cinemas, or reflected the demands or tastes of such audiences. Furthermore, the BFI's funding structure was such that it was isolated from the financial pressures under which commercial exhibitors operated.

7.239. UCI queried how accurately the BFI reflected cinema-goers' views given that its comments were based on conversations with audiences around the country rather than a proper audience survey. It said that it did show British films which catered for popular tastes and responded further to consumer tastes via its Director's Chair programme.

7.240. Responding to the BFI's comments on admission charges (see paragraph 6.104), MGM Cinemas contested the BFI's assertion that UK cinema tickets were among the most expensive in the world. When the VAT element of the ticket price was excluded, the UK was not one of the most expensive places. The average seat price in the UK was slightly lower than the EC average.

7.241. Rank said that UK cinema admission prices compared favourably with those in other Western European countries. Exhibitors charged premium prices in a small number of auditoria in the West End which exhibited newly-released films and provided audiences with a high degree of comfort. Such cinemas were all within a short distance by public transport of much cheaper cinemas and most of their audiences had made a special journey to visit them. The admission prices reflected the high quality of service and amenity and the high level of demand; they were not anti-competitive.

7.242. UCI said that average admission charges in the UK in 1992 were just below the EC average and well below the average in Western European countries. It was wrong to suggest that UK admission prices were disproportionately high.

7.243. Regarding the BFI's comments on the expression of British culture (see paragraphs 6.105 and 6.106), MGM Cinemas said that film was no doubt a significant medium for the expression of British culture. But this included film for exhibition in other media, particularly television. It believed the importance of cinema exhibition should be placed in context. A made-for-television film, *One Foot in the Algarve*, was viewed by 22 million people in the UK in 1993. By contrast, the most popular feature film in recent times, *Jurassic Park*, was seen by approximately 14 million. The average person in the UK spent 26 hours a week watching television and only four hours a year watching films in cinemas. The cultural impact of television was, therefore, of far greater importance. According to MGM Cinemas, the only barriers to entry derived from commercial and investment decisions. There were no other barriers to commercial product.

7.244. Rank argued that there was extensive opportunity to express the cultural identity of the nation through television as well as through cinema films. But if the public were not willing to pay to see such expressions in the cinema, they could not be coerced into doing so.

Mr Michael Henry

7.245. Responding to Mr Henry's comments on collusion among distributors (see paragraphs 6.121 to 6.123), MGM Cinemas disputed the claim that members of the MPAA directly or indirectly fixed prices for exhibitors and distributors. Claims of price fixing were not, it argued, borne out by the facts; MGM Cinemas was constantly being challenged by distributors over the fact that it paid virtually the lowest film hire in the world. Nor was Mr Henry's assertion that MGM/Cannon was able to fix prices borne out by the facts. The average seat price of MGM Cinemas had been the same as the other circuits, notwithstanding its preponderance of cinemas in London where rentals and prices were higher. It also ignored the fact that MGM Inc had not produced a really commercially successful film for almost ten years. It further ignored the fact that, for some time, there had been no direct link between MGM Cinemas and the MGM studio.

7.246. Rank told us that Odeon did not regard its trading conditions as being directly or indirectly fixed by the MPAA corporations.

7.247. Responding to Mr Henry's comments on location of control (see paragraphs 6.127 and 6.128), MGM Cinemas argued that because the MPAA corporations made creative decisions in the USA, UK-based producers and distributors should have an advantage in this country, being closer to the market and local tastes.

7.248. Responding to Mr Henry's comments on the withdrawal of financing from British film production (see paragraphs 6.131 to 6.133), MGM Cinemas described as farcical the argument that the withdrawal of US financing for British films was an abuse of dominant position; US financing of production activity in the UK was of US rather than British films. The unfavourable exchange rate and the emergence of cheaper alternatives in other countries were the main reasons for the transfer of such financing. As the exchange rate had become more favourable, there was increased activity in the UK industry. Rank said that Mr Henry ignored the US financing of films such as *The Remains of the Day* and *Shadowlands*. Several films, including *Frankenstein* and *War of the Buttons*, which were financed from the USA were currently being made in this country.