

9 Views of the other distributors in the complex monopoly group

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Introduction

9.1. In the previous chapter we summarized the views of the leading distributors. In this chapter we summarize the views of the other distributors who are members of the complex monopoly group: Entertainment, First Independent, Guild and Rank.¹ We first summarize their observations on the market and then their comments on the various matters raised in our issues letter of 14 February 1994.

Observations on the market

9.2. Entertainment told us that the major development in the market over the last ten years had been the introduction of multiplex cinemas. It said that access to those cinemas was still dominated by the US studios.

¹ Rank 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. In this chapter we summarize Rank's evidence relating to RFD exclusively. All the remainder of Rank's evidence was summarized in Chapter 7, to which cross-reference is made where appropriate.

9.3. Entertainment told us that the output deals of the Hollywood studios under which they agreed to sell their films to B SkyB often included provisions which linked the deal to the budget for the UK theatrical release of the films. Thus the deal might be triggered, or the payment by B SkyB increased, if spending on prints and advertising for the UK theatrical release exceeded certain figures. Such provisions, Entertainment argued, gave distributors an artificial incentive to increase release budgets and encouraged the Hollywood studios to take up screen time in cinemas with films for which there might not be any consumer demand.

9.4. First Independent said that film distribution in the UK was still dominated by the major US studios, with US films taking an average of 80 per cent of box office receipts over recent years. Referring to the increase in cinema admissions since 1984, it said that approximately half of all admissions were now accounted for by multiplex cinemas. It considered that the advent of the multiplex cinemas had helped the smaller independent exhibitors. Any film released with over 200 prints would, in an area served by a multiplex cinema, a circuit cinema (belonging to MGM Cinemas or Odeon) and an independent, be given to all three simultaneously. The video boom of the 1980s had helped to fund the distribution of films, with profits being ploughed back into the production of films. Now, however, the dynamics of the video rental industry had changed substantially and it could not support theatrical losses. Each medium now had to stand on its own.

9.5. Guild referred to the substantial investment made by the operators of multiplex cinemas. It said that these greatly improved venues were in the public interest. Rank's views on the nature of the market are summarized in paragraph 7.3.

Views on complex monopoly situation

9.6. We asked these distributors 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, along with the leading distributors and exhibitors, engaged in one or more of the practices listed in paragraph 7.11.

9.7. Entertainment disputed its inclusion in the complex monopoly group saying that it was the only truly independent company in the list, it was privately owned and it did not own cinemas, nor did it have control over exhibitors. First Independent made no comment on our provisional finding. Guild said it did not agree that a complex monopoly existed but presented no arguments in support of this view.

9.8. Rank submitted that RFD 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's detailed comments on each of the practices are summarized in paragraph 7.14.

Alignment

9.9. We asked the distributors 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 possible remedies detailed in paragraph 7.16.

9.10. Entertainment did not consider that it was aligned to either of the two main circuits. More of its films were released through Odeon than through MGM Cinemas because Odeon had a greater number of available release dates. Entertainment distinguished between release and non-release films. With the former, it sought exhibition dates, in the first instance, from Odeon. If enough prints were available, it offered to supply the whole Odeon circuit. In the case of a non-release film, it sought exhibition dates from Odeon, MGM Cinemas and other exhibitors more or less at the same time. The decision as to whether a film would be a release or non-release film was largely a marketing decision which took into account the form of advertising to be used. If Entertainment intended to arrange television advertising, it would release the film as widely as possible. If the film required careful nurturing, it would be released on a very selective basis. On occasions it might wish to release a film in key cities only, supporting it with

national press or a national poster campaign targeted at those cities. Since the beginning of 1992, it had had one full MGM Cinemas release.

9.11. Entertainment said that the practice of alignment was originally instigated by the US studios and enabled them to reserve release dates for the entire year. Independent distributors were denied access to screens on certain dates and the market was made less responsive to consumer preferences. Alignment enabled the leading distributors to reserve dates with the two main circuit exhibitors (MGM Cinemas and Odeon), many months in advance, simply by putting forward a title which might relate to a film in the planning stage; if the film did not materialize the date was kept for another film from the same distributor. Entertainment said that the independent distributors were unable to reserve screen space in this way and that the practice prejudiced their efforts to get films screened. [

Details omitted. See note on page iv.

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9.12. First Independent told us that it was not aligned to either of the two main circuits. It did not believe alignment had any adverse effects. It pointed out that neither MGM Cinemas nor Odeon had a cinema in every location. A successful film would, it said, play in almost every town that had a cinema. Guild did not accept that alignment operated against the public interest. It said that it had a flexible policy and offered films to both MGM Cinemas and to Odeon. Rank's views on alignment and the possible remedies are summarized in paragraphs 7.24 to 7.40.

Exclusivity and refusal to supply

9.13. The distributors 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 possible remedies detailed in paragraph 7.46.

9.14. Entertainment agreed that exclusivity and refusal to supply restricted consumer choice, though not unduly. It said that there were numerous reasons which might warrant a refusal to supply. For example, unreliable booking by an exhibitor and concerns regarding the security of the print could be relevant. New entry and investment in the exhibition sector were not being deterred, as was evidenced by the fact that cinemas were being built and admissions had increased.

9.15. Entertainment said that a distributor had to make a commercial decision whether to supply a print to an exhibitor and whether exclusivity should be granted. Several factors played a part in making such a decision. For example, certain films required a slow build-up and could be damaged if released too quickly or too widely. It was counter-productive to play too many cinemas in the same area. To do so would split the audience between the cinemas and thereby reduce the distributor's share of the box office returns. This would, it suggested, be an argument for not supplying every exhibitor even if they were to guarantee a minimum return to the distributor.

9.16. Entertainment said that creditworthiness was the most important factor to be taken into consideration when deciding whether to supply a print. Timely payment to the distributor was also important. Entertainment said that it often took a very long time to collect its share of box office receipts from independent exhibitors. Indeed, they might choose not to pay until they knew whether Entertainment was offering another film which they wanted to book. Entertainment argued that it would be harmful if independent exhibitors were to be supplied with films when it was clear that this would be unprofitable for the distributor. If it had to book films on an uneconomic basis, Entertainment would be forced to withdraw from the market.

9.17. First Independent said that distributors were in business to make a profit. The costs of prints and advertising were an extremely important factor which had to be taken into account when developing the release pattern for a film. It attempted to recoup these costs from the cinemas which had booked the film.

First Independent did not accept that these practices were harmful to independent exhibitors; nor did it accept that they deterred new entry and investment in the exhibition sector.

9.18. First Independent opposed the suggestion that exclusivity might be prohibited. If every cinema in a given area was able to play the same film at the same time, the public's choice of films would be reduced. Regarding the suggestion that distributors might be required to supply prints, it said that distributors and exhibitors would never agree over profit margins. It said that creditworthiness was the most important consideration when deciding which exhibitors to supply with prints.

9.19. Guild did not believe occasional exclusivity acted against the public interest. On the contrary, it could enhance the profile of a film that might otherwise disappear quickly if exhibited widely. Exclusivity did not deter new entry and investment in the exhibition sector. Many independent exhibitors were expanding their businesses by acquiring additional cinemas and adding new screens.

9.20. Guild said that it could provide evidence of numerous exhibitors who declined offers of prints on release. It wondered whether this practice had adverse effects. It said that it was not a public service industry. All its activities were directed towards achieving profit within the limits of good business conduct.

9.21. Rank said that, given the high level of risk inherent in film distribution and the low level of return achieved by distributors in respect of many films, it was vital that distributors were free to seek to maximize the returns by means of granting exclusivity and selecting outlets, as appropriate. Without such freedom, the risks involved in production and distribution would be disproportionate and the level of investment would be likely to be reduced, limiting further the range of films available to the public. The ability to control the distribution of prints in order to maximize returns was fundamental to efficient distribution. The right to refuse to supply a print was essential.

9.22. Rank argued that the grant of exclusive rights constituted a recognized and acceptable means of exploiting intellectual property rights in many fields. There was no justification for restricting this right in respect of cinematic exhibition. Such a restriction would limit the efficiency and competitiveness of the means of distribution and would be against the public interest. Prohibition of contractual exclusivity would deprive exhibitors of the ability to reduce the risks associated with showing films and could be expected to reduce the rental that they were able or willing to pay.

9.23. Rank also argued that requiring distributors to supply prints to all exhibitors, subject only to covering costs and a profit margin and considerations of creditworthiness, would involve compulsory licences of doubtful legality under EC law, in the light of Council Directive 92/100, and under the Berne Convention. Rank's other views on these issues are summarized in paragraphs 7.55 to 7.59.

Minimum exhibition periods and restrictions on screen use

9.24. We asked the distributors whether the imposition 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 to comment on the possible remedies detailed in paragraph 7.69.

9.25. Guild, First Independent and RFD did not feel that they were denied access to screens as a result of the minimum exhibition periods negotiated by the leading distributors.

9.26. Entertainment was concerned that the leading distributors were able to obtain longer minimum exhibition periods than were the independent distributors. Whereas the leading distributors usually negotiated a two-week booking plus holdover, the independents could only negotiate one week plus holdover. It believed that, apart from special cases where a distributor only had a limited opportunity to recoup its advertising and print costs, there should be a level playing field between the leading distributors and the independents. It also argued that the leading distributors were able to impose unreasonable

minimum exhibition times on the exhibition circuits, thereby exacerbating the problems faced by independent distributors and restricting consumer choice.

9.27. Entertainment said that because the exhibitors did not contribute towards the cost of prints and advertising, distributors felt that it would be financial suicide to agree to reduce the playing time of a major film. Agreeing that one exhibitor could reduce the playing time on a film would weaken the distributor's ability to reject similar requests from other exhibitors.

9.28. First Independent told us that the extended minimum exhibition periods required by the leading distributors had never affected its ability to place its films with MGM Cinemas, Odeon or the multiplex operators. The effect on exhibitors would depend entirely on which films were being shown at any particular time. It did not believe these practices would restrict consumer choice.

9.29. First Independent said that the public always complained that films came and went too quickly. Films should, it said, continue to be shown for as long as the box office takings warranted. It agreed with the suggestion that exhibitors should have the right to show other films, as long as adequate compensation was paid to the distributor who lost a showing on its contracted booking.

9.30. Guild said that it was not denied access to screens either by minimum exhibition periods or by restrictions on screen use. Nor did it accept that these practices harmed exhibitors by reducing their revenues. For its own part, Guild always sought a minimum exhibition period of seven days; for some films it sought a longer period. Where agreement on the minimum exhibition period had been reached and box office returns were disappointing, consideration would be given to revising the minimum period.

9.31. Guild said that no evidence was available about the effects on consumer choice. It did not agree that minimum exhibition periods should be abolished or restricted. Each film should be allowed to maximize its potential for both exhibitor and distributor. Allowing exhibitors to show other films was, it said, a matter for negotiation. Guild said that if exhibitors were not profitable, distributors would also suffer. Distributors would not engage in practices which were harmful to their profitability.

9.32. Rank said that it was the strength of the film which determined a distributor's ability to negotiate an extended exhibition period. It described the usual exhibition period as seven days plus holdover. It told us that agreement on the duration of the exhibition period and the frequency of exhibition was a necessary part of the contract between distributor and exhibitor. The distributor needed to know what obligations the exhibitor was prepared to accept in return for receiving a print. Given the cost of prints and the limitations on their availability, the distributor needed to ensure that each print was used as effectively as possible. If an exhibitor was prepared to show a film only part time, the distributor would prefer to place the print with another exhibitor who was willing to make better use of it. It would be against the public interest if exhibitors were free to take prints and not use them fully, or if distributors were precluded from seeking to place prints where they would be used most effectively.

9.33. Rank told us that, where a film was not of exceptional potential, distributors would wish to maximize the use made of the available prints by transferring them between cinemas. Given the risks involved in distribution and the relative infrequency of exceptional films, it was of the greatest importance that distributors were able to exploit such films to the full. This was particularly important for independent distributors who would have acquired such films at a high price and would inevitably incur significant release costs. Thus, in Rank's view, the ability to seek minimum exhibition periods, and to specify frequency of screen use, was valuable to the smaller distributors. It was unlikely to restrict their access to screens since there were few films capable of supporting an extended exhibition period.

9.34. Rank did not accept that consumer choice was restricted by these practices. The ability of a distributor to seek an extended exhibition period on the basis of the quality of the film reflected the strength of consumer demand and preference. There was, it said, no justification for restricting minimum exhibition periods. Any restriction would prevent distributors from achieving the optimum distribution pattern for their films and securing the most efficient use of prints. If distributors were unable to direct prints to those exhibitors who were prepared to commit to minimum periods, distribution costs would be likely to increase, to the ultimate detriment of consumers.

9.35. Rank also argued that any reduction in the number of times that a film was shown in a week would be likely to lead to a reduction in the distributor's income and would increase risks. It would also reduce the efficiency with which prints were used and render less effective the distributor's national marketing campaign, thus increasing overall costs. Those prints that were used by exhibitors for reduced frequency showings would be unlikely to be available elsewhere during the week in question. Thus, public access to prints would be reduced. Rank's other comments on these issues are summarized in paragraphs 7.75 and 7.76.

Influence or control over admission prices

9.36. We asked the distributors whether the influence or control exercised over exhibitors' admission prices by distributors caused those charges to be higher than they otherwise would have been.

9.37. Entertainment said that income generated from concession sales, games machines and screen advertising could enable an exhibitor to lower its admission prices. This would adversely affect the distributor whose revenue was solely derived from its share of the box office takings. First Independent did not accept that the influence or control exercised over exhibitors' admission prices by distributors caused those charges to be higher than they otherwise would have been. Guild said that it had never been involved in price fixing, nor did it exercise controls which had that effect.

9.38. In Rank's view, a distributor had a legitimate interest in the admission prices charged by exhibitors and it was entirely reasonable that the distributor should have some influence over them. However, the extent of that influence was limited, extending only to giving or withholding consent to a reduction in prices during the licence period for a film supplied by the distributor in question. The distributor could not require an exhibitor to increase admission prices. Rank's other views on this issue are summarized in paragraphs 7.86 and 7.87.

SFD *Standard Conditions*

9.39. We asked the distributors 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 possible remedies detailed in paragraph 7.90.

9.40. Entertainment said that, without the *Standard Conditions*, distributors would have to negotiate a fresh contract for each film to be exhibited. This would create an impossible and chaotic situation in which to conduct business. It believed independent distributors could be put out of business as the leading distributors attempted to obtain more favourable trading conditions from the exhibitors.

9.41. First Independent did not accept that 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*. It said that there had to be some logic to buying and selling films. The *Standard Conditions* were a matter of common sense.

9.42. Guild said that the observance of the *Standard Conditions* did not have anti-competitive effects. Terms and conditions were negotiated on a film-by-film basis. Withdrawal of the *Standard Conditions* would, it suggested, create total confusion with thousands of separate negotiations each year. It would be ludicrous to depart from the *Standard Conditions*. Rank's views on the *Standard Conditions* are summarized in paragraph 7.94.

Vertical links to US production companies

9.43. The distributors 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.

9.44. Entertainment said that US-linked distributors and exhibitors tended to be more reliant upon films from US producers and rarely supported independent producers from outside North America. They generally only acquired such films for distribution when completed. The exhibitors would give dates for commercial British films only if they did not clash with dates sought by an aligned studio.

9.45. First Independent said that the majority of the films handled by the leading distributors had been produced by independent producers. It believed exhibitors would negotiate on a film-by-film basis at arm's length from their parent companies. It did not accept that the films of independent producers outside North America were unable to obtain screen space. It had released *City Slickers* through Odeon, not MGM Cinemas, and had had no difficulty making bookings (see paragraph 9.11).

9.46. Guild had no comments to make. Rank told us that RFD was not unreasonably excluded from screens at cinemas outside Odeon. Its other views on vertical links are summarized in paragraphs 7.103 and 7.104.

Overseas decision-making

9.47. We asked the distributors whether overseas-based decision-making made the market less responsive to consumer preferences than if decisions were taken in the UK.

9.48. Entertainment and Guild had no comments to make. First Independent said that the public decided which films it wanted to see. Many films that succeeded in the UK failed elsewhere and vice versa. Rank's views are summarized in paragraph 7.113.

Domination of the UK markets by US films

9.49. The distributors were asked whether the influence exercised by US companies in the UK markets for the 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.

9.50. Entertainment was concerned about the output deals between the major US studios and BSkyB. It claimed that they subsidized the wide release of inferior US product which the studios were able to force on the exhibition circuits due to the strength of the alignment system. The deals were, it said, used by most distributors to underwrite the size of their theatrical releases, both in terms of print numbers and advertising budgets. They had, therefore, a distorting effect on the exhibition of films in the UK. Entertainment also believed that the economic and cultural effects of US dominance were extremely harmful both in terms of employment and the impact on cultural identity.

9.51. First Independent said that the UK public had been brought up on a diet of US films. In its opinion, this was not harmful. It suggested that UK producers had to stop complaining about lack of finance and Government assistance and get on with producing commercially attractive films that the public wanted to see. Guild did not believe that the influence exercised by US companies caused the UK markets to be dominated by US films. Nor did it believe that the economic and cultural effects were harmful. Rank's views on the domination of the markets are summarized in paragraphs 7.119 and 7.120.

Co-ordination of release dates

9.52. We asked the distributors whether, by co-ordinating the release dates of their films, the leading distributors reduced consumers' choice of first-release films at any given time and crowded out other distributors.

9.53. Entertainment told us that it did not co-ordinate release dates with other distributors. It chose what it felt to be the most effective dates for its films. It reiterated the point that the leading distributors reserved dates throughout the year, thereby denying release dates to the independents (see paragraph 9.11). First Independent denied that the leading distributors, by co-ordinating the release dates of their

films, reduced consumers' choice of first-release films at any given time. It said that when too many films were released in the same week, there could be an adverse effect on the availability of press coverage for its films. Guild told us that the co-ordination of release dates did not reduce consumers' choice of first-release films. It had not experienced any problems in arranging release patterns in competition with other distributors.

9.54. Rank denied that distributors co-ordinated release dates. Rather, individual distributors used publicly available information about release dates when deciding upon their own dates. It was sensible commercial conduct for any producer or distributor, when considering the launch of a new product, to consider all the factors that might influence demand at any time. A distributor who failed to do so would be ignoring commercial prudence. The need to book screens and develop a lengthy pre-release marketing campaign meant that release dates were announced well in advance. In addition, the fact that most films were first released in the USA meant that generally they were heralded in the UK well before release. Even before US release, details of films in production were likely to be known. Rank's other views on co-ordination of release dates are summarized in paragraphs 7.127 and 7.128.

Exercise of market power by leading distributors

9.55. The distributors were asked whether, by exercising market power over independent exhibitors to persuade them to screen films which they would not otherwise choose, the leading distributors 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.

9.56. Entertainment did not believe, as an independent distributor, it was able to exercise market power over independent exhibitors. It said that the excessive power of the US studios might cause exhibitors to book films which it might not be in their economic interests to take. The effect on independent producers depended on how commercial their films were. When an independently-produced film proved to be more successful than a film released by a leading distributor, exhibitors would make more screen space available.

9.57. First Independent said that it had yet to find an independent exhibitor who would play a film that it did not want. A few would only play the films of the leading distributors. It did not accept that the revenue of independent exhibitors was reduced. If an independently-produced film was commercially attractive and opened well at the box office, screen space would be available. Guild did not believe distributors exercised market power over independent exhibitors to persuade them to screen films which they would not otherwise choose.

9.58. Rank said that RFD had no material market power, nor did it seek to persuade exhibitors to screen films which they would not otherwise choose, save in the sense that it tried to persuade them to choose its film rather than one of the many others that would be available. RFD was generally, though not always, able to secure a showing for its films. Any difficulty experienced in persuading independent exhibitors to take its films was attributable to the fact that the exhibitors had access to other films which they believed had greater commercial potential, rather than to pressure from leading distributors to take films which the exhibitors would not otherwise have wanted. Rank's other views on the exercise of market power by the leading distributors are summarized in paragraph 7.135.

Exercise of market power by leading exhibitors

9.59. We asked the distributors whether the leading exhibitors, by exercising market power over distributors to secure preferences over other exhibitors, harmed those exhibitors by reducing their access to popular films, particularly on first release.

9.60. Entertainment told us that the distributor's decision was based solely on a commercial assessment of the release plan most suited to the film in question. First Independent said that independent exhibitors always wanted to know which of the circuits would be showing a film. With the exception of the BFI cinemas, they would never book a film that had not first been booked either by MGM Cinemas or Odeon.

This allowed them to assess the potential of a film based on the opening figures at either MGM Cinemas or Odeon.

9.61. Guild said that it actively sought exhibitors in order to maximize the market for its films. In so doing, it did not reduce other exhibitors' access to the market. Certain exhibitors would not take a film unless it was showing nearby in a leading exhibitor's cinema. Rank's views on the exercise of market power by leading exhibitors are summarized in paragraph 7.138.

Code of practice and associated machinery

9.62. The distributors were asked for their views 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.

9.63. Entertainment believed the SFD had adequate procedures for handling disputes between exhibitors and distributors. It also said that direct discussions between distributor and exhibitor worked well. First Independent said that the suggested code of practice and associated machinery might work for the leading distributors. It would, however, cause problems for independent distributors as prints and advertising costs often had to be agreed between distributor and producer before release.

9.64. Guild said that the suggestion might have the appearance of an efficient means of resolving disputes but would be impracticable to put into operation. It opposed the establishment of any 'quangos' when the means of resolving disputes already existed. Rank's views on the code of practice and associated machinery are summarized in paragraph 7.143.

Prohibiting contracts based on box office receipts

9.65. We asked the distributors 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.

9.66. Entertainment said that distributors received a smaller share of box office receipts in the UK than they did in other territories. Given that distribution was such a risky business, it believed it would be fairer if the terms were more in line with those achieved elsewhere. It was right, however, that distributors should receive a share of the box office receipts. It was the distributor who supplied the film and who had to account to the producer. First Independent said that there was no alternative to the existing system. Producers would never agree to a flat rate system. Guild made no comment on this suggestion.

9.67. Rank said that it was the prospect of participating in a box office success that justified the risk incurred by the producer and distributor. If the distributor was unable to charge the exhibitor by reference to box office receipts, it could neither participate in the success of the film nor pass on the benefits of such success to the producer. The distributor would have to charge the exhibitor on some other, presumably flat rate, basis unrelated to box office receipts, determined before the success of the film was known. The impracticality of negotiating a fee in such circumstances was, in Rank's view, self-evident. Rank's other views on this subject are summarized in paragraph 7.150.

Distributors to commit revenues to independently-produced films

9.68. The distributors were asked to comment on the possibility that they 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.

9.69. Entertainment did not believe this would be a good idea. While it was very supportive of British films, it did not think that any company should be forced to invest in a film that might not be commercial. First Independent opposed this suggestion. It would be another burden which independent distributors would have to bear. Furthermore, producers and sales agents would probably not accept the suggestion. Guild also opposed this suggestion.

9.70. Rank said that the business of an independent distributor, such as RFD, was not particularly profitable. An obligation of the sort suggested could have significant implications for its continuing viability. RFD invested in films from independent producers. Its decision in each case was based on commercial, rather than chauvinistic, criteria. Rank's other views are summarized in paragraph 7.158.

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

9.71. We asked the distributors to comment on the possibility that they might be required to distribute, and exhibitors to exhibit, a specified proportion of films with a predominantly European theme or other cultural content.

9.72. Entertainment believed exhibitors should be encouraged to book British films but believed it would be very difficult to legislate for such a proposal. First Independent said that this would be a retrograde step. When previously tried, the net result was poor-quality films which were produced to meet the requirements of the quota. Guild said that it was already involved in distributing films with a European theme. It cited *Germinal* as an example. Rank's views are summarized in paragraphs 7.165 and 7.166.

Divestment or reduction of interests in exhibition

9.73. The distributors 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.

9.74. Entertainment felt that, given the investment being put into exhibition and production, it would be unwise to restrict vertically integrated companies, so long as they did not use that integration to give them an unfair advantage in placing films. First Independent could not see that the proposal would be advantageous. Guild was not sure that the proposal was in the public interest. Rank's views are summarized in paragraphs 7.177 and 7.178.

Termination of the UIP joint venture

9.75. We asked the distributors to comment on the possibility that the UIP joint venture in the distribution of films to cinemas in the UK might be terminated.

9.76. Entertainment told us that the fact that UIP was a joint venture gave it muscle in the market. First Independent said that the effect would be that the UIP partners would distribute their own films, thereby creating more jobs. Given that the partners required a return on their investments, it might be best to leave UIP alone. Guild said that it was not qualified to comment. Rank's views are summarized in paragraph 7.184.

Prohibition on distribution joint ventures

9.77. The distributors 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.

9.78. Entertainment believed this should be examined on a case-by-case basis. First Independent had no comment to make. Guild's reaction was that it might help to increase competition. Rank's views are summarized in paragraph 7.190.

Termination of the UCI joint venture

9.79. We asked the distributors to comment on the possibility that the UCI joint venture in cinema exhibition in the UK might be terminated.

9.80. Entertainment said that UCI had done a lot for the exhibition business by investing a large amount in new cinemas. It would be foolish to terminate a growing venture. First Independent did not agree that the UCI joint venture should be terminated. It said that UCI was the only company with the courage to invest in UK exhibition when the industry was in decline. The UK exhibitors had stood on the sidelines. Neither Guild nor Rank expressed a view.

Complaints

9.81. We asked the distributors 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. Other responses by Rank to complaints are summarized in paragraphs 7.202, 7.203, 7.205 and 7.206, 7.209, 7.211, 7.213, 7.218 and 7.219, 7.223, 7.226 to 7.228, 7.231, 7.234, 7.237 and 7.238, 7.241, 7.244, 7.246 and 7.248.

The CEA

9.82. Responding to the CEA's complaint about the sharing of information (see paragraph 6.16), Rank told us that RFD did not share commercially sensitive information about members of the CEA with other members of the SFD. It did, from time to time, check break figures with other distributors.

Exhibitors

9.83. Responding to the complaint by Richmond Filmhouse (see paragraph 6.23), Entertainment denied that Odeon had put any pressure on it with regard to the booking of *Much Ado About Nothing*. The Odeon cinema in Richmond was better situated than the Richmond Filmhouse and was frequented by a mainstream audience. Entertainment believed that for some films, particularly *Much Ado About Nothing*, the Odeon would attract a far wider audience than would the Richmond Filmhouse, which it described as an arthouse cinema.

9.84. Regarding the complaint about the unfair treatment of exhibitors and its effect on investment (see paragraph 6.24), Rank said that RFD could not reasonably be accused of treating independent exhibitors unfairly. All multiplex owners, whoever they were, received access to a wide variety of films from most distributors. This lent no support to the suggestion that investment in multiplex cinemas had been deterred.

9.85. Rank denied that RFD operated a key town priority system (see paragraph 6.26). While RFD would usually seek to arrange the exhibition of its films in the major cities as soon after release as possible, this did not mean that it would not consider requests from cinemas in towns nearby.

9.86. Rank did not know on what basis, or by what measure, Richmond Filmhouse claimed that the diversity of choice for films in the UK was not as wide as it could be (see paragraph 6.34). 44 per cent of the films released in the UK in 1992 were of non-US origin. Although US films accounted for about 86 per cent of total box office revenue, this was well within the range typical of other European countries,

notwithstanding that the UK might, as an English language country, have been expected to have a greater US penetration. Although RFD distributed US films along with films from other countries, and Odeon was a major cinema operator, Rank said that it had no vested interest when deciding which films to show. Odeon did not give priority to films distributed by RFD.

9.87. Rank rejected Mr Henshaw's claim that prints were allocated to independent exhibitors on a random basis (see paragraph 6.35), saying that there was no random element in planning the release of a film. It was uncertain what was meant by the consideration given to multiplex cinemas (see paragraph 6.37). RFD treated multiplex cinemas in essentially the same way that it treated other cinemas to which it regularly supplied films on first release. It treated Odeon multiplex cinemas in the same way as it treated other multiplex cinemas.

PACT

9.88. Responding to PACT's comments on bias against independently-produced UK and European films (see paragraphs 6.53 to 6.55), Rank said RFD did not consider that a narrow release led to restricted marketing and advertising budgets. Rather, it was the restricted budgets or the limited appeal of a film which usually limited the number of prints.

9.89. RFD did not accept that non-US films which were distributed by companies not vertically integrated with the major US studios were, by virtue of that fact, less attractive to UK audiences (see paragraph 6.54). If that were so, RFD would operate under a permanent handicap.

9.90. Regarding PACT's comment that distributors contributed very little finance to the making of films in the UK (see paragraph 6.55), Rank told us that RFD had contributed to the financing of 12 UK-made films in the last ten years.

9.91. Responding to PACT's comments on reduction in choice (see paragraphs 6.56 and 6.57), Rank agreed that many films generated most of their revenue in the first four weeks after release. It did not, however, agree that a film's potential revenue was exhausted after that time. RFD had, on a number of occasions, opened a film in a limited number of cinemas around the country, after which it was released in stages over a period of time. *Reservoir Dogs* was still being shown successfully after 14 months.

9.92. Regarding PACT's comments on internal transfer pricing (see paragraph 6.59), Rank said the suggestion that, for vertically integrated companies, the exhibitor's share of box office returns was simply a matter of internal transfer pricing was 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. The links between the two did not reduce competition, nor were opportunities for other exhibitors to take RFD's films in any way limited.

The BFI

9.93. Responding to the BFI's statements on the current state of the British film industry (see paragraphs 6.93 and 6.94), Rank said that RFD would participate in the financing and distribution of any film which it regarded as commercially viable. The criteria that it applied in deciding the commercial potential of a film might not, however, be the same as the criteria used by the BFI in deciding what was a good film. Rank also told us that barriers to entry were low (see paragraph 6.106) as was evidenced by the level of output and critical acclaim of a number of low-budget British producers.

Michael Henry

9.94. Responding to Mr Henry's comments, Rank said that, so far as RFD and Odeon were concerned, they did not regard their trading conditions as being directly or indirectly fixed by the MPAA corporations (see paragraph 6.123). In referring to the withdrawal of US financing from British cinema film production (see paragraph 6.131), Mr Henry ignored films such as *The Remains of the Day* and *Shadowlands*.