Developments in the cinema distribution and exhibition industry

Report to the
Australian Competition and Consumer Commission

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Summary

In March 1997 the Australian Competition and Consumer Commission (ACCC) requested a report on the developments in the cinema distribution and exhibition industries which may be having an impact on competition in the industry.

The request followed a substantial increase in the number of complaints received by the ACCC from cinema exhibition interests. These complaints related largely to access to first release and conditions of film hire imposed by film distributors on small exhibitors.

Exhibition industry structure

The Australian cinema exhibition industry is dominated by three large companies, Hoyts, Greater Union and Village. These three groups and their subsidiaries control around 50 per cent of Australia's cinema screens and generate around 70 per cent of total box office revenue.

The Australian exhibition sector is undergoing a major expansion with rapid growth in the number of screens and continued strong growth in attendances. Box office revenues grew from less then $300 million in 1990 to in excess of $500 million by 1996. Admissions increased over the same period from 43 million to 74 million.

The substantial growth in demand appears to be linked to the expansion in the number of screens. Between 1985 and 1995 the number of screens increased from 742 to 1137 and screens per million population increased from 44 to 64. This screen rate per million population compares to 106 per million in the USA leading many exhibitors and other industry participants to claim that there are still opportunities for further expansion.

Between 1985 and 1995 annual cinema admissions per head increased from 1.9 to 3.9 in Australia. In the USA admissions per head have stabilised at around 5 per year, perhaps suggesting that admissions may continue to increase in Australia.

Much of the expansion in exhibition has come from the establishment of multiplex and, more recently, megaplex cinemas in the suburbs of major cities. For the purposes of this report, a multiplex is considered to be a cinema complex containing six or more screens and a megaplex as a site containing 16 or more screens.

Since 1988 suburban box office shares have increased from 30 per cent to 52 per cent of total Australian box office revenue. Much of this revenue growth has come from the establishment of multiplex suburban cinemas, usually owned by the major exhibitors. Until the establishment of the multiplex sites, suburban cinemas were largely operated by small privately owned groups. The major exhibitors tended to concentrate their interests in the central business districts (CBDs) of the major cities. The move by the major exhibitors back into suburban exhibition after abandoning the suburbs in the 1960s and 1970 has led to a substantial increase in competition in suburban markets.

The major exhibitors, Hoyts, Greater Union and Village dominate CBD exhibition. Apart from the Wallis group in Adelaide (in which Greater Union has some site ownership interests), the major exhibitors control almost every CBD screen in the State capitals. In the suburbs of the major cities the majors also have a significant market presence. In Sydney and Melbourne the major exhibitors have a suburban market share in excess of 75 per cent.

The dominance of the three major exhibitors is greater than the market share statistics would indicate. Competition between the majors is significantly reduced by an arrangement between two of the three leading exhibitors. Greater Union and Village have established a joint venture to operate suburban multiplex cinemas, effectively reducing the competition between the major exhibitors.

The Greater Union/Village joint venture (with a third partner, the US based Warner Bros film company) eliminates any potential competition between these two exhibition groups. Greater Union's parent Amalgamated Holdings is also a significant shareholder in the Village group. Greater Union, Village and associated subsidiaries have a box office market share of 50 per cent, giving the group substantial power in film exhibition.

Distribution market structure

Australia's distribution market structure is also highly concentrated. Distribution is dominated by four firms. The largest is Roadshow Film Distributors, a company jointly owned by Greater Union and Village. Roadshow has provided theatrical distribution in Australia for the US studios Warner Bros and Disney and their associated companies for many years, and also distributes independently produced films from Australian and overseas producers. It has recently been announced that Roadshow will cease to have access to the Disney product from 1999.

The second largest distributor is United International Pictures (UIP), an overseas based joint venture between the US studios Paramount, Universal and MGM/UA, which distributes the films of its parents.

Roadshow and UIP often have a combined market share in excess of 60 per cent in any given year. Distributor market share varies considerably from year to year according to the success of the films distributed. However, the aggregation of the product of three of the seven major US studios in UIP and the aggregation of two of the largest studios, Warner Bros and Disney, in Roadshow, has given these two distributors a market share and a stability in that market share considerably greater than their competitors.

The other major distributors are Twentieth Century Fox and Columbia TriStar. These two distributors distribute locally the films of their US parents. Until 1996 Twentieth Century Fox and Columbia TriStar operated as a single distribution unit.

The market share of the four major distributors has been in excess of 90 per cent in most years. The remainder is made of a number of small Australian distributors who acquire Australian rights to independently produced foreign and local films. A number of these smaller distributors have recently formed the Australian Independent Distributors Association (AIDA) to lobby on behalf of the small distributors.

Barriers to entry

Barriers to the entry of new distributors appear low. However, distribution of non mainstream US films appears risky and profits are reportedly low. There is a high turnover of firms in this sector and no new distributor has grown to a size sufficient to challenge the market strength of the four major distributors.

Market power

The market power of any film distributor lies in the control over film copyright. A major distributor or a small independent distributor may have some degree of market power at any particular point in time depending on who has the copyright to the latest blockbuster. However, the strength of the major distributors comes from their continued access to a stream of major films which will generate successful financial performance for the distributor and exhibitor. It is the continuity of highly profitable films which gives the major distributors an advantage over their competitors.

Distributors earn their revenues by taking a percentage of the cinema box office revenue. This percentage may vary from week to week and from film to film, although there is a high degree of uniformity between distributors in the film rentals charged exhibitors. Distributors do not set the price charged by exhibitors and thus seek some certainty of return on their investment by attempting to control the other main variables which influence box office revenue, generally via a film's 'policy', a set of conditions which determine the number of session, sessions times, and the number of weeks which cinemas show a title.

Distributors do not necessarily maximise their revenue by placing a print of a film in every cinema. In some instances additional prints of a film will add more to costs than to revenues by splitting audiences across cinemas rather than expanding demand. It is the refusal by distributors to supply prints to certain cinemas and the terms and conditions of supply which generate most of the complaints to the ACCC.

Distributor conduct

Over the past few years the number of complaints from small exhibitors about the market conduct of some of the distributors has increased significantly. Numerous complaints have been received about the conduct of Roadshow and UIP in particular. The general thrust of these complaints is that the policies of the two major distributors advantage the major exhibitors, Hoyts, Greater Union and Village.

Small independent privately owned exhibitors receive the same terms from distributors as do the major exhibitors. Unlike many other industries, the largest firms in the market do not get quantity discounts and film hire rates do not advantage the major over the smaller exhibitors.

Many small privately owned exhibitors take films 'day and date' with the major exhibitors. That is, they take a film on the day that it opens at the major sites across the country. They get the film at the same time and on the same terms as the major exhibitors. The major concern of these exhibitors is the distributors' season requirements for the film.

Exhibitors with only a few screens sometimes find it difficult to meet the session requirements imposed by the distributor of a film. For example, a distributor may require four sessions per day for a number of weeks. When each major distributor makes the same requirements it may not be possible for an exhibitor with only a few screens to show all the films that they want to show.

Some independent exhibitors claim that their continued viability is threatened by not being able to show all the films being shown by a competing multiplex. Some exhibitors with only a few screens would like to show the same range of titles as might be available at a multiplex but offer fewer sessions of each film. Alternatively, they might wish to show a title for a smaller number of weeks than the competing multiplex.

Small exhibitors claim that lengthy minimum seasons enable distributors to force exhibitors to continue to show titles long after their box office appeal has ended. Distributors argue that they revise their policies if demand is less than expected. However, small exhibitors appear to be unable to renegotiate minimum session policies where a film is not working unless a major exhibitor renegotiates the policy. Small exhibitors fear retaliation if they do not maintain session requirements even in those instances where the film is performing poorly.

The two leading distributors have considerable power in their negotiations with the small exhibitors with regard to session and season requirements. Roadshow and UIP, through their access to the output of a number of major studios, have had a considerable competitive advantage. No small exhibitor would be likely to ignore the distributor's session policy on a title for fear that future supply would be jeopardised. It is unlikely that any exhibitor in a competitive market situation would survive in the long term without access to the product of UIP and Roadshow (while Roadshow distributes for both Warner Bros and Disney).

This report has considered the arguments for some form of mandatory session policy which would limit the length of the season which the distributor could demand. However, the introduction of compulsory limits on distributor's policy with regard to session times and number of weeks is not recommended at this time.

Such compulsory limits would be likely to change distributors' behaviour in a way which may be detrimental to exhibitors and consumers. For example, distributors may decide to raise rentals, reduce the number of copies of first run prints and bunch release dates into the most popular cinema-going weeks of the year (generally school holidays). Any of these changes may make exhibitors and consumers worse off.

Refusal to supply

Refusal to supply is a major concern. A decision by either of the two largest distributors to refuse to supply first run to an exhibitor may lead to the destruction of that exhibitor's business where that exhibitor is in a competitive market. At times the decision by a distributor not to supply may be justified on the grounds that the exhibition site is of inferior quality or that there is insufficient demand to justify a first release print.

However, in the course of this investigation there were numerous allegations that distributors favour the major exhibitors in providing first release prints. In particular, it has been claimed that Roadshow favours its own exhibition related interests and at times refuses supply to sites which compete with Greater Union and Village related sites. This inquiry examined in detail various allegations against distributors. While much of the material is confidential and not available in this report, there is no evidence that Roadshow's behaviour breached the Trade Practices Act.

Nevertheless, the vertical links between Roadshow in distribution and Greater Union and Village in exhibition may provide advantages which strengthen the already significant market power of the Greater Union/Village exhibition interests.

One particular advantage the vertically integrated group has over its exhibition competitors is guaranteed access to supply. Many small exhibitors complain that when they propose to undertake new investment, distributors will not guarantee to supply. This sometimes makes borrowing difficult as lenders see independent exhibitors as more risky. It would seem that the vertical links between Roadshow and the Greater Union/Village joint venture give that group a considerable advantage in securing sites as they are likely to have guaranteed supply from Roadshow. Further, given that the Greater Union/Village group controls half the Australian exhibition market, all distributors would likely supply this group even in those cases where the new exhibition site results in excess capacity.

There appears to be a high degree of mistrust between many independent exhibitors and some film distributors. In confidential material supplied to the ACCC, this report examined many examples of alleged unfair treatment of small exhibitors by major film distributors. In no circumstance was there evidence that the alleged behaviour breached the Trade Practices Act. In most instances the behaviour of the distributor could be explained as profit maximising behaviour. While such behaviour may have damaged the profitability of a particular exhibitor, it did not necessarily lead to a substantial lessening of competition.

Nevertheless, it is the view of this report that there is a need for improved information flows and communications processes in the industry. Many small exhibitors believe that they are being discriminated against and access to information may help to resolve the numerous complaints the ACCC receives. It may also assist parties should they decide to take private action under the Trade Practices Act.

Recommendations

Complaints

It is recommended that the ACCC seek assistance from the exhibition and distribution sectors of the industry to establish an industry code of conduct and a dispute settling mechanism. Many of the complaints to the ACCC would best be handled, in the first instance, by an industry-based mechanism. If satisfactory resolution were not possible, complainants would still be able to bring the matter to the ACCC.

The ACCC would need to monitor the code and dispute settling mechanism. It is recommended that a review of the procedures be conducted after 12 months of operation.

Market power

The high levels of concentration in distribution and exhibition and the vertical links between Roadshow and the Greater Union/Village joint venture may have detrimental effects on conduct in the industry. There is considerable imbalance in the bargaining strength of parties which may lead to less than competitive outcomes. The ability of some distributors to impose excessive session and season requirements may be enhanced by the market power generated by UIP's access to the output of three major US studios, and Roadshow's access to the output of two of the largest US studios. The recent announcement by Disney that it will establish its own distribution company independent of Roadshow will likely reduce Roadshow's market power.

The Greater Union/Village exhibition joint venture is an ongoing arrangement between two otherwise competitors and has led to a considerable decrease in potential competition in exhibition.

Information flows

The market power of the major exhibitors and their long standing alignments with particular major distributors may limit the opportunities for successful entry by local distributors. It may also give the major exhibitors substantial negotiating positions in their dealings with the distributors. It is recommended that mechanisms be established within the code of conduct which improve information flows so that small distributors and exhibitors have access to industry statistics currently available to major participants in the industry. Such information may improve the bargaining ability of the smaller participants in the market.

Future action

It is recommended that the ACCC consider further investigation of the structural conditions in distribution and exhibition, particularly the joint venture arrangements between competitors, and alignments between major exhibitors and distributors that enhance anti-competitive opportunities, if the code of conduct and dispute settling mechanism prove to be ineffective.

1. Introduction

In March 1997 the Australian Competition and Consumer Commission (ACCC) requested a report on developments in the motion picture industry.

The ACCC requested that the report focus on:

- the impact that rationalisation may be having on competition;
- the structure, operation, participants and nature of the industry;
- the impact that restrictions placed by distributors on exhibitors are having on competition;
- developing trends in the ownership and management of exhibitor sites and their implications for competition;
- the development of large cinema complexes with capacity exceeding present and future demand, the rationale supporting this conduct, and its effect on competition; and
- the potential and likelihood of new entrants to the industry or, alternatively, the likelihood of growth of minor industry participants so as to challenge the 'majors'.

A confidential report was submitted to the ACCC in September 1997. This is an edited version of that report.

In the first months of this inquiry, contact was made with a large number of independent exhibitors in Queensland, New South Wales, Victoria, South Australia, and Western Australia and organisations which represent exhibitors interests in particular forums. The Entertainment Industry Employers Association (EIEA) contacted its cinema exhibition members and facilitated their participation.

Major exhibitors including Greater Union, Hoyts and Village were also invited to address the issues raised by the ACCC. These exhibitors and a new entrant into the exhibition industry, Reading, provided fact and opinion helpful in the preparation of this report.

The views of Australia's principal film distributors were also sought. Three of the four major distributors responded to invitations to discuss issues raised by independent exhibitors, while the fourth provided a written submission via its legal firm.

A number of independent Australian distributors were also contacted and information relevant to this inquiry's concerns was discussed with interested participants.

The views of cinema exhibitors, film distribution and government regulatory agencies in the UK were also sought. The UK experience is particularly valuable given that the UK has recently introduced restrictions on the behaviour of distributors in response to concerns similar to those expressed by some parties in Australia. Discussions with UK industry representatives were undertaken in July 1997.

Submissions were received from a range of sources within the industry. Many of these submissions were provided on a confidential basis. Submissions continued to be provided until the end of investigations in late August 1997.

In Chapter 2 the structure of exhibition and distribution is examined. Chapter 3 examines distribution behaviour in the context of issues and concerns raised by exhibitors. In Chapter 4 the changes in exhibition and the impact that such changes are having on competition, especially competition from independent exhibitors, are examined. Chapter 5 considers the UK experience and the likely impact in Australia of adopting procedures similar to those of the UK. Chapter 6 provides conclusions and recommendations.

2. Industry structure

This chapter describes the distribution and exhibition of films for cinema release in Australia. It briefly examines the supply of films, the major firms involved in the distribution and exhibition of films, and the definition of the relevant market.

Market size

Table 2.1 shows the number of films released for theatrical exhibition in Australia in recent years.

Table 2.1. Theatrical releases in Australia: country of origin

Year	Australia	USA	UK	Other	Total
1985	17	136	24	17	194
1986	31	149	25	30	235
1987	30	167	18	44	259
1988	37	167	29	47	280
1989	35	162	36	54	287
1990	23	151	22	58	254
1991	22	146	24	47	239
1992	27	136	26	38	227
1993	22	171	13	52	258
1994	26	153	22	51	252
1995	14	171	23	45	253

Source: *AFC Get the Picture (various issues), Screen Digest, Jan 1997*

Over the decade to 1995 the major source of films for theatrical release in Australia was the USA. On average between 60 and 65 per cent of all films released today are of American origin. Australian made films are generally the second most important source, usually accounting for around 10 per cent of all films released theatrically.

In terms of revenue, films made in the USA have generally held in excess of 80 per cent of the market for at least the past 60 years. Over the past 20 years Australian films' share of the box office has varied considerably, ranging from a high of 21 per cent in 1982 to a low of 3 per cent in 1990. Australian films have had an average box office share of around 9 per cent over the past 20 years.

Market definition

In its terms of reference the ACCC requested analysis of the 'motion picture industry'. This report concentrates therefore on the supply of films for exhibition in cinemas, and this delineates the relevant market for the purposes of this report.

At various times cinema exhibitors have claimed that they face considerable competition from the video and television industries. In a proposed merger between two cinema exhibition groups in New Zealand, the Commerce Commission rejected the notion that cinema, video and television were within the same market. It considered that cinemas provide an identifiable package of features which distinguishes them from other forms of entertainment. Cinemas provide a unique, out of home entertainment experience with quality sound and picture and provide the latest releases; features unavailable in supposed alternatives.

There appears to be no substantiating empirical data to suggest that home video or television is a substitute for cinema. In its recent work on pay TV markets, the ACCC has rejected arguments that cinema and video are sufficiently close substitutes for pay TV to be considered as part of the same market.

It may be that rather than cinema and video being substitutes, there is some degree of complementarity between the two. The recent expansion of the cinema market (see table 2.4) may be related to the growth of the video rental market. The long term effect of video appears to have been an increase in the growth of cinema admissions as consumer interest in cinema is enhanced by regular viewing of movies on video. Certainly, the success of many sequels in the cinema appears to be related to the widespread popularity of their predecessor on video.

A second issue of market definition is whether the geographic dimension of the market should be considered to be national or local. Exhibitors would likely see their market as being local and in many instances local geographic markets may be described as monopoly markets, in that there is no strong local competition. Most urban exhibitors typically claim that consumers will travel no more than around 20 minutes to a suburban cinema complex so they sometimes describe their market as a geographic market within around 10 km of their site.

The major film distributors' behaviour would indicate that they see markets from both a national and a local level. Most films in Australia are now given a national release. That is, a particular title is released in a large number of cinemas across the country on the same day. Distributors will typically take national television and magazine advertising to promote a particular title. Distributors' terms and conditions for film hire tend to be standard across Australia (with some distinction made between city and country locations).

In their decisions as to when to release a title and how many prints to supply, distributors consider the national behaviour of their competitors. For example, the wide release of a popular film by one distributor may cause another distributor to delay its popular release.

Distributors also consider local markets. The decision as to how many prints to make available is often related to aspects of a particular geographic market. For example, distributors may decide to supply no more than one print of a title in a country town which has competing exhibitors on the grounds that the local market is too small to justify a second print.

Ancillary markets

Ancillary markets are of increasing importance to movie copyright holders. The rapid growth of the video market, both hire and sell through (generally videos sold by mass merchandisers direct to consumers) provides a major additional source of revenue. Television sales to free-to-air broadcasters have also been a source of revenue for many years. The introduction of pay TV into Australia has provided another major revenue stream. Over the next few years advances in technology such as digitalisation are likely to lead to further revenue expansion via services such as video on demand, pay per view, and digital video disc (DVD).

It is difficult to estimate the value of the various markets. Different companies sometimes own different rights in different geographic and ancillary markets. However, the trade publication, *Screen Digest* in 1994 estimated that of the US studios' total worldwide revenue, 48 per cent came from the video market, 23 per cent from the theatrical market, 11 per cent from free-to-air television, 8 per cent from pay television, and the remaining from other markets such as pay per view and laser discs. In the US domestic market, video income is approximately 50 per cent of revenue and cinema around 25 per cent. In Australia, the video market is worth around twice that of the cinema market. Nevertheless it is success at the cinema which determines the value of any film in the ancillary markets.

Changes in demand and supply over time

Australians are among the world's most regular cinema goers. Table 2.2 compares cinema admissions across countries.

Table 2.2. Cinema admissions: annual average per head

	1980	1985	1990	1995
India	6.5	6.4	5.7	8.8
Singapore	16.8	8.9	7.6	6.4
USA	4.5	4.4	5.0	4.8
Iceland	11.4	5.9	4.9	4.5
Hong Kong	11.9	10.6	4.8	4.1
New Zealand	3.2	2.8	1.7	4.1
Australia	2.6	1.9	2.6	3.9
Spain	4.7	2.6	2.0	2.3
Switzerland	3.3	2.5	2.4	2.3
France	3.2	3.2	2.2	2.2
UK	1.8	1.3	1.7	2.0
Japan	1.4	1.3	1.2	1.0

Source: *Screen Digest, September 1995*

Annual cinema admissions in Australia grew throughout the 1970s and early 1980s but slumped in the mid 1980s as video rental expanded rapidly. However in the late 1980s demand was back to where it was at the beginning of the decade and continued to rise rapidly in the 1990s.

The growth in demand is probably attributable largely to the growth in the number of screens. It would appear that as the number of screens has expanded, especially via the growth of multiplex cinemas in the suburbs of major cities, admissions have increased.

It may be that there still exists some scope for further supply expansion. Table 2.3 indicates that Australia may still be under screened as compared to a number of other countries.

Table 2.3. Screens per million population

	1985	1990	1995
Sweden	139.5	134.9	132.9
USA	88.4	94.4	105.3
France	93.4	80.1	79.2
New Zealand	46.2	40.9	73.7
Switzerland	67.5	61.0	67.7
Australia	44.4	50.4	64.2

Source: *Screen Digest,* August 1997

In a number of the top markets there has been a large expansion in the number of screens per million of population. By the standards of a number of countries there are still considerable opportunities for cinema expansion in Australia before a saturation point is reached. Such a conclusion is based of course on the continued growth of demand.

Australian cinema demand remains strong after recovering from the video induced slump of the mid 1980s. Table 2.4 shows recent box office gross and total admissions. While the box office figures vary from those published in trade magazines, all revenue statistics and admissions indicate substantial growth over the past decade.

Table 2.4. Box office revenue and admissions: Australia 1980–1996

Year	Box office ($m)	Admissions (m)
1980	154	38.6
1984	156	28.9
1988	224	37.4
1990	285	43.0
1992	334	47.2
1994	476	68.1
1995	502	69.9
1996	537	74.0

Source: *Get the Picture, 4th edition, Screen Digest, August 1997*

Box office revenues remain strong while total admissions continue to grow. However, there have been substantial shifts in the sources of demand.

During the 1990s there has been a rapid expansion of demand in the suburbs of the major cities. Table 2.5 shows the breakup of revenue on a geographic basis over recent years. The most significant feature is the major expansion of suburban revenues at the expense of traditional CBD sites.

Table 2.5. Australian box office percentage by location

Year	Cities	Suburbs	Major provincial/other
1988	39	30	31
1990	32	44	24
1992	24	53	23
1994	18	51	31
1995	16	52	32

Source: *AFC Get the Picture, 4th edition, p.145*

The growth of the suburban market is a consequence of the huge expansion in the number of multiplex cinemas in the suburbs. Easy parking, proximity to retail and entertainment outlets in major shopping centres, and newer, technologically improved cinemas have attracted consumers to the suburbs. As table 2.6 shows, the number of screens in the cities has actually fallen over the past decade while the number of suburban screens has more than doubled. The table also shows that while there has been a major expansion in the number of screens there are still fewer theatres than a decade ago. This indicates that many smaller single screen sites have closed over the decade.

Table 2.6. Number of cinema screens and theatres in Australia

Year	City screens	Suburban screens	Country screens	Non commercial	Total screens	Total theatres
1985	128	167	406	41	742	573
1987	111	158	330	46	645	506
1989	116	250	345	61	772	501
1991	118	339	373	55	885	522
1993	118	382	385	55	940	515
1995	113	500	469	55	1137	555

Sources: *AFC Get the Picture, Screen Digest*

Exhibition market structure

Cinema exhibition in Australia is dominated by three companies, The Greater Union Group (GU), the Village Roadshow Group (VR) and Hoyts Cinemas (Hoyts). The fourth largest exhibitor in Australia, Birch, Carroll and Coyle (BCC), concentrated largely in Queensland, is a wholly owned subsidiary of Greater Union. Market share data is shown at table 2.7.

Table 2.7. Australian exhibitor market shares

	Number of screens[1]	Share of screens[1] %	Share of box office[2] %
Hoyts	155	14	21
Greater Union	131	11	18
Village Roadshow	117	10	11
GU/VR/Warner Bros	148	13	20
Others	600	52	30
Total	1151	100	100

Source*: Screen Digest*

1. As at June 1996
2. Year to June 30 1996

The extent of market concentration is greater than that revealed by the table. Greater Union is a major shareholder in the Village group while a joint venture between Greater Union, Village Roadshow and the US studio, Warner Bros, operates a large number of cinemas (mainly suburban multiplexes). The GU/VR/Warner Bros joint venture was established in the late 1980s to develop non CBD multiplexes. Some independent cinemas are also linked to the major exhibitors. The Palace Cinema group has ownership links to Village while Dendy is to join Hoyts in a joint venture.

In the past exhibitors' market shares fluctuated considerably from year to year. This was because their CBD cinemas are allied to particular distributors. For example Paramount and Universal films will generally screen only at Greater Union CBD cinemas while Columbia and Twentieth Century Fox release largely through Hoyts CBD sites. Thus, when exhibitors earned a large share of their revenue from CBD sites, their market shares varied according to the relative success of the films supplied by their allied distributors.

Multiplex cinemas with a large number of screens are at present supplied by all distributors. Consequently as more than 50 per cent of total box office revenue comes from multiplexes, the market shares of each exhibitor will depend less on the market success of allied distributors. It is likely that exhibition market shares will become more stable and depend largely on the rate of growth in establishing new multiplex sites.

Table 2.7 also shows that the major exhibitors control a large proportion of the most successful screens. While having only 48 per cent of the screens, they have 70 per cent of the total revenue (box office). Independent exhibitors operate more than 50 per cent of the screens but such screens take only 30 per cent of the total box office revenue.

The market share data outlined in table 2.7 are national figures. However, the market share of each of the major exhibitors can vary significantly across regions. Given that cinemas attract consumers from a fairly small geographic area, concentration can be high in particular areas. At present there is not a great deal of overlap in the catchment areas of many of the multiplex sites and in some cities the two major multiplex operators, Hoyts and the Greater Union/Village joint venture, have distinct geographic separation, eliminating most competition between themselves.

Independent cinemas are those which are not operated by, or franchised to, the major cinema groups. They are often owner-operated, and may be less modern than those of the majors, although there are many modern and new independent sites. Many of the independents have one or two screens, and because their cinemas are often older, they have a higher number of seats per screen than the multiplexes of the major exhibitors. In 1990 independents had 404 screens while by 1997 this number had increased 50 per cent to more than 600.

A number of independent privately owned cinemas are very modern and of a standard at least equal and in some instances superior to those of the major exhibitors. Such cinemas are sometimes in areas where the majors have no competing cinemas, although the expansion of the major exhibition groups will likely lead to the situation where few privately owned operators are without competition, at least in major population centres.

Some independents are second release sites, that is cinemas which get films after they have played the first release cinemas. Many of the other independents are non mainstream cinemas, which specialise in independent and foreign language films.

Mainstream independent exhibitors (those showing mass appeal films) are now almost completely confined to the suburbs of the State capital cities and to smaller cities and country areas. Of the State capitals, only in Adelaide does an independent (the Wallis group) have a CBD first release mainstream cinema (and Greater Union has a shareholding in the site).

Independent mainstream cinemas in the suburbs of the major cities are typically smaller in terms of the number of screens than competing multiplexes of the major exhibitors. The major exhibitors have tended to establish suburban cinema complexes at major regional shopping centres while the independents have typically operated free standing sites.

Statistics provided from the Motion Picture Distributors' Association of Australia (MPDAA) indicate a buoyant and thriving independent cinema exhibition sector. In a growing market independent exhibitors have increased their share of the total box office from 7 per cent in 1989 to 27 per cent in 1996. Table 2.8 shows box office performance of independents from 1989 to 1996.

The table indicates that independents have been very successful in recent years. While some of this growth may be attributable to growth of non mainstream cinema such as provided by Dendy, Palace, Kino and others (some of whom have links to one or other of the major exhibitors), growth has also occurred from mainstream independents who have invested in more screens and better quality cinemas.

Table 2.8. Annual box office performance (independents)

Year	% of total	Box office independents ($m)	Box office total ($m)
1989	7	$17.9	$241.7
1990	10	$27.8	$270.2
1991	20	$63.3	$314.4
1992	22	$71.2	$322.6
1993	25	$93.1	$369.4
1994	26	$117.6	$444.9
1995	27	$127.9	$470.3
1996	27	$135.7	$502.6

Source: *MPDAA*

The distinction between mainstream and 'arthouse' or specialised sites has blurred in recent years, especially as the major exhibitors have begun to exhibit non mainstream titles, and operate 'arthouse' screens within their complexes. However, table 2.8 indicates that independent exhibition has expanded significantly during the past decade.

Table 2.9 on page 11 provides a geographic breakdown of major and independent exhibitors' market shares over the period 1990–1996.

Table 2.9 shows that the major exhibitors dominate the State capital cities, with the exception of South Australia where the independent Wallis operates city sites in partnership with Greater Union.

There has been a rapid expansion in suburban exhibition (see table 2.5). While some exhibitors (such as Palace) are not totally independent of the major exhibitors, the table shows that independent exhibitors have increased their presence in this rapidly growing market. In NSW suburban independent exhibition had almost double the market share in 1996 than it had in 1990. In most other States the sector's share of suburban box office revenue is at significant levels.

Independent exhibitors now enjoy greater access to first run films. They are major beneficiaries of distributors' policies to increase the number of first release prints into the market.

Distribution market structure

Distribution is dominated by four large firms: Roadshow Distributors (Roadshow), United International Pictures (UIP), Columbia TriStar Film Distributors (Columbia), and Twentieth Century Fox Film Distributors (Fox).

Table 2.9. Market share by location (percentage)

	City		Suburban		Country	
	Majors	Independents	Majors	Independents	Majors	Independents
NSW						
1990	97	3	87	13	-	-
1991	92	8	75	25	49	51
1992	93	7	73	27	41	59
1993	95	5	71	29	40	60
1994	94	6	74	26	40	60
1995	94	6	76	24	39	61
1996	97	3	75	25	45	55
Victoria						
1990	97	3	92	8	-	-
1991	93	7	88	12	67	33
1992	95	5	84	16	63	37
1993	93	7	83	17	50	50
1994	94	6	83	17	50	50
1995	94	6	67	23	45	55
1996	93	7	82	18	54	46
Queensland						
1990	99	1	58	42	-	-
1991	96	4	62	38	85	15
1992	97	3	69	31	85	15
1993	98	2	68	32	83	17
1994	95	5	68	32	86	14
1995	94	6	66	34	85	15
1996	95	5	64	36	84	16
South Aust[1]						
1990	61	39	15	85	-	-
1991	54	46	22	78	-	100
1992	51	49	39	61	-	100
1993	51	49	33	67	-	100
1994	52	48	33	67	-	100
1995	46	54	33	67	-	100
1996	50	50	32	68	-	100
Western Aust						
1990	99	1	56	44	-	-
1991	93	7	64	36	-	100
1992	88	12	63	37	-	100
1993	86	14	53	47	-	100
1994	84	16	43	57	-	100
1995	94	6	49	51	-	100
1996	93	7	50	50	-	100

Source: *MPDAA*

1. South Australian figures list the Wallis Cinema Group as Independent.

Roadshow

Roadshow is 50 per cent owned by the Village cinema group and 50 per cent by Greater Union. Roadshow is an Australian owned distributor with no direct links to the major US production studios. It distributes films for cinema exhibition almost exclusively in Australasia.

Roadshow has agreements with two of the major US studios, Warner Bros and Disney, to distribute their films theatrically in Australia. Under these arrangements all Warner Bros and Disney titles distributed in Australia are handled by Roadshow. This includes the films of subsidiary Warner Bros and Disney companies. In February 1998 Disney announced that it would establish its own distribution company in Australia from 1999.

Roadshow typically decides release patterns, advertising budgets and promotion strategies in conjunction with Warner Bros and Disney for their respective titles. It provides theatrical distribution only. Warner Bros and Disney have their own Australian video and television distribution businesses.

Roadshow also acquires independently produced films for distribution in Australia, typically all Australian rights, that is cinema distribution, video, pay TV and free-to-air TV rights.

UIP

UIP is an overseas based joint venture between three US studios for the distribution of films for cinema (and for ancillary markets in certain countries) outside North America. The three studios, Paramount, Universal and MGM/UA supply UIP with the films to distribute to cinemas, with the profits being returned to each production house on a per film basis, after UIP's costs have been recovered. UIP distributes very few films from sources other than its production house partners.

Columbia TriStar, Twentieth Century Fox

Until October 1996, Columbia TriStar and Twentieth Century Fox operated Australia's third major film distributor. The joint venture distributed the films of the Sony owned Columbia and TriStar, and the News Corporation owned Twentieth Century Fox. Under arrangements similar to those of UIP the joint venture shared distribution operating expenses, while costs and box office revenue for the theatrical release of each film remained specific to the partner owning the copyright of the film. Columbia TriStar and Twentieth Century Fox have recently abandoned their joint venture and now operate independently. Each company handles their own film and TV program distribution and handles the sale of their own product in ancillary markets such as pay TV and video.

Independent distributors

The four major distributors distribute mainstream product, much of which is supplied directly from affiliated US studios. There are also a number of other distributors operating in Australia. Most are small and specialise in 'arthouse' or non mainstream films. The distinction between the two types of film is subjective but arthouse films generally appeal to a narrower, specialised audience. In recent years the major distributors have also increased their distribution of non mainstream films.

Among the larger of the distributors not affiliated to any major production studio are REP Distribution, Ronin and Newvision. These companies tend to specialise in non studio product. A recent entrant into the market is Polygram which plans to become a major distributor of mainstream and arthouse products.

Arthouse distribution is significantly different to mainstream distribution. Arthouse films are often produced by independent film companies established for the purpose of financing and producing a single film. The potential box office is often too small to warrant large advertising expenditure. Consequently they may be released in what is known as platform release where they open in a small number of screens and rely on word of mouth to build audiences. In contrast, mainstream films may open with as many as 250 prints across the country on a given day.

Market share

Film distribution is highly concentrated. The four largest distributors, UIP, Roadshow, Columbia TriStar and Twentieth Century Fox, generally hold in excess of 90 per cent of the Australian market. The Motion Picture Distributors Association of Australia (MPDAA) supplies an annual list of the top 50 films. They represent around 75 per cent of the total box office in any given year, so a reasonable estimate can be made from such statistics.

Table 2.10. Distribution market share (percentage)

	1993	1994	1995
Roadshow	52	47	52
UIP	21	27	29
Twentieth Century Fox	10	13	5
Columbia TriStar	16	6	9
Others	1	7	5

Source: *Adapted from AFC Get the Picture 1996, 1995*

Table 2.10 shows that the market share of each of the major distributors is substantial. While the method of calculation probably overstates the majors' market share (due to the fact that they are generally likely to distribute most of the top grossing titles — the mainstream product), Roadshow's market strength is significant.

The announcement by Disney that from 1999 it will no longer use Roadshow to distribute its theatrical product will likely have a significant impact on Roadshow's market share. Given that Roadshow will rely largely on Warner Bros and its related companies, and independent titles acquired for Australia, its market share would be expected to fall substantially in the short term.

Roadshow has supplied recent statistics from the MPDAA. Table 2.11 shows market shares of first release, a more comprehensive base than Table 2.10. The two smaller distributors, Fox and Columbia, have increased their market share at the expense of UIP and Roadshow. While market share may vary substantially from year to year the major distributors allied to the US studios have dominated the market for many years.

Table 2.11. Distributor market shares (percentage)

	1996	1997
Roadshow	31	35
UIP	35	19
Fox	13	15
Columbia TriStar	10	18
Others	10	13

Source: *Roadshow submission*

The separation of Disney from Roadshow in 1999 is likely to have a significant impact on Roadshow's market share. In 1996 and 1997 Disney's market share was 15 per cent. While, as noted previously, distributors' market shares may vary considerably from year to year, based on figures for the past few years it is unlikely that Roadshow's share would be significantly greater than the single studio distributors such as Fox and Columbia TriStar, once Disney is established as an independent distributor.

Barriers to entry

There are several potential barriers to the entry of new film distributors, the most important being access to product and finance. It would be very difficult for a new distributor to gain access to any major US studio output. These production entities typically assign their rights to their own distribution arm.

It may be that the number of studio-affiliated distributors operating in Australia will increase. Disney's decision to establish its own film distribution entity in Australia, and the recent establishment by Polygram of its film distribution company, indicates that large, well financed, international companies connected to film production may have little difficulty in entering the distribution market. Similarly it would not be difficult for the various UIP partners to establish individual distribution entities based on the output of their Paramount, Universal and MGM/UA studio affiliates.

Many independent film producers would prefer to deal with the major distributors. They generally offer worldwide distribution and provide extensive advertising and promotional expenditure. Smaller Australian distributors would have difficulty acquiring mainstream titles. Most small domestic distributors acquire Australian rights to non mainstream independent product and the occasional 'surprise' hit. For example in 1994 when independent distributor share of revenue hit 7 per cent, almost all of this was accounted for by one film, *Four Weddings and a Funeral*, an independently produced UK film which was distributed in Australia by REP.

A number of small independent distributors have nevertheless established themselves over the years, many having a limited life. Entry at small scale appears to be reasonably easy but no new distributor has ever been able to expand to as much as 5 per cent of the market. Many smaller distributors have had 'one off' success which may have boosted their market share for a short time but none have had consistently popular titles of a magnitude sufficient to challenge the grip of the major distributors.

Small independent distributors may at times have difficulties in gaining exhibition outlets. In periods of peak cinema going demand such as school holidays, the major US affiliated distributors typically release their mass appeal movies. Independent distributors may find it difficult to get films of lesser appeal into cinemas during such times. However, all exhibitors, independents and majors, would be likely to take a film from any source if it had significant box office potential. Further, out of peak periods the major exhibitors are often looking for films from any source to fill their multiplex screens.

Overall performance

As noted earlier there has been significant growth in demand and supply in the industry in recent years. The rapid expansion of exhibition (discussed in Chapter 4) has given Australian consumers state of the art cinemas equal to the best in the world. Furthermore, this substantial new investment has not so far led to significant price increases.

Prices have been relatively stable in recent years. At the time of the Prices Surveillance Authority's (PSA) Inquiry into Cinema Prices in 1991, the maximum admission price was $11.50. It is now $12.50. However, as the PSA inquiry noted, most consumers pay less than the maximum price.

Table 2.12 shows average admission price in recent years. Between 1991 and 1997 the average price increased by 52 cents, or 7.5 per cent, indicating a fall in real average admission price over the period.

Table 2.12. Average admission price

Year	Price
1991	$6.95
1992	$7.09
1993	$7.00
1994	$7.00
1995	$7.17
1996	$7.26
1997	$7.47

Source: *AFC, Get the Picture, Screen Digest, Roadshow*

Presently there appears to be vigorous competition in cinema exhibition which is promoting price restraint, technological improvement and increased investment. However, as Chapters 3 and 4 of this report argue, much of that competition has historically come from the independent exhibition sector. In recent years the sector has become concerned that the behaviour of major distributors and exhibitors has been designed to eliminate and/or damage independent exhibition.

The remainder of this report examines the concerns raised by independent exhibitors and considers the likely impact of the changing industry structure on independent exhibition and consumer welfare.

3. Distribution behaviour

Independent exhibitors have raised a number of concerns regarding the behaviour of film distributors. Most relate to arrangements regarding film hire and access to first and later release.

Film rental fees

Film distributors typically charge fees as a percentage of box office revenue rather than a flat fee. The cost of film hire to a cinema is negotiated between the film distributor and the film exhibitor. There are various methods of calculating this cost.

- A monetary figure is agreed between the distributor and the exhibitor which reflects a screen's operating costs. This is sometimes described overseas as the 'nut' method. The agreed screen expenses (the nut) are deducted from the box office takings and the remainder is shared in an agreed way. Under this method the majority of the revenue after the expenses of the cinema goes to the distributor. For extremely popular or 'blockbuster' titles the split could be as high as 90/10 in favour of the distributor during the first few weeks of release.

- An agreed minimum formula. This minimum varies from around 55 per cent of the total box office down to 25 per cent, varying with the number of weeks a film has been playing and geographic location. City cinemas tend to have a higher agreed minimum than cinemas designated by distributors as country. The minimum formula guarantees the distributor some minimum return in those circumstances where a film performs so poorly that it does not generate sufficient revenue to cover cinema operating expenses. In Australia the distribution charge is typically calculated as the greater of the two methods.

- An adjusted formula. For certain titles some distributors adjust percentages up or down according to national box office. For example, with one particular release a distributor informed exhibitors that if the national box office exceeded $10 million, then first week percentages would be adjusted from 50 per cent to 55 per cent.

Film distributors operating in Australia and many other countries claim that average film hire in Australia is among the lowest of the world's major countries. This may be partly due to the highly concentrated nature of exhibition with Hoyts and the Village/Greater Union group strongly resisting increases in film hire charges.

While this chapter's opening paragraphs describe the process by which film hire charges are determined in a general sense, for independent exhibitors there is little negotiation. Independent exhibitors are typically told that a particular title is opening on a particular date and the terms of hire are stated. They appear to have no ability to negotiate film hire terms.

Film hire terms are typically negotiated between a distributor and a major exhibitor and then made available to all exhibitors. Distributors often negotiate first with their traditional customer, the cinema group to which they are allied in CBD sites. Thus Fox and Columbia TriStar will typically negotiate with Hoyts and these terms become the standard for all cinemas. UIP would do the same with Greater Union and Roadshow would typically follow the same approach with Greater Union and Village.

On rare occasions a major exhibitor may not be able to strike a deal with a distributor. It has been alleged that Hoyts' refusal to accept terms on a particular film from Fox-Columbia TriStar a few years ago led to that film's distribution being delayed for a number of months, missing the important Christmas school holiday period. It is also relevant to note that even though this was a major title of considerable appeal, Greater Union or Village did not compete against Hoyts to take the film at their CBD locations.

The apparent lack of competition between the major exhibitors for film titles is probably the major reason why Australian film hire rates are low by world standards. The traditional alignments between the major exhibitors and distributors at the CBD sites result in bilateral negotiations on film hire rather than competition between exhibitors.

The effect is that the negotiating strength of exhibition interests is enhanced. If the exhibitors formed a joint venture to negotiate film hire with distributors it would likely breach the Trade Practices Act. But the process whereby the major exhibitors effectively divide up the negotiating task between them and then receive the benefits of their competitor's negotiations gives a similar outcome.

The system of alignments between distributors and exhibitors is not without benefits. There may be substantial transaction costs in negotiating film hire terms on a film-by-film, site-by-site basis. There may also be more general benefits from the greater security of film supply. Promotion of future releases may be facilitated by the certainty of supply that the alignments offer. A side benefit for exhibitors may be that the negotiations between one distributor and one exhibitor strengthens the exhibition side in the negotiations.

As the terms set then flow on to independent exhibitors it is possible to argue that smaller exhibitors benefit from the bargaining strength of the majors. The film rental terms may be significantly lower than those which small independent exhibitors could negotiate individually.

However, it is possible that independent exhibitors could be disadvantaged by such arrangements. If more flexible hire terms were available, independents might be willing to pay higher terms to secure titles which they considered to be particularly appropriate to their location.

Given that film hire terms negotiated between a distributor and a major exhibitor tend to become the industry wide terms and conditions, it is probable that such terms reflect the circumstances of the major exhibitor negotiating those terms and may disadvantage smaller exhibitors who face different market conditions. For example, smaller exhibitors may benefit from receiving the same film rates as those negotiated by a major exhibitor, but may be disadvantaged by the session requirements negotiated between the distributor and the major exhibitors, which become the standard for all cinemas taking the title.

Film hire typically drops from week to week. An example for a suburban multiplex may be as follows for a major title.

Week 1	55 per cent of box office
Week 2	50 per cent of box office
Week 3	40 per cent of box office
Week 4	30 per cent of box office
Week 5	25 per cent of box office

Thus, by week five the exhibitor is paying only 25 per cent of the gross to the distributor as film rental.

Exhibitors therefore benefit from longer runs. The average percentage film hire for each title will decrease with the length of time the title is shown. However, the changing pattern of distribution will likely reduce the number of weeks any particular title is shown.

Print availability

The rapid expansion of exhibition has led to a large increase in the number of prints made available on opening. Forty years ago a major title might open on as few as two screens, one in the CBD of Sydney and one in Melbourne. It might play for many months before being released to suburban and country cinemas. As recently as 15 years ago there would typically be only one print of a film in each major city on opening day.

Today most films open wide. A major title such as *Independence Day* would open on more than 250 screens across Australia on the same day. The wide release means that films generally earn most of their cinema revenue in a few weeks. The first week may account for as much as one third of total revenue. By the fifth week, when terms are more favourable to exhibitors, many films have little earning capacity left.

One of the major reasons for the wide release is the cost of advertising and promotion. Most releases nowadays use extensive television advertising and rely on promotion via television infotainment programs. The national reach of television broadcasting encourages national film release.

Independent distributors are often forced to go with large scale national distribution by the policies of the major exhibition groups. Independent distributors have claimed that Hoyts and the Greater Union/Village multiplexes often insist that a film play all multiplex sites or none, limiting the opportunity of the distributor to place a title in the most revenue effective locations. It has also been alleged that the major exhibitors insist on exclusivity so that if a small distributor supplies a small exhibitor, the major exhibitors refuse to take the title.

The terms of film hire are generally the same for all first release sites (CBD sites pay a little more, country a little less). Major exhibitors do not receive lower film terms than their smaller rivals. In this industry there appears to be no ‘quantity discounts for bulk buying’. The major exhibitors therefore have no advantage over the smaller in terms of film hire. However, such a system is also highly inflexible and takes little account of differences in demand and cost over location.

Not all exhibitors receive (or request) first run release. Some take films weeks after their initial opening. These exhibitors may operate sites which compete in the same geographic territory as the first run sites, or they may operate sites where there is no local competition, such as small country towns.

Some of these later release sites claim they are paying higher terms and receiving less distributor promotional support than their competitors, which are generally sites owned by the major exhibitors.

Generally, it is the independent exhibitors who own the later release sites, some of whom have made the complaint that distributor terms and conditions are excessive. In some instances distributors treat these later run sites as being first release for that particular location. That is, while a film may have had its national release some weeks before, when it opens in a small town it is a ‘new’ release to that area and the site is charged first week terms (although session and season requirements are usually less than first release requirements).

The terms charged for this later release may not be as high as the initial first week terms, but they are often higher than the terms being paid by a first release site by that time. For example, a title playing in the fifth week at a first release multiplex site may be paying rental terms of 25 per cent. That same title released in the fifth week to a later run site which does not compete with the multiplex may have terms considerably greater than 25 per cent, even though the earning capacity of the film has been severely diminished.

Distributors argue that where a film is new to a geographic area the exhibitor should pay high film rental because the market potential is untapped and demand would probably be at first week levels.

However, exhibitors argue that the benefits of distributor promotion go largely to first release and that consumer interest drops away rapidly with each new promotion. As well, the potential audience diminishes because interest wanes or consumers travel to neighbouring geographic locations to see the film during its initial release.

Not all later release sites are treated as new by distributors. Where distributors decide that a later release site competes with a first release site, the later release site is typically given the same terms as the first release site for that particular week. Thus a multiplex playing a film may be paying 40 per cent film rental in week three. A competing site which waits until week three to take the title may also pay 40 per cent under this arrangement.

While rental rates are the major concern for a small number of exhibitors, the largest number of complaints relate to the requirements by distributors for minimum exhibition periods.

Minimum exhibition periods

Minimum exhibition periods are sometimes described as 'no share' or a film's 'policy'. Distributors typically require that an exhibitor screen a particular title for a minimum number of sessions per day and a minimum number of weeks, e.g. five sessions per day for the first week, 2 day/2 evening for the next two weeks, and 2 day/1 evening for the next two weeks. Given average film length most cinemas can run only five sessions per day per screen. A requirement of five sessions per day is effectively 'no share' as the exhibitor is unable to share the screen with another film.

Most films do not have a first week policy of five sessions per day. A more typical policy is one day plus two evening sessions for the first few weeks. Most distributors will want the high demand evening sessions when they release a major title.

The effect of minimum exhibition periods differs between multiplex operators and those operating only a few screens. Multiplex operators with at least six screens generally have little difficulty in complying with minimum exhibition periods. A film may be successful for say three of its five week season. However, the multiplex exhibitor can take new titles in other screens to compensate for the last two weeks' poorer return. Exhibitors with only a few screens may not have this flexibility.

Independent exhibitors

Many independents have four or fewer screens. Some are twin or single screen houses. The minimum exhibition periods significantly reduce the number of titles they can screen. This disadvantages them in a number of ways.

Exhibitors with few screens claim they are unable to take all the titles they wish to screen because they cannot meet distributor requirements. They argue that they lose the marketing advantage which comes from having all the best titles. Exhibitors believe there is a strong element of habit in movie going; if an exhibitor does not have all major titles within a short space of time it may find that public perception of the cinema is that it is less able to satisfy demand than a competing multiplex. Consequently small exhibitors fear that even when they get delayed access to major titles, audiences will have forgotten that the cinema exists.

A more significant disadvantage occurs in relation to revenue. A small number of titles take the majority of box office revenue in any given year. Minimum exhibition periods reduce the ability of exhibitors with a small number of screens to take all major titles which overlap, thereby reducing their overall revenue. This should not be a problem if the release of major titles is spread across the year. However, where major releases are bunched around particular times of the year, such as school holidays, season policy overlap may cause programming difficulties for small sites.

In small population areas this problem may be particularly severe. For example, many small coastal towns have a resident population which may support only one or two screens. However, in holiday times the population swells and cinema exhibitors want to meet holiday demand, but distribution policies limit the number of titles which can be shown. For example, a distributor may often release a major animated title and require two evening sessions as well as day sessions. Small cinemas find that to accommodate the distributor's demands they cannot show a different title with more appeal to adults in the evening.

Major exhibitors

Such exhibition terms may not disadvantage the major exhibitors. They can afford to play a non performing title in one screen while playing popular adult titles in their other screens. While it may appear that major exhibitors would also be disadvantaged by being required to screen a title for which there is little demand, there are times when there are insufficient new strong titles to fill the screens. Consequently they may be willing to accept distributors' terms. A loss on a required two evening sessions of a children's' title for example, may be compensated for by the profits from adult titles in the remaining screens. Cinema operators with few screens are unable to practise this cross subsidisation.

However, major exhibitors tend to take most titles from all mainstream distributors, even those with little potential. Their CBD sites for example may provide a release for a film which could not be justified on any commercial basis. Many small exhibitors 'pick and choose' so that they do not share the cost of non performing titles. Therefore, the perceived disadvantage to small exhibitors of not being able to show all titles they want on first release is mitigated by not having any obligation to show titles of little appeal.

Session requirements

The minimum requirements for the most successful titles, the so called blockbusters, have not increased substantially over the past decade. But almost all titles now have some minimum requirements for first release.

Distributors' terms are sometimes inappropriate for the location, for example a requirement of two evening sessions. The second evening session would rarely start before 9 pm given average film length. While a second evening session may be in demand in the CBD and suburban cinemas attached to shopping malls, in outer urban and country locations the requirement may be completely inappropriate. Some exhibitors claim that distributors are often unwilling to acknowledge that different locations may benefit from different session requirements.

Distributors argue that because their film rentals are directly related to box office takings they need to know in advance the number of sessions a film will be screened in a week and the number of weeks it will screened. In the absence of minimum exhibition requirements they claim that prints would be less efficiently used, perhaps reducing the box office of the film and therefore reducing returns. In the absence of minimum exhibition requirements a distributor might decide that at certain sites the return would not justify the cost of providing a print and so reduce the number of prints available, thereby disadvantaging exhibitors and consumers.

Nevertheless, the argument that minimum requirements are necessary to justify the costs of prints and advertising to ensure adequate returns to distributors bears further scrutiny. Distributors decide the amount they will spend on promoting a film. It could be argued that it is reasonable to allow the market to then decide whether or not such decisions are appropriate. If a film is in high demand, distributors should have little concern that an exhibitor would not try to maximise box office revenue by showing the film as often as demand requires. On the other hand, if a film performs poorly and a distributor requires sessions in excess of those justified by demand, it may be that the distributor is merely trying to use extended minimum periods to block the release of more competitive product to the detriment of other distributors, exhibitors and consumers.

The minimum exhibition requirements may reduce competition between distributors. A major distributor would not release a title on the same day as its competitor released a major title because there may be insufficient screens. Independent, smaller distributors appear to be particularly disadvantaged because the major distributors tie up holiday periods with long minimum exhibition requirements, thereby blocking smaller firms. Consumer choice is again reduced. However, even in the absence of such exhibition requirements, distributors will still move their release dates according to the perceived box office strength of a rival distributor's film.

In summary, minimum exhibition requirements exceeding the period in which the exhibitor would otherwise have played the film might restrict consumer choice and harm smaller exhibitors. As the smaller exhibitors are forced to forego particular titles they claim their commercial viability is diminished to the advantage of their major exhibitor rivals.

Exclusivity and refusal to supply

As noted previously, the major film distributors have traditional alignments with major exhibitors in releasing films at CBD sites. Thus Fox, Columbia TriStar and United Artists (via UIP) release via Hoyts. Paramount, Universal and MGM release (via UIP) through Greater Union. Roadshow product (Warner Bros, Disney and independent titles) is split between Village and Greater Union.

Until the growth of multiplex sites the traditional alignments were also followed in the suburbs. For example, until recently Hoyts, Village and Greater Union each operated cinemas in Parramatta and the traditional alignments were followed.

The growth of multiplex cinemas with many screens has broken down these alignments. All distributors now supply to all multiplexes regardless of ownership.

Print availability and cost

Complaints about non-availability of prints has been a major concern of many independent exhibitors. These complaints have been examined on a case-by-case basis in appendixes unavailable to this public report. In most instances the complaints relate to a distributor refusing to supply a print on a particular date to a requesting cinema.

It is at a local level where competition between cinemas takes place. Where films are available to one cinema but not another at a particular geographic location, competition will be affected. There have been many allegations that the viability of some cinemas was jeopardised because they were not able to obtain prints of films at the same time as their competitors. It has also been alleged that in some instances exhibitors were forced out of the industry after distributors cut off supply. Such a situation generally occurred after a major exhibitor opened a cinema complex near an independent outlet.

One of the main reasons why a print is not made available to all cinemas who request one is because the cost of additional prints might be high relative to the additional rental income expected to be generated. Distributors have stated that a print is around $2000 (although it is known that Australian distributors widely use lower cost, second-hand reconditioned prints which have been shown in the US).

Even if an exhibitor earned sufficient revenue to cover the cost of print, it may not be in the interests of the distributor to supply. The distributor may not maximise profits by making prints available to all who want them.

Product sharing

The method of film rental means the distributor wears a significant proportion of the risk, especially where house expenses are deducted first. If two prints simply spread the available audience over two cinemas without increasing the number of admissions, then the distributor would be worse off by supplying two prints. The desire by a distributor to avoid splitting the audience is one of the major reasons why they refuse to satisfy all requests.

Roadshow provided an example of the economics of product sharing, i.e. supplying more than one print. Suppose the terms are 50 per cent of gross box office and an 80/20 formula applies. If there is $20 000 gross box office and $20 000 expenses, the 50 per cent minimum is higher than the formula. The distributor would then take $10 000 in film hire. The distributor's return is then reduced by the cost of a print (say $2200) and the contribution to advertising (say $700). Net film hire is $7100. If two cinemas share the title with no increase in ticket sales, the result is a box office gross of $10 000 per location. Gross film hire remains at $10 000 but print costs have doubled to $4400 and advertising is $1400 (in Roadshow's scenario). Net film hire is reduced to $4200.

Roadshow's overall argument is plausible (although doubling of advertising costs seems unlikely) even when the second print generates a small increase in box office revenue. And even if prints are re-conditioned US prints, the additional costs may still exceed the additional revenues.

Roadshow states that it regularly shares product (that is, supplies more than one print of a film) in cities with populations in excess of Wollongong's (220 000) and it has begun sharing in Townsville (population 124 000). Small centres are usually supplied with only one print (known as product splitting) even where there are competing sites. A product split would involve a distributor supplying one title to one site, and a different title to a competing site. The distributors' output is split between competing exhibitors. In the CBDs of the major cities all distributors usually supply only one site via their longstanding CBD alignments.

It would seem, then, that a refusal to supply is not automatically contrary to the public interest. While the effect may be to lessen competition in a particular market between competing cinemas, such lessening may not be substantial. The effect may differ between markets and should be considered on a case by case basis.

Even so, the behaviour of certain distributors in particular geographic markets is a cause for concern when there appears to be an inconsistency in the treatment of cinemas in like circumstances. Roadshow is described by many exhibitors as being inconsistent in its application of distribution rules.

As explained on page 22, it is not necessarily in a distributor's interest to supply competing sites where a market is small. However, independent exhibitors have claimed that Roadshow typically favours its own exhibition related sites in those circumstances. In the small market of Coffs Harbour NSW, the incumbent exhibitor (an owner-operator) was supplied with all product by Roadshow until BCC, a Roadshow affiliate, entered the market. Roadshow subsequently split its releases between the two sites. The other major distributors supplied a print to both sites.

In another example of alleged inconsistent treatment of cinemas, Roadshow allowed its affiliated exhibitors to move a print between sites. For example a Greater Union cinema opened a film on one site and completed its run at another geographic site. Roadshow refused to allow an independent operator which competes with an affiliated exhibitor the same rights. It argues that circumstances differ — when Greater Union moved the print to an alternate site revenues did not fall significantly; but when the independent operator moved the print to its alternate site the decrease in revenue was substantial.

In Townsville, Queensland, the privately-owned Warrina is generally unable to obtain first release product from Roadshow. Roadshow now supplies two Townsville sites, its exhibition affiliate, BCC, and a new entrant, Readings. Other distributors have been willing to supply Warrina on a first release basis.

It is difficult to evaluate allegations of inconsistent treatment between locations. Geographic regions and individual cinemas differ with regard to demand characteristics, cinema quality and cinema location relative to population base. All of these factors influence a distributor's decision to supply print. Nevertheless, while there may be valid explanations for Roadshow's conduct, it does appear that its criteria in supplying prints sometimes differ from those of its competitors, and such criteria appear to benefit Roadshow affiliated exhibitors.

The inconsistent application of distribution arrangements regarding supply have the potential to damage and possibly eliminate competition in particular markets. By deciding to withdraw supply on the grounds that the market is too small to justify an additional print the distributors can quickly force an exhibitor out of business.

A distributor's refusal to supply first release may be sufficient to destroy the viability of a cinema which competes in the same geographic market as a first release site. Films now have a very short shelf life. Most of the revenue is earned within the first four weeks. A cinema which receives a print much past this time when a competitor has already been showing the film may earn little revenue. Further, with video release around six months after initial cinema release, those cinemas well down the line will find that the cinema appeal is largely satiated and they are competing against imminent video release. Small country exhibitors in particular face this problem.

Joint ventures and market power — distributors

The two leading distributors, Roadshow and UIP, have considerable market power. As described under 'Distribution market shares' on page 10, Roadshow has exclusive access to Warner Bros and Disney films, and films produced by subsidiaries of those companies. Roadshow also distributes for domestic and foreign independent film producers.

Warner Bros and Disney have generally been the two largest US film companies over the past decade in terms of number of films released and market share. In almost all other major markets of the world they have separate distribution companies.

The effect of agency and joint venture arrangements for film distribution may be to facilitate coordinated release dates and reduce competition between partnered companies. Thus in the US and most other countries a Warner Bros release might open the same day as a Disney release. In Australia Roadshow may be in a position to stagger the release to prevent opening week competition between titles.

The UIP partnership might also facilitate such coordination. The local UIP company might devise release strategies to prevent the overlap of Paramount, Universal and MGM/UA titles with long minimum session requirements. Such activity may reduce consumers' choice of first release films at any particular time and may have the effect of preventing small independent distributors not linked to US production houses from gaining access to cinemas.

It is unlikely that coordinated release dates would extend across all distribution companies. In any case, release dates for major films are generally known well in advance by distributors and exhibitors, and often by the public. Distributors may shuffle release dates in response to activities by competitors without such activity involving any coordination. For example, the UIP release of the *Jurassic Park* sequel, *The Lost World* was expected to dominate the market on its opening date to the extent that other distributors would avoid releasing any significant title on that date. So it may be that even if all film companies operated independently, they may still avoid head to head competition with release dates.

Distributors' release patterns would also be influenced by the activities of the major exhibitors independently of any coordination. Exhibitors typically want a regular flow of releases to ensure no major seasonal revenue fluctuations rather than having a large number of films released around the same time.

At the Monopolies and Mergers Commission (MMC) inquiry into film distribution and exhibition in the UK, UIP stated that it did not coordinate the release of films supplied by its production parents. It stated that the release of films from related production companies was decided by discussions only with the partner who released the film. The partner made the decision whether or not to compete directly with the release of a film by another UIP partner.

An oligopolistic distribution market

The establishment of two major distributors, controlling the output of more than one major US studio, has led to film distribution in Australia being a tightly oligopolistic market. While the barriers to the entry of new small scale distributors may be low, the US studio-related distributors continue to dominate the Australian market. The major US distributors tend to dominate in every country in which they operate.

The distribution arrangements established in Australia by the US studios have led to a distribution market structure more concentrated than in most other countries. The two largest distributors, Roadshow and UIP, are considerably larger then the two largest distributors in most other countries.

The structure of UIP is likely to give it considerable market power in negotiations with small exhibitors. UIP has access to the output of three US studios. Given that there are only seven major US production houses, the access to the output of three studios by one company gives that company considerable strength. UIP is currently being investigated by European competition authorities to determine whether its continued operation breaches European competition policy and law.

Roadshow Film Distributors also has had significant market share as a consequence of its access to the output of two large US film companies, Warner Bros and Disney.

The joint venture arrangements of five of the seven US production companies give UIP and Roadshow considerable power in negotiating terms and conditions with independent exhibitors. A decision by either not to supply a particular exhibitor in a competitive market would likely be sufficient to drive that exhibitor out of business.

However, it should be noted that the major distributors negotiate with major exhibitors who also have significant bargaining strength. The highly concentrated exhibition structure gives Hoyts and the Village/Greater Union groups considerable negotiating power as evidenced by the low average distributor rentals in Australia as compared to many other countries.

The market power of Roadshow and UIP would be substantially diminished if each of the major US studios distributed their own films in Australia. The market share of each major studio varies considerably from year to year in the US. In Australia, the near certainty that Roadshow and UIP will have many of the most popular titles every year gives them negotiating strength greater than would be the case if they were separated into individual distribution companies linked with their US parent.

As noted earlier, the recent announcement by Disney that it will establish its own distribution company in Australia in 1999 is likely to impact on the negotiating strength of Roadshow. It would be expected that Roadshow would face a more competitive environment in the future.

The major distributors cooperated with this investigation and comments relating to the behaviour of each distributor follow.

UIP behaviour

UIP has no interest in exhibition and is concerned only with the maximisation of its film rental. With regard to the supply of prints for first release, UIP has stated that it has a policy of supplying any exhibitor prepared to make an investment in exhibition, regardless of whether that exhibitor is a major exhibitor or an independent.

UIP's approach is to supply competing locations, e.g. Townsville and Coffs Harbour, even when such supply is not in the interests of UIP's traditional exhibition partner, Greater Union. According to UIP, Greater Union has objected to UIP supplying first release to independents who compete with Greater Union sites but UIP states that it will continue to supply as long as it is profitable.

In those instances where UIP does not supply first release when requested, its argument is generally that it is unable to earn sufficient revenue from such supply. Complaints regarding this refusal to supply generally come from small country exhibitors.

There are further complexities in distribution. UIP will sometimes withdraw prints from certain sites in order to prolong other sites holding a title. For example, most multiplexes make their decision to drop a film on a simple rule. If two new films are about to open and need screens, multiplexes will drop the weakest performing titles. If say in week six, UIP has a title in 50 multiplexes and revenues are low, all 50 multiplexes may drop the title in the same week. UIP will sometimes withdraw a title early from some multiplexes so as to increase revenue per screen at the remaining ones, thereby avoiding replacement across all sites on the same day.

As a consequence, even if a site were to agree to cover the costs of a print, it may not be UIP's interest to supply. If the additional print did nothing more than split the total revenue across more screens, the additional print will cause each screen's revenue to fall. If it falls below the level each cinema needs to earn a return, then both sites may drop the title, reducing the overall revenue to the distributor.

UIP is not particularly supportive of exhibitors who do not screen 52 weeks per year. In certain small coastal areas independent exhibitors sometimes request prints from UIP for showing in the summer. Sometimes films are shown in the town halls, community centres etc. UIP generally refuses to supply, preferring to support exhibitors in nearby towns who open all year.

UIP typically charges later release sites lower film rental if that site is competing against a first release site. However, if in UIP's view, the later release site (usually a small country location) is considered 'new' in that the film is new to that geographic area, higher (often first run) terms are charged. UIP's access to the output of three competing studios enables it to negotiate such terms from a very strong position.

According to country exhibitors, distributors with the output of only one studio are more reasonable in their terms.

Country exhibitors

UIP's behaviour towards country exhibitors was criticised during this inquiry, particularly with regard to the company's alleged lack of consistency in argument.

UIP has at times refused to supply some small town cinemas with first release on the grounds that the site is too small to justify the cost of a first release print. Such an argument seems reasonable.

It was claimed that UIP sometimes refuses to supply a print until the film completes its run in a neighbouring town. This could indicate that UIP sees the two sites/towns as competing for the same audience. If this is the case, then it seems unreasonable for UIP to charge high film rental at the second release site/town. However, it is also possible that UIP may have been unable to supply due to a shortage of prints, so it is not necessarily the case that refusal to supply is evidence that the two sites are seen by UIP as competing. Each instance would need to be considered on its own merits.

Second release

Complaints against UIP also relate to high second release film rentals, and what a number of small exhibitors described as a general indifference by UIP to supply small second release sites. It was suggested that UIP was content to allow the video market to collect the returns out of small country locations rather than supply cinema release.

Single screen cinemas

UIP believes that the future of single screen, or even the two and three screen, suburban cinema is bleak. It argues that even if no-share and minimum session policies were eliminated, a small exhibitor screening a major title for a few sessions per day would find it difficult to compete against a modern multiplex where the title may be on in numerous screens with starting times every 10 to 15 minutes. Customers would be likely to take the convenience of the multiplex.

Roadshow behaviour

More complaints were received about Roadshow's behaviour than any other distributor. While this might be expected, given that Roadshow has generally had the largest market share, the proportion of complaints against Roadshow considerably exceeds its proportion of the market.

The principals of Roadshow were particularly cooperative to this inquiry, and explained Roadshow's behaviour in detail. The corporate culture of Roadshow appears to be particularly aggressive in the sense that the company has a history of hard bargaining. Roadshow acknowledges such a description. It argues that as an Australian distributor which acts as an agent for two Hollywood studios, it is always at risk that the studios will take over their own distribution unless Roadshow is seen to be maximising revenue from every possible opportunity.

In contrast the other major distributors are direct affiliates of their US studio parents and, according to Roadshow, do not exhibit the same intensity of competitive behaviour because they are guaranteed films due to their corporate relationships.

Such a view is probably a simplification. Roadshow has distributed for Warner Bros for around 30 years and a Roadshow predecessor GUFD distributed for Disney for around the same period. Roadshow is partnered with Warner Bros in exhibition and theme parks all over the world so there appears to be little likelihood that Warner Bros would abandon Roadshow.

Season and session requirements

Many complaints against Roadshow relate to its minimum season and session requirements. Roadshow states that its maximum no-share or minimum-session policy for top titles has not increased in recent years. The policy for Warner Bros *Batman*, Roadshow's top title in 1989 was six weeks 2 days/2 evenings. The policy for Warner Bros' *Batman and Robin*, expected to be Warner Bros' top title in 1997, was six weeks, 3 days/2 evenings. (However, it is understood that this policy was subsequently not enforced for the full six weeks).

Many exhibitors claim that Roadshow imposes more stringent conditions on session times than other distributors. When a film is required to play two evening sessions, Roadshow requires that the session times be between 6.30 pm and 9.30 pm. Roadshow states that it applies this policy to all sites that are given day and date release.

Roadshow's drive-in policy is a cause of complaint by independents. Where a drive-in shows a double feature, Roadshow generally refuses to supply a current release as a second feature. Instead, it supplies a title which is already on video. Roadshow argues that such a policy is to protect the video release of a title. For example, Warner Home Video may be disadvantaged if Roadshow allows a drive-in to take a Warner Bros title as a second feature a few weeks before the title is to go out on video.

Roadshow states that second release is available at lower terms than first release. However, Roadshow will not provide second release until a first release site has finished with a title. Thus if a first run exhibitor continues to hold a print, even with limited sessions, Roadshow will generally not supply a print of that film to a competing site. As independents are generally the 'competing site' they may find that second release is many weeks after first release, even though prints of the film may be available, and the competing first run site is screening the film at limited sessions.

Roadshow's argues that market power waxes and wanes according to the strength of any particular title. It argues that any distributor with a strong title can demand 2 day/2 evening for a number of weeks, even if that distributor has only a few titles per year. Such a small distributor would also be unlikely to have problems securing sites, even in holiday times, if the release is strong. Roadshow provided the example of *Bean* distributed by Polygram, which secured many screens during a school holiday period when competition was particularly intense.

Roadshow will not allow any exhibitor to move prints between locations unless negotiated with Roadshow first. Examples were provided of box office takings from exhibition sites which showed that when exhibitors moved a print to the lesser site, revenue fell substantially.

A number of drive-ins complained about Roadshow's requirements for first release. Roadshow insists that if it gives a drive-in a first release print, that print must be shown as the prime evening session. Some drive-ins want to show a 'family' film at say a 9 pm session (in summer) and a first release 'adult' title later in the evening. Roadshow refuses to supply a first release title unless it gets the 9 pm session.

Roadshow argues that its drive-in policy is consistent with its standard first release terms. It wants the primary evening session(s) if it is providing a day and date release.

Roadshow supplied detailed session policy for the 18 month period 1 January 1996 to 30 June 1997. Roadshow released 73 films during the period with an average minimum season of four weeks and an average 1.14 weeks of a 2 day/2 evening policy. The most stringent requirements were seven weeks for one film (with four weeks of 2 day/2 evening) and six weeks (with six weeks of 3 day/2 evening) for another. However, the declining returns of the latter film led to Roadshow abandoning the 3 day/2 evening requirement after the fourth week.

Roadshow indicated that on a number of occasions exhibitors have challenged the appropriateness of a Roadshow session policy. Such a situation generally occurs when a film fails to perform as expected and the major exhibitors wish to amend the policy. Roadshow then informs all other exhibitors of any changes.

Post 1999 Disney will operate independently from Roadshow. The separation has the potential to lead to a significant increase in competition in distribution. The interests of Disney, with no exhibition considerations, may be different to those of the vertically integrated Village Roadshow group. In particular there is no reason why Disney would not supply any exhibitor which would provide a profit to Disney, even if such profit came at the expense of a particular exhibitor. Roadshow's behaviour may more likely be influenced by any potential detrimental effects to its exhibition partner.

Twentieth Century Fox behaviour

Neither the ACCC nor this inquiry received specific complaints regarding Twentieth Century Fox (Fox). However, Fox adopts first run policies similar to those of the two major distributors, UIP and Roadshow.

Like other distributors Fox defends the no share policy on the grounds that distributors need a certain amount of security when deciding on print number. It was Fox's view that in the absence of session requirements it would supply fewer prints at first run.

According to exhibitors Fox is less strict than Roadshow or UIP with its release policies. However, the policy is likely related to the strength of product being released. Fox had long minimum seasons for *Independence Day*, its biggest 1996 release, and was able to require that exhibitors take all three *Star Wars* movies in their recent re-

releases rather than just the first. As most of Fox's recent titles (prior to *Titanic*) have not been what the industry describes as blockbusters, it may simply be that its apparent flexibility is related to the need to find screens for product that is weaker than that of competitors.

The second release terms offered by Fox to suburban sites which compete with multiplex sites are similar to those of other major distributors. An exhibitor who, for example, takes a film in the third week of release pays third week terms.

Fox does not allow exhibitors to move prints between locations except with the local Fox office's approval. According to Fox, films gross better at one site than another and distributors naturally wants their films at the best grossing sites.

Fox's country location policy appears to be to get second run prints into the country as soon as they are available. Fox provided examples of supplying country sites with prints of major releases in week three, when second prints at the multiplexes had been returned. This seems faster than that of UIP, but again it depends on the relative strength of titles on release.

Fox acknowledges that CBD exclusivity still exists but says it may be breaking down. Fox has been a Hoyts' CBD supplier since the two companies were founded in the 1930s; Fox owning Hoyts for many years and selling in the 1980s. Exclusivity, a practice followed by all distributors, prevents a second CBD site from showing a film. However, major exhibitors also pay a premium for CBD exclusivity. Fox would lose revenue if it supplied a CBD independent as well as Hoyts, as Hoyts would either drop the title or demand lower terms.

Columbia TriStar behaviour

Columbia TriStar representatives did not meet for discussion. Their lawyers Minter Ellison provided a submission. No complaints have been received by the Commission or this inquiry regarding Columbia TriStar's behaviour.

Between December 1996 and May 1997 Columbia released 18 films. Only one had a policy of 2 day/2 evening in excess of two weeks. For 12, Columbia's evening requirements were only one session, enabling exhibitors to screen other titles in the evening even where they had only a single screen.

In its submission Columbia notes that its floor rental of 25 per cent has not increased in more than 20 years and that distributor rentals in Australia are among the lowest in the world.

Columbia seeks minimum session terms for first release only. These terms do not apply to exhibitors who begin to screen a film after the minimum session term has expired. Given that most of Columbia's films have had short season requirements, exhibitors who take a Columbia film by around the third or fourth week generally have been supplied a print without any restrictions.

Independent distributors

Independent distributors generally do not have direct relationships with major studios. They acquire Australian cinema distribution (and sometimes ancillary) rights on a film by film basis.

Most films distributed by independents are non mainstream titles and are generally distributed to non mainstream sites. However, the distinction between film types is blurred and some do play suburban multiplexes and CBD sites.

The independents complain of the major exhibitors' behaviour. In particular they complain that they are sometimes forced to place prints in all multiplexes when they would prefer a smaller release. They claim that the exhibitors' preference for standardised programming multiplexes often leads to the distributor being required to open a film at numerous locations. When that title fails to find an audience immediately, the title is dropped from all multiplexes.

Average rentals from films distributed by independent distributors are lower than those from the major distributors. The reasons for this difference are difficult to determine. The greater market share of the four major distributors is obviously related to the fact that they distribute most of the most popular titles. Thus they are more likely to be able to enforce higher terms in the opening weeks of a title than their smaller rivals and therefore their average rentals would be expected to be higher.

The independent distributors claim they have significantly less bargaining power with the major exhibitors than do the four US studio affiliated distributors, even in circumstances where box office returns are equivalent to titles of the major distributors. Such an outcome might be explained by the fact that over the long term the four major distributors will be likely to have the majority of the best performing titles. Consequently their greater bargaining strength derives not from any particular title but the fact that they are likely to have a large number of popular titles. The major exhibitors are more likely to accede to demands of a major distributor with many potential major films than a smaller distributor with a bundle of films of more limited appeal.

Regardless of the reasons for the differences in average film hire between major and minor distributors, it would appear that opportunities for the minor distributors to expand might be limited.

Independent distributors argue that they would generally prefer to open a film in a few locations and build word of mouth for a title, but the programming demands of multiplexes prevent them from distributing in the way they think best for the title.

Independent distributors also complain about their inability to get screens during the major holiday periods and their inability to hold screens. They claim that the major exhibitors drop their films even when they are earning more than competing titles of major distributors.

Major exhibitors claim that they will take films from any source if they are likely to be profitable in the multiplex sites. In most instances the major distributors have the mass appeal films most likely to gain screens during the holiday periods. However, the concern by independent distributors is that they are discriminated against in favour of poor performing titles from the majors. Such issues could perhaps be resolved by better information flows between distributors and exhibitors.

Distributor behaviour and the Trade Practices Act

A large number of complaints by independent exhibitors against the distribution practices of major distributors were investigated during this investigation. In no specific circumstances did it appear that the behaviour breached the Trade Practices Act. Almost all complaints relate to matters which may breach s. 46 of the Act, misuse of market power. These are discussed in Chapter 6.

Even though there appear to be no breaches the concentrated market structure in distribution does give the four major distributors (especially the two largest, Roadshow and UIP) considerable market power. Film distribution is more concentrated in Australia than in the USA, Japan and most European countries. It is unlikely that any exhibitor could survive in a competitive market if that exhibitor were refused supply by Roadshow or UIP, given their market shares in this country. Again, it is important to note than from 1999 Roadshow's power will likely diminish, and a refusal to supply by Roadshow would still enable an exhibitor to have access to six of the seven major US studios.

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

While unequal bargaining power is common in many industries this inequality is exacerbated by a distribution market structure which sees five erstwhile competitors operating as two. The large market shares of the two, UIP and Roadshow, and their continued access to highly successful films on a regular basis may provide opportunities for unfair terms and conditions which could not be enforced in a more competitive distribution environment.

Should independent exhibition be put at risk by unfair distribution practices, price competition at the exhibition level may be lost. A code of behaviour which promotes greater equality in bargaining between small exhibitors and distributors may assist competitive processes. In the absence of such a code, or should such a code fail to resolve the issues generated by bargaining inequality, it may be necessary to consider more interventionist behavioural regulations or, as a last resort, to consider further the impact of the distribution structures, especially joint ventures. This issue is further examined in Chapter 6.

4. Changes in exhibition and impact on competition

The Australian cinema exhibition industry has recovered from the slump of the mid 1980s and has grown rapidly in recent years. Box office revenue more than doubled in the seven years from 1988 to 1995. Between 1985 and 1995 average annual admissions per head increased from 1.9 to 3.9.

Suburban expansion

Much of the growth in the industry has come from the huge expansion in the suburban cinema industry. In 1988 almost 40 per cent of box office revenue came from the capital city CBD sites. By 1995 the CBD's share of revenue had fallen to 16 per cent. Over the same period the suburbs' share increased from 30 per cent to 52 per cent.

Much of the growth in the industry is attributable to the development of suburban multiplex cinemas, typically complexes of six or more, attached to major suburban shopping centres. Such multiplexes offer a range of films, generally screening all of the recent releases from the four mainstream US affiliated distributors.

The major exhibitors began their move into the suburbs in the late 1980s. Hoyts entered into a short-lived joint venture with Cinema International Corporation (CIC) a company owned by the US production houses Paramount and Universal. Hoyts subsequently acquired the interests of CIC and has undertaken its expansion independently.

The other major exhibitors, Greater Union and Village, entered into an arrangement with each other and the US production house Warner Bros to operate multiplex cinemas across Australia. Greater Union, Village and Warner Bros each hold a one third interest in the sites. As discussed earlier Greater Union and Village are the joint owners of Roadshow Distribution, which distributes Warner Bros films in Australia. Greater Union is also a major shareholder in Village.

The joining of Greater Union (and its Birch Carroll and Coyle subsidiary) with Village in a joint venture arrangement has given the Greater Union/Village/Warner Bros cinema grouping considerable market power in exhibition.

Since late 1996 the joint venture has opened 56 screens with another 61 screens due to open by June 1998. Robert Manson, the Managing Director of Greater Union (quoted in *Encore,* 6 Aug, 1997 p.54) stated that the joint venture will add more than 200 screens to its combined 453 screen group.

The Greater Union/Village combine controls a significantly larger number of screens than its nearest rival, Hoyts. Its control of Roadshow, the largest domestic distributor, gives it a vertically integrated structure unmatched by competitors.

The joint venture has eliminated competition between Greater Union and Village (outside their small number of CBD sites in Sydney and Melbourne). The consequent considerable market power has had an impact on the development of a market structure which may have a major effect on competition in cinema exhibition.

While the joint venture was established in 1989, it is an on-going arrangement which covers almost all of the new cinema investment of two of Australia's largest exhibitors. The arrangement has substantial impact on competition within particular geographic locations. For example, in July 1997 Greater Union closed a site in Parramatta NSW which competed with a Village site. The Village site will be expanded and incorporated into the joint venture, thus eliminating any competition in Parramatta.

The strength of these two major exhibitors and the lack of competition between them has considerably enhanced the ability of their joint venture to secure shopping centre sites and other valuable locations at the expense of their smaller competitors.

Combine that market power with control of a major distributor and it can be used in a number of subtle ways. An illustration is the inconsistent treatment of exhibitors in Townsville and Coffs Harbour. In Townsville, that has a population at least twice that of Coffs Harbour, Roadshow refused first run supply to an independent competing against BCC, their exhibition partner. In Coffs Harbour, where an independent was the incumbent exhibitor, Roadshow switched half its supply immediately to the new entrant, its BCC partner.

While Roadshow claims that all distribution decisions are based on the circumstances in each market, the power of the Greater Union/Village exhibition circuit and the corporate links to Roadshow ensure that any new cinema investment by the group will receive supply. Any independent contemplating a cinema investment will not have that certainty. It is reasonable to assume that Greater Union/Village would put considerable pressure on their distribution subsidiary to refuse supply to a new exhibition competitor, which could limit the expansion of the independent exhibition sector.

The market power of Roadshow in distribution and the joint venture in exhibition can be used to intimidate exhibitors and inhibit their expansion to further promote the joint venture's interests. An exhibitor contemplating bidding for a new site against the joint venture may hesitate, concerned that Roadshow may discontinue supply to the independent's existing location(s).

Until the late 1980s the suburbs were generally underscreened. Independent operators, usually operating older, larger cinemas often once owned by the major exhibitors, had most of the suburban market. Some of these older sites may have been twinned or rebuilt as three and occasionally four screen multiplexes, but very rarely had an independent operator developed a complex of six or more screens.

The rapid expansion of Hoyts and the Greater Union/Village/Warner Bros combine into the suburbs has increased competition to the independents. The cinema complexes of the major exhibitors are typically larger, newer, offer parking and have other entertainment, retail and food complexes nearby. In spite of this many independents continue to survive and, in many instances, thrive, as long as they receive first run supply from distributors.

Independents' pricing behaviour

The major advantage the independents have over major exhibitors is price. Independent cinemas are often family managed, operating out of older, fully depreciated sites. They are usually located away from shopping malls and would typically have lower rent than shopping mall based multiplexes. They charge admission prices below those of the major exhibitors. While the major exhibitors may charge up to $12.50, the independents charge around $7 to $8 in most locations.

It has been suggested that independent, private company exhibition is threatened with extinction by its larger, more efficient rivals, in the same way that supermarkets put inefficient corner stores out of business. However, unlike the supermarket case where small, family run businesses are put at risk by more efficient, larger, and lower priced rivals, independent exhibition continues to be able to charge lower prices than their multiplex rivals.

The price competition provided by the independent cinema sector was recognised in the 1991 Prices Surveillance Authority inquiry into cinema prices. The two major exhibitors, Hoyts, and the Greater Union/Village joint venture, charged identical prices. They continue to offer similar discounts, such as low priced tickets on Tuesdays, but charge higher prices on average than independent exhibitors.

There appears to be some price competition from major exhibitors but it is usually confined to situations where a major is competing against an independent rather than against another major. For example, in Sydney Hoyts has selective discounting, a 'movie of the week', for $6 at two of its suburban sites. Both sites are competing against an independent exhibitor. Hoyts generally discounts the title being shown by its independent competitor while keeping the prices of all other films at Hoyts' usual price.

Greater Union adopts a similar policy via a movie of the week special in those areas where competition comes from a lower priced independent.

In a number of instances independent exhibitors have claimed that when the independent closed down the limited price discounting by the major exhibitors ceased.

Generally there is very little competition between the major exhibitors. At present there is very little overlap in the catchment areas of the multiplex sites. Further, it would seem that the majors, by design or circumstance, have some degree of geographic separation such that each controls most of the multiplexes in a particular area. Thus in Perth, the Greater Union complexes are north of the Swan River, and the Hoyts sites are south. In Sydney, a series of cinema swaps has left Hoyts controlling almost all sites west of Parramatta while Greater Union has Sydney's south west and north west. In Brisbane, a Greater Union subsidiary, Birch Carroll and Coyle, faces no opposition from Hoyts who have only CBD cinemas and no suburban complexes.

There is no reason to believe that small suburban independents will be driven out by lower cost large rivals. These rivals are generally not lower cost. The Hoyts and Greater Union sites are generally high rental sites and unlikely to have lower costs. Nevertheless, the future for some small independent exhibitors looks bleak.

Many small independent exhibitors are finding that their inability to compete against the major exhibitors is not because of inefficiencies and consequent high costs. It is because they cannot obtain films on appropriate terms and cannot improve their competitive position by expanding.

As the major exhibitors move into territories previously serviced by independents, some of the independents face difficulty in securing day and date releases with a competing multiplex operated by a major. Those cinemas who do not secure supply have little chance of survival.

It may seem that it would be in the interests of film distributors to ensure that their films were widely distributed. However, this is not necessarily the case. As was explained in Chapter 3, distributors take a percentage of a cinema's box office revenue as their film rental. If ticket prices of the independents are lower than those of the major exhibitors and demand is not sufficiently price sensitive to allow the lower ticket price to increase total revenue, the distributors are disadvantaged by lower ticket prices. This problem is aggravated if the major exhibitors discount particular titles to match the independent. For example, substantial price discounting in Coffs Harbour, led to the situation where a Greater Union subsidiary and the competing independent charged $3.50 for new releases. This severely reduces the revenue of the film distributor as well as the exhibitors.

Consequently, should an independent exhibitor disappear from the market and the admission prices of the major exhibitor rise, distributors benefit. There have been isolated claims that distributors have suggested to independents that supply would be threatened unless price was increased. For example, independents in a number of States claim that the two largest distributors have indicated that they would consider requests for films more favourably if prices were raised. However, the exhibitors who made such comments indicate that there were no formal requests to raise prices.

Nevertheless it appears that regular price discounting by independent exhibitors is a major concern to distributors, especially if that discounting is then matched by a major exhibitor. According to distributors, many films fail to recover their costs of prints and advertising. Substantial discounting, therefore, especially of popular releases, may inflict major damage on distributor revenue and profits.

The revenue and profit of the exhibitor may not be damaged as severely by discounting. They have an additional major revenue source in the sale of food and drink. If the discounted admission prices encourage customers to spend more at the concessions stand, the exhibitor may be able to effectively pass on most of the cost of their discounting to the distributor.

Expansion of non major exhibitors

One of the most noticeable features of the exhibition industry in Australia is the dominance of the Hoyts and Greater Union/Village duopoly. While both groups have expanded rapidly in the past few years and have substantial expansion plans over the next few years, there are more limited growth prospects for independent exhibitors.

The major expansion of cinemas in recent years has come via suburban complexes attached to major shopping centres. Independent exhibitors have had little success in gaining leases to such developments. A major potential entrant, the US cinema group Reading, has also been restricted in its attempts to expand in Australia.

Major shopping centre developers and operators appear to have a preference for Hoyts and Greater Union. Readings states that it has been frustrated on numerous occasions in attempts to secure a lease at a major shopping centre. The company's decision to develop stand alone sites (recently blocked in Victoria by government planning laws) is a consequence of this.

The major shopping centre developer Westfield tends to deal with the majors, and mostly with the Greater Union joint venture. Another major shopping centre developer and operator, Lend Lease, is a significant shareholder in Hoyts, presumably facilitating Hoyts' ability to secure cinema sites at shopping centres.

AMP, another shopping center owner, has had a legal dispute with Readings regarding a cinema lease. Readings claimed that AMP reneged on a proposal to allow Reading to operate a cinema complex at an AMP site in the Brisbane suburbs. It is believed that the Greater Union subsidiary, Birch Carroll and Coyle will obtain the lease.

A number of independent exhibitors applied to AMP to get the lease at an AMP Perth suburban site, Booregoon. However, that site also went to a major exhibitor.

Independents have had an almost total lack of success in securing shopping centre sites. Those which have been successful have been so almost by default. The successful sites operated by AMC in the Brisbane suburbs of Sunnybank and Stafford provide the best example. AMC secured an arrangement with a developer who had recently acquired a shopping centre at Sunnybank. The shopping centre owner was approached and a deal was signed before BCC was aware of it. AMC secured a second site after their landlord purchased a shopping centre in the northern suburbs of Brisbane.

In another successful case for an independent, Perth's Coastal Cinemas secured a shopping centre site being developed by the local council, only after Hoyts and Greater Union rejected the site and despite Coastal Cinemas being the existing local operator in the territory. Coastal's site, which is south of the river, has proven to be highly successful and Coastal has been approached by Hoyts to acquire the site.

In the other capital cities and major centres, the two major companies have secured shopping centre sites and no independent has been able to gain a foothold.

Many independents are also frustrated in their expansion plans by lack of parking at their existing sites. The sites are often in older 'strip' shopping precincts and expansion opportunities are usually limited to twinning or tripling an existing cinema rather than building a multiplex.

The major exhibitors legally take advantage of planning laws to block new developments. Hoyts and Village both opposed Reading's attempts to enter the Melbourne market while BCC has opposed Reading's attempts to secure a number of Brisbane sites. BCC has even lodged protests against the development of a restaurant near the Reading site in Townsville. It appears that Hoyts and Greater Union, however, have been less likely to oppose each other's developments.

Readings' lack of success is an indication of the high entry barriers. The company planned to have 150 screens operating by the end of 1997 but had less than 20. Readings has numerous sites at various stages of development but faces court action by Greater Union or Hoyts at the majority of these sites, slowing down their building and allowing their rivals to expand their own sites.

For example, at Liverpool in NSW, Reading has had its cinema proposal challenged by Greater Union while Greater Union has obtained permission to expand its own Liverpool site. At Auburn in Sydney's west, Hoyts has used planning laws to challenge a proposed Reading complex. It has cost Readings substantial amounts in legal costs to get site approval. Such costs add substantially to development costs and may be a major barrier to small, less capitalised entrants.

Excess capacity

Hoyts and the Greater Union/Village/Warner Bros groups have plans for major expansion over the next three years. Approximately 180 new screens were added in the two years to June 1997 and a further 300 will open over the next three years. This would give a screen count in excess of 1600 by the year 2000, compared to around 650 screens ten years ago. The Greater Union/Village joint venture plans to have up to 650 screens while Hoyts has plans to have a 400 screen circuit by 2000. Of course it is likely that closure of some smaller sites will occur.

It appears that the two major exhibitors' objective is to secure as many sites as possible over the next few years to prevent the expansion of Readings and the independents. Given that their expansion plans vastly outstrip the rate of growth in demand (even assuming the closure of smaller sites), it would seem that the majors may be willing to endure low or negative rates of return in the short run to maintain dominance. In some instances a major exhibitor has taken a site that does little more than cannibalise another of its own sites rather than allow a competitor into the area.

Major multiplex sites tend to have monopoly elements. Once a major exhibitor has secured a site it is unusual for the other major exhibitor to build a complex in the same geographic area. Given that most multiplexes are built at regional shopping centres, the limited overlap between the catchment areas of the shopping centres reinforces the local monopoly elements of the cinema complex. So, there are major competitive advantages in being first into an area. In some States local planning laws which discourage free standing sites may act as a barrier to later entry, thus assisting the operator which establishes first.

Consequently, even in those cases where the establishment of a new multiplex is in excess of demand at the time, the growth in demand and the opportunity to block competitors from any future entry may encourage excessive building of sites.

The existence of excess capacity is likely to have positive effects for consumers in the short term. Cinema exhibition is a high fixed costs business. In a highly competitive environment with excess capacity, operators may be encouraged to discount prices. Any price above variable cost will make a contribution to the site's fixed costs so, in extreme cases, price discounting could be severe. The Coffs Harbour price discounting situation described previously may be an example of this behaviour.

However, in the longer term consumers may be disadvantaged if cinema exhibitors do not recover their full costs and make a return sufficient to justify new investment. Cinema quality would decline as exhibitors delayed investment and refurbishment of existing sites. For much of the 1960s and 1970s investment in cinema exhibition in Australia was low and quality of infrastructure declined.

Aggressive price wars spurred by excess capacity may not therefore be in the long term interests of consumers.

Major exhibitors — Hoyts

Hoyts argues that the exhibition market in Australia is highly competitive. In particular it claims that price competition between Hoyts and the Greater Union joint ventures is intensive.

In 1996 Village undertook substantial price discounting in Victoria. These price discounts were immediately matched by Hoyts. According to Hoyts the price discounting of all tickets led to a significant increase in sales in the first few weeks. In some locations the increase in demand was as much as 40 per cent.

In Hoyts' case, however, the increases in demand were not sustained. Over the following few months, even though the discounts were maintained, ticket sales drifted back to levels prevailing before discounting. After six months Hoyts announced that the discounts were ending one month later in the expectation that Village would follow. Village then announced that their discounting would also be ending and ticket prices moved up, although not to their original level.

Hoyts' view is that demand is price insensitive over the longer term and while there may be some consumers who will be attracted by the lower price to attend the cinema more frequently, they are a minority.

Nevertheless, Hoyts believes it is necessary to match discounts in most circumstances. Its strategy is selective discounting via 'movie of the week' at those locations where a competitor, generally an independent, is offering lower prices. Hoyts will generally discount one title at particular location, while its independent competitor would typically discount all films showing at that location. Hoyts believes that it would be very unprofitable to likewise discount every title; operating as it typically does from major shopping centres it faces much higher rents and overheads.

Hoyts' belief that many customers are not particularly price sensitive has led them to adopt a different competitive strategy in many locations. Hoyts recently discounted the opening week of a major title at a number of competitive locations but were not particularly satisfied with the results. Hoyts found the audiences were attracted to the better quality locations to see the movie, rather than the lowest price locations. In particular Hoyts found that where they had a site which competed against a site with a 'mega screen', the discounting was ineffective. That is, customers were prepared to pay more for a better quality cinema experience.

Hoyts' expansion plans involve the development of so called mega screens at all new locations and all existing locations where redevelopment is possible.

It is Hoyts' view that in the next few years the older independent sites with poor quality sound and picture will not be able to compete just by discounting the price of admission. Hoyts' expansion plans include the assumption that many independents will leave the industry as consumers move to the better quality complexes, despite the independents' lower prices.

Hoyts expects that many independent cinemas and some cinemas belonging to the major exhibitors will become second run houses over the next few years. Such an outcome would likely be the result of excess capacity in the industry. Distributors may not continue to increase the number of prints available for first release. Once saturation point is reached, box office per screen will decline and distributors may decide that their costs no longer justify first release prints to all requesting sites.

Second run or 'discount houses' have re-established themselves in the US over the past few years. These sites are typically older and smaller (in terms of the number of screens, not necessarily in terms of the number of seats) than first run houses, without the picture and sound quality currently available at the best first run cinemas.

The expansion by the major exhibitors may lead to them establishing their own second run sites. BCC has established a second run site on the Gold Coast after opening a 12 screen complex in the same area. Hoyts had two sites at Mt Druitt in Sydney's west after acquiring an independent site. The former independent site was tested as a second run site. Village is purchasing a number of independent cinema sites in Melbourne which may form the basis of a second run chain.

Second run sites will typically take films after they have completed their minimum season, often five–six weeks after first release. They charge $4–$5 admission and are on low rental terms, usually 25 per cent of box office gross. However, there is considerable doubt as to their likely success. Their price does not appear to be sufficiently low when the industry average ticket price is just over $7. In the US where second run has been more successful, the ticket prices are as low as $1.

Major exhibitors — Greater Union

Greater Union argues that price and quality competition are intense from Hoyts and quality independent operators.

Greater Union practises selective price discounting and generally does not support across the board cuts. It is the company's view that it is necessary to match some, but not all, price discounting. Where Greater Union has a relatively new site with superior technology it generally does not discount, even if a nearby operator discounts a title also being played by the Greater Union site.

Greater Union's expansion plans in Australia are via its joint venture with Village and Warner Bros. The company is engaging in substantial site expansion over the next three years. The company believes there will be very few opportunities for cinema expansion once the current round of development finishes. Greater Union expects that some major exhibitor and independent sites will either close down or become second run.

However, Greater Union agrees with most other industry participants that the prospects for second run sites are poor. No major exhibitor would want to have a site downgraded to second release and Greater Union argues that second run would probably only occur until the particular site could be redeveloped (probably into some non cinema use).

Greater Union points to the high degree of success of some independents and is of the opinion that independent exhibition will continue to be successful if the independents invest in their sites and provide the film going experience available at modern cinema complexes, or if smaller site independents target and actively market a particular audience segment.

Greater Union executives point to the success of numerous mainstream independents including those who have only one or two screens, such as Roseville on Sydney's North Shore.

Major exhibitors — Village

Village is of the view that the cinema exhibition industry will become more competitive in the future as the increased number of sites and screens leads to overlapping catchment areas. This outcome might also lead to competition for film product with distributors splitting product between competing multiplex sites. Under such circumstances multiplexes may not all be showing the same product.

Village thinks that there may be some prospect for suburban discount houses for secondary sites, a view challenged by most others in the industry.

Megaplex development (large complexes with 16 or more screens) reduces risk to the exhibitor according to Village. The large capacity of megaplexes allows the operator to take a wide range of product and therefore the operator is less likely to overlook the unexpected hit movie.

In Village's view, megaplex development may allow such exhibitors to extract better terms relative to other exhibitors.

5. The UK experience

In 1994 the UK Monopolies and Merger Commission Report on the Supply of Film to Exhibition recommended that exhibitors should not be required to commit to a long period of exhibition as a condition of supply of film. The report recommended that a two week maximum be imposed. Exhibitors would be entitled to screen a film for longer but distributors could not require a longer period.

Conditions of supply

According to the Cinema Exhibitors Association (CEA), these requirements were not adhered to by a number of distributors. In 1996 the Office of Fair Trading (OFT) reported to the Government and the Government issued a draft statutory instrument. This culminated in an order on 12 December 1996, the Films (Exhibition Periods) Order 1996, which came into force on 1 March 1997.

The Order makes it unlawful for a distributor to require, as a condition of supply of a film for exhibition in a cinema, on or after the day of general release of that film, that the exhibitor should exhibit the film for a period longer than;

- in the case of a film for a period commencing within six weeks of the general release of the film, two weeks
- in any other case, one week.

While the Order was not finalised until March 1997 and therefore has been in force for only a short time, most distributors have been adhering to the recommendations for at least 18 months. Thus it is possible to make some tentative comments about the effectiveness of the requirement.

From the OFT's perspective one of the major difficulties was to define the terms of the Order. In particular the concept of a 'new release' as it relates to 'general release' versus other types of release patterns was a significant drafting problem. However, there have been no disputes to date related to definitional issues.

Of particular importance is the impact of the Order on distributors' behaviour. The worldwide CEO of UIP, Mr Paul Oneile, provided comment on the impact of the order on UIP.

The UK is the only country in which UIP operates where there are such restrictions. One of the most significant effects according to UIP has been the bunching of releases, a number of major films being released simultaneously. There are certain peak periods for cinema going, generally school holidays. In the past, distributors would often release some films before school holidays and impose terms which required the film to be shown at least some sessions during the holidays. However, the two week limit has led to distributors releasing at the start of the holidays to ensure that they get the peak demand period.

UIP's release of their biggest title for 1997 *The Lost World* provides an interesting example. In Australia UIP released the film in late May with a policy which required some screenings through the school holidays four weeks later. The film opened to very large box office revenue and stimulated cinema demand in a relatively quiet period. UIP then picked up additional revenue as the film was still showing in the school holidays.

In the UK, UIP chose to delay release until the beginning of the school holidays, fearing that an earlier release would lead to some exhibitors dropping the film after the two week period and taking another title. However, other distributors also released their major titles for the holidays which led to a glut during that period and a scarcity of new films in the earlier part of the year.

It is UIP's view, supported by market research, that a large number of titles released close together does not expand the market significantly. Very few cinema goers visit the cinema more than once a week, even in holiday periods. Consequently, bunching can lead to a decrease in the average number of trips per person per year; attendance drops off during product scarcity and does not significantly expand during a glut.

Policy effects

The effect of such policies is to reduce the average playing time of each film in the most popular cinema going period. Given the box office formula which has the majority of revenue going to the distributor in the first few weeks of release, the average cost of film hire to exhibitors will increase assuming that release patterns remained constant.

The two week policy would not provide any significant benefit to one and two screen exhibitors if the restrictions led to bunching. With a two week policy exhibitors would still be forced to choose between titles. If the blockbuster titles were all released in school holidays, independent exhibitors with only a few screens would be little better off than if there were longer required periods and the major titles were released further apart.

Since the introduction of the two week limit two major UK distributors have raised their financial terms. Until relatively recently all UK film distributors used a film hire formula where the distributor took 25 per cent of the box office up to an agreed figure based on cinema costs (the break) and then 75 per cent of the gross over that agreed break, with the distributor's entire share limited to 50 per cent of the box office.

Warner Bros and Disney have both increased their minimum to 30 per cent in recent months. The CEA's view is that such an increase was inevitable and not related to the Order. However, it is acknowledged that the Order may have led to the increase sooner than would otherwise have occurred.

Such an increase in film hire terms is entirely consistent with what would be predicted. If distributors cannot gain financial security from setting policies in excess of two weeks, a logical response would be to increase the film hire charges for the shorter two week period. It is not clear that exhibitors would therefore be better off should two week limits be imposed.

Film distributors in the UK are also now offering different film hire rates according to the agreed length of season. Cinemas which commit only to the two week term are offered one rate while those cinemas that contractually agree in advance to a three week term are offered lower rates.

It would seem that the two week limit is not a panacea to this issue raised by independent exhibitors in Australia. While UK exhibitors are generally pleased with what they see as a greater flexibility in programming opportunities, such flexibility has come at the expense of higher film terms in general, and even higher terms for those cinemas who commit for only the required two weeks.

The two week limit has the potential to cause a change in distribution behaviour which may be detrimental to consumers. The bunching of releases may not be in consumer interests but of more concern is the effect which the limit may have on the number of releases.

While it is perhaps too early to see the impact of the limit on the total number of releases in the UK, UIP, the largest distributor, is contemplating reducing the number of titles it releases there. The reason is that the two week limit has increased the distributor's risk. Release costs remain the same but the potential revenue is reduced by the two week limit and consequent bunching. Should the number of titles released to cinemas be reduced there is potential consumer detriment from a reduced range/quality of film titles.

The MMC report recommended the establishment of a Film Complaints Panel. The panel was established 1 January 1996 and provides both exhibitors and distributors with an opportunity to bring a complaint to a voluntary independent panel. The panel's objective is to act as a safety net where misunderstandings and disputes between exhibitors and distributors could be aired and resolved. So far only one complaint has come to the panel, indicating that most disputes are resolved by negotiation.

The OFT has received no complaints since the panel was established. This is significant given that the film industry was a major source of complaints before.

Developments in the UK since the two week limit was imposed may provide lessons for any proposed Australian regulatory intervention in the industry. It cannot be stated with certainty that UK exhibitors, major or independent, have been advantaged by the restrictions on minimum seasons.

Should such a remedy be proposed for Australia and if it were possible to enforce, Australian exhibitors might be no better off. If film distributors reacted by increasing terms and bunching releases, they could be worse off. Additionally, if distributors decreased the average print run for first release titles, many independent exhibitors may be even worse off because they are more likely to be second release operators.

The UK conciliation/mediation remedies appear to provide opportunities for industry participants to resolve disputes without external regulatory intervention. Most complaints are resolved before going to the Film Complaints Panel. A dispute settling mechanism linked to a voluntary code of conduct may be a useful mechanism for problems raised by Australian independent exhibitors.

6. Conclusions and recommendations

The relationship between the wholesale (distribution) and retail (exhibition) segments of the film industry is probably unique. In most other industries the wholesaler/distributor sells the product to the retailer who then sells to the consumer. In the film industry the distributor supplies the product but not via sale. The distributor takes an agreed proportion of retailers' revenue. As a consequence the distributor's profitability is very closely linked to the exhibitor/retailer behaviour.

Such a relationship does not exist in similar industries. For example, magazine publishers sell directly to newsagents and earn their revenue from that sale, not from the newsagent's sale to the customer. Record companies sell their CDs to retailers who then bear the risk of the sale to the consumer.

Even in the video industry which has many of the same distributors as the film industry, the distributor sells to the video retailer or video rental store and gets its revenue immediately. The distributor generally does not take a percentage of the video hire.

Given that a film distributor takes a share of the exhibitor's box office revenue, the distributor is particularly concerned that the activities of film exhibitors do not reduce revenue. To maximise their revenue distributors tend to impose terms and conditions on exhibitors unnecessary in other industries where the distributor gets its revenue before the final sale to the public.

'No share' and minimum seasons

Film distribution is a high risk business. Many films do not return their distribution costs and even fewer return their costs of production. Distributors are not allowed by law to set exhibition prices. If an exhibitor discounts admission prices, distributors bear part of the burden.

Therefore distributors attempt to gain a degree of security by prescribing some form of minimum screening to ensure that their costs are covered. For example, in the extreme case where an exhibitor has a single screen and runs five sessions a day, the exhibitor may consider it beneficial to run five films across the day in an attempt to maximise audience appeal. However, distributors will be severely disadvantaged by such a policy, particularly those whose films are relegated to the less popular daytime sessions.

The use of no share and minimum seasons are mechanisms by which distributors try to ensure greater security of revenue. Film distributors bear the risks of promoting a film. Most forms of promoting a new film, including television and print advertising, are paid for by the distributor, not the exhibitor. In an increasingly crowded market place with new films opening every week, promotion costs may be substantial.

Distributors fear that in the absence of no share or minimum session requirements, exhibitors will not give films sufficient screen time to recover distribution costs and contribute to production costs.

There is no evidence that the maximum number of weeks for no share or 2 day/ 2 evening policies has increased in recent years. For a top title, the so called blockbuster, the typical policy may be a six week minimum season. However, it is a very rare title which requires 2 day/2 evening for the entire six weeks. Further, should a particular film turn out to be much weaker than expected, one of the major exhibitors will usually insist that the distributor renegotiate. When terms are changed for the major exhibitors, they are changed for all exhibitors.

It may be that the mid range titles now have longer minimum requirements. It is difficult to quantify this because the definition of mid range is vague. It may be possible to compare minimum requirements for films within a certain Australian gross box office range, for example $4 million to $8 million, to see if such titles have average longer session requirements now than in previous years. This analysis has not been undertaken and would probably not be conclusive. Different titles, different release strategies, different competing films and different admission prices over the years would make such analysis difficult and its ability to explain activity is doubtful.

A critical issue is whether minimum session requirements involve a substantial lessening of competition. These session requirements appear to constrain those exhibitors with only a few screens. Generally exhibitors with more than six screens at a location are able to meet minimum requirements and still exhibit all major titles.

Those who claim that they are disadvantaged by distribution policies are invariably exhibitors with a small number of screens, typically independent exhibitors. However, sites owned by major exhibitors have the same problems if they have only a few screens. The minimum seasons prevent small exhibitors from taking every film on the day of first release and, according to independent exhibitors, prevent them from competing with the major exhibitors.

However, small independent exhibitors generally do not wish to take all titles. They reject many films offered by distributors. The multiplexes of the major exhibitors tend to take all mainstream films released by all distributors, even when such films have little box office potential. The independent exhibitors want to be able to take all successful films on a first release basis while rejecting the lesser titles.

Small exhibitors have given no indication of the extent to which they are disadvantaged by restrictions on screen use. Generally they believe that the most effective way to compete against the multiplex sites is to program as many films as possible, even though this approach may not be their best strategy. A multiplex which takes multiple copies of a major title would be able to program that title so that it is showing every 15 to 20 minutes. A single screen operator who decides to program that title only once or twice a day would probably be disadvantaged in terms of audience convenience. It would probably be in the interests of this small exhibitor to also program the title extensively in order to compete, rather than provide a wide range of films that have restricted session times.

It would be rare for any exhibitor with four screens to be unable to take every major title on first release. There may be times when a three screen complex has to pass on a title but the major problems would be for twin and single screens who would be forced to reject some popular titles because of the overlapping requirements of competing films.

Many small independent exhibitors believe that they have some ‘right’ to first release but should have no obligation as to minimum session requirements. That is, they believe that they should be free to program their cinemas in any way they see fit, just as any other retailer decides what to stock and in what quantity. If exhibitors paid distributors some up front fee this argument may be valid. Under such arrangements the exhibitor takes all of the risk and should therefore be entitled to program as the exhibitor sees fit.

However, as distributor income depends on exhibitor action and as distributors fund almost all advertising and promotion of titles, they require some degree of security. The restrictions on screen use are designed to provide this security.

In the absence of minimum session requirements distributors would seek other means to guarantee revenue. They might substantially increase their financial terms. Australian film rentals (the proportion of box office revenue going to distributors) are among the lowest in the world. While average film rentals have increased over the past decade from around 36 per cent to around 40 per cent of box office, this has been largely caused by factors other than higher film rates.

Distributors earn most of their revenue in the early weeks of release when rental terms are highest. As typical film life decreases due to wider release, fewer films remain in cinemas after four to five weeks when distributors’ terms are often down to 25 per cent. This shorter life increases the average film rental of distributors although not necessarily increasing a distributor’s net revenue given the shorter screening period.

Should restrictions be placed on minimum session requirements and if distributors responded by increasing film hire terms for the first few weeks, many exhibitors would be likely to complain about excessive financial terms rather than session requirements. Of course, it is possible that the exhibition duopoly of Hoyts and Greater Union/Village may refuse to accept higher financial terms, but it is by no means clear that a restriction on session requirements would solve the complaints of independent exhibitors.

Furthermore, stringent restrictions on minimum session requirements may have other unwanted effects. Distributors faced with higher risk in film release may change their release patterns. They could reduce the number of films released or reduce the number of prints. In the former case, Australian film goers may get a reduced range of cinema choices. In the latter, the number of first release prints would be reduced to increase the per screen average box office. Such an outcome would be likely to disadvantage smaller exhibitors rather than the majors, as independents may be dropped back to a second release.

Misuse of market power: s. 46 issues

Many smaller exhibiters have expressed the view that the ACCC should take action under s. 46 of the Trade Practices Act to prevent film distributors engaging in practices which restrict screen use. They have claimed that the major distributors, particularly Roadshow and UIP, have a substantial degree of market power and use that power for a proscribed purpose under the Act. Specifically it is argued that Roadshow uses its market power to damage independent exhibitors, to the benefit of Roadshow's exhibition partners Greater Union/Village/Warner Bros or some combination thereof.

At first sight it would seem that Roadshow currently has the requisite substantial degree of market power under the Act. Its market share generally exceeds 40 per cent in most years. While there are fluctuations in each distributor's market share from year to year, Roadshow's access to two of the most successful US companies, Disney and Warner Bros, plus its own titles, has often given it a market share greater than that of its competitors.

It is the view of this report that UIP would also be seen as having a substantial degree of market power, for the purposes of s. 46. Its market share is consistently high given that it distributes for three of the major US film studios. As noted earlier, it is unlikely that any exhibitor would be able to remain in business if it was refused supply by UIP or Roadshow.

If they were shown to have a substantial degree of market power, the critical issue is whether either Roadshow or UIP have used their substantial market power for the purpose of eliminating or damaging independent exhibition via the restrictions on screen use. In the case of Roadshow it has sometimes been argued that 'excessive' session time policies have been designed to deliberately disadvantage independent exhibitors who compete against Roadshow linked exhibitors.

Such an argument should be considered very carefully. All film distributors impose restrictions on screen use. All film distributors, regardless of their market size, will be able to negotiate substantial minimum seasons where they have a very popular title. In mid 1997 Polygram, which has a small market share, was able to impose a substantial session policy for a particularly popular title.

It is likely that a distributor's ability to impose a lengthy minimum season or to require a large number of sessions is less related to the distributor's overall market share and more related to the strength of particular titles. While it is obvious that the distributors with the largest market shares have a greater proportion of the most successful titles and will impose long season requirements more regularly than small distributors, such impositions are likely related to the title rather than general market power.

It is possible therefore that any market power held by a distributor is related to the exclusive copyright held by a distributor over a particular title rather than that distributor's market share. This may lead to the conclusion that each film title constitutes a separate product market.

This argument has been used in a number of cases. The situation most relevant to this circumstance is probably the New Zealand case *Tru Tone v Festival Records Retail Marketing Ltd* (1988) 2NZBLC 103,081 (High Court) and (1988) 2NSBLC 103,286 (Court of Appeal). It was argued on behalf of the plaintiffs that each record album is a separate and unique market. The New Zealand High Court accepted evidence that when an album is selling well, many people would not be prepared to substitute this title for any other. However, the Court found as a matter of fact and commercial sense that there was not a separate market for each title.

Film distributors compete vigorously against each other to secure screens for their releases. They adjust release dates according to the expected competition from other titles. Exhibitors build multiplexes in the belief that titles do substitute for each other so that if one title has a full house, consumers will choose a different film. Consequently a market definition based on each title would be likely to fail.

A further problem with alleging that session policies represent a misuse of market power is when intent is considered. While numerous small independent exhibitors have claimed that it is Roadshow's intent to drive them out of business to assist its own exhibition interests, intent is less clear in the case of the non vertically integrated exhibitors.

The non vertically integrated distributors behave in the same manner as the vertically integrated Roadshow. This would suggest that the behaviour is related to profit maximisation objectives rather than eliminating competition in exhibition. Consequently, it would be difficult to argue that distributors' behaviour has a proscribed purpose in terms of s. 46 of the Act.

It might be possible to argue that all distributors have a common intent to eliminate independent exhibition so as to remove the major source of price discounting and thereby improve distributor returns. But there is no evidence that this is the case. Further, distributor actions which strengthen the bargaining position of the exhibition duopoly by eliminating their independent competitors do not appear to be a sensible long term objective for film distributors.

Given that film distributors in Australia earn low average film rentals by world standards, and that such low rentals are probably related to the exhibition market power and consequent bargaining strength of Greater Union/Village and Hoyts, it would seem that distributors other than Roadshow may be more likely to encourage alternative (independent) exhibition.

Taking everything into consideration it would appear that s. 46 does not provide small independent exhibitors with the protection they indicate they need. This is not to suggest that s. 46 needs amendment to provide such specific protection. It is important to consider the effects of session and season requirements on competition in the exhibition market.

Effects of screen use restrictions

There is no doubt that minimum session policies, minimum seasons, and no share policies restrict the ability of cinema complexes with a small number of screens from playing every major title. It is not possible to measure the number of title which they have to pass on. It varies from month to month according to distributor release schedules. However, it seems that exhibitors with four or more screens are able to take every major title.

Under current policies those with three or less screens are at times required to choose between major titles. Only the largest multiplexes take all titles released by major distributors. Smaller exhibitors currently reject many titles offered to them. Should minimum seasons be eliminated small exhibitors would still be unable to take, and would not wish to take, all titles offered.

Some small exhibitors argue that they need to take every major title and program their site as though it were a multiplex. However, it is unlikely that such an approach would maximise their revenue. As noted earlier, if a single screen showed five different movies across the day, one at each session time, and a competing multiplex programmed a major release for five sessions, it is probable that the multiplex screen would take more revenue across the day than the single screen. This is because at any given time a very small number of films take the majority of the revenue.

Distributors are usually very flexible with their requirements for middle range and weak titles yet small exhibitors often decline to accept them. In the current market environment with over 250 titles being released annually, distributors find that most titles get a very short cinema life before being replaced.

At the present time there appears to be no evidence that minimum session requirements are leading to the demise of independent cinema operators. Those independents who receive first run, while not being able to take every major title day and date, appear to be prospering. Many independents are undertaking the investment in additional screens to give them greater flexibility in exhibition.

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

It is relevant to consider why the complaints of independent exhibitors have increased when no share periods and minimum session times do not appear to have increased in recent years. One possible explanation is that over the past few years there has been an increase in the number of films generating large grosses (in excess of $10 million), that is, the so called blockbuster, and consequently an increase in the number of films with minimum requirements of more than say four weeks.

Statistics are inconclusive. In Australia in 1994 ten films earned more than $10 million in box office, in 1995 eleven films earned more than $10 million, while in 1996 only six films earned more than $10 million. Independent exhibitors have claimed that ‘mid range’ titles are claiming longer minimum terms now than in previous years but given the loose nature of the term ‘mid range’ it is difficult to test this proposition.

Another explanation for the increase in complaints may be that there has been greater bunching of major titles recently so that there is more overlap between the minimum seasons of competing films. It is possible that complaints from independents regarding the effects of minimum seasons could increase if restrictions similar to those imposed in the UK were introduced. Should local distributors bunch major releases into school holiday periods, exhibitors with a small number of screens would still be unable to play all major titles.

An option which this report has considered is an arrangement whereby distributors are required to offer shorter minimum terms to sites which have less than a particular number of screens. For example one option is to have a policy for four or less screens and another for more than four screens. Those sites with four or less screens could be covered by a rule which restricted a distributor's required season to a two week maximum (although an exhibitor could commit for longer than two weeks). This proposal is favoured by many independent small exhibitors and some major exhibitors.

At first sight such an approach (if agreed to by the various distributors) would appear to have merit. Smaller sites would be freer to program as they saw fit. However, there are problems with this proposal. In the first instance it is arbitrary. A rule based on four screens might satisfy some smaller exhibitors but there is no particular logic to the cut off being four. Second, it may discourage growth. If there is some advantage to exhibitors from the proposals it might distort investment decisions away from multiplex development, a development clearly favoured by consumer demand.

A third point is that such a proposal is unlikely to be effective. As noted above, distributors may decide to charge higher rentals to the smaller sites as a consequence of them taking a film for a shorter period. An even more damaging possibility is that distributors may decide to reduce the size of the print runs and deny the smaller screens access to a first release print. Because of this, this report has decided that different rules according to the number of screens is not an effective solution to the minimum season issue raised by small exhibitors.

Guaranteed print access

Many small exhibitors have argued that distributors should provide some certainty of supply by guaranteeing them access to either first release or access at some future set time (for example, three weeks after first release).

Such a proposal would undoubtedly improve the position of a number of small exhibitors. However, this report does not recommend fixed guarantees of supply. Film distributors need to be able to allocate prints in a manner which maximises distributor returns. It would be inefficient to establish a mechanism of print supply by which distributors subsidised non viable sites.

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

A more flexible model

While it is beyond the scope of the ACCC's powers and interests to dictate new methods of distribution, it is possible to envisage a more flexible model in distribution contracts which might satisfy all parties.

At present the only variable in distribution contracts which distributors attempt to control is session requirements and minimum seasons. The price, that is film hire percentages, is set by all distributors in essentially the same way. The maximum percentage for the blockbuster title (currently 55 per cent of the first week's gross) is the same for all distributors. For moderately successful titles all distributors charge identical lesser percentages. It seems that no distributor trades off percentages against some other variable such as session policy.

It would be possible to develop more flexible distribution contracts which more effectively suit the circumstances of particular sites. This flexibility should include greater variations in rental rates. For example, rather than require an exhibitor to commit to say 2 day/2 evening for four weeks, or not receive the title, it should be possible for distributors to include a range of options that traded off session time requirements for rental rates.

Under this option a cinema which is willing to commit to a title for only one week would pay a higher rental than a cinema which is prepared to take the film for longer. Under such a scheme exhibitors could make a trade off between rental fees and playing time according to their particular circumstances.

A more flexible system may also provide some limited assistance to those exhibitors currently wanting first release but unable to receive supply. If a marginal exhibitor is prepared to pay a higher film rental to receive a print, that is, to effectively move up in the queue, it is difficult to understand why a distributor may refuse to supply.

Distributors have argued that because they cannot enforce minimum exhibition prices although their revenue depends on such prices, they need the security of minimum seasons to guarantee some minimum return. Again a more flexible film hire fee may provide some further insurance. An exhibitor who charges very low prices (and makes up the revenue shortfall from drinks and confectionary sales) could severely damage the potential revenue to a film distributor. With more flexible pricing arrangements distributors could amend hire rates to take account of lower revenues per ticket from such sites.

Of course, under such a proposal distributors may use higher rental charges to discourage discounting by exhibitors, to the detriment of consumers. While there are no legal barriers preventing distributors from charging different prices to different customers, all distributors currently charge all exhibitors the same rates. Any changes that would have different exhibitors paying different film hire are likely to generate considerable disquiet and complaint from those exhibitors paying the higher prices even where the trade off is a shorter minimum season.

It is probable that such a system would be administratively more complex for distributors. It might lead to an increase in distribution transaction costs in developing a range of contractual options. But such costs are unlikely to be substantial. Further, it would enable greater flexibility in contracts for film hire and provide more effective pricing mechanisms for distributors than are currently available. A contractual arrangement which allowed minimum seasons to be traded off against film hire rates may enable exhibitors to more effectively program their sites, and might increase distributors' rentals.

Conciliation and dispute solving

A revelation of this inquiry is the poor relations between many independent exhibitors and some distributors. Exhibitors describe distributors as ‘arrogant’ and ‘dictatorial’ while distributors describe certain exhibitors as ‘uninformed’ and ‘bad managers’. A significant number of independent exhibitors were prepared to provide information only in the strictest confidence for fear of reprisal. Given the interdependency of distribution and exhibition the mutual distrust is surprising.

The fact that many independent exhibitors see the ACCC as the first, rather than the last, resort in their disputes with distributors indicates that there are communication problems in the industry. The industry generates numerous complaints which require ACCC investigation. Such investigation is resource intensive and rarely leads to effective solutions from the ACCC perspective.

There is a widespread view among independent exhibitors that distributors lack consistency in their policies and are arbitrary in decision making. Independent exhibitors cite Roadshow’s apparent more favourable treatment of Greater Union, Village and BCC sites with regard to print availability, moving prints between sites, access to drive-in programming and so on. Roadshow provided this inquiry with explanations of apparent differences in treatment which suggest a greater degree of consistency than the independents acknowledge.

There would appear to be considerable merit in the establishment of an industry code of practice and an industry dispute resolution procedure. As a minimum there is a need to ensure that exhibitors in similar circumstances are treated in a similar manner. While distributors argue that this is already the case, a commitment in the form of a code of behaviour would be useful.

An industry dispute resolution procedure would be particularly useful, especially for independent exhibitors who would gain an unbiased mechanism to arbitrate grievances.

This report recommends that the industry in Australia establish a mechanism to resolve conflicts. An industry code of practice would be an essential first step. Such a code would necessarily cover the major issues of concern, specifically contract terms, agreed standards of practice and so on. The ACCC, with its expertise on appropriate standards and procedures, could provide assistance in developing a code.

It also recommends that the industry establish a complaints handling mechanism which embodies an independent mediation mechanism. To be effective the procedure would need to be fast in deliberation and cost effective. The industry should fund the mediation process.

Mediation should be confidential, but to encourage confidence in processes summaries of complaints and settlement procedures should be published.

Compliance

In the past the ACCC has found it difficult to enforce effective performance in the industry or take legal action — given that the behaviour reported by independent exhibitors has not breached the Trade Practices Act or there has been insufficient evidence to take action.

The ACCC does not have the legal powers to require remedies such as those adopted in the UK. Of the UK's two major 'remedies' — restrictions on minimum number of weeks film hire, and the establishment of a complaints panel — it is the latter which would be more appropriate for Australian circumstances. However, even here, the ACCC has no power to force the industry, and especially the distributors, to consent to conciliation processes.

The UK experience shows that industry dispute settling mechanisms result in a significant decrease in litigation and complaints to regulatory agencies. A similar approach in Australia is likely to provide benefit to the industry.

This report recommends that a code of conduct be established which provides rules for fair and equitable terms and conditions for access to first release films. **It is recommended** that the ACCC develops a code in conjunction with industry participants which address the concerns of the report.

It also recommends that a dispute resolution mechanism be established to provide for independent mediation in the event that the dispute cannot be resolved by the parties.

Mediation should provide the industry with a quick relatively inexpensive means of dispute resolution. It also seems appropriate that the ACCC should closely monitor the process and after 12 months conduct a review to ensure the code and mediation processes are working effectively with active participation by film distributors.

The dispute settling mechanism would not prevent any party from approaching the ACCC and requesting investigation of potential breaches of the Trade Practices Act.

If the industry proves *unwilling* to develop a code of behaviour and dispute settling mechanism voluntarily, **it is recommended** that the ACCC consider other options to improve industry practices. Approaches to consider would relate to mandatory codes and/or action against possible anti-competitive structural features of the distribution and exhibition industry.

If the industry proves *unable* to develop a code it may be appropriate for the ACCC to request the Government to consider a mandatory code, enforceable under the Trade Practices Act. This may lack the flexibility of an industry developed code, but may be an alternative if there is lack of industry support for some voluntary mediation processes.

One of the major features giving rise to the potential for anti-competitive behaviour is the highly concentrated structures in distribution and exhibition. The two largest distributors (Roadshow and UIP) have considerable market power deriving from their ongoing control of five of the seven major US film companies. It is significant that almost all complaints from exhibitors relate to the alleged anti-competitive behaviour of Roadshow and UIP. A less concentrated market structure in distribution whereby each US film studio distributed independently may give a more competitive outcome. The existing arrangements may have anti-competitive features which may be addressed by the ACCC pursuing structural reform.

Cinema exhibition in Australia is also highly concentrated. The two major groups, Greater Union/Village and Hoyts, hold a substantial share of the market and historically competition between the two has not been intense. The difficulties faced by Reading in entering the market indicate that it is difficult even for a large, well financed company.

The Greater Union/Village/Warner Bros joint venture eliminates any competition between Greater Union and Village and gives the joint venture considerable bargaining strength in their negotiations with developers for cinema sites and with film distributors over terms and conditions. In the absence of the joint venture Greater Union and Village would have most likely each established their own multiplex cinemas.

The Greater Union/Village joint ownership of Roadshow, the largest film distributor in Australia, reinforces the bargaining power of the Greater Union/Village exhibition joint venture. Should the code of behaviour and dispute settling mechanism prove unsuccessful **it is recommended** that the ACCC examine the exhibition joint venture to evaluate whether its structure and conduct breach Part IV of the Trade Practices Act.

Country locations

Many complaints about distributor behaviour come from country cinemas and generally relate to lack of supply and/or late supply, and the financial terms of supply.

Some country sites complain of their inability to get first release. In instances where the complainant is the only cinema in town the decision by a distributor not to supply first release is usually related to the relatively small market and consequent low revenue earned. The decision to supply or not is based on commercial reasons and there is no reason to expect that distributors should supply every site with first release.

However, it would seem that country sites are often supplied later than need be. Major titles released with multiple prints usually have spare prints after a few weeks of release. Some country exhibitors claim that they are unable to book a film from certain distributors until the film has at least completed its season at the multiplex in a neighbouring town that gets first release and distributors often charge first week rates when the country site finally receives the film.

The distributor view is that a country site is typically a fresh site and the film is new to the town. Therefore they insist on high film rentals. However, if they deliberately withhold supply until the film has completed its run in a neighbouring town the inference is that there is overlap in audience and, if this is the case, the second release site should be paying much lower rentals.

There appears to be no reason why many country sites should not receive a print of a major release within a few weeks of national release. Further, it would seem that film hire terms lower than week one should apply just as they do for later run city sites which compete with first run sites. The limited amount of local promotion paid for by a distributor would rarely justify the country exhibitor paying high percentages when the film has been released for as long as eight to 12 weeks.

In some instances it appears that distributors are indifferent to providing any service to small country sites.

This report does not suggest that distributors should subsidise country exhibition. Country sites should be allocated supply on their own merit, but distributors should provide more flexibility in terms and conditions for them taking second run product.

Conclusion

This report was commissioned by the ACCC in response to a significant increase in complaints from independent exhibitors. These complaints have been examined in a confidential report to the ACCC and this document is the edited public version.

The inquiry found insufficient evidence of breaches of the Trade Practices Act. In many instances the complained-of activities of film distributors were found to be consistent with commercial objectives of film distribution and not designed to damage particular competitors.

Nevertheless, there is a high degree of concern by independent exhibitors that many of the major film distributors' policies are designed to eliminate independent exhibition.

While this report does not reach that conclusion there is little doubt that independent exhibitors are sometimes disadvantaged by those policies. It is of concern that distributor behaviour at times appears arbitrary and favours larger exhibitors.

The inability of many small exhibitors to access information that is available to distributors (and often to major exhibitors) may disadvantage their negotiations over terms and conditions of film hire. Improved information flow may reduce the level of dispute.

A code of behaviour and an industry-supported dispute resolution mechanism should assist small exhibitors in their negotiations with major distributors. It is to be hoped that such a code will address the issues raised in this report and that distributors will be willing to participate constructively rather than insist that there be no constraints on their business practices.

Should this approach fail it may be necessary for the ACCC to take action against the structural factors which facilitate opportunities for anti-competitive behaviour by large distributors and exhibitors, and to request the Government to consider a mandatory code for the industry.