

19 December 2017

Mr Darrell Channing
Director
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clark Street
Canberra ACT 2601

Our Ref
FED472

Your Ref
62357

Contact Officer
Simon Bell

By Email

Dear Mr Channing

Independent Cinemas Australia Inc – Application for Authorisation - A91587 – Interested Party Consultation

I refer to your letter of 5 December 2017 inviting interested parties to make submissions on the Independent Cinemas Australia Inc (**ICA**) response of 1 December 2017 (**ICA Response**).

I am writing in my capacity as Chair of the Film Exhibition and Distribution Code Administration Committee (**FEDCAC**).

The ICA Response referred in a number of places to FEDCAC and the Film Industry Code of Conduct (**Film Code**), the use of the Film Code by independent exhibitors and the relative effectiveness of the Film Code in dealing with disputes between exhibitors and distributors. The ICA Response was supportive of the Film Code and FEDCAC but pointed out some areas of operation of the Film Code that the proposed authorisation was designed to augment.

The Film Code and FEDCAC have been mentioned in a number of submissions to these proceedings and in the ACCC Conference on the draft Determination.

This submission outlines the role FEDCAC and the Film Code can play in managing and resolving disputes between exhibitors and distributors.

1. History and Enduring Nature of the Film Code

The Film Code was developed at the instigation of the ACCC in 1998 as a self-regulatory model to manage disputes between distributors and exhibitors in a swift and efficient manner.

There are currently approximately 255 signatories to the Film Code.

The objectives of the Film Code include to:

- » *provide a framework for fair and equitable dealing between all distributors and exhibitors;*
- » *provide a timely, non-legalistic, cost-effective and commercially orientated means of avoiding and settling disputes; and*
- » *reduce the likelihood of litigation between parties to the code.*

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The Film Code includes guidelines for various aspects of film distribution and exhibition including:

- » That each distributor and each exhibitor will engage on a fair and equitable basis and in the manner set out in the code;
- » Principles for flexibility of trading terms;
- » The development of terms of trade, policies and guidelines; and
- » Arrangements for information exchange between distributors and exhibitors.

The Film Code states that each distributor decides if and when an exhibitor will be offered supply of a film. It acknowledges that a distributor can develop its own distribution strategy in relation to a film.

The Film Code also states that exhibitors acknowledge that the development of a film distribution strategy is '*...dependent upon the skill, experience, expert intuition and business judgment of the individuals responsible for such decisions within each distributor.*'

The Film Code has to all accounts operated effectively for the past 19 years. Significant and enduring trust had developed between the communities of distributors and exhibitors. Over the life of the Film Code there have not been a significant number of disputes.

This observation is supported by the bipartisan expressions of support and relevance made in the various submissions to the proceedings by both exhibitors and distributors.

2. Current Situation

I have taken on the role of Chair of FEDCAC in July this year. One of the initiatives that I commenced is to affirm and strengthen the Film Code. Initially this is by identifying issues that members have with the operation of the Film Code and seek role clarity for FEDCAC members and FEDCAC. This exercise has been outside the conduct of the ICA authorisation proceedings.

In due course I hope to move to an upgrade and simplification of the Film Code. This will require the continued support of FEDCAC and members.

Certainly, there is scope for such an upgrade given both changes in the film distribution and exhibition industries and the development and refinement of Film Codes over nearly two decades.

3. Initial Identified Needs

Our preliminary findings are that there is a real need for educating members and their staff in the obligations under and proper use of the Film Code, the processes enabled by the Film Code including information sharing and the overriding principles informing the Film Code to deal on ***a fair and equitable basis***.

As well there is a need to simplify the Film Code, to unpack the various principles and present them to members in digestible parts.

The approach discussed by FEDCAC involves building tools such as **education modules** in video format to cover key principles in the Film Code such as:

- » Supply of film copies by distributors and nature of their business decisions;
- » Trading terms and flexible negotiations;

- » Supply of marketing materials and film trailers;
- » Supply of information by distributors to exhibitors and vice versa; and
- » Exhibitor obligations including technical and exhibition requirements.

Another and complementary approach would be the preparation and publication of a series of **Frequently Asked Questions** dealing with the operation of the Film Code.

4. Conclusion

FEDCAC's view is that there has been little focus on educating and training members and their staff in the operation of the Film Code. The Film Code is complex, and could be simplified by preparation of supplementary/summary material, without amendment to the Film Code itself.

Where distributors are clear on their obligations and exhibitors understand the extent of their rights FEDCAC is optimistic that the Film Code will continue to operate as a valuable avenue to inform members, air grievances and resolve disputes, regardless of the determination finally made by the ACCC.

Please feel free to contact me to discuss this submission or any aspect of the Film Code.

Yours sincerely

Katherine Sainty

Katherine Sainty
Chair
Film Exhibition and Distribution Code Administration Committee