

## **A91587 - Independent Cinemas Australia Inc. – Application for Authorisation**

### **Summary of Presentation to Pre-decision Conference held at Sydney, 8 November 2017.**

#### **On behalf of Paramount Pictures Australia Pty.**

#### **By Mr Brian Pritchett**

Thank you for the opportunity to participate in today's Pre-decision Conference.

Paramount Pictures Australia Pty. is a longstanding participant in the Australian feature film industry.

Paramount has distributed films in Australia since 1913, and was a founding signatory to the current Code of Conduct.

As a distributor we have daily dealings with exhibitors who are members of the ICA, and we are proud of the quality of those relationships. Paramount's dealings with independent exhibitors have never been conducted through the ICA.

We have worked hard at fostering good relationships with the exhibitors of our films.

They are our partners in bringing those films to market and we are not aware of any concerns about how Paramount has dealt with independent exhibitors. There have been no issues raised by any exhibitor with Paramount under the Code for well over a decade.

We'd like to highlight the following issues:

1. It is our view that there is no evidence of the assumed market power asymmetry or any need or justification for the Authorisation that the ICA has sought.
  - a. Paramount does not currently hold a significant market share in the Australian film market;
    - i. Paramount operates as a relatively small distributor in a market with many suppliers and even more products competing for time on a finite number of screens;
    - ii. Paramount is not in a position to dictate terms that are not justified by the value that each party brings to the table; and
    - iii. there is no suggestion that Paramount has leverage that needs to be balanced out by the measures which ICA is seeking.
  - b. As Paramount is not a Goliath, neither are the ICA members without bargaining power;
    - i. The ICA members' respective market power lies in the (different) value each of them bring to the bargaining table in getting our films to market;
    - ii. Factors such as geography, ability to attract particular genre customers and investment in service offerings all impact the value they bring;
  - c. In our experience the independent exhibitors are typically skilled negotiators with lengthy experience in the industry.
  - d. It is Very important to highlight that Concerns about distributor or exhibitor behaviour can already be adequately dealt with under the Code, which is not an expensive or difficult process.
    - i. Paramount is not aware of independent exhibitors having raised any concerns with it (or the administrators of the Code) about Paramount's conduct or its standard conditions at any time over the past decade.

2. We don't believe that the scheme will be workable in practice.
  - a. It is still unclear to Paramount, even from the terms of the Draft Determination, as to exactly what topics for negotiation the Authorisation is really intended to cover;
  - b. It is inherently unclear as to who will be covered by each
  - c. Given the individual nature of the factors which make up the value which each exhibitor brings to the bargaining table, and the value which attaches to each film, any attempt to divorce negotiations from those factors is unlikely to be productive, or to succeed in an 'opt out' system;
3. We don't believe that it will produce the public benefits which have been assumed, and in particular:
  - the types of structural negotiations about changes to standard terms with Paramount that the ICA seems to be referring to are completely hypothetical -
  - Paramount has not changed its generic standard terms and conditions for at least 10 years, and in that time no independent exhibitor has asked for any changes;
    - o there have not been any structural negotiations with independent exhibitors about changes to standard terms with Paramount over the last 10 years;
  - there are no substantial transaction costs associated with the exhibitors' typical negotiations and there is no evidence that the Authorisation will give rise to transactional cost savings; and
    - o In Paramount's experience there are no substantial transaction costs associated with the exhibitors' typical negotiations with Paramount;
    - o In terms of advisor's costs, it has not been our experience that independent exhibitors use lawyers or accountants in these negotiations;
    - o To the extent that distributors 'opt out', there is no transactional cost benefit;
    - o To the extent that independent exhibitors 'opt out', there is again no transactional cost benefit;
  - there is no evidence that the Authorisation will result in a better and more efficient negotiation process.
    - o It would introduce another layer of bureaucracy and costs, as Paramount will still have to deal with the ICA members individually on the matters that the ICA accepts are outside the scope of the proposed Authorisation.
    - o It would interfere with well-established lines of communication and relationships with the individual exhibitors;
    - o It may lead to unrealistic expectations being raised on the part of some exhibitors which cannot demonstrate that they bring the same value as other exhibitors, which may in turn see the cost and length of negotiations increase;

In short, the Authorisation is unlikely to give rise to any substantial benefit to the public.

4. By way of contrast we believe that there are real grounds for concern about the inherently anti-competitive conduct which is the subject of the proposed Authorisation.

We believe that the Authorisation is more likely to result in:

- A reduction in competition between independent cinemas,
  - o A move to collective bargaining may reduce the incentive of individual exhibitors to provide competitive offerings (services etc.) to secure better terms than their competitors;
  
- An increase in inefficiencies in negotiations;
  - o introducing another layer of bureaucracy and costs;
  - o Also introducing interference with well-established lines of communication and relationships with the individual exhibitors;
  
- The protection of a degree of information sharing that would be unnecessary, unfair and which could be used outside of proposed collective bargaining.
  - o In practice the information sharing will already have occurred by the time that a decision is made by Paramount as to whether to agree to engage in collective bargaining in a particular situation.
  - o Even if Paramount opts out, the relevant information will have been shared between the competing independent exhibitors under protection of the Authorisation, with the outcome that there will be a significant imbalance in information in their favour.
  - o Information shared for the purpose of collective bargaining under protection of the Authorisation would remain in the hands of the ICA members even if collective bargaining is declined by Paramount, or if an ICA member 'opts out' for its own reasons.
  - o The ICA members would be aware not only of the terms being offered to them by each distributor, but also of the terms that are being offered by each other distributor to each of the other independent exhibitors (some of which will be competitors), and the attitudes of those competitors to the offered terms.
  - o This would unfairly tip the scales of information balance against Paramount which will not know the terms being offered by its competitors to the ICA members

On the basis of the material contained in the submissions to the ACCC, and on the basis of our own experience, Paramount submits that the ACCC should not be satisfied that the likely benefit to the public would outweigh the detriment to the public constituted by the lessening of competition that would be likely to result.

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