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To: Chair / The Australian Competition and Consumer Commission (ACCC)

From: The Australian Independent Distribution Association Inc (AIDA)

**Subject: Application for Authorisation A91587 submitted by the independent Cinemas Australia Inc. (ICA)**

Date: 8<sup>th</sup> November 2017

Forum: Pre-decision conference  
Human Rights Commission conference room  
Level 3, 175 Pitt Street, Sydney

AIDA Rep: Oral submission - Paul Wiegard  
Case example to be shared Matt Soulos – Transmission  
Specific responses about the operational details to be provided by  
Greg Denning – Studiocanal & Jason Hernandez - eOne

*ACCC draft determination:*

The ACCC concluded in its draft determination that overall it was satisfied that the public benefit flowing from the proposed arrangements is likely to outweigh the public detriment and accordingly proposed to grant authorisation to the application.

The following is the AIDA 'oral submission' / response is to assist the ACCC's weighing of issues and its interpretation of the information given to it.

AIDA opposes the Draft Determination

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**About AIDA:**

AIDA is a not-for-profit association representing thirteen (13) independent film distributors in Australia, being film distributors who are not owned or controlled by a major U.S. film studio or a non-Australian person.

Collectively, AIDA's members are responsible for releasing to the Australian public approximately 75% of all Australian feature films that are released across states and territories.

AIDA members distributed more than 175 feature films in the past 12 months, including Feature Documentary, Live Performance, all forms of scripted features in English and non-English languages. In sum, representing the greatest diversity of content for Australian exhibitors to schedule.

AIDA members are collectively the largest private funder of Australian cinema and responsible for all non-trade marketing and publicity across all films represented.

The following statement from AIDA Member, Becker Film Group < 6<sup>th</sup> Nov 17 > encapsulates many of the views of the AIDA members:

*“My name is Richard Becker, I have been a member of AIDA since its inception. I have been in the film distribution for 40 years. Apart from my international releases, I have distributed dozens of local films over the years including many AFI (now AACTA) Winners such as RABBIT PROOF FENCE, ANGEL BABY & TWO HANDS, and have always been flexible and supportive of all regional and urban independent cinemas. I have never had any complaints or issues that couldn't be resolved with my cinema clients.*

*I am concerned that the ICA Application for Collective Bargaining will have its most negative impact on all Australian Independent Distributors.*

*There is a serious potential for rigidity in terms and session policies particularly for Australian films. It seems inevitable this process will create a bureaucracy that will struggle to handle so many individual film negotiations (over 600 last year) in so many unique locations. This can only create a barrier between the cinemas and distributors that have historically worked together successfully.*

*Should Collective Bargaining be allowed I have further concerns that those Australian Distributors that don't participate will inevitably be disadvantaged given their small market share. Even though independent distributors represent the smallest sector of the industry's total box office it does however represent more Australian films than any other group. The barrier created by collective bargaining has the potential to limit diversity of local films available to urban and regional Australia.”*

What Richard has said in his statement is the market is functioning, the negotiation process is evenly balanced and efficient between AIDA and ICA members and the public beneficiaries.

Collective sharing of information and negotiation amongst ICA members will likely create an imbalance of bargaining power which can potentially reduce film hire terms; sessions and length of seasons. This would prove detrimental to AIDA distributors businesses and create a flow on effect... AIDA distributors becoming more risk adverse with the films and content represented; in turn reducing diversity of films being released.

The majority of AIDA members are relatively small film distribution businesses. Already challenged by the competition of major international distributors, AIDA maintains that collective bargaining will further disadvantage the independent distribution businesses and non-ICA member independent exhibitors' which is not in the public interest.

*A summary of key points providing more insight into the market not addressed in the AIDA submission dated 28<sup>th</sup> July, 2017 & responses to ACCC views expressed in the Draft Determination:*

- The aggregate market share represented by all ICA members is significantly greater than any other exhibition circuits when filtering for AIDA films.
  - The average ICA market share for all AIDA distributed films over the past 12 months was 42.65% vs ICA overall market share of 22.20%. <reference industry data reporting bodies *Comscore & Numero* >
  - For films released on less than 50 screens, the ICA share of total Box Office is more than 50% of revenue.
  
- More than 600 films were released in 2016, up 94% since 2010. Australian Cinemas and in turn the public have never had more diversity of choice. Over this same period of growth, the Gross Australian Box Office has increased just 19%. Therefore, there are more films vying for a slice of only a slightly bigger financial pie. AIDA members argue that this change in dynamic has provided exhibition community greater leverage.

AIDA distributors are fair and flexible in their dealings with ICA members. To date, it is our understanding no AIDA member has ever been through a mediation process with Film Exhibition and Distribution Code Administration Committee (aka FEDCAC), which speaks to our exemplary record in ongoing dealings with all exhibitors.

- The ACCC concerns that some exhibitors may have fears about complaining to the code secretariat is unsubstantiated. If the lack of complaints to the Code facilitator is genuinely a result of fear from ICA members that such action will jeopardise relationships with distributors, then how are we to know there are problems to address? AIDA have strong ongoing relationships with ICA

- members and independent exhibitors, so we encourage them to approach us with their concerns as they currently do.
- As there has been no history of code complaints against AIDA members, the argument that there will be legal cost savings under collective bargaining does not hold.
- AIDA are of the opinion film hire terms and session policies are fair and reasonable:
    - To this end each individual ICA member is already well placed to negotiate terms and conditions, as they see every Distributor's terms and conditions (which AIDA members do not).
      - i.e. individual ICA members have the advantage of comparing all Distributor terms already in consideration of their own individual dealings.
  - AIDA members DO NOT foresee efficiencies in marketing, financial management incl accounts receivable, materials movement incl trade marketing collateral and DCP ( the film master) supply costs.
    - ICA has NOT proposed to administer central billing, take on the responsibility of account management; as such, the argument that there will be accounting cost savings under collective bargaining does not hold.
  - AIDA seeks clarity regarding section #98 in the Draft Determination as there is confusion as to what the proposed collective bargaining will entail. Section #98 specifically says that neither session, seasons or rental fees will be part of the proposed ICA information sharing or collective negotiations. Yet various other parts of the draft determination seem to indicate that they will be part of such collective negotiations?
  - The “must have” films that AIDA members hold distribution rights for are significantly fewer in number when compared to the MPDAA members. Conversely, ICA members hold the upper hand when it comes to peak school holiday periods, when each Distributor is vying for their screens. This is the equivalent of an AIDA member having a “must have” film. Both sides navigate the “must have” films and peak period negotiations in good faith and with flexibility and understanding, as we maintain good relationships for the health of the exhibition ecosystem.

- AIDA members are considerate of each exhibitors unique attributes and programming challenges (i.e. screens, locality, audience demographics, past performance, week of release etc) when negotiating opening week trading terms policy.
  - Thereafter, there is very little bargaining power after a film opens as a film's commercial performance will usually determine film session policy in subsequent weeks. Herein lies the inherent problem with collective bargaining in that any upfront negotiations would likely hold no accountability post week one of release. Screening sessions for films post week 1 of release are typically negotiated week to week after the film's opening in accordance with the film's performance, relative to the competition. Those subsequent negotiations would revert to the individual cinemas; the equivalent of having your cake and eating it too as far as AIDA members are concerned.
- If AIDA members decide to 'opt out' of collective negotiations, it may influence cinemas to decline showing a film or AIDA members may be forced to accept an unfavourable deal to have a film exhibited. Either way it negatively impacts AIDA distributors and may marginalise our business model which is already under pressure from the evolving distribution landscape. Ultimately, impacting the diversity of films and reducing diversity for the public.
- The information that would be collectively shared in a 12 month period could potentially have long lasting impact on the independent distribution model and in turn investment into content which is already facing many serious fiscal challenges.

In conclusion, it is NOT in the interest of the Australian public to authorize the ICA application; the trading ecosystem will be negatively impacted, there is likely to be reduced investment into theatrical distribution of content. In turn, local content investment and a reduction in the diversity of films released.