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17 November 2017

Ms Adrienne Pecotic
Chief Executive Officer
Independent Cinemas Australia

By email: ceo@independentcinemas.com.au

Dear Ms Pecotic

Re: A91587 - Independent Cinemas Australia Inc. - Application for authorisation

I am writing to you to request additional information, which will assist our assessment of application for authorisation - A91587 - lodged by Independent Cinemas Australia Inc. (ICA).

As you are aware, after the ACCC issued a draft determination in relation to this matter on 28 September 2017, two interested parties requested a conference on the draft determination, which was held on 8 November 2017 in Sydney.

There were a number of issues raised during the conference. As ICA opted not to speak at the conference I am seeking written clarification and inviting further submissions from ICA on some of these issues.

1. Information exchange

In ICA's application for authorisation, it sought authorisation for ICA and its members to engage in '*information exchange concerning terms or proposed terms of film licensing arrangements...*'.

- 1.1 Please specify in as much detail as possible the terms ICA and its members intend to share and explain in what circumstances the terms will be shared. As part of this explanation, please comment on whether any of this information is the subject of confidentiality agreements between distributors and exhibitors.

As you are aware, ACCC authorisation provides protection from legal action for a breach of certain competition laws but it does not provide parties with any exemption to breach confidentiality agreements.

2. Collective negotiation

ICA proposes to engage in collective negotiation on behalf of ICA member exhibitors for:

- terms and conditions of film licensing arrangements and/or;
- booking terms and policy of film licensing arrangements for specific categories of members and/or;

- booking terms and policy of film licensing agreements applying to specific titles from time to time.

At paragraph 98 of its draft determination, based on our understanding of the position put to it by ICA the ACCC stated that:

'... the ACCC understands that ICA is not proposing to negotiate the standard terms and conditions for film supply or the initial season, sessions and film rental fee. ICA acknowledges that these arrangements are determined by distributors. However, ICA does wish to collectively negotiate with distributors on behalf of exhibitors, or a subset of exhibitors, on certain common issues such as where there are material changes in terms and conditions for a particular film.'

As you know, parties at the conference considered this description to be ambiguous and inconsistent with other statements about the proposed scope of the collective bargaining, and that it created uncertainty about the scope of the conduct sought to be authorised.

Please clarify in as much detail as possible:

- 2.1 Exactly what terms and conditions and booking terms and policy are intended to be negotiated collectively?
- 2.2 How ICA sees collective negotiation operating in practice:
 - 2.2.1 In what circumstances will ICA and its members engage in collective bargaining?
 - 2.2.2 Will it be engaged in routinely or only in cases where ICA members have concerns?
 - 2.2.3 Will it involve small groups in some instances and all ICA members in others?
- 2.3 To what extent does the *Code of Conduct for Film Distribution and Exhibition* (the Code) already deliver the benefits that collective bargaining is intended to deliver?
- 2.4 The extent to which collective bargaining is likely to result in detriment by undoing the beneficial effects of the Code.

3. Public benefits

As you would be aware, several distributors attending the conference challenged the public benefits identified in ICA's application for authorisation. Concerns were raised that, in the view of these distributors:

- 3.1 The proposed conduct would not result in reduced transaction costs, particularly because negotiations between distributors and exhibitors rarely involve external advisers.
 - 3.1.1 On this specifically, does ICA envisage that its members might choose to engage advisors to assist them in bargaining?
 - 3.1.2 More generally, please provide additional information on likely transaction cost savings, including examples and evidence to support your submissions.
- 3.2 Benefits will not be passed on by exhibitors (although we note that under the authorisation test, efficiency gains may still be given some weight as public benefits even if they are not passed through to consumers). If ICA maintains that benefits will flow through to consumers, please provide additional information, examples and evidence relevant to this submission.
- 3.3 There are minimal efficiency gains to be achieved from the proposed conduct; it will increase the time to negotiate, which in turn will increase costs, including because

independent cinemas are not a homogenous group. Please respond to these concerns, providing examples and evidence to support your submission.

- 3.4 ICA members represent a disproportionately large share of the customers for independent distributors, leaving these distributors in a position of disadvantage in any collective negotiations. Please respond to these concerns, providing examples and evidence to support your submission.

We are not seeking other specific information at this stage although it is open to you to respond to other comments raised at the conference should you wish to do so.

Please provide your response to this information request by close of business, Friday 24 November 2017. Please contact us as soon as possible if you do not consider that you will be in a position to do so.

This letter will be placed on the ACCC's public register.

If you would like to discuss this information request, please contact Simon Bell on 02 6243 1232 or via email, simon.bell@acc.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D Jones', is positioned above the typed name.

David Jones
General Manager
Adjudication