



8th November, 2017

TRANSMISSION

Mr. Darrell Channing

Director

Adjudication Branch

Australian Competition & Consumer Commission

23 Marcus Clarke Street

Canberra ACT 2601

Dear Mr. Channing,

Re: INDEPENDENT CINEMAS AUSTRALIA (ICA) APPLICATION A91587

Thank for your time and consideration to this matter, we submit the following without prejudice.

Last month Transmission Films joined AIDA (Australian Independent Distributor Association) and while we are now represented by this body, we would like to share our experience of releasing LION in January of this year, in response to point 140 in the Draft Determination (authorization number: A91587) -

ICA submits that independent distributors have bargaining power. Control of a successful film confers significant, if transient bargaining power. On this measure independent distributors can exert comparable bargaining power to a major distributor. ICA provided the example of the film 'Lion', distributed by Transmission Films. Lion was the fifth most successful Australian film of all time at the Australian box office.

As of today's date LION is the fifth highest grossing film of 2017, having grossed \$29.6m. I reference this because it was our experience prior to the opening of LION that Transmission Films clearly did not exert comparable bargaining power to a major studio distributor.

LION released on January 19th 2017, we booked the film with 254 cinemas on opening day, to ultimately play on a total 334 screens. On that date only XXX: THE RETURN OF XANDER CAGE (going onto gross \$7.5m) also released.



Following the first screening of the finished version of the film at the 2016 Movie Convention, it was the opinion of the exhibition community, both major and independent, that LION was likely to gross \$15m-\$20m+ in box office.

We set what we believed to be a fair policy to reflect the box office result that the bulk of exhibitors felt was likely for the film. More than 97% of cinemas confirmed our policy without major issue.

There was a small contingent of cinemas (all of whom are members of ICA) that took issue with our requested policy. They all came to us with the same concern and in one instance freely admitted knowledge of a negotiation that was currently taking place with another member.

As normal practice, we display flexibility to many cinemas, including the majority of ICA members. This flexibility occurs because we either have a good proven ongoing partnership with that exhibitor, or in most cases because 'the market' has determined we need to be flexible, in order to achieve the release scale we planned for.

With the 2016 Boxing Day release of our film A UNITED KINGDOM, we showed a lot of flexibility with all cinemas, which was predominantly made up of ICA members, as the 'market' dictated we had to. It was simply not a 'hot' film. The 'market' with regards to LION did not dictate the need to discount our offer. But again, a small handful of ICA screens pushed back regardless.

Unfortunately to compromise policy too heavily with only one cinema can cause a domino effect, which impacts our investment beyond the returns of just one or two cinemas in question. We witnessed this happen with the release of the film BROOKLYN in February 2016, specifically with the same small contingent of ICA members who took issue with our LION policy. This was not something we were willing to repeat on such a key title given the investment particularly by ourselves and Screen Australia.

In early January, the CEO of ICA contacted me with regards to three outstanding negotiations relating to LION. A lot of my personal concerns relating to the proposed Collective Bargaining agreement were born out of the experience.

As a distributor we cannot compromise our national release for the unreasonable demands of three cinema locations.

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When discussing one of the negotiations, I highlighted that the member in question openly admitted to antagonising my staff for his own amusement, was constantly late in reporting box office docket, had a poor payment history with our company and been caught trying to host an unapproved screening.

Nobody can legislate against bad programming decisions. No one can stop cinema owners making poor decisions that impact both our bottom lines. That's business. However, we need the right to set terms that can offset the risk of repeat offenders who have a history of terminating (or under-programming) our films in order to make room for heavy commitments, or those cinemas with whom we have payment liability or account issues. We don't see why they should get the same terms as other ICA members and be rewarded for bad commercial behaviour.

The eventual success of LION did not give Transmission any additional market power in our negotiation with ICA members. While one ICA exhibitor maintained that they were accommodating for the success of the film by adding sessions (for which we should be grateful), the reality was that they had clearly made the wrong programming call and were only trying to catch up to the other 97% of exhibitors who supported this Australian film from opening day without argument.

Each screen comes with its own history of working with respective distributors, while the greater majority are respectful of both partners mutual needs. Some remain combative and one-sided.

Under a collective bargaining scenario – who holds the responsibility for this relatively tiny, vocal minority? Is it now ICA? Our fear is that these cinemas will hide behind ICA and continue bad practice to the detriment of a vulnerable independent and Australian distribution eco-system.

To quote one the independents critical of Transmission, 'your films' don't deserve the same treatment as the studio films - even when we have a blockbuster like LION. Their view is that we should be pushed around. Collective bargaining solidifies our position at the bottom of the food chain.

Thank you for considering our comments, do please contact us if we can elaborate further.

Kind regards,

Matthew Soulos

c.c. Andrew Mackie, Richard Payten, Shannon Cook