



The General Manager
Adjudication Branch
Australian Competition & Consumer Commission

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ACCC ref: Independent Cinemas Australia Inc Authorisation.
A915887

Date: 15th Dec 2017.

Dear Mr Channing,

Thank you for providing us the opportunity to put our point of view regarding the ICA's application for an Authorisation to collectively bargain and share information.

We support their submission.

As part of your deliberations we believe the ACCC should consider:

1. The distinctive nature of the market for films shown in major metropolitan areas as against rural and regional areas where the Independent sector is at a clear disadvantage regarding terms and conditions
2. The ready access to digital entertainment available at home, means the exhibitors and distributors current business models must eventually change.
3. The dominance major distributors have in determining 'policy' for most of the independent exhibitors has the effect of squeezing out opportunities for smaller distributors trying to sell their product, in particular, new Australian films.
4. The global growth of 'Event Cinema', (NTLive, Met Opera, Australian Ballet, etc.), means independent cinema owners would benefit from greater flexibility in programming screen entertainment for their respective communities.

I will elaborate further on these points, but first, a bit of history about our production company, Australian National Theatre Live and our distribution company, ACT 2 Distribution.

We established ANTLive 3 years ago with the intention of filming great examples of live Australian theatre and distributing them to cinemas and community halls across the country.

Advances in digital recording and broadcasting have now made it possible for many more arts-lovers to see and experience live performances in metropolitan cities they would otherwise never see.

A similar project, the UK's National Theatre Live, now screens theatre around the world.

We have successfully negotiated all rights agreements and have filmed 8 plays, 4 of them already screened in 30 cinemas, (independent and major metro's), to almost 2500 cinema-goers.

Our experience distributing these plays has been slow, frustrating and obstructive, very much more difficult than we had imagined.

We initially licensed a small distribution company which had limited success so we started our own, Act 2 Distribution, specialising in 'Event Cinema' screenings.

We travelled the country speaking to cinema owners and attended conferences and industry events trying to understand how the industry works.

We found very few people ready to discuss it with us in any detail.

Unlike many other industries, it was clear the inner workings of the distribution and exhibition business were closely guarded secrets.

Aspects involving terms and conditions, 'policy' issues, screen availability, booking windows, theatrical first-run and sub-run seasons, became familiar expressions, but detail-free.

I have to say, despite our 2 year efforts, I have learnt a lot more about the industry and the behaviour of its participants reading the pages of submissions to this enquiry.

On our tour, we discovered there were two markets, one very large and competitive in metropolitan cities and another, very much smaller, serving rural and regional centres.

However the terms and policy arrangements seem to be the same across the board, for example, as one owner reluctantly told us, he would have happily programmed one of our films for kids regularly during the day but, "due to

'policy' agreements", he was obliged to screen other films a certain number of times, more often to empty seats.

There seemed to be no available times to screen our films, especially during school holiday periods when the market for films was already crowded with mostly foreign content programmed to be screened not by popularity but by contractual obligation.

In this regard we fully support comments made in a submission from Icon/Dendy's CEO, that, "Ensuring a commercially successful independent exhibition sector supports both consumer choice and the ongoing commercial viability of the Australian film industry and the independent Australian companies who manage the distribution of a significant proportion of Australian films".

It's also clear that current business models are changing and few people dispute that. The battle for box-office dollars is getting harder, with the major exhibitors rebuilding their cinemas for the 'luxury theatrical experience', with bigger, more comfortable seats, fast-food and programming 'alternate content', - options not readily available to independent exhibitors in rural and regional centres trying to increase their own ticket sales.

It seems to us, there is a conflict between exhibitors needing to maximise their box-office takings and distributors, whose only interest is to maximise their own film's box office with the latter, well on top.

Distributors understandably attempt to sway the market in their favour, but in our view, it's not a level playing field, where open competition should set the standard.

We believe independent exhibitors, especially in rural and regional areas should have the flexibility to program films for their own communities, after all, no-one knows their market better than they do.

As it stands at the moment, most independent exhibitors are dictated too by the major distributors in terms of the films they screen, their screening times, and the amount of marketing support they receive.

In rural and regional Australia especially, building a sense of community is important, and establishing a cinema as a hub for local entertainment, not just for mainstream films, but for 'events', such as our theatre screenings, opera or ballet, or even televised rock concerts from around the world, is important not just for the exhibitor, but for the community as a whole.

Diversity is the key to success for independent cinemas and a driver for better business practices that depend on a sharing of information about what works in different communities and how to respond to changing trends in the exhibition market.

In that regard, we fully support the ICA's aim to share information to ensure a better understanding of the pressures on each other's businesses and as a way of openly resolving disputes that arise between all parties.

It's clear to us that claims of commercial confidentiality can be seen as a veil over bad behaviour and sharp business practices.

We note in the ICA's submissions that involvement in a collective bargaining process is voluntary, with opt-out options and anti-boycott provisions that will render incapable the ICA's ability to act as a cartel.

From our point of view, we see benefits in being able to join with the ICA to negotiate terms and conditions collectively acknowledging the often un-co-ordinated nature of the exhibition market in rural and regional areas.

While our films are not in the 'block-buster' category, we serve a loyal but specialist clientele in a new and developing industry. Working together with ICA members and sharing experiences, we would see efficiencies in setting terms, conditions and policy, including ticket price, aligning cinemas to launch screenings on a particular day, and involve individual exhibitors in creating a 'special event' around the film's screening, as currently happens in Event Cinema screenings around the world.

We believe such a process would deliver us a more effective result for less cost.

It also has the potential to revitalise the exhibition industry generally in both metro and regional areas and make them more responsive to the interests of their audiences, the customers.

If you need any further information from us, or if you need us to clarify certain matters, please don't hesitate to be in touch.

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