



21 July 2017

SONY PICTURES RELEASING PTY. LTD.

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Darrell Channing
Director
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2061

Dear Mr Channing,

Thank you for your letter inviting information to assist the Commission to determine whether or not it should grant an Authorisation to Independent Cinemas Australia Inc. (**ICA**) in relation to proposed collective bargaining activities. The following information is provided to assist the Commission.

Sony Pictures Releasing Pty Ltd

Sony Pictures Releasing Pty Ltd (**SPR**) is the Australian distributor of Sony Pictures Entertainment Inc. motion pictures for theatrical exhibition. SPR is one of almost 20 distributors of motion pictures in Australia of which Disney, Paramount, 20th Century Fox, Universal and Warner are the major competitors.

The success or otherwise of SPR motion pictures depends on the level of public consumption, which is directly related to the number of cinemas that agree to accept and exhibit SPR motion pictures. Independent cinemas are integral to SPR's success because of their audience reach, particularly in suburban, regional and country locations.

In seeking the optimal exposure for each motion picture, SPR is in direct competition with all the other motion picture distributors, each of which separately seeks to reach terms with exhibitors to show their motion pictures in cinemas across Australia. SPR's success depends on strong support by exhibitors. When determining whether to book an SPR motion picture, each independent exhibitor must also consider whether to book motion pictures from competing distributors, as well as when to exhibit each motion picture to achieve optimal sessions for an optimal run.

As far as SPR is concerned, ICA's claim that there has been pressure to appropriate a higher share of revenues from theatrical exhibition of its motion pictures due to declining DVD and Blu-ray sales, is not correct.

Over almost 20 years, SPR has built long-standing, collaborative relationships with exhibitors, including members of ICA. That has been essential to the success of Sony Pictures in Australia. SPR has worked directly with exhibitors, rather than through an industry body or association, and as a practical matter, is likely to continue to do so.

Commercial realities of the industry

First, SPR's commercial strategies, including release dates, motion picture rental rates and session and season policies for each motion picture are carefully developed by teams of experienced professionals to maximise the box office returns for both SPR and exhibitors. SPR's licensing agreements form the legal basis on which SPR licenses exhibitors to screen our motion pictures. Although SPR sets a notional release date for its motion pictures, in accordance with standard industry practice, commercial terms such as exhibiting dates are negotiated to suit scheduling, especially in theatres with one or two screens. Sessions times and length-of-run are also flexibly arranged between SPR and the independent exhibitors who elect to take its motion pictures. SPR does not believe that it is feasible or appropriate to negotiate with any trade industry body over these matters, or other terms of its agreements with independent exhibitors.

Secondly, although SPR is not privy to the confidential information provided to the ACCC on the turnover of members of the ICA, it is aware that ICA members include a number of exhibitors that are significant businesses and some that are both distributors and exhibitors.

Code of Conduct

As ICA has noted in its application, there is a Code of Conduct for Film Distribution and Exhibition. It is a comprehensive voluntary code designed to provide a framework for fair and equitable dealings between distributors and exhibitors. The Code provides a timely, non-legalistic, cost-effective and commercially orientated means of avoiding and settling disputes.

SPR has always embraced the general principles of the Code. While SPR cannot speak for other distributors, from SPR's perspective the Code has always worked well since it was established in 1998. No referral to the Code Committee has been made involving SPR, nor has there been any dispute involving SPR in at least the past ten years.

In his 2015-2016 annual report, the Code Conciliator stated:

'the Code Administration Committee has increasingly and successfully dealt with industry wide issues, this has led to the minimisation of disputes coming before the Secretariat or myself.'

The Code acknowledges that the nature of the movie business requires distributors and exhibitors to have flexible opportunities to negotiate arrangements that best suit their individual needs. In short, the Code has proven itself an effective and reliable means for ensuring mutually beneficial commercial dealings between SPR and all exhibitors, large and small. SPR would be very concerned if any steps were taken that impacted on efficacy of the Code or diminished it in any way.

Conclusion

We trust this information assists the Commission in considering ICA's application. If there is any other information I can assist the Commission with I would be pleased to do so.

Yours sincerely,



Stephen Basil-Jones
Executive Vice President - Aust./N.Z. & Northern Asia