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26 September 2017

Director  
Adjudication Branch  
Australian Competition & Consumer Commission

[adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Dear Mr Channing

**A91587 - Independent Cinemas Australia Inc. – Application for Authorisation – Further Submission**

We are writing on behalf of Paramount Pictures Australia Pty. (**Paramount**) in response to the Response and Supplementary Response to Public Submissions (the "ICA Responses"), dated 30 August and 31 August 2017, respectively, filed by Independent Cinemas Australia, Inc. (**ICA**).

We assume that the ACCC will be reaching a view shortly in relation to the Application for the purposes of publishing its draft decision. Without responding in detail, Paramount believes that it is important to point out a number of issues with the matters asserted and submitted in the ICA Responses.

***The lack of evidence demonstrating the necessity or benefits of the Authorisation***

The ICA now submits in the ICA Responses that the Application does not arise out of a major market failure, but rather out of what it asserts to be a potential future scenario.

This new assertion is problematic for two reasons. First, this was not the basis for the Application put forth in the ICA's initial Supporting Submission; consequently, the interested public has not had the opportunity to comment on this last-minute justification.

Second, the ICA has provided no evidence to support its postulated future scenario. There is nothing in the ICA Response that shows this hypothetical scenario is likely, let alone certain. Further, the ICA has not provided any evidence of distributors unfairly discriminating between like customers, which it asserts as justification for the information sharing sought under the Application.

The alleged benefits claimed in the Application remain unfounded assertions unsupported by any evidence.

***The effect of the Authorisation***

The ICA repeatedly asserts that there is no risk of a collective boycott, or of lessening competition. However, the ICA's Application under s.88(1A) and 88(1) expressly seeks authorisation for conduct that would or might constitute cartel conduct under the CCA, or conduct that would or might have the effect of substantially lessening competition within the meaning of s.45 of the CCA. The Authorisation sought is of potentially broad reaching effect, justifying the concerns expressed by a number of the interested parties.

It is disingenuous for the ICA to suggest that there should be no concern because it would not promote illegal behaviour: if granted, the Authorisation would make legal that which is otherwise prohibited by the CCA, and about which Paramount and other interested parties have expressed serious concerns.

It is also misleading to characterise any collective negotiations as being "voluntary" from the point of view of the distributors. If ICA members were to require the distributors to negotiate with the ICA, rather than themselves individually, which is a potential outcome of the Application, then the distributors' participation cannot be said to be voluntary.

***The class of persons to which the Authorisation would apply remains uncertain***

In the ICA Responses, the ICA concedes that the class of persons to which the Authorisation would apply would remain uncertain at least until after the Application has been determined. Paramount's concerns are not addressed by the suggestion that the ICA will inform it (and other distributors) who is "in" each time a negotiation takes place. Nor is there anything in the Application to bind ICA members to remain "in" in relation to any particular issue or negotiation.

Paramount reiterates its concern that the proposed 'opt out' mechanism is unworkable.

Paramount has other concerns in relation to the matters raised in the ICA Responses, but is unable to fully address these in the timeframe within which we understand the ACCC intends to publish its draft decision. We reserve the right to address these issues (and to expand on Paramount's concerns expressed in this letter) after the publication of the ACCC's draft decision.

Please feel free to contact me if you should wish to discuss further any aspect of this or Paramount's previous submission.

Yours sincerely  
**DibbsBarker**



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