

Comments Regarding the Possible Nullification of the Paramount Decrees

Introduction

Twenty-seven years ago, I decided to go into the Cinema business and opened the first full dinner and first run movie concept. When interviewing film buyers to represent my new endeavor to the major studios, I was told by one and all that this industry, Exhibition, was the only industry where the Wholesaler/ Manufacturer" (Studio) had an adversarial relationship with the Retailer (the Cinemas). Being a novice at that time I was incredulous, how could that be? I was wrong, dead wrong. It was, and still is, both the truth and truly amazing. That love hate relationship has continued to this day between exhibition and the studios, but at least there are some rules and a reasonably level playing field between all the interested parties. That is what was embodied in the Supreme Court's decision and by the Paramount Consent Decrees enacted in 1948 to halt vertical integration and anticompetitive behavior in the movie industry.

Now comes talk of nullifying those Decrees.

The number one purpose of antitrust law is to promote fair trade and fair competition for the benefit of consumers. These are the general principles of the Federal Acts. First, antitrust laws restrict the formation of cartels and prohibit other collusive practices regarded as being in restraints of trade. Second, they restrict the mergers and acquisitions that may substantially lessen competition. Third, they prohibit the creation of monopolies and prevent oligopolies from exercising monopolistic power, especially to the detriment of competition. Fourth, they were meant to exert a downward pressure on retail pricing for the public benefit. That directive was confirmed in a 1970 case stating the public interest is served by the promotion of competition.

The Paramount Decrees define and apply these principles to this industry. This industry will always need that legal oversight, no matter how times and how technology changes.

The Department of Justice ("DOJ") sued the Big Five studios (Paramount, MGM, Warner Bros., 20th Century Fox and RKO Pictures) for a variety of illegal trade practices, including discriminating against independent theaters and forcing theaters to purchase a group (block booking) of movies from studios, regardless of their quality and without the ability to preview them. Further, the Big Five studios were vertically integrated and controlled each step of the process. The cases made it to the Supreme Court.

The Decrees were consented to by all parties involved in the Supreme Court case and they have successfully governed the film industry for 70 years. The settlement prevents studios from owning movie theaters, and bars a number of anticompetitive practices which led to the growth in number of independent filmmakers, theaters and studios.

My Personal Experience with Antitrust Litigation

My first little three screen theater stood up and sued the original MGM in part for block-booking and also over a clearance issue. MGM was in clear violation and had little choice but to settle and pay me in exchange for a non-disclosure agreement so as to avoid an inevitably unfavorable ruling. Afterward, I became a resource for the DOJ's Antitrust Division and others regarding antitrust issues.

I was a little guy that had successfully stood up to one of the giants.

This is how it works. A big cinema chain or major studio is caught playing the game. Little guy has their very existence threatened and files suit.

Big guy pays off the little guy with a cash settlement in return for a non-disclosure agreement. That is cheap price to pay for a big guy to make possibly precedent confirming litigation vanish. This explains why the headlines disappear and there are actual no court judgements.

There was press coverage when I was paid off by MGM. I was quoted, "Just last week I was cleaning up popcorn after a kids show, wishing I had a nickel for every kernel I had ever swept up.....and now I do."

Even the National Association of Theater Owners ("NATO") could only congratulate me with silent pats on the back for fear of complications from the Studios or big dues paying members.

My later involvement with the Antitrust Division included some of their subsequent reviews of the Paramount Decrees as I had also forwarded them details of my legal action. The DOJ and I were both evidently on the same page as the decrees remained in place and 'as is' for the past 70 years. If it's not broke, don't fix it.

Not so long ago, when AMC bought Chicago headquartered Kerasotes' Showplace Cinemas (which owned 800 screens), I was again interviewed by half a dozen DOJ attorneys in a phone hearing lasting over two hours. Before AMC was allowed to close on that acquisition they had to sell six of its own Chicagoland cinemas (which went to Regal). Without such a remedy, the transaction would have combined too many AMC theaters in Chicago. AMC would have been able to exert too much control over the local marketplace, which would have been anticompetitive under the antitrust laws.

When the DOJ reviewed anti-competitive activity common in the entertainment industry in the decades before the settlement, major studios controlled nearly everything about movie making.

The DOJ and the high court were particularly alarmed at how the major studios were keeping independent theaters out of the business. That is still a relevant concern to this very day. The studios themselves owned the theaters or they dealt with a select few, but it was a decree violation for fear the new combination could set regional ticket pricing.

It is illegal for a large theater chain to manipulate or try to cut off the supply of movies to independent theaters. It is illegal for studios to not provide a fair, legal and level playing field for all. It is now illegal for studios to give preferential access or terms to a specific theater or chain of theaters.

Even way back in the 1930's, small independent exhibitors were already claiming they were being cheated by the studios. The Supreme Court's ruling in 1948 agreed that the studios were giving preference to their own theaters. That was, and still is, a violation of antitrust laws.

Studios must supply titles both to the independents and the large chains on a fair and equal basis or those large chains could simply manipulate product with a studio to drive other exhibitors out of business.

A theater doesn't have to miss screening many high profile films in a single year to be put out of business by a neighboring theater who enjoys preferential access or financial terms with prime product.

These are the mechanisms of the Paramount Decrees that promote competition.

The Paramount Decrees originally solved legitimate anti-trust issues through a compromise consent rather than relying on an order from the courts. The studios settled and signed because they were forced to do so. They didn't volunteer and the history books show the industry fought the government on this issue tooth & nail for over a decade before they acquiesced.

Does anybody really think the studios want to promote competition? Does anybody really think the big national cinema chains want to promote competition for audiences? That is crazy! If the reader is that naive, I have a Harvey Weinstein picture I want to sell you.

If a million tickets are projected to be sold for a title in a given market, a corporate giant like AMC would certainly do everything in its power to be the majority or sole seller of those tickets. That is well and fine if it builds the best theaters and naturally attracts the biggest audiences to its own theater. That is wrong if somehow they are the only theater or chain to have that title.....and if a chain or a few chains of cinemas have the sole possession of that title you can bet your bottom dollar that the public would be charged extra ticket dollars for that exclusive or semi-exclusive run.

The big three chains control over 50% of the screens in this nation. If I were the chief executive of one of those three giants, I would want to divide that pie up among the few rather than the many. Wouldn't you?

Legally prohibiting that type of behavior is the only way to prevent it from happening.

If large chains could, they would hurt their competition not by competing for an audience on the same terms; but by shutting the product out of their smaller neighbors by obtaining preferential or exclusive terms. That is what all anti-trust initiatives are designed to prevent. Fair and equal access is in the public's best interest, make theaters compete with other theaters by having the best admissions policies, best theaters, presentations, marketing and innovations like I did, not by shutting each other out of product with insider deals.

The big studios of MGM, Warner Bros, Paramount, RKO, United Artists, Universal, Columbia and 20th Century Fox were forced to get rid of their own theater holdings. Disney was a producer of films, which Metro distributed, and so Disney was not as directly affected back then. However Disney always pledged to abide by the Decrees as the industry standard rather than have the DOJ take further enforcement action and bring them to trial. They settled.

In its original 1948 ruling, the Supreme Court found "at least 70% of all first-run theaters are affiliated with one or more of the five majors." The theaters only showed films from their affiliated studios.

Shockingly, the court also found that there were no independent first-run theaters whatsoever in 38 of the country's 92 cities with a population of more than 100,000 people.

There are currently over 40,000 screens in the USA. Of those screens, 2500 facilities housing 25,000 screens are owned by just the three largest chains, AMC, Regal, and Cinemark. The remainder are regional chains or independants.

All those remaining smaller local and regional chains are currently entitled to fair and equal pricing, treatment and access, all due to the protections of the Paramount Decrees. That is the very definition of fair trade. That is what the Court wanted, and the Decrees are the only way to keep competition fair.

More Personal Experience

Over my entire history of theater ownership the studios were furious when I would promote attendance with discount admissions, but because of the Paramount Decrees they could do nothing about it. Studios cannot currently dictate an individual theater's pricing. Nullification of the Decrees could change that, at minimum it is the proverbial slippery slope.

Examples of promotions at the theaters I then owned included students enjoying free admission on Wednesdays. Film rental was calculated and paid to the studios based as if the regular full student price had been charged. The studios still complained, they didn't like the thought of a ticket being given away, despite being paid themselves.

A second example of a promotion at my theaters was that customers who bought day-of-show tickets would receive a coupon to later buy two tickets over the next 30 days for the price of a single ticket (BOGO), valid weekdays only.

Studios constantly sent in what are called "blind checkers" to count customers and compare those totals to box office reports to see if I was cheating them. They reconciled.

Again, my theaters always paid film rental based on the full market rate (called the per capita) as if the public paid me full price for that ticket as per the studios standard terms. Studios typically charge up to 70% of a theaters admission revenues as their cut.

These discounts increased the frequency of movie-going and the attendance to all films across the board. The studios profited mightily by that increased attendance without any loss of film rental whatsoever.

Yet studios still hated those specials as these promotions tended to suppress the prices nearby cinemas could charge for the same title. Several nearby theaters did lower their ticket prices. A nearby Cinemark even started to accept our passes and advertised that fact in the media and on their own front doors.

The nearest Regal Cinema hired a flatbed truck with big electric billboards on the sides and would drive it around our town and even our parking lot. That backfired and simply marketed our opening, we grew exponentially.

Each of those two nearby theater complexes had more screens than my nearby 7 screen theater. The Regal had 30 screens and the Cinemark had 18 screens. As long as each cinema was charged the same amount per butt in a seat by every studio, and given I had equal access to the film product, I didn't care and we did very well with our slice of the American pie. Within a couple of years, the Regal closed an entire wing of auditoriums and shrunk from 30 to 18 screens.

We worked harder to make a living without playing with big money back slapping, good day at the golf course guys.

Disney once played hardball to keep me from doing these "specials", but I was protected by the Paramount Decrees. I made my case with them in a face-to-face meeting over two decades ago and that studio, as did all others studios, finally left me alone.

Disney has only recently done an about face and prohibited these type of promotions, threatening to withhold their pictures if tickets are sold at a deep discount or given away as a reward for frequent movie-going. That edict is a violation of the Paramount Decrees, something Disney always said they would abide by.

Disney's new rule is posted at the front doors of my old theater right this very minute, protecting the two nearby megaplexes from competition by threatening to withdraw their films from my old theater.

That is a prohibited form of price-control in violation of the Paramount Decrees. A smaller player complaining to a studio faces problems if they challenge the powers that be.

Now AMC has their new annual movie pass for a flat fee per month, but a theater I once owned cannot now sell a discounted ticket even if they paid full film rental at the full market price.

The AMC Stub Hub Movie Pass and other programs are just the latest forms of something I did two decades ago with what I called "The Hollywood Card". The studios tried to shut us down for the "Card" back then. Now, if AMC does its version, it is embraced as being smart. This is a good example showing the innovation originates with the entrepreneur and is a good example of the power of big business over the little guy.

An example from 20th Century Fox: Tom Sherak was the head of the Fox Motion Picture Group for 17 years. He had absolute power. I wrote letters to Sherak not long after I opened my first theater asking to be able to play their films on the national release date, which Fox would not then allow because my cinema had a liquor license. Every other studio had previously acquiesced and sold my theaters "Day & Date" movies, Fox was the last holdout.

Sherak's response to my second letter was, and I quote, "If I ever see an envelope with your return address cross my desk again, I will throw it away in the nearest trash can, unread". That's how it works. Only after Sherak left the studio did Fox policy change so my theaters could book their film product just like everyone else did.

Over the Sherak years, he would attend the annual theater owners convention and make his annual assertion that someday, some way, he was going to find a way to get a percentage of cinema concession revenues. A little harder to do that with the Paramount Decrees in place, so it never happened.

My theaters commonly had audiences drive 30 minutes or more, passing multiple competitors, because we had a better facility product at a better price. I met one family who would drive 60 miles from Merrillville Indiana to suburban Chicago, even though they had an AMC 14 just three blocks from their home because we were a better theater.

A recent poll conducted by “Business Insider” ranked the public’s appreciation of the circuits by ranking the “10 Best Movie Theaters” using several categories of qualitative questions. Of the top five rated theaters, only Cinemark made the cut, squeaking in at 5th place. Regal ranked 7th and AMC was 9th. The best, the most innovative, the ones who try harder were appreciated more.

It’s the individual entrepreneurs who are interacting with their customers, sweeping up the popcorn and personally checking the screen image. While making up less than 50% of the screens the small guys still make up the heart and soul of Exhibition and carry the industry forward. They listen to the customers from the floor instead of just sitting behind big desks checking weekend box office reports and what today’s stock price is.

The Decree, like all good antitrust law, promotes competition by innovation such as what I did when I opened the first 'dinner and a movie' theaters. Twenty-five years later many other theaters now have the previously prohibited liquor license and 'table food', such as I first established. Twenty years later, the Movie Pass is a version of what I called “The Hollywood Card”. We were among the first to have actual movable chairs instead of rows of seats attached to the floor, like every passenger on a commercial flight complains about. (SIDE NOTE: As I write this, the US Government is about to pass a law regulating the minimum legroom for passengers of the major airlines. If government can step in to mandate legroom for those ticket holders, why is it a problem for government to regulate monopoly powers in order to promote competition in the public interest?).

Innovation comes from the little guys trying to do better, not by the guys who have to squeeze out an extra penny per share for the quarterly SEC report filings.

Different cinemas should compete by offering the best locations, facilities, presentations, concessions, services, pricing **and not by manipulating the free, fair and timely flow of products with insider backroom deals or with the wolves slaughtering the lambs with big money while the government shepherd turns its back on both the herd and the consumers they are supposed to protect.**

That is the classic definition of American fair play and fair competition.

As to Some of the DOJ’s Specific Questions

The introduction of digital projection at Cinemas has no bearing on this issue. That conversion was to save the studios an expense of about \$3000 per film print, which when distributed to an average of 2500 screens meant a distribution cost of about \$7,500,000 per title. Going to digital images did not improve the film quality so much as to cut the annual costs for the studios to distribute their films. The cost of re-producing an average of 30 titles annually resulted in saving each major studio about a quarter billion dollars every year. That was not an Exhibitor inspired innovation; it was a studio demanded cost cutting mandate to increase studio profits.

Cinemas now have multiple screens instead of just a single screen like in 1948. That issue has been raised by the DOJ but is not a legitimate excuse to change the Decree. If smaller chains don’t have fair and equal access to all the new films, that simply means an under-performing or dark empty auditorium that will soon cause a theater to close altogether for lack of current ‘grade A’ product on all its screens.

The Wanda Group is controlled by Mr. Wang Jian. He is the wealthiest man in China and owns AMC as well as Hoyt Theaters in Australia. Wang owns more movie screens than anyone else in the world. The Brits now own Regal Cinemas. CMX from Mexico recently bought Cobb Theaters here in the USA and are also opening their own locations. Since the Paramount Decrees do not apply overseas, I am guessing the public does not enjoy similar protection from monopolies and fair trade in those countries. Maybe before we start looking at the Paramount Decrees here at home, we should look at the international distribution of films from Paramount, Warner Bros, Disney Sony, Universal and other big producers and see how they run their operations in other countries?

The big three cinema chains are aggressively adding overseas locations so there is a ready basis of comparison. Same players, different countries playing by different rules.

It's well worth tabling any investigation of how well antitrust law is working here at home. First, let's look objectively in countries where there is likely no such consideration of the public interest, as there is here at home.

That should take some of the guesswork out of a "quickie" DOJ review for such a momentous decision as killing the decrees. Using a real life example is surely better than guesswork by any lawyer in any circumstance, whether that lawyer is employed by government, studios or cinemas. Taking as gospel the assertions of any self-interested party might be seen in a truer light if what these same players are doing 'over there' is an example of what could happen here at home.

Wouldn't that be a wise thing for the DOJ to do, maybe hand-in-hand with NATO who would know what to look for?

Maybe the topics that keep me up at night are already a nightmare by American standards over there? Surely that question is worthy of investigation.

Big Money

Unfair trade practices, vertical integration, monopolies and oligopolies were thought to be bad for the country and its citizens as far back as the Sherman Act in 1870. The base greed of mankind in the form of unfair practices, price fixing and gouging were as much a reality in 1870 as they were in 1948. Those vices are still in play now. That is why there are rules. Whenever the vices of big money private interests can make a new appearance, they still do and always will. The recent Great Recession is the latest big bad example of what happens when manipulation of markets, vertical integration, consolidation and deregulation occurs.

The same vices that drove certain Wall Street financial interests then are inherent in the human condition and just as strong now, just look around you. Have we already forgotten what corporate greed did just ten years ago?

Yes, it's only the movies and not the entire financial market. Yes the movie industry has grown and changed like all industries do, but people stay the same and, in this case, the old adage that the more things change the more things remain the same still applies to people and greed today.

The recent combination of two studios, Disney and 20th Century Fox, will now control movies that sell between a third and half of all the movie tickets in this country. That could be just the start. Not so long ago there were eight majors, now there are five. What will be next if antitrust laws are weakened?

If the Decrees are dead, and if theaters or other studios are approved targets for friendly takeovers by other studios, I shudder to think what will happen to this industry.

Still a Healthy Industry

The primacy of showing film product on the big screen first has never changed, despite changes in technology. Attendance and revenue will fluctuate from year to year based much more on content than anything else.

A lot of great movies still produce a lot more butts in seats, so cinema is not dead.

Reports of the demise of the movie theater have been highly exaggerated. The public already has access to a nearly unlimited library of movies at their disposal at all times with DVD's, PPV and streaming but are still choosing to pony up \$10 to \$20 to go to the theater and see a new release on the big screen. This year is brings a new record at the box

office, bigger than then in 2016 which was the last record. This summer had the biggest number of butts in seats than in decades.

Sometimes there is a "Waterworld" and a title is so bad it makes the year of its release a valley. Then you get an "Avatar" or a new "Star Wars" in a given year, and they are so mightily embraced by the public that its a mountain.

The following year can't just possibly climb such a high mountain the very next year. However, after one or two years more time the box office does increase over that prior record. The year 2016 being superseded by this year is just the latest example. Just like the stock market, volume changes. Any volatility is based on film content.

It's true that annual domestic box office was down in 2017, that had to do with the product the studios released. But it was just that summer that had a dearth of hit movies.

Even in 2017 both September and December were new records for that particular same month, prior year. September 2017 had been the best September ever, up 14% over September 2016. December 2017 was up 11% over December 2016.

But overall, 2016 had a bigger box office than 2017 because too many of those summer flicks were just bombs with appropriately bad reviews. That season's loss of attendance caused the media to prematurely jump the conclusions and start mourning the death of big screen cinema at the hands of Netflix. That's just not true.

Despite the rise of Fire Stick and despite Netflix and other streaming services, movie theaters had there their best summer in over two decades and were able to rake in close to a \$4.5 billion box office in just several months. North American ticket sales for the 2018 summer season ended up increasing nearly 15% year-over-year, a new record for ticket revenue. This summer had hit movies; the summer of 2017 just had too many duds.

As Sam Goldwyn always said, "There is nothing ever wrong with this industry that a good movie won't fix". True then, true now.

This year will be the new all-time record for annual ticket revenue. That sounds like a healthy competitive industry to me.

Not every studio has benefited equally from jumps in 2018 ticket sales. Some made better pictures this year, some made worse. Disney nearly doubled its sales from last summer, with Universal and Paramount seeing huge gains too. On the other hand, Warner Bros and Sony ticket sales have each dropped by over \$200 million.

That all demonstrates the exhibition industry is not in decline, studios just have natural ups and downs based on content. Annual attendance is always in flux but not based on a loss of general interest in theatrical releases. Rather, it is based on the degree of successful content with the total mix of the individual films released.

Why would China, England and Mexico all want to own so many screens in this country if Cinema was in such a steep decline as the news media often describes?

It is a sign of a healthy industry and healthy competition when studios must vi with with each other by making the best pictures. That is what the Supreme Court was seeking to do. Mission still accomplished.

Content, what a concept! More better pictures, hmmm. Making good pictures makes good business for everyone. There is no substitute regardless of the release platform.

In 2016, total worldwide attendance at AMC Theatres had reached record levels with over 215 million attendees. This led AMC to all-time high revenue of over \$3.23 billion for that year.

AMC stock is up 26% YTD, and Cinemark shares are up 11%. Sounds like a healthy industry to me.

The big theater chains would certainly rather compete in the marketplace armed with preferential terms if allowed, and those cinemas would force consolidation due to lack of prime available product for the little guy, or just put competitors out of business altogether.

The practical oligopoly of the big three giant cinema chains must be waiting in gleeful anticipation of the possible demise of that Decree.

The big cinemas will play golf under the palm trees with the big studios and throw the smaller guys in the nearest trash can, just like Fox once threatened to do to me.

With not enough time or enough money for legal fees to fight back, the small guys get auctioned off to the big guys at their bankruptcy liquidations. It will happen very quickly. Litigation can't progress through the legal system in time to save anything; it can only provide payments for damages after the fact to those already buried. When the objects of the hostile takeovers are split up among by the monopolies, they are gone for good.

Imagine what could happen if even one studio allowed those three cinema giants to successfully crush smaller competitors by these means. The line of dominos will fall at lightning speed.

Industry manipulation by killing the rules would be the only source of widespread cinema fatalities, not the tiny home screens as the special interests would have the public believe. .

If the studios are again allowed to own their own theaters, (vertical integration), they will be the ones that have the ability to pick and choose for themselves which small cinema will live or die.

If DOJ enforcement disappears from the scene and the studios can do whatever they want, unfair trade and monopolistic practices will soon be the new normal, especially if the studios can once again own their own venues.

The smaller guys will be crushed, forced to sell or just close, and their collective 50% share of national ticket sales will be gobbled up among the remaining three major chains. Without serious competition, ticket prices will surely rise, benefiting the studios and the chosen few, again all to the public detriment.

Say goodbye to the 50% of the screens being owned by independent exhibitors and regional chains if any studio can pick and make sweetheart deals for a series like "Harry Potter" or "Twilight" or even own their own exclusive "retail outlets". Even missing one great picture ("Titanic" or "Black Panther" being good examples) can throw a profitable theater into an annual loss.

The Exhibition Industry has proven over the long haul that using a single proprietary national release date on the big screen drives the profits of the subsequent release platforms. With the Decrees thrown out and the studios fully free to own theaters again, many other dynamics, not to mention probable unintended consequences will come into play. But among the first and foremost will be vertical integration so they can show their films on fewer screens and charge higher ticket prices for the exclusive runs, shutting out competitors.

There will be no fighting it. The loss or constraints on access to all titles would very quickly put a theater out of business, well before the legal cost of extended litigation would bury even most successful smaller operators.

Any one or all acting together would love to see all the movie tickets sold from just their theater circuit or otherwise limit competition to several. The studios must now offer their product with the same terms and conditions to all cinemas, this would no doubt change if the Paramount Decrees were killed off.

Here is what will happen, in part. Studios will not put a picture in general release at the same terms and conditions for all exhibitors, but rather charge or make a special deal with a single or small group of top chains at a premium price in return for exclusive runs, knocking out other independents and chains from showing a picture at all.

The Headlines

If Studios won't behave as I predict, then why these recent headlines?

The issues noted in these news stories are exactly the same issues the Supreme Court was concerned about in 1948. Seventy years later the biggest companies in the industry are still trying to circumvent those Decrees. The more things change, the more they remain the same.

Big Movie Studios, Theater Chains, Win if Antitrust Rules Lifted: Small Chains Could Suffer, August 10, 2018

AMC Settles Lawsuit Over Alleged Conspiracy With Major Studios Disney, Sony & Universal, September 14, 2018

AMC Theater Chain Loose Key Antitrust Court Ruling, August 21, 2018

Regal Settles Monopoly Suit, August 24, 2016

Involving Allegations that Regal Coerced Film Distributors Like Sony, Lionsgate and Disney.

Will the Curtains Close on Small Town Movie Theaters? July 24, 2018

Important to Smaller Exhibitors to Have Wide Access to Films.

AMC Accused of Coercing Film Distribution in Antitrust Lawsuit, June 24, 2014

One Southeast Movie Theater Chain Says That as a Result of AMC's Market Power, It Has Been Deprived of Sony Pictures Film and Forced to Make unfavorable Deals with Warner Bros.

AMC Can't Escape Antitrust Lawsuit Over Distribution of Studio Movies, March 23, 2015

A judge is satisfied that an independent movie theater chain, Cobb Theaters, has adequately pled the existence of a conspiracy with Warner Bros and Sony Pictures in an unreasonable restraint on trade and harm to competition.

AMC, Regal Cinemas and Cinemark under DOJ Investigation for Possible Antitrust Violations, June 2, 2015

AMC, Regal Under Investigation by DOJ for Possible Antitrust Violations, June 2, 2015

Big Chain Movie Theaters Under Investigation by the Feds, June 2, 2015

Small Cinema's Antitrust Win: Big Implications For Large Theater Chains, Sep. 29, 2011

Similar lawsuits have been filed against Regal and AMC in Texas, Georgia, California and New York.

A long-running antitrust battle between a small independent movie theater owner, Flagship Theaters, and the third largest U.S. movie theater chain, Cinemark, has taken a turn in favor of David instead of Goliath.

AMC Theater Chain Headed to Trial Over Alleged Conspiracy With Movie Studio Giants, August 21, 2018

Judge rejected AMC Entertainment's bid for summary judgment in defending a lawsuit that alleges the exhibition giant colluded with the big Hollywood studios to the disadvantage of an independent theater owner in Houston.

Landmark Theaters Must Face Antitrust Lawsuit, October 1, 2018

Judge Refuses to Dismiss Complaint Alleging Distributors Were Coerced into Exclusive Licenses

Notice.....the very same week that the DOJ made the announcement that they were looking to abrogate the Paramount Decree, a Judge approved that a prima facie cause exists and the case should go to trial. That case accuses AMC of colluding with Disney, Sony and Universal to the disadvantage of an independent theater owner, forcing them to then close their doors. +AMC settled that case in a matter of weeks.

Now within two months of that DOJ announcement and the same week comments are due from the public, Mark Cuban's Landmark Theaters is being forced to go to trial over antitrust allegations from a group of independent theaters. Sounds like the TV shark is at work.

Is there any difference in the various headlines above going back to 2011?.....or back to my direct experience?.....or the two recent antitrust suits of the last months?

The theater owners were making all the same types of allegations before 1948 and the DOJ and the Supreme Court agreed then. The big guys still try to get away with the same strategies and tactics whenever they can get away with it to this very day and the DOJ has been right (so far) in keeping the Decrees.

In one instance, a letter surfaced during discovery in the Cobb lawsuit where the head film buyer actually put in writing AMC's demand for exclusive licensing and preferential treatment over a new cinema that Cobb Theaters had just opened in Georgia. Another letter found in a different case showed AMC deliberately and successfully set out to "Bleed Dry" a dine-in theater in Missouri. That all happened just a few years ago. Those behaviors have to be stopped and stay stopped.

Will that curtail corporate greed? AMC learned their lesson.....stop putting things in writing.

Why are studios already meeting individually with the top three chains about release windows instead of dealing with the entire industry through the National Association of Theater Owners? What is going on behind those closed doors? It's not hard to guess. Should government support independent initiative and competition or should government support this collusion/violation?

AMC is widely reported to be on the verge of dropping out of the National Theaters Owners Association, distancing themselves from the smaller members as to stay free of any encumbrances.

Where there's smoke, there's fire.

What happens when the fireman goes away? The house burns down, the operator is out of business and the public pays the price, that's what happens.

Less innovation, less customer service, less film product, less convenience, but higher ticket prices. That same type of thing happens when one or a few big businesses rules any industry, not just big screen Exhibition.

The Studios

Disney has traditionally charged the highest film rental terms in the industry and will now own 30% to 50% of the market share with their absorption of 20th Century Fox. Disney, while always pledging to abide by the rules, is not party to the Paramount Decrees and their acquisition of Fox who is a signatory may now become problematic for them. You will see Disney start to transfer Fox product to the Disney label very soon.

This assault on the decrees may be the silent behind-the-scenes- power of this new combine in the effort to kill the Paramount decrees. This merger is already putting upward pressure on the prices of tickets just by changing Fox films to current Disney standard terms.

Netflix is the Number 1 downstream application worldwide, using an average 15% of all internet bandwidth at any one moment. Disney/Fox will pull their content over to Disney's own new streaming service very soon. Once AT&T acquires Warner Bros, that content will be pulled.

Think what will happen when Disney can get into the exhibition business and pull its product to just favored cinemas.

If just Disney makes an exclusive content deal with just one, or all three, of the big chains, everyone else in the industry will be out of business within a year.

If Disney/Fox or some new merged style super studio owns or controls a nationwide cinema chain, how much more money and power could any business want? The DOJ approved the Disney-Fox deal, how is that possibly consistent with the spirit and the goal of any and all antitrust laws or the Paramount Decrees. Trampling on the decrees is the next logical step down the road to limiting competition, controlling the market and giving total control of all aspects of the industry to the anointed few. The nation already has one foot on the slippery slope.

Again, if the Decrees are dead, and studios are approved targets for takeover by other studios, I shudder to think what will happen to the industry.

Expand the Decrees

Netflix, Amazon and others may be growing, but the big screen is where it's at. Recently conducted studies have shown that the more money people invest in their own home theaters, the more likely those same people are likely to go out to a cinema and see a movie. Those people are the most frequent customers to cinemas. That may sound counterintuitive, but think about it. If people love movies they want to see them on a big screen in a movie theater first. That's the test drive. If it's a good enough film, they just buy it for home use and build a whole film library of their favorite titles. People spend money on movie tickets at theaters because they love going out to a night at the flicks. That is what independent studies have already concluded.

Movies made by people like Netflix, no matter how much is spent on production and celebrity actors, are still just TV movies.

Netflix hasn't stopped movie theaters from having their best summer since 1998. The year 2016 had a record domestic and international box office, and 2018 will break those records at a breakneck pace.

So the naysayers, pundits, headline seekers and profiteers point to the attendance slump in year 2017 instead. Any self-serving motives there?

Maybe the rules in the decrees just need to be improved to do more and be more inclusive of the new alternative release platforms?

Remember that before a title can be considered for Oscar gold they have to first be shown on the big screen. Otherwise they are just eligible for an Emmy (that would be TV). France just set up the same rule for the Cannes Film Festival. Germany and Italy then followed suit. Other nations are expected to follow those examples. Why? Because the big screen is where it's at - and should be at - first and always foremost.

Amazon started making and distributing their own movies and have already won several major Oscars in 2017 for "Manchester by the Sea". Jeffrey Bezos, the wealthiest man in the world, does not oppose putting Amazon movies on the big screen in a theater months before streaming it and is now planning on having many of their films screen in cinemas first.

The National Association of Theater Owners has urged Netflix to follow Amazon's example and play major films theatrically first.

Cinephiles have long been frustrated with Netflix's distribution model, which amounts to little more than dumping the films they buy on to their streaming service with minimal fanfare.

Netflix had been wanting to buy a chain of Cinemas although backed off, but they are planning on releasing the next Coen brothers flick, "The Ballad of Buster Scruggs" along with Alfonso Cuarón's "Roma" (which already has a lot of Oscar buzz) directly to theaters first. Netflix has already been talking to IMAX and others about the big picture..

Even to an outside observer, the reasons for these 'changes of heart' in favor of the big screen aren't all that difficult to understand. Netflix seems to and Amazon already does want to shore up their reputation as a legitimate competitor in show business and be on the big screen. Walking away with a windfall of gold on Oscar night would put them beyond being dismissed as just another maker of TV movies. Exhibition and the filmmakers themselves would be the first to embrace that.

The big studios want to merge (Disney & Fox) or be acquired (like AT&T with Warner Bros). They want to talk with the big three cinema chains behind closed doors instead of through Exhibitions professional organization NATO. Studios don't want new players Amazon and Netflix to compete with them for screen time.

Does anybody really think the current big studios want to promote competition? That is ludicrous, they are trying to subvert and suppress competition! How more obvious could that possibly be?

And don't forget how hard it is for independent studios to get off the ground and be successful. Behemoth studios with billions of dollars will do their best to keep new studios out of show business. Why would they want to promote competition for screen space and time? People complain about content of movies being all the same formula, wait until there are fewer studios left. There are only five now.

If Netflix and Amazon do change marketing strategy, embrace cinema and start doing better by the public by showing movies on the big screen as they were meant to be seen, then that's a good thing for everyone's customers. It promotes competition which is what Federal Law and the Supreme Court wanted the DOJ to enforce.

Maybe the DOJ should make Amazon and Netflix come to the table, just like they did with the studios with the Decrees and accept them as the Supreme Court actually approved in 1948. These rules that have provided 70 years of fair play and stability to the entire industry and Amazon & Netflix should come to the big screen and also abide by them. The rules are a positive healthy development for the overall industry and should be kept in place, as is. That would be a really smart play for both Netflix and Amazon with Disney, Fox and Warner poised to pull film product from those streaming services.

After allowing Fox and Disney to merge, and with the implosion of Weinstein companies, two new major studios would be a big win for theaters, the public, for competition, for innovation, and for those two studios.

That would further support an already vital industry, making an even more competitive marketplace consistent with the public interest.

My Crystal Ball

Here will be the end result. Maybe not today, maybe not tomorrow, but sooner rather than later.

If the Decrees are nullified, the consumer will pay a much higher price and the regional chains will be forced to sell, or just be shuttered and go out of business altogether. That further consolidates money and power in the hands of a few media giants and a few cinema chain giants.

The new normal will be either an oligopoly of a few theater owners, or an oligopoly by a few studios, or some combination of both. The increase in charges to the consumers will pay for the change.

Antitrust laws and the consent decrees were put in place back in 1948 to prevent these things from happening. They were in the public interest then and they are now.

Since 1948, the Decrees have and would continue to give structure to the movie industry, after working smoothly for over 70 years by leveling the playing field between studios and exhibitors and further by codifying fair trade practices between the individual theater owners through enforcing equal access, terms and conditions to showing studio product.

It ain't broke, don't fix it.

Studios and the big cinema chain giants must be made to adhere to the basic rules of fair trade. Even if it is a love hate relationship; this makes for a healthy industry, promotes competition and safeguards the public interest.

Anything different will not only be at a big loss to the American Exhibition industry, but to local economies, jobs and the public interest. People's lives and livelihoods are on the line here. The American consumer deserves choices and innovation.

Shame on the Justice Department and shame on any administration that would terminate the Paramount Decrees.

That would allow the very same vertical integration to occur that the DOJ was trying to challenge in At&T's acquisition of Time Warner.