

Written Statement of **Cinetopia LLC** regarding
the PARAMOUNT CONSENT DECREES REVIEW before the
Chief, Litigation III Section
Antitrust Division
U.S. Department of Justice
450 5th Street NW, Suite 4000
Washington, DC 20001

October 4, 2018

Cinetopia LLC owns and operates cutting-edge, upscale, dine-in multiplex theaters in Overland Park, Kansas; Beaverton, Oregon; and Vancouver, Washington. The company was founded in 2005 and is based in Beaverton, Oregon.

The goal of antitrust law is to foster competition, and thus expand output, reduce prices, enhance quality, promote innovation, and generally improve consumer welfare. The *Paramount* consent decrees remain important guideposts in the movie industry today—as they have been for the last seventy years. Although some aspects of the industry have changed, the market conditions that exist today would permit anticompetitive conduct. These conditions insulate large, entrenched firms, threaten innovation, and raise barriers to new entrants. The original rationale for the consent decrees continues to support their enforcement today. If the Division should nevertheless choose to seek modification or termination of the consent decrees, the basis should be limited to the age of the decrees, and not to their substance. The Division should not make unnecessary determinations that could unfairly prejudice pending litigation.

As was recognized in the 1940s and remains true today, watching movies in the theater is a unique form of entertainment in American culture.¹ The experience of viewing a movie in a theater differs from watching live entertainment (*e.g.*, a stage production), watching a sporting event, or viewing a movie at home (*e.g.*, on a DVD or via streaming service). The theater experience for movies is not easily replicated in the home, because movie theaters offer advanced sound systems, larger screens, and a social experience. Moreover, the most popular and high performing movies released for theaters typically are not available for home viewing for some period. Differences in the pricing of various alternative forms of entertainment also reflect their lack of substitutability in the eyes of consumers.

Today the major movie studios—Paramount Pictures, Warner Bros. Pictures, 20th Century Fox, Universal Pictures, Columbia Pictures, Walt Disney Pictures, and Lionsgate—collectively control 80 to 85% of domestic box-office revenue.² Five of these studios (except Disney and Lionsgate) were major studios in the Golden Age of Hollywood—*i.e.*, between late 1928 and the end of 1949, when Paramount divested its theater chain, pursuant to the *Paramount* consent decrees—and have maintained that status today.³

¹ See generally, *e.g.*, Samantha Barbas, *How the Movies Became Speech*, 64 RUTGERS L. REV. 665, 710–15 (2012).

² See, *e.g.*, *Big Six*, MAYA ACAD. OF ADVANCED CINEMATICS, <http://www.maacindia.com/blog/index.php/big-six/> (last visited Sept. 5, 2018).

³ See *id.*

Although much has changed since 1949, the landscape of the movie industry remains largely the same, and the same reasons supporting the creation of the decrees remain true today.

The *Paramount* consent decrees were an appropriate response to the growing power of the big players at the time. The primary objective of the decrees was to impede conspiracy in the licensing and exhibiting of movies within theater circuits to maximize joint profits. The pre-*Paramount* industry practices hurt not only independent studios and consumers, but also the industry as a whole. Innovation and improvement were stifled; all that the big players needed to guarantee profits was adherence to this conspiracy to license and exhibit movies within their own theater circuits.

Without these practices, distributors would have to compete for theater space on the merits by, for example, offering attractive licensing terms or making better movies. It would then be up to theater owners to consider the merits of these offers and decide—on a case-by-case, theater-by-theater basis—which movies to bid for and how long to run them. This competitive system, envisioned and supported by the interdependent provisions of the *Paramount* consent decrees, allows independent studios and distributors to have better access to theaters and, thus, be able to compete for market share against the major movie studios. Conversely, it also allows smaller theaters to compete for access to movies. The system seeks to promote competition in the movie market as a whole and, ultimately, to benefit consumers by increasing output and improving quality of the products.

The *Paramount* decrees also drew lines between movie production, distribution, and exhibition. The market can respond faster and more efficiently to changes in consumers' preference and demand when these processes are separate. Today, the increased concentration in the market makes the decrees *more* relevant than they were 70 years ago. For example, following Disney's recent acquisition of 20th Century Fox, four corporations now control more than 80 percent of the movie production and distribution market sector.⁴ In the exhibition realm, three dominant theater circuits control more than 50 percent of domestic revenue.⁵ This increased concentration of market power in a small number of players highlights the need to preserve and promote competition in the movie industry.

Indeed, a number of smaller theaters have challenged anticompetitive conduct by these major theater circuits supported primarily by their dominant position in the movie industry.⁶ More specifically, the smaller theaters allege that the major theater circuits use their national market power to coerce distributors into granting them exclusive licenses and thus deprive smaller theaters of a fair opportunity to compete for movie licenses. By way of example, when Cinetopia opened a new theater in Overland Park, Kansas, American Multi-Cinema, Inc. ("AMC") reached agreements with movie distributors to block

⁴ See Youyou Zhou, *Charted: How the Disney-Fox Mega-Merger Eats up Market Share*, QUARTZ (Dec. 15, 2017), <https://qz.com/1157391/how-the-disney-fox-deal-will-dominate-media>.

⁵ See VIKRAM CHANDRASEKARAN, REDWOOD CAPITAL, NORTH AMERICAN CINEMA EXHIBITOR REPORT 2016, 5 (2017), <https://www.vipcinemaseating.com/content/uploads/2016/08/North-American-Cinema-Exhibitor-Report-Redwood-Capital.pdf> (last visited Sept. 5, 2018) (note that Carmike Cinemas was acquired by AMC by the end of 2016).

⁶ E.g., *Landmark Theatres v. Regal Entm't Holdings, Inc.*, No. 16-CV-0123 (D.D.C. filed Jan. 26, 2016); *Viva Cinemas Theaters v. Am. Muti-Cinema, Inc.*, No. 4:15-CV-1015 (S.D. Tex. filed Apr. 20, 2015); *Cobb Theatres III, LLC v. AMC Entm't Holdings, Inc.*, No. 1:14-CV-0182, (N.D. Ga. Filed Jan. 22, 2014).

Cinetopia’s access to films. AMC is the largest theater circuit in the United States, and its headquarters are near Overland Park. AMC’s agreements with distributors injured not only Cinetopia but also competition and consumers. Cinetopia has joined other smaller theaters in filing suits against AMC to challenge such anticompetitive conduct.⁷ These lawsuits are evidence that increased concentration of market power continues to pose a serious threat to the notion of fair competition in the movie industry.

Moreover, the opening of an online market sector has threatened further blurring of beneficial lines between movie production, distribution, and exhibition. Indeed, new digital streaming services have been able to combine the distribution and exhibition of certain movies into a one-stop process. As they took another step and started to produce their own content, these digital players have been able to control, to a certain extent, the entire process of movie production, distribution, and exhibition. As the Department acknowledged in *U.S. v. AT&T*, this vertical integration can damage competition because “a vertically integrated firm” could “use its ownership of programming to raise fees to rival distributors and limit competition in the distribution market.”⁸ More generally, “vertically integrated programmers . . . have the incentive and ability to use . . . that control as a weapon to hinder competition.”⁹ That is exactly what the *Paramount* defendants were able to do prior to the decrees. Although the industry has changed since entry of the decrees, the same anticompetitive forces exist, just with new technologies. The *Paramount* decrees are still needed. Enforcing them benefits the industry, competition, and consumers by promoting fair opportunity for innovative new entrants.

⁷ See generally Complaint, *Cinetopia LLC v. AMC Entm’t Holdings, Inc.*, No. 18-CV-2222 (D. Kan. May 4, 2018), ECF No. 1.

⁸ Brief of Appellant United States of America 2, *United States v. AT&T*, No. 18-5214 (D.C. Cir. Aug. 6, 2018), ECF No. 1744194.

⁹ *Id.* at 40–41 (omissions in original).