

COMMENTS BY ODYSSEY ENTERTAINMENT, INC.

U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION
REVIEW OF PARAMOUNT CONCENT DECREES

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Background

Odyssey Entertainment is a small regional Independent Exhibitor that owns and operates 8 Cineplexes exhibiting first run theatrical content. Odyssey has been in operation since 1997 and focuses on smaller theatrical markets with populations of 50,000 person or less primarily in the upper Midwest. Odyssey is a member of the North American Theatre Owners (“NATO”).

Purpose

Odyssey Entertainment, Inc. (“Odyssey”) respectfully submits the following comments in response to the U.S. Department of Justice Antitrust Division’s announcement of its review of the Paramount Consent Decrees.

Statement:

The Paramount Consent Decree (the “Decree”) while imperfect in our eyes continues to be an effective and essential legal foundation that ensures the past anti-competitive practices of Larger more powerful Studios continues to be checked. Then to a lesser extent also ensure collusive activity between them and the three major National Exhibitors is also kept at arms-length. Our comments herein are not designed to go into extensive analysis like those contained in the recently submitted NATO Comment document which we anticipate you are familiar with.

Block Booking:

The Studios would love nothing more to eliminate the Block Booking rule. The rule is likely one of the most effective checks on Major Studios’ power over Exhibition particularly Independent, smaller Exhibitors. In its absence, Major Studios would quickly attempt to monopolize an Exhibitor’s screens by threat of withholding the more attractive and likely commercially successful films as ransom if the Exhibitor does not agree to accept a “bundle” of films that likely contain other less economically viable films that may fly in the face of the Exhibitor’s judgement where those less attractive films may not be attractive to their local market. Not only would this distort market fit but force the Exhibitor to play other films it would otherwise pass on at the consequence of crowding out potentially more attractive and better market fit films from perhaps smaller independent Studios that are trying to gain theatrical distribution.

We believe eliminating the rule would be very harmful to the Small Independent Exhibitor and likely promote significant anti-competitive behavior by Major Studios especially Disney given they now control almost 50% of the Major release schedule. Cinema Patrons too would likely see less selection or a poorer slate of films that may not be the best fit for that particular market.

Overbroad Clearances:

In the past Clearance Zones or “Clearances” had some validity especially in the pre-Digital 35mm projection era where expensive and burdensome 35mm film prints often cost the Studio up to \$2,500 each. Studios not wanting to incur duplicative print distribution costs for a given competitive “zone” would grant clearances or set some sharing allocations where only one print was allowed into the

competitive zone. Not always was the sharing symmetrical often the advantage went to the larger exhibitor's that had significant sway over the Studio where it is believed the National Exhibitor tied and conditioned booking the Studios' films in that competitive zone at other lucrative non-competitive theatres owned by the National Exhibitor where the Studio also wanted to play its feature(s) at.

In recent years AMC, Regal and Cinemark (The "National Exhibitors") have consolidated north of 61% of the US theatrical screen count and 51% of the US domestic box office¹, principally in the larger more lucrative markets. In some cases, Independent Exhibitors that are competitive with one or more of these 3 large National Exhibitors have found themselves shut out by often unexplained clearances even in the age of digital projection. With the advent of digital distribution and projection technologies, the cost to distribute a feature film is rapidly falling and will very soon be almost nill² In our opinion after 2020 there will be little justification for the use of Clearances since digital film distribution and projection costs have largely been recaptured and the costs to the Studio for digital distribution will largely become fixed in nature and not dependent on whether it digitally distributes 1,000 or 5,000 copies of any feature to participating Exhibitors.

Price Fixing

While price fixing is a major illegal, anti-competitive tenant, we feel Major Studios have come up with and implemented ever creative and restrictive methods of achieving the same result in what seems ever changing licensing agreements that in effect focus on restricting, setting and controlling the Exhibitor's admission price and flexibility. These schemes are basically designed to eliminate or severely restrict the Exhibitor's ability to engage in price variability by film popularity, type, length of engagement, day of week, price categories, promotional experimentation and other pricing marketing schemes that Exhibition believe will result in higher attendance and revenues and attractiveness to the customer. Methods of price control employed by Studios include setting per-capita limits, per-capita sales mix combinations, setting per-capita requirements on other than local market conditions usually to markets that have different economic dynamics etc. Personally, I'll never forget a call back in 2011 with a Disney film rep asking why they were not licensing film to one of our more competitive theatres and I was flatly told because we didn't charge enough. What was interesting is the Disney attorney was on the phone with the Disney rep and quickly jumped in the conversation and assertively stated the rep had misspoke. I clearly, herd what the rep clearly stated. Just one example of what most Studio's really think and the methods and means they will go to control Exhibitor pricing.

The restrictive nature of these agreements otherwise ensure the Exhibitor cannot experiment and if one does, is likely faced with asymmetrical penalties. We believe these type of contract conditions to be or border on illegal. We believe it would be beneficial to see further study into this area and possibly new rules or clearer guidance what a Studio can and cannot dictate. With more pricing

¹ NATO 2017 Statistics

² Many Virtual Print Fee Agreements are nearing maturity if not matured already and the last to mature will be around 2020

flexibility we believe there would be more competitive offerings to the public and likely higher revenues to the Studio.

Circuit Dealing

Circuit Dealing in our opinion is and has been in practice for some time particularly as it relates to film rental terms. With the large three Major Exhibition chains controlling over 61% of the U.S. screen count, Studios have been actively cutting administration costs over the last 15 years and otherwise consolidating sales and administration offices at a rapid rate as exhibition has consolidated. Interestingly, in recent years Independents have seen film term rise and rise yet the Major Exhibitors seem to hold more or less steady. Whether this is illegal or not is unclear. We do believe the larger National Exhibitors have actively leveraged their size to negotiate better terms usually that are advantageous to them which are then pushed down on the smaller Independents. Examples are tying film scales to national gross revenue measures. Those measures have nothing to do with small local markets that generate a fraction of the revenue and have a harder time covering fixed costs. This sort of film rental term has coincidentally only come up with the rise of the big 3 National Exhibitors. This may be a sort of Circuit Dealing.

Studio Ownership of Movie Theatres

In some limited cases Studio's do own Movie theatres e.g. Disney owns the El Capitan in Hollywood. We do not necessarily see this as a problem given today's distribution dynamics involving TV, Steaming Disk etc. Our only concern here is what and how this would affect Block Booking and perhaps Circuit Dealing and Clearances. Surely the Paramount Decree's primary driver of the day was meant to stop the anti-competitive nature such vertical integration caused.

Conclusion

Without the Decree's ongoing protections, we believe the Studios could and would quickly engage in restrictive practices which would significantly reduce competition in favor of the large chains, increase prices, limit the ability of smaller independent studios to get a theatrical distribution for their content and finally the ability of Independent Exhibition to survive in small non-metro markets often rural communities. Many small communities that rely on their local cinema for out of the home entertainment would likely perish without its protection.

We respectfully request that the DOJ consider our comments during its review and strongly encourage the Decree largely remain in effect and even look further into some of our other concerns during its review especially the Studios' relationship with the major Exhibition Chains and then the ever creative ways Studios are coming up with to exert price control to their liking.