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**HORIZONTAL CONCENTRATION AND VERTICAL INTEGRATION IN CINEMA  
AND TELEVISION FILM DISTRIBUTION**

**(NOTE BY THE UNITED STATES DELEGATION)**

**This note is submitted to the Committee on Competition Law and Policy  
FOR DISCUSSION in connection with the mini-roundtable discussion on this  
subject at its next meeting on 9 and 10 November 1995.**

**COMPLETE DOCUMENT AVAILABLE ON OLIS IN ITS ORIGINAL FORMAT**

### **Antitrust and Relations Between Film Distributors and Exhibitors in the United States**

1. The business of licensing movies for exhibition in cinema houses (called "theatres" in the U.S.) has traditionally been handled by "distributors," many of whom are operated by major film studios. By the 1930s the major distributors, and through them the studios themselves, were vertically integrated into exhibition, or ownership and operation of movie theatres. In the late 1930s and 1940s the Antitrust Division brought a series of cases against eight distributors alleging various horizontal and vertical violations of the Sherman Act. Eventually, judicial decrees were entered in the cases, collectively called the "*Paramount*" decrees (Paramount, Inc. was one of the defendant distributors). The decrees are not identical, but they share many common elements.

2. Those distributors that were vertically integrated into exhibition were required to divest their theatre assets, and some (but not all) were prohibited from re-entering the exhibition business. The decrees also contained certain injunctive provisions intended to prevent discrimination against small, independent exhibitors, and to prevent vertical re-integration by contract. The distributors could not engage in "block booking," or conditioning the licensing of a desired film on the simultaneous licensing of other films, or in other specified types of contractual arrangements that effectively bound a theater or chain of theatres to a distributor. See *U.S. v. 20th Century Fox*, 882 F.2d 656 (2d Cir. 1989), *cert. den.* 110 S. Ct. 722 (1990). Most of the decrees contained a requirement that defendants license their films "theater by theater, solely upon the merits and without discrimination ... ." This language gave rise to much litigation under the decrees.

3. The decrees remain in effect, but in the intervening almost half century the markets have changed significantly. Film distribution has remained moderately concentrated, with eight to ten large distributors existing at any given time. Individual market shares are not stable, however. In one year a distributor may have a highly successful "blockbuster" film; in another it may have several failures. Further, as noted above, not all distributors are subject to the constraints of the *Paramount* decrees. Some of the original *Paramount* defendants no longer exist, although all the big distributors today were *Paramount* defendants fifty years ago (with the exception of Disney, which took over distribution of its own product in the 1950s). Some distributors are vertically integrated while others are not.

4. The exhibition business has changed significantly as well. In the years following the entry of the *Paramount* decrees, movie exhibition markets were characterized by the existence of small, independent

a market met periodically and allocated ("split") among themselves those films that were coming up for

11. Clearly, a first run exhibition market still exists from the perspective of distributors. Most new films are first exhibited only in theatres. It is said that the success of a film in the theater is vital to the later stages of exhibition on home video, network television, or cable, even if theater exhibition no longer accounts for the bulk of the income from a film. Thus, for these reasons distributors who suffer an anticompetitive five or ten percent decline in theater rentals might not forgo first run theater exhibition in favor of direct sales to cable or video tape.

12. An interesting question is whether a discrete first run exhibition market exists for consumers, or theater-goers. Again the question of substitutability of video tapes, movie channels, or television entertainment for consumers is relevant. It could be of interest currently, given the concentration in ownership of movie theatres in many markets today.

13. Consideration of conditions of entry into movie exhibition might also bear re-examination under