

## APPENDIX 1

*Referred to in paragraph (i) of the Introduction*

### **The Reference Made by the Board of Trade**

The Monopolies and Restrictive Practices Acts 1948 and 1953,  
as amended by the Restrictive Trade Practices Act 1956 and the  
Monopolies and Mergers Act 1965

### **Reference to the Monopolies Commission**

#### **Films**

Whereas it appears to the Board of Trade that it is or may be the fact that conditions to which the Monopolies and Restrictive Practices (Inquiry and Control) Act 1948 (hereinafter called "the Act of 1948"), as amended by the Restrictive Trade Practices Act 1956, applies prevail as respects the supply of films.

2. Now, therefore, the Board of Trade in pursuance of section 2(1) of the Act of 1948, as so amended, hereby refer to the Monopolies Commission the matter of the supply in Great Britain of films to exhibitors for exhibition in cinemas.

3. The Commission shall as respects such supply investigate and report on whether conditions to which the Act of 1948, as so amended, applies in fact prevail and, if so, in what manner and to what extent.

4. The Commission, if they find that the conditions in question prevail, shall also investigate and report on—

- (1) the things which are done by the parties concerned as a result of, or for the purpose of preserving, those conditions ; and
- (2) whether the conditions in question or all or any of the things done as aforesaid operate or may be expected to operate against the public interest.

5. In this reference—

"cinema" means any premises in Great Britain used for the exhibition of films ;

"exhibition" means exhibition to the public ;

"exhibitor" means a person carrying on the business of exhibiting films to the public in Great Britain ;

"film" means any record, however made, of a sequence of visual images, which is a record capable of being used as a means of showing that sequence as a moving picture.

Dated this 23rd day of September 1964.

*(Signed) D. R. SERPELL,*  
*A Secretary of the Board of Trade.*

## APPENDIX 2

*Referred to in paragraphs 7 and 38*

### Information relating to Cinemas Operating in Great Britain, 1950-1964\*

#### A. Seating Capacity

		up to 500 seats	501 to 1,000 seats	1,001 to 1,500 seats	1,501 to 2,000 seats	over 2,000 seats	Total No. of cinemas	Total seating capacity '000
1950	...	1,056	1,931	920	471	207	4,584	4,221
1951	...	1,058	1,931	919	469	204	4,581	4,221
1952	...	1,049	1,930	920	464	206	4,568	4,200
1953	...	1,043	1,910	923	460	207	4,542	4,177
1954	...	1,047	1,886	911	457	209	4,509	4,156
1955	...	1,039	1,866	915	456	209	4,483	4,087
1956	...	1,014	1,831	898	449	201	4,391	4,026
1957	...	976	1,701	878	439	200	4,194	3,825
1958	...	918	1,596	848	439	195	3,996	3,664
1959	...	746	1,322	750	420	176	3,414	3,299
1960	...	652	1,165	667	397	153	3,034	2,960
1961	...	570	1,045	607	353	136	2,711	2,649
1962	...	481	919	561	334	126	2,421	2,420
1963	...	414	808	524	319	116	2,181	2,222
1964	...	390	749	514	293	111	2,057	2,104

#### B. Admissions, Gross Box-Office Takings and their Distribution

	Total admissions ('000)	Gross box-office takings (£'000)	Entertain- ments duty† (£'000)	Payments to British Film Production Fund‡ (£'000)	Net takings (£'000)	Payments for film hire (£'000)	Exhibitors' share after paying film hire (£'000)	
1950	...	1,395,828	105,181	36,806	394	67,981	24,143	43,838
1951	...	1,365,036	108,296	37,299	2,072	68,925	24,343	44,580
1952	...	1,312,077	109,856	38,098	2,861	68,895	24,154	44,742
1953	...	1,284,511	108,787	37,444	2,747	68,596	24,015	44,581
1954	...	1,275,776	109,992	35,902	2,698	71,394	24,954	46,440
1955	...	1,181,765	105,830	33,425	2,650	69,756	24,465	45,290
1956	...	1,100,794	104,217	33,920	2,660	67,637	23,587	44,050
1957	...	915,191	92,894	27,821	2,504	62,569	21,528	41,041
1958	...	754,651	83,391	15,565	3,932	63,894	21,766	42,128
1959	...	580,993	67,494	7,919	3,680	55,895	19,252	36,644
1960	...	500,789	63,641	2,035	3,821	57,785	19,604	38,180
1961	...	449,114	59,814	—	3,865	55,950	18,859	37,092
1962	...	394,963	56,889	—	3,842	53,047	17,578	35,469
1963	...	357,207	55,095	—	3,789	51,306	17,493	33,813
1964	...	342,780	57,533	—	4,164	53,369	18,298	35,071

Source: Statistics Division, Board of Trade

\* Relates to average number of cinemas reporting 1950-58 (over 99 per cent.) and to cinemas operating at 31st December in each of the years 1959-64.

† Entertainments Duty ceased 10th April 1960.

‡ Made on a voluntary basis until made compulsory by the Cinematograph Films Act 1957.

Any apparent discrepancies are due to rounding of figures.

APPENDIX 3

*Referred to in paragraph 8*

**Films Registered During the years 1950-1965**

	British (including Commonwealth)			USA			Foreign Others			Total foreign			Total British and foreign		
	Over 72 mins.	33½-72 mins.	Under 33½ mins.	Over 72 mins.	33½-72 mins.	Under 33½ mins.	Over 72 mins.	33½-72 mins.	Under 33½ mins.	Over 72 mins.	33½-72 mins.	Under 33½ mins.	Over 72 mins.	33½-72 mins.	Under 33½ mins.
1950 ...	74	49	238	260	149	490	48	4	34	308	153	524	382	202	762
1951 ...	67	47	229	260	159	464	42	7	34	302	166	498	369	213	727
1952 ...	79	42	315	258	121	406	71	7	46	329	128	452	408	170	767
1953 ...	86	46	312	255	100	340	42	11	35	297	111	375	383	157	687
1954 ...	93	51	301	206	108	368	60	12	36	266	120	404	359	171	705
1955 ...	82	40	310	200	76	293	68	15	23	268	91	316	350	131	626
1956 ...	81	29	260	206	84	297	83	2	33	289	86	330	370	115	590
1957 ...	96	33	245	240	74	245	85	11	32	325	85	277	421	118	522
1958 ...	89	35	229	198	96	147	84	12	30	282	108	177	371	143	406
1959 ...	80	43	300	163	57	146	83	7	19	246	64	165	326	107	465
1960 ...	79	44	285	142	56	137	112	11	38	254	67	175	333	111	460
1961 ...	77	43	236	132	32	120	138	14	32	270	46	152	347	89	388
1962 ...	71	45	201	117	31	154	131	11	22	248	42	176	319	87	377
1963 ...	72	39	231	115	28	208	128	9	16	243	37	224	315	76	455
1964 ...	70	29	216	124	11	85	112	9	46	236	20	131	306	49	347
1965 ...	69	22	227	109	11	130	124	12	36	233	23	166	302	45	393

Source: Films Branch, Board of Trade.

Note: Figures are exclusive of newsreels which were not registrable until 24th April 1960.

APPENDIX 4

*Referred to in paragraph 8*

**Film Rentals Charged in Great Britain 1950-1960 and in the United Kingdom 1961-1964 and their Distribution**

		(£'000)				
		Gross film rentals charged*	Direct distribution expenses†	Amounts retained by distributors	Amounts paid to producers for films distributed on their behalf	Amounts paid to producers for films bought outright by distributors
<b>British films</b>						
1950 ...	...	6,776	809	1,427	4,540	104
1951 ...	...	6,295	891	1,469	3,935	212
1952 ...	...	6,586	1,095	1,418	4,074	185
1953 ...	...	7,152	1,346	1,596	4,209	250
1954 ...	...	7,953	1,319	1,794	4,840	273
1955 ...	...	7,224	1,287	1,698	4,239	299
1956 ...	...	7,564	1,407	1,655	4,502	239
1957 ...	...	7,873	1,427	1,633	4,630	183
1958 ...	...	8,379	1,641	1,818	4,920‡	
1959 ...	...	7,910	1,720	1,773	4,418‡	
1960 ...	...	8,514	2,036	1,816	4,662‡	
1961 ...	...	9,406	2,503	1,679	5,224	
1962 ...	...	8,042	2,389	1,363	4,289	
1963 ...	...	8,839	2,563	1,556	4,719	
1964 ...	...	9,084	2,172	1,889	5,023	
<b>Foreign films</b>						
1950 ...	...	16,698	2,477	3,272	10,949	133
1951 ...	...	17,010	2,790	2,932	11,288	58
1952 ...	...	17,238	2,825	3,026	11,386	94
1953 ...	...	16,436	2,835	2,877	10,725	45
1954 ...	...	16,444	2,760	2,998	10,686	53
1955 ...	...	16,873	3,245	2,915	10,713	67
1956 ...	...	15,745	3,178	2,920	9,647	47
1957 ...	...	13,418	3,055	2,164	8,109	90
1958 ...	...	12,990	2,743	2,073	8,174‡	
1959 ...	...	11,385	2,572	1,786	7,026‡	
1960 ...	...	12,131	2,804	1,788	7,540‡	
1961 ...	...	11,473	3,202	1,236	7,036	
1962 ...	...	11,479	3,382	1,096	7,001	
1963 ...	...	9,693	2,831	1,215	5,647	
1964 ...	...	10,164	2,601	1,265	6,298	
<b>Total British and foreign films</b>						
1950 ...	...	23,474	3,286	4,699	15,489	237
1951 ...	...	23,305	3,681	4,400	15,223	270
1952 ...	...	23,823	3,921	4,443	15,459	279
1953 ...	...	23,588	4,181	4,473	14,934	295
1954 ...	...	24,397	4,079	4,792	15,527	326
1955 ...	...	24,097	4,532	4,613	14,952	366
1956 ...	...	23,308	4,585	4,575	14,148	286
1957 ...	...	21,291	4,482	3,797	12,740	273
1958 ...	...	21,369	4,383	3,891	13,095‡	
1959 ...	...	19,295	4,292	3,559	11,444‡	
1960 ...	...	20,645	4,840	3,604	12,201‡	
1961 ...	...	20,879	5,705	2,915	12,260	
1962 ...	...	19,520	5,771	2,459	11,290	
1963 ...	...	18,532	5,395	2,771	10,366	
1964 ...	...	19,248	4,773	3,154	11,321	

Source: Statistics Division, Board of Trade.

## APPENDIX 4 (*continued*)

Notes:

\* Relates to films other than newsreels and 16mm. films shown in cinemas and service establishments in Great Britain (United Kingdom from 1961) and including films distributed on behalf of producers and films bought outright from producers.

† All expenses paid by distributors during the year, whether on their own behalf, or on behalf of producers, which were attributable to the distribution of individual films. These include the costs of prints, advertising, customs duty, censors' fees, registration fees, cost of trade shows, transit cases and carriage, but exclude such expenses as wages, salaries, office and other expenses not attributable directly to the distribution of individual films, which are payable out of the amounts retained by distributors.

‡ Amounts payable to producers for films distributed on their behalf and for films bought outright by the distributors.

## APPENDIX 5

*Referred to in paragraphs 62 and 136*

### History and Development of ABPC

1. The company formed by Mr. Maxwell in 1926 was a private company ; however, it soon became a public company, and in 1927 its name was changed to British International Pictures Ltd. (BIP). It quickly began acquiring production and distribution interests by buying for cash in 1927 the film studios at Elstree from a company called British National Pictures Ltd.

2. In 1928 BIP acquired a 51 per cent. interest in a new company called First National Pathé Ltd., the remaining shares in this company being owned by First National Pictures Ltd. (First National), a British subsidiary of the American company First National Pictures Inc. First National was merged with a company called Pathé Frères Cinemas Ltd. and First National Pathé took over the production and laboratory business of Pathé Frères and the distribution business of First National. In 1931, however, First National and Pathé Frères were separated, but BIP retained the production, distribution, studios and laboratories which had belonged to Pathé Frères. Later in 1931 the name of Pathé Frères was changed to Pathé Pictures Ltd., which in 1946 was again changed to Associated British-Pathé Ltd.

3. By 1930 BIP controlled or owned studios and laboratories at Elstree, where feature films were being produced, and through First National Pathé a studio and laboratory in Wardour Street as well as the former production business of Pathé Frères (of which *Pathé News* and *Pathé Pictorial* still survive). In distribution BIP controlled Wardour Films Ltd., which distributed most of BIP's films in the United Kingdom, while First National Pathé (in which BIP held a 51 per cent. interest) distributed the films of both Pathé Frères and First National in the United Kingdom as well as some of those of BIP. Foreign distribution of BIP films was handled throughout the world by BIP (Export) Ltd. In exhibition BIP had acquired a controlling interest in Associated British Cinemas Ltd. (ABC), which had been formed by Mr. Maxwell in 1928 to acquire the 40 cinemas he then owned ; by 1934 BIP, which in 1933 had changed its name to Associated British Picture Corporation Ltd. (ABPC), had acquired ownership or control of the whole of the share capital of ABC, which by then had increased its cinema chain to 147 cinemas.

4. First National, on being separated from Pathé Frères in 1931, was taken over by the United States company, Warner Bros. Pictures Inc. At this time Warners had no link with BIP, except in so far as it had taken over a company which had only recently been associated with BIP through First National Pathé ; but in 1941 a direct link between Warners and ABPC (formerly BIP) was formed. In that year Warners, by acquiring two million ordinary shares from Mr. Maxwell's widow, obtained a 25 per cent. interest in ABPC. In 1945 Warners purchased a further one million ordinary shares from Mrs. Maxwell and the trustees of her settlement, and thereby increased its holding to 37½ per cent. Warners and Mrs. Maxwell and the trustees then owned together just over 50 per cent. of the ordinary shares. Although Warners nominated two directors to the board of ABPC, the Chairman was nominated by the Maxwell interests. Under the agreements of 1941 and 1945 between Warners and ABPC it was stipulated that ABPC should 'remain free at all times to rent pictures from such sources as it might think fit as fully and freely as was done prior to August 1964'. In 1961 Warners sold one million shares in ABPC and thereby reduced its holding to about 25 per cent. of the issued ordinary shares.

## APPENDIX 6

*Referred to in paragraph 83*

### **History and Development of Rank**

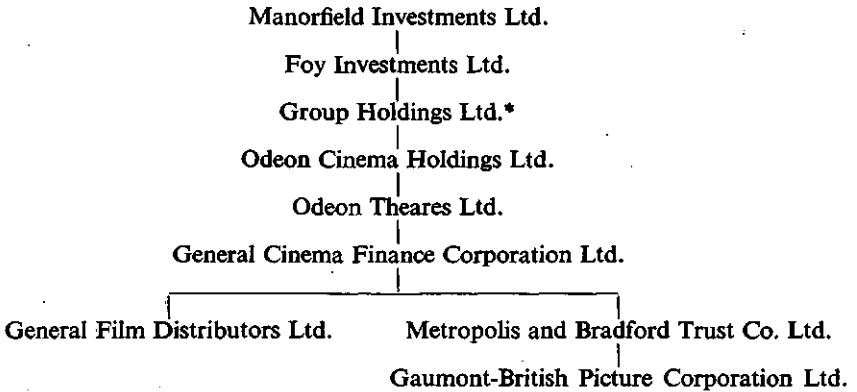
1. After entering film production at the new Pinewood Studios in 1936, Lord Rank wished also to obtain a substantial interest in the distribution side of the industry. He did this, in the same year, by becoming one of the founders of General Cinema Finance Corporation Ltd. (GCF), which was incorporated to acquire all the issued capital of General Film Distributors Ltd. (GFD), an important British distributing company in which Lord Rank already had a small interest. GCF also bought an interest in the United States production company, Universal Pictures Inc.

2. In 1941 GCF acquired control of Gaumont-British Picture Corporation Ltd. (Gaumont-British), which had been formed in 1927 to acquire three companies engaged in production, distribution and cinema operation. Gaumont-British had been one of the most important distributors in the country, but in 1936 it had ceased distribution and its films had thereafter been distributed by GFD. In 1941 Gaumont-British controlled about 300 cinemas. In 1929 the control of Gaumont-British had been acquired by a company called Metropolis and Bradford Trust Company Ltd., of which the United States company Twentieth Century-Fox Film Corporation had acquired nearly three-quarters of the equity, though it did not hold voting control. In 1941 GCF bought a controlling interest in Metropolis and Bradford, and in 1942 Lord Rank acquired control, through a company called Manorfield Investments Ltd., of GCF and thus of Gaumont-British, of which he had already become Chairman in 1941. It is understood that about 1937 the United States Company Loew's Inc., which controlled Metro-Goldwyn-Mayer, acquired a substantial part of Twentieth Century-Fox's holding in Metropolis and Bradford, but disposed of it about 1944.

3. Also in 1941 Lord Rank acquired control of the Odeon circuit, which at that time had about 300 cinemas. The Odeon circuit was controlled by a company called Odeon Theatres Ltd., which was itself controlled by a private company called Odeon Cinema Holdings Ltd. (OCH) in which the important United States distributing company United Artists Corporation had a 50 per cent. interest but not voting control. OCH, in turn, had in 1940 come under the control of a company called Foy Investments Ltd., which had been formed by Lord Rank and by Mr. Oscar Deutsch (the founder of the Odeon circuit) and his associates. Lord Rank had in 1939 become a director of Odeon Theatres Ltd. In 1942, after the death of Mr. Deutsch, he acquired Mr. Deutsch's shares in Foy Investments thereby getting control of Foy Investments and thus of OCH and Odeon Theatres. Lord Rank's controlling interest in Foy Investments was acquired through the same company, Manorfield Investments, through which, as mentioned above, he acquired control of GCF and Gaumont-British.

4. By 1942, therefore, Manorfield Investments had control, through Foy Investments, OCH and Odeon Theatres, of the Odeon circuit, and through GCF and Metropolis and Bradford, of Gaumont-British and its Gaumont circuit. In 1947, however, Odeon Theatres Ltd. acquired the whole of the issued capital

of GCF and thus control of Gaumont-British. The position then was as follows:



\* A company which had formerly controlled Deutsch's holding in the Odeon Group, and which itself had come under the control of Foy.

5. Manorfield Investments, Foy Investments and Group Holdings were all private companies through which the Group was controlled, but in 1953 Manorfield Investments and Foy Investments went into liquidation and control of the Group was left with Group Holdings. In order to ensure that the control of the Group should remain in British hands, particularly in the event of the death of Lord Rank, another company, Film Development and Research Ltd. (FDR), was incorporated as a company limited by guarantee; to this company Lord Rank and his wife transferred their controlling interest in Group Holdings, so that FDR then became the company controlling the Group. Under the Articles of Association of FDR the number of members of the company is limited to fifty, the Directors have full discretion as to the admission of any person as a member, and membership is not transferable or transmissible. In the company's Memorandum of Association the first stated object for which the company is established is

To encourage and assist the production of such cinematograph films by persons engaged in the British Film Industry . . . as shall be deemed by the Directors of the Company to be or to be likely to be in the National interest or to be calculated to enhance the reputation of the United Kingdom, its manufactures or its way of life in countries overseas, and to encourage and assist the distribution and exhibition of any such cinematograph films.

6. In addition to transferring their control of Group Holdings to FDR, Lord Rank and his wife transferred shares carrying the greater part of the income from Group Holdings to a charitable trust known as the J. Arthur Rank Charity which is concerned with the promotion of the Christian religion, the promotion of education, and 'any other charitable objects or purposes'. All the directors of FDR, of Group Holdings and of OCH are trustees of the J. Arthur Rank Charity.

7. In 1955 the name of Odeon Theatres Ltd. was changed to The Rank Organisation Ltd. In 1958 United Artists' 50 per cent. interest in the equity of OCH was acquired by a subsidiary of Group Holdings called FD & R Holdings Ltd., and in 1961 the Twentieth Century-Fox interest in Metropolis and Bradford was acquired by The Rank Organisation Ltd. Thus the American interest and influence in The Rank Organisation was eliminated.

8. The present position therefore is that, American interest having been eliminated, the ultimate control of The Rank Organisation rests with FDR, which

is able, by virtue of its Articles of Association, to ensure that its membership, and therefore control, are at the discretion of its directors. FDR's control of The Rank Organisation is actually exercised as follows:

Film Development and Research Ltd.

Group Holdings Ltd.

Odeon Cinema Holdings Ltd.

The Rank Organisation Ltd.

## APPENDIX 7

*Referred to in paragraphs 109, 157, 226 and 239*

### **Antitrust Action in the Motion Picture Industry in the United States**

1. During the course of our inquiry a number of witnesses drew our attention to the fact that there had been a considerable history of antitrust action in the motion picture industry in the United States, and some of these witnesses believed that experience there might suggest measures which could be appropriately applied to the British industry. However not all the evidence given to us about measures taken in the United States was consistent, and there was also conflicting evidence about the results of these measures. We therefore decided to make our own limited study of the subject in order to ascertain the details of the relevant consent decrees of the US courts, the reasons for these decrees and, as far as possible, the effects which they had had on the industry and the public. In addition, ABPC made its own study of the subject, and has provided us with a considerable amount of detailed information; we are grateful for this and have taken it into consideration in the account which follows.

2. During the 1930's there were five major companies which had substantial interests in production, distribution and exhibition in the United States. They each had their own studios, which they used largely for the production of their own films, and they maintained their own 'stables' of artists, producers, directors and technicians. They each had important circuits of cinemas, the smallest of which contained over a hundred cinemas and the largest well over a thousand. There were also three other companies of importance, of which two were engaged in production and distribution and the other in distribution only. The five integrated companies have commonly been referred to as the majors, and the other three as the satellites.

3. In 1938 the US Department of Justice began litigation under the Sherman Act against all these companies. It sought to compel them to abandon various allegedly unfair and monopolistic practices, and also, in the case of the five majors, it sought to divorce their exhibition interests from their production and distribution interests, as well as to divest the successor exhibition companies themselves of some of their cinemas. In 1940 the case was temporarily brought to an end, as far as the five majors were concerned, by consent decrees under which the companies undertook to abandon a considerable number of the practices complained of, provided that the Department of Justice dropped its demand for the separation (or 'divorcement', as it had come to be called) of exhibition from production and distribution.

4. In 1944, however, the Government revived its demand for divorcement, and another series of consent decrees between November 1948 and February 1952 finally brought about the divorcement which had originally been sought as well as the abandonment of a number of specific practices. It is this series of decrees which gave the industry the structure which it now has and which established the present pattern of control.

5. It is not necessary to consider all the provisions of the 1948/52 consent decrees in detail, but some of them have been specifically brought to our attention and others, though not quoted to us, have a bearing on the subjects of complaints which have been made to us. Briefly, the provisions which are of interest to us are the following:

- (i) Distributors may not stipulate admission prices.
- (ii) Distributors may not agree with other distributors to 'maintain a system of clearances'. The term 'clearance' means the period of time which must elapse between runs within a particular area or in specified theatres, and is therefore the time element, but not the distance element of what we understand by bars. The provision does not outlaw clearances, but is aimed at preventing anything in the nature of an agreed master list of clearances for use by all distributors and exhibitors.

- (iii) Distributors may not enforce clearance 'in excess of what is reasonably necessary to protect the licensee in the run granted'. In other words clearance must be reasonable, and if a clearance is attacked under this provision the burden of sustaining its legality is on the distributor.
- (iv) Distributors may not 'further perform any existing franchise' or make any franchise in the future. A franchise is a licensing agreement with an exhibitor covering more than one year, and the purpose of this provision is to prevent permanent trading associations between particular exhibitors and particular distributors.
- (v) Distributors may not make 'master agreements' or 'blanket deals'. These terms are synonymous and mean licensing agreements with whole circuits.
- (vi) Distributors may not make the licensing of one film contingent upon the exhibitor taking others.
- (vii) Distributors may only offer to license a film to an exhibitor 'theatre by theatre, solely upon the merits and without discrimination in favour of affiliated theatres, circuit theatres or others'.
- (viii) The five major companies were required to divest themselves of their exhibition interests (divorcement).
- (ix) Their exhibitor successors were required to divest themselves of a considerable number of cinemas; in some cases particular cinemas were designated, and in others particular towns were designated in which one or more cinemas were to be disposed of (divestiture).

6. The litigation leading up to the decrees which contained these provisions was known as *United States v. Paramount Pictures, Inc.*; it is commonly referred to as the Paramount case, and the decrees collectively as the Paramount decree. It seems that the provision of the decrees which has attracted most attention in this country is that which required divorcement; in fact it seems likely that some of the witnesses who mentioned divorcement to us may have regarded the decrees and divorcement as almost synonymous and therefore attributed to divorcement some of the effects of other provisions of the decrees. It is partly in order to remove any such misconception which may exist that we give the following brief account of what we understand to have been some of the reasons why divorcement was sought by the US Department of Justice, and of some of the effects which are now attributed to it.

### **Divorcement**

7. The basic case for divorcing exhibition from production and distribution was that all parts of the industry were said to be effectively controlled by the five major companies in a way that was possible only to integrated organisations operating in all three branches of the industry. Each company owned a considerable number of cinemas, but none of them had nation-wide dominance in exhibition; therefore, although each had a substantial assured market for its own films, it also needed to secure bookings on the circuits owned by the other companies if full nation-wide distribution was to be obtained. So important were the film rentals arising from bookings with other companies' circuits that, as exhibitor, each company, so it was alleged, gave preference to films from others in order to avoid possible reprisals against those films for which, as producer and distributor, it needed to secure bookings. Although other practices such as block booking (selling a block of films, e.g. a year's output, to exhibitors in a single transaction) and blind selling (selling films before exhibitors had had an opportunity of seeing them, or before they had been made) were objected to, the system of reciprocal preference between the five major companies was, it is said, the principal factor which, by substituting co-operation for competition, enabled them to control the industry and to prevent independent production or distribution companies from breaking in and competing.

8. It was possible to outlaw certain specific trading practices by which, it was alleged, the control of the industry was actually exercised by the major companies; but the Department of Justice believed that it was not possible to ensure that any requirement of non-discrimination in booking was being carried out, since there was so large an area of uncertainty about the quality of films themselves. It was impossible to be sure that circuits were booking films on their merits and not because they came from particular production and distribution companies. It was thought, therefore, that as long as integrated companies continued to exist they would always be able, and would in fact continue, to discriminate in favour of their own films and of those from companies which gave reciprocal preference. It was for this reason that the measures contained in the consent decrees of 1940 were held to be insufficient, and that the demand for divorcement was revived by the Department of Justice.

9. Divorcement of exhibition from production and distribution has been criticised on the grounds that it was largely responsible for the decline in American production which began in the early fifties, and that it handicapped the American film industry just at the time when the industry was facing increasing competition from television. The argument that divorcement adversely affected production is simply that the major companies, having been deprived of an assured market for their films, could no longer plan production in advance with any certainty of a market for it. Film production had become much more speculative, and the major companies no longer felt able to maintain their large 'stables' of producers, directors, stars and technicians; they were no longer able to spend large sums on publicity and on building up stars whom they had under contract, so that some of the value of the star system was lost to the industry. It is also said that divorcement has led to a large increase in the number of producers, who by competing with each other for talent have forced up the price which must be paid for it.

10. The opposite view of divorcement is that it has successfully brought to an end the system of reciprocal preferences operated by the major companies and that these companies are no longer able to substitute co-operation for competition. It is said that this has had a beneficial effect on the quality of films, since, although competition in the film industry does not necessarily produce better films (the success of a film always being unpredictable), at any rate it is now too risky, under competitive conditions, deliberately to make cheap trivial films such as were possible when screen time was guaranteed for them. The decline in American film production is held to be due to changing social habits, particularly as a result of the spectacular spread of television, and it is denied that the decline has been caused to any significant degree by divorcement. It is said that the decline in demand, particularly for certain types of films, would have been exactly the same no matter who owned the cinemas, and that even if the integrated companies had remained integrated they would not have continued to produce at the same level merely to keep their own cinemas supplied: they would in any case have cut down production and would also have closed unprofitable cinemas. The level of production, it is said, is determined not by the structure of the industry, but by the supply of talent and the demand for films. The major companies' studios are now used mostly by independent producers and the major companies themselves now concern themselves less with production and more with the financing of production, but some say that the reason for this is that producers gain a tax advantage by working independently rather than on the payroll of one of the major companies. Finally, divorcement is said to have made it possible for independent producers and distributors to compete, where formerly they were excluded by the domination and degree of control exercised by the major companies.

### **Divestiture**

11. Although the major circuits were required to divest themselves of some of their cinemas, and therefore are obviously somewhat smaller than before divestiture took place, the circuits themselves still remain in existence. It was never the intention to break up the circuits altogether. The purpose of

divestiture was, we understand, to attack the 'closed town' situations (towns in which a circuit had complete local monopoly) in order to give distributors as far as possible an alternative customer in any town where there was more than one cinema. Divestiture was not an attempt to deal with the problems of circuit booking power by breaking up circuits; circuit booking power was in fact attacked in the United States, but attempts to mitigate it have been concerned with the regulation of booking methods and not with the breaking up of the circuits.

#### **Control of booking methods**

12. At one stage in the Paramount case a system of compulsory competitive bidding for films was introduced. This meant that, in towns where there was more than one exhibitor operating, distributors were required to announce what films they had available and to invite bids for each film. The intention of this system was of course that, by being compelled to accept the best bid, distributors would be precluded from discriminating in favour of any particular exhibitor; it would also ensure that the ability of exhibitors to secure the best films would depend on the quality of the cinema in respect of which a bid was made and not on the fact that the cinema derived booking power from belonging to a circuit.

13. The system of compulsory competitive bidding was later abandoned because, we understand, of the high degree of uncertainty in determining the best bid. Bids could vary in a number of ways: competing exhibitors might offer different percentages of box-office takings; the cinemas themselves might be of different sizes and they might be in more or less favourable localities or be more or less well equipped; the runs offered might be of different lengths; some exhibitors might offer a guaranteed minimum payment and others a fixed sum. All these variations were legitimate, but made the determination of the best bid (i.e. the bid which would yield most revenue to the distributor) too imprecise a matter for the courts to be able to enforce compulsory competitive bidding.

14. Now that compulsory competitive bidding had been abandoned the principal restriction on distributors in respect of booking methods is the requirement of the consent decrees that they may only offer to license a film to an exhibitor 'theatre by theatre solely upon the merits and without discrimination in favour of affiliated theatres, circuit theatres or others'. Some competitive bidding still takes place, but it is understood that this is purely as a defensive measure adopted by distributors to protect themselves against the possibility of private antitrust actions being brought against them by aggrieved exhibitors alleging contravention of the 'without discrimination' requirement.

15. The arguments in favour of the present booking methods, including theatre by theatre booking and competitive bidding, are that the booking power of large circuits has been reduced and that the ability of some independent exhibitors to compete with them has therefore been increased. In particular, some exhibitors have been able to raise the status of their cinemas, since cinemas which have always been regarded as subsequent-run houses can now make a bid for, and may secure, first-run bookings. It is argued that this has made it possible for them to invest in the improvement of their cinemas with a reasonable hope of an adequate return on their investment; it is said that it has also encouraged the building of new cinemas. There is a tendency for the public to forsake the large city centre cinemas and to favour the often smaller neighbourhood and suburban cinemas instead. Many of the new cinemas, including many drive-in cinemas, have been built to meet the demand in these areas, and it is said that they would not have been built (and the demand would not have been met) if booking methods had not been regulated; competitive bidding, it is said, is the chief factor which has made new building possible.

16. On the other hand the present booking methods, particularly competitive bidding, have been criticised on numerous grounds. It is said that one result of competitive bidding, which is the opposite of what was intended, is that occasionally small exhibitors, who have relied for an adequate supply of films on some traditional friendly relationship with a distributor, may, when faced with competitive bidding, lose all the advantages of this relationship and become less,

instead of more, able to compete with a larger neighbour or a circuit. Some exhibitors say that distributors use competitive bidding as a device for increasing film rentals, and also that distributors do not operate the system fairly or openly. They say that distributors not infrequently indicate how much a bid will have to be, either to be of any interest to them at all or to beat a competitor. There is so much room for doubt about which bid will yield the highest return that distributors can, it is alleged, use competitive bidding as a cover for the kind of discrimination between exhibitors which is outlawed by the consent decrees.

17. It has been said by distributors that competitive bidding is also open to unfair practices by exhibitors, who, by various forms of collusion, are able to use it as a means of depressing film rentals. They say also that booking methods resulting from the consent decrees have increased the cost of film distribution, because a larger office staff is needed to cope with the paper work involved and because more prints are required, and therefore the total cost of prints, has increased. The increase in the number of prints is due to a new pattern of distribution which is said to have emerged from theatre by theatre booking without discrimination. Many more exhibitors, it is argued, wish to show films on their first run than formerly, and, in view of the non-discrimination requirement, distributors find it hard to resist pressure from them; the number of cinemas playing the first run in an area has, therefore, often increased, and the first run has now become what is called a multiple run. In spite of the emergence of multiple runs the number of prints can still be kept down to some extent by distributing the film in different areas consecutively instead of simultaneously; but this too is disliked on the ground that it slows up distribution. Multiple runs also mean that exhibitors who were formerly charging seat prices appropriate to second or third runs now charge first-run prices; the resulting increase is said to have caused a fall in attendances and lower total earnings to distributors and producers. Multiple runs are also said to have decreased the value of subsequent runs, or even to have caused their complete disappearance; this means that after the first (multiple) run a film may never be available to the public again, and since there are bound to be some cinema-goers who would miss the first run, this, it is said, is another cause of falling attendances and lower film earnings. The only alternative to multiple runs which enables a distributor to avoid allegations of discrimination is to distribute the film on an exclusive basis after inviting bids; but again, owing to exhibitors' dislike of playing after their competitors, there may still, it is said, be little or no subsequent run.

18. The assertion that competitive bidding has encouraged independent exhibitors to invest in the improvement of their cinemas is countered by the claim that, since cinemas with the lowest overheads and on which least is spent on improvements can afford to make higher bids, the system positively discourages the rebuilding, refurbishing and re-equipping of cinemas and encourages a low and inadequate standard of staffing and maintenance.

19. Many exhibitors and distributors say that, at any rate partly owing to the bidding methods which have resulted from the consent decrees, film distribution in the United States has become 'chaotic'. There is no longer any set pattern of distribution and exhibitors often have no idea what films are going to be available to them even in two weeks' time; neither distributors nor exhibitors, therefore, can plan ahead effectively. Although it is conceded that theatre by theatre booking and competitive bidding may have benefited some independent exhibitors, this is held by some to be of little importance compared to the alleged disadvantages to the industry as a whole.

#### **The relevance of US experience**

20. Although there are two large integrated companies in Great Britain, and although it is alleged that they dominate the British film industry, there is nothing in this country comparable to the domination which it is alleged was exercised by the major companies in the United States prior to the Paramount case. Although ABPC and Rank may be said to hold a dominant position in exhibition, much of the distribution and of the financing of production in this country is done by

companies which are not associated with ABPC or Rank and which themselves have little or no stake in exhibition. The conditions which are said to have made possible the system of reciprocal preferences in the United States and which divorcement there was intended to remove, do not therefore exist in this country.

21. Divestiture, too, was resorted to in the United States mainly as a remedy for a situation which has no real parallel in the film industry in this country. The aim of divestiture was to break down not the circuits but a large number of purely local monopoly situations. There are a few situations in Britain in which all the cinemas (or all the important cinemas) are owned by one or other of the two major circuits; but this is not the general pattern, and it has not been suggested to us that it contributes significantly to the dominant position of the two circuits.

22. Theatre by theatre booking and competitive bidding for films, on the other hand, are both relevant to the problems which are said to arise in the British industry, since the booking power of the major circuits is one of the principal targets of complainants in this country, and it was partly the effects of circuit booking power in the United States which these measures sought to mitigate. It is clear that there are conflicting views held in the United States about both the effects and the efficacy of theatre by theatre booking and of competitive bidding. We are not in a position to determine which views are correct, or whether the results have on balance been beneficial, nor do we assume that, if similar measures were adopted here, the results would necessarily be the same as in the United States; nevertheless even conflicting views are valuable as indicating the possible consequences of introducing similar measures here, and we have accordingly taken them into account.

APPENDIX 8

*Referred to in paragraph 222*

**Overseas Payments and Receipts in Respect of Cinematograph Films in 1963 and 1964\***

Area†	Sums paid or payable to overseas‡	1963			1964			£'000
		Total	Sums received or receivable from overseas§		Total	Sums received or receivable from overseas§		Others
			In respect of British films	Others		In respect of British films	Others	
Overseas Sterling area ...	97	1,570	1,184	386	115	1,798	1,391	407
Western Europe ...	1,365	2,108	1,796	312	915	3,162	1,732	1,430
North America ...	8,838	9,529	1,153	8,377	10,142	10,947	1,575	9,372
Latin America ...	—	292	275	17	—	336	144	192
Other non-Sterling ...	211	468	349	118	146	452	295	157
<b>Total ...</b>	<b>10,512</b>	<b>13,967</b>	<b>4,757</b>	<b>9,211</b>	<b>11,318</b>	<b>16,696</b>	<b>5,137</b>	<b>11,559</b>

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Source: Statistics Division, Board of Trade.

\* (i) These figures cover sums arising from transactions between the United Kingdom and overseas territories in respect of any films where rights to commercial exhibition to the public in cinemas are concerned. Transactions restricted solely to rights to television performance are excluded.

(ii) Transactions in respect of film rights are covered (whether the sums covered are for production, sale or rental of films) together with such freight, print and material costs as may be covered in association with these rights.

† Areas to which sums were paid or payable or from which they were received or receivable, irrespective of where they may first have been earned.

‡ Including sums actually paid out to overseas countries and sums owed to overseas countries though retained in the United Kingdom (e.g. sums credited in their books by United Kingdom subsidiaries to their overseas parent companies).

§ Including sums actually received from overseas, sums owed to the United Kingdom though retained overseas (e.g. sums credited to United Kingdom parent companies by their overseas subsidiaries but held overseas) and sums transferred from amounts that were credited to overseas though held in the United Kingdom. Sums blocked in overseas territories are excluded.

|| Covers only sums received or receivable from overseas in respect of films for which the distribution rights are held by a United Kingdom registered company.

## APPENDIX 9

*Referred to in paragraph 242*

### **Booking Arrangements and Finance in the French Film Industry**

1. The structure of the exhibition side of the film industry in France is somewhat different from that in this country. There are more than twice as many cinemas in France, but there are no circuits either numerically as strong or with the same degree of dominance as the ABC and Rank circuits in Great Britain. It is understood that the biggest circuits in France are of not more than 40 cinemas. Furthermore, by law not more than 30 cinemas may operate together for booking purposes. However, cinemas under different ownership do group themselves together to book films, and it is understood that where such groups exist they are each centred at one important cinema (a pilot cinema) which does the booking for the group. Although it would be possible, therefore, for a circuit of 30 or 40 cinemas, if a large number of its cinemas were pilot cinemas, to control the booking for several hundred cinemas and therefore to exercise very strong booking power, it is understood that in practice this does not happen. At any rate it appears that the market in France is much more fragmented than it is in this country and that there is nothing equivalent to the two-release system of distribution which operates here.

2. It may well be as a result of the way in which exhibition and booking are organised in France that there is also some difference in the way in which film production is financed. In France films do not have the assurance, which is said to result in this country from a major circuit booking, of being widely shown and of being booked into a considerable number of cinemas irrespective of their appeal to the public. It would seem that film financing may, therefore, be more speculative in France, and it is understood that obtaining finance is more complicated for producers there than it is in Great Britain. French producers may have to approach a wider variety of potential sources of finance than producers in this country. Nevertheless, both French and foreign finance does appear to be available for film production in France, as is shown by statistics issued by the Centre National de la Cinématographie. A total of 298.9m francs (£21.8m) was spent on the production of long films in 1964, of which 169.39m francs (£12.4m) came from French sources and the balance of 129.52m francs (£9.4m) from foreign sources in respect of co-production films. A considerable number of low budget films are produced, but in 1963 36 films costing between 2m and 3m francs each (£145,000 and £224,000) were produced, and 26 films costing more than 3m francs each (over £224,000). The corresponding figures in 1964 were 27 and 26. Although most of these films were co-productions (and most of the wholly French films were low budget films) the figures do not suggest any serious shortage of film finance when all sources are taken into account.

## APPENDIX 10

*Referred to in paragraph 250*

### **Government Action to Assist Film Production in Sweden**

1. In 1963, the Swedish Government, with the co-operation of the film industry, set up the Swedish Film Institute. The purposes of the Institute are 'to promote the development of Swedish film art, to increase the understanding of film as an art in general, to assist in the distribution of foreign films of importance, and to finance technical, artistic and academic training in the art of film'. The Board of the Institute has eight members. The Chairman and three other members are appointed by the Government, two members are nominated by film producers, one by distributors and one by cinema owners.

2. The Institute is financed by a 10 per cent. levy on the box-office receipts of cinemas which give six or more performances per week. The proceeds are used as follows:

- 30 per cent. for the general support of Swedish feature films in direct proportion to their box-office receipts ;
- 18 per cent. for quality awards to Swedish feature films ;
- 2 per cent. for quality awards to Swedish short films ;
- 15 per cent. for compensation for losses on Swedish feature films which have won quality awards ;
- 5 per cent. for general public relations activities ;
- 30 per cent. for the administration of the Institute, for artistic and technical training, for assistance to film clubs, and for the maintenance of a film archive.

Films are evaluated for quality awards by a jury of seven, including the President of the Institute. The other six, none of whom may serve for more than three consecutive years, are chosen by the Board of the Institute. The work of the jury, and the distribution of the funds available for awards and to compensate for losses, follow procedures laid down in detail.

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(31242) Dd. 129806 K23 10/66 St.S.