

CHAPTER 6

Conclusions on the Public Interest and Recommendations

195. In Chapter 5 we have shown how in various ways the free play of competition in the film industry is prevented. Restrictions are operated by a large number of those engaged in the industry—all exhibitors operate bars on other exhibitors, for instance, and all the major distributors impose collective restrictions as members of the Kinematograph Renters' Society. In assessing the effect on the public interest of the various 'conditions' which we have found to prevail we regard it as necessary to take into account not only the consequences which can be identified as resulting from each separate limitation of competition, but also the total effect of all the limitations. Thus we are not solely concerned with a straightforward monopoly situation, notwithstanding that Rank takes a sufficient share of the supply of films to exhibitors to qualify as a monopoly under the Act. Nevertheless, although the anticompetitive practices of others must not be overlooked, the outstanding feature of the film industry's structure is the fact that it is effectively dominated by two companies, ABPC and Rank, and this fact inevitably plays a large part in the consideration of the public interest which follows.

196. The dominant position of these two companies rests on the first three 'conditions' which we have found to prevail. As we have shown in Chapter 5, Rank alone takes more than one-third by value of all the films supplied to exhibitors, and ABPC and Rank together take more than one-third and at the same time so conduct their affairs as to restrict competition, both because they do not compete with each other in obtaining films from distributors, and because by the exercise of bars they limit the freedom of other exhibitors to compete with them. Their dominance is reflected in the pattern of film distribution with only two regular channels of release, the ABC release and the Rank release (see paragraph 44). Substantially all feature films which achieve public exhibition are distributed in the pattern set by one or other of these releases, which means that they are shown not only in most of the cinemas of the circuit in question, but also in an even larger number of independently owned cinemas which habitually follow the major circuits. We were left in no doubt by all the evidence put before us that in this situation, which is peculiar to Britain, a booking on one or other of the main circuits is essential to the financial success of any feature film produced in Britain. Such a booking does not, of course, guarantee success, since this still depends in the end on the public's acceptance, but it is clear that, unless a film is shown on one or other of the main circuits, it has little chance of reaching the public at large. We were told that, in the absence of an early circuit booking, distributors will prefer to leave a film unbooked for a very long time in the hope of ultimately securing a circuit booking, rather than try other outlets. The importance of a circuit booking thus puts ABPC and Rank in a position to determine very largely what films shall be given public exhibition, and hence what films shall be

made, since those who put up money for film production take account of what they believe to be the circuits' booking policies in their assessment of a proposed film's chances of success.

197. In examining whether this dominance of ABPC and Rank in film exhibition or any of the restrictions on competition prevalent in the industry operate against the public interest, we consider first the effect, if any, on British film production, including the possibility that it might have some bearing on the scale of United States participation in British film production ; and second any effect on film exhibition and on independent exhibitors. In both cases we judge the effects primarily from the point of view of the consumer ; that is to say, we are concerned with the question whether both the production and the exhibition of films are effectively geared to meeting the needs of the consumer as regards quantity, quality, choice and convenience.

Effect on production

198. We consider first whether the dominant position of ABPC and Rank has an effect on British film production which is against the public interest ; in other words, whether this dominance in itself prevents films from being shown or from being made which would otherwise have a reasonable prospect of attracting enough of the public to make them a financial success. We deal first with feature films.

199. As indicated in Chapter 3, there is a fairly widespread feeling among British film producers that the dominance of the two circuits and the two-release system does put difficulties in their way. They allege that (i) ABPC and Rank give preferences to the distributors with which they are financially associated and to the 'tied distributors', as a result of which any film distributed by British Lion or any other independent distributor receives unfavourable treatment ; (ii) that the policy which they follow in selecting films is unduly cautious and conservative ; and (iii) that as a result the production of certain kinds of British films is discouraged. It is also argued that Rank's rationalisation policy, by reducing the number of weekly releases from three to two, had a depressing effect on production ; in addition it is said that, since their position in the industry carried with it some responsibility for the industry's welfare, ABPC and Rank themselves ought to have been investing more money in British production.

200. There is no doubt that there has been a decline in the quantity of British film production over the last twelve years, as shown by the figures in paragraph 8. This is largely explained by the fact that cinema attendances have declined. This trend has not been peculiar to Britain. It can evidently be accounted for largely by changing tastes and the growth of other forms of entertainment, especially television.

201. The question is whether, in this admittedly difficult situation, the policies followed by the two major circuits or the structure of the industry to which their position gives rise have aggravated the difficulties for the British industry. ABPC and Rank themselves argue that, on the contrary, the industry would have been in a worse position without the stability provided by their circuits.

202. In discussing the allegations made against them ABPC and Rank denied that they give any preferences between distributors which would

operate against British films. Both acknowledged that, all other things being equal, they may sometimes in practice show a slight preference for a film offered by one of the distributing companies with which they are financially associated, and, as regards foreign films only, ABPC admitted to giving preference to the 'tied distributors'. Indeed, this is probably implicit in the arrangement whereby each circuit takes a 'line of product', including indifferent films as well as the obvious attractions, from certain distributors. But both companies claim to give preference to British films over foreign films and say that they book every British film that is offered to them, unless it is definitely unsuitable for exhibition to the audience for which they cater. It is admitted that British Lion films were at one time at a disadvantage in securing bookings because British Lion was unwilling to give advance information about the films which it expected to have available for distribution, with the result that other distributors obtained a favourable position in the circuits' advance planning. ABPC and Rank say that this difficulty has now been overcome, however, and they argue that, in view of the preference which they give to British films, British Lion is now in a more favourable position than the other major distributors because nearly all the films which it distributes are British.

203. We accept that in the booking of feature films for circuit deals no preferences are now given which operate against British films. This does not in itself, however, fully answer the complaints made about the circuits' booking policy. For one thing the circuits claim only to book every British film that is suitable for the audience for which they cater, and there is evidently room for different opinions about the suitability of a particular film. And in addition it is argued that, in deciding whether to put up money for the production of a film, distributors base their assessment of its prospects on their knowledge of the kinds of films that the circuit bookers are ready to accept, so that the influence of the circuits' booking policy is seen not in films refused a booking, but in films not made.

204. In commenting on the first point Rank laid stress on the fact that, when there is doubt about the suitability of a British film for a circuit booking, it is prepared to depart from the normal pattern of release and to try the film out with a partial circuit release or with bookings in selected cinemas. If such films prove acceptable to the public they can then get further bookings in the circuit and among independent cinemas. Rank gave examples of films which had been given this treatment during the last few years. ABPC also said that if it is difficult to assess the acceptability of a film to the public trial runs are given at selected cinemas. Our conclusion on the evidence, however, is that this practice has been adopted fairly recently and that its use has not been extensive. The fact that it has been introduced at all may indicate that the companies themselves have become aware that the circuit booking system is inherently too rigid, and we think that there is scope for further development on these lines (see paragraph 251).

205. On booking policy generally, however, ABPC and Rank emphasise that they would not be fulfilling their duty to their shareholders if they did not follow a policy aimed at making a profit, and they therefore consider that, in selecting films, they are right to base their assessment primarily on the likelihood of success at the box-office. They recognise that it may be desirable that films appealing to minority tastes should also be made. But

they point out that their own circuits consist mainly of large cinemas which depend on a mass audience for success and they are therefore in general unable economically to provide an outlet for minority films, except in a few large towns where they have more than one cinema and the population provides a minority audience large enough to support exhibition in one of their cinemas. They argue that, with this exception, to show films of minority appeal in their cinemas would mean depriving the majority audience of the entertainment that they want, and that it would be an unprofitable use of cinemas not designed for this purpose.

206. Although the interest of ABPC and Rank shareholders does not necessarily coincide with that of the public, we recognise the commercial arguments underlying this approach to the selection of films. The circuit bookers may not always be right in their assessment of a film's prospects of attracting the public, but inevitably the selection of films for exhibition must be governed by an assessment of their financial prospects and in making their assessment the circuit bookers must take into account the nature of the cinemas for which they are booking.

207. Nevertheless it could still be true that, even if their commercial policy is fully justified, the fact that the two major circuits provide virtually the only outlets for British producers of feature films, and that their booking policies are geared to the kind of cinemas that they own, may have the result of discouraging production. ABPC and Rank themselves argue that, in the present state of the market, the release system based on their circuits brings positive benefits to British film production. They say that the regular pattern of distribution, starting with large city centre cinemas and moving on to smaller cinemas in succession, means that a film is made available to the widest audience as soon as possible after its initial release, i.e. before the effects of the initial publicity have worn off; moreover this is achieved while keeping the number of prints required to a minimum. Thus the maximum return is obtained as quickly as possible and at the minimum cost, and the film has the best possible chance of recovering its production costs and making profits for the distributor and the producer. They say that this argument is of less significance for the outstandingly successful films, which would probably be equally successful under any distribution arrangement, than for the many mediocre films. Many films do not even cover their cost of production, but under the circuit system they are still shown all over the country and therefore bring at least some return to the producer. Thus the losses on less successful films are reduced and it is argued that this is in the public interest since it is an indispensable condition for the continuance of production on the present scale. They also point out that they both invest substantial sums in film production, but would have no incentive to do so if they had no exhibition circuits. Rank also drew attention to the value of its overseas distribution organisation.

208. We think that there is some force in these arguments, and it is evident that some producers and distributors—those offering the kinds of films that the circuits want—find the system convenient and helpful. On the other hand the importance of the arguments should not be exaggerated, and the experience of other countries shows that a successful film production industry is possible without such a tightly organised market. The

evidence put to us by other producers revealed a marked lack of confidence arising from the policies of the circuits. Such producers were convinced that, if they had free access to the market for films and did not have to rely on acceptance by one of the two major circuits, they would be able to produce films which would appeal to the public and have a reasonable chance of success. In the light of this we find it hard to reject entirely the view that the dominance of the two major circuits does to some extent discourage production, at least of certain kinds of films. The two-release system is remarkably rigid—uniquely so, since there is nothing resembling it in any other country. Such a rigidly organised market seems particularly inappropriate in view of the nature of the product: films are the work of artists; each one is different from all others and its success is unpredictable; and there is no possibility, as in most industries, of determining by research and experiment what the consumer wants and then producing the article in quantity. This suggests that it is desirable that any producer who has a good idea should be free to compete for the public's support, and that the market should therefore be organised on more competitive lines as in other European countries. Whether the films produced under such a system would be either better or more numerous than those produced at present is unpredictable. But at least the consumer would have a better chance to show his preference and producers' ideas could be put to the test of the public without first having to surmount the obstacle of acceptance by one or other of the two major circuits. The rewards might be lower on some films, but they would be determined more directly by public demand.

209. The dominance of the two major circuits is also at least partly responsible for the difficulty which some producers experience in finding an outlet for, and hence of financing, films intended to appeal only to a minority. It is true that the circuits themselves, since they consist mainly of large cinemas catering for a mass audience, rely for their commercial success on films having a mass appeal and they could not reasonably be expected to give extensive showings to films which would clearly not have a wide appeal to their audiences. But since at the same time all the best popular films are taken up by the circuits and the other cinemas which accept their releases, minority films are, in effect, confined to those places where there is sufficient demand for them for a cinema to keep going exclusively on such films, since an independent cinema which wants to show some minority films cannot as a rule get access to a good selection of popular films as well. If such minority films are to be more widely shown while the market is organised on the present lines it is probably therefore necessary to establish a separate circuit of small cinemas which could concentrate on such films. If there is sufficient public demand to make this economically practicable then private enterprise may perhaps undertake it. But it is the dominance of ABPC and Rank, with their preponderance of large cinemas which are economic only if they can draw a mass audience, which has brought about this separation of the outlets for popular films and minority films. Under a more flexible system small cinemas in many places might be able to show some minority films interspersed with more popular films. It seems likely too that minority tastes could be catered for better if there was a greater readiness to vary admission prices; since a minority

film is not necessarily competing directly with popular films for an audience and could often command a premium. It is not suggested that anything done by the circuits deliberately prevents such variation, but they set the pattern and there is little disposition among other exhibitors to challenge it.

210. As regards the complaint that Rank's rationalisation policy (see paragraphs 90 and 129) damaged British film production, Rank agreed that the closure of some cinemas may have led to a reduction in the total number of admissions. Indeed it is generally accepted that the size of the cinema-going public is related to the number of cinemas, and that when cinemas are closed a part of their audience is lost even if there is ample seating capacity in the surviving cinemas. In France and Germany, where cinemas are more numerous in relation to population though individually smaller, cinema attendances per head of population are today higher than in Britain. It is probably true also that closures in Britain have been more numerous because of the dominance of ABPC and Rank, and this has moreover led to the greater preponderance of large cinemas, which itself influences the kind of films selected for exhibition (see paragraph 209). Nevertheless we accept that rationalisation was required because of falling attendances and that, since the rest of the industry were unwilling to co-operate in a collective scheme, Rank was right to put its own rationalisation plan into effect.

211. A rather different complaint was made about the effect of the policies of the two dominant circuits on the production of shorts and documentaries (see paragraph 113). Producers of such films attributed their difficulty in securing bookings to the fact that ABC and Rank cinemas regularly played the weekly documentary programmes produced within their own groups (*Pathé Pictorial* and *Look at Life*). It was suggested that the production of shorts and documentaries was a good training ground for directors and others and that therefore this booking difficulty caused by the circuits was likely to have a damaging effect on the production side of the industry.

212. ABPC's and Rank's replies to this complaint are summarised in paragraph 149. Both companies drew attention to the great change that has taken place in the market for short films following the advent of television. Since television provides constant opportunities for the public to see short films and documentaries there is, they say, much less demand for them in the cinema. Similarly the regular and up-to-date newsreels shown on television have largely replaced those in the cinema. They say that they find that public preference is now for a programme including two feature films, which leaves little time for the inclusion of shorts, and this difficulty has moreover been aggravated by the fact that the average length of feature films has increased.

213. The complaint of producers that they are put at a disadvantage by the regular bookings of the circuits' own weekly documentary programmes appears to be ill-founded in the case of ABPC, since its *Pathé Pictorial* is included in only four or five circuit programmes each year. Rank on the other hand admits that its *Look at Life* series is included in every circuit programme, but argues that this has not deprived independent producers of any opportunities since it has merely replaced two former newsreels. We do not consider that this is an adequate answer to the complaint. The fact is that, in a situation in which, for the reasons given by Rank, there is only limited scope for inserting shorts and documentaries in cinema programmes,

Rank has guaranteed a regular booking for its own product and in consequence leaves very little opportunity for anyone else. It might be argued that the same considerations apply to ABPC's regular showings of the Pathé newsreel which, it says itself, 'leaves even less time available for playing other shorts'. But a newsreel by its nature requires regular showing and, if there is a public demand for it, it could hardly be shown on any other basis. Moreover no complaint was made to us about it.

214. We feel some doubt about the argument that the public does not want short films and that it prefers double feature programmes, since the public is not in practice given any choice in the matter ; films are usually linked together in the same programme in all the cinemas that show them. It is true that producers of shorts do not appear to fare any better in independent cinemas where they are not affected by any automatic preference for *Look at Life*. But it does not follow that this is because the public would not like to see their films. A more likely explanation is that the major circuits set a pattern of cinema programmes which is followed by the rest of the industry, and the reason for this can be found in the barriers to effective competition with the circuits in film exhibition (see paragraphs 227 and 228).

215. We are not seriously concerned about the effect of Rank's policy in this matter on film production generally. While competition from television may have contributed to the difficulties of producers of shorts and documentaries, it follows that there is a lively demand for their films in television. This, together with films sponsored by industry, Government Departments, etc., is now the main outlet for producers of such films. The lack of opportunity in the cinema does not mean, therefore, that a valuable training ground for future directors of feature films is necessarily being lost. Nevertheless, from the point of view of the cinema-going public, we regard the preference which Rank gives to its own documentary films in cinemas which take more than one-third by value of the total supply of films as an unjustified interference with the choice of films available to the public. We conclude that it is a thing done by Rank as a result of its monopoly position (see paragraph 178), and that it operates and may be expected to operate against the public interest. We recommend that Rank should discontinue its practice of giving regular weekly bookings for its own documentary programme and should book documentary or other short films on their merits.*

United States participation in British film production

216. Throughout most of its history the British cinema industry has been faced with a threat of domination by the very powerful United States industry. Governments have from time to time taken this threat sufficiently seriously to introduce legislation intended to ensure the survival of film production in Britain (see paragraphs 18 to 20). Moreover, as explained in Chapter 2, the early development of both the ABPC and the Rank circuits was, at least in part, deliberately directed against the possibility of United States domination, and we accept that they were instrumental in preventing United States companies from making any significant entry into film exhibition in Britain.

217. However, our attention has repeatedly been drawn during the course of our investigation to the extent to which United States companies are

* See Mr. Smith's note of dissent (paragraph 263).

now participating in film production in Britain. The production of films which qualify as British for the purpose of the exhibition quota (see paragraph 18) and for the subsidy (see paragraph 19) has been fairly well maintained during the last few years, but it has been urged upon us that an increasing proportion of these films has been financed by the distributors which are subsidiaries of United States film companies. This is borne out by the following analysis which we have obtained of the source of finance for the 79 British long films registered in 1960 and the 69 in 1965:

		Wholly American finance	Joint British/ American finance	Wholly British finance
1960	...	19	7	53
1965	...	23	14	32

Thus the proportion of wholly British financed films had fallen from 67 per cent. to 46 per cent. It has been represented to us that this trend is dangerous for what is described as the 'native' British film industry, and that the blame for it can be attributed to ABPC and Rank.

218. We have considered whether and to what extent ABPC and Rank could properly be held responsible for this trend. The arguments put to us were that:

- (a) The alleged preference in booking films given by ABPC and Rank to the American distributors puts any film distributed by an independent British company (i.e. other than the distributors financially associated with ABPC and Rank) at a disadvantage. Producers are therefore discouraged from looking to independent British distributors for finance.
- (b) In booking films the major circuits, particularly Rank, favour the kinds of films that are financed by the American distributors and do not look with favour on more modest but artistically meritorious and distinctively British films.
- (c) ABPC and Rank themselves have not invested in film production sufficient of their earnings from exhibition.

219. These arguments do not appear convincing. In particular we do not accept that the booking policies followed by ABPC and Rank are responsible for the trend towards financing by United States subsidiaries nor that this is a ground for suggesting that their booking policies ought to be changed. As stated in paragraph 203, we accept that ABPC and Rank do not give preference to the 'tied distributors' in booking British films, and they have assured us that they judge British films on their merits irrespective of who is distributing them or who has financed them. It may be that in recent years the Rank circuit has concentrated more on the large and costly films, which, for the most part, the wholly British distributors could not finance (partly because they cannot normally get their films shown widely in the United States), and to this extent the American distributors have been in a favourable position. But this has been based on Rank's belief that films of this type were needed to arrest the decline in cinema-going and not on any preference for particular distributors. Rank drew our attention to the value of co-production for such films, since it provides access to the United States market without control of the product being lost.

220. As regards the extent of the two companies' own investment in British film production, the figures given in paragraph 76 show that there has been no significant downward trend over the last 10 years in the number of British films wholly or partly financed by ABPC; the value of their investment has also been well maintained (see paragraph 137). The corresponding figures for Rank, in paragraph 96, show that there was a marked decrease in the number of British first feature films wholly or partly financed by Rank during the period 1961-1964. But we accept Rank's explanation (see paragraph 137) that, latterly at least, this was due to a policy of providing joint finance for some big films produced abroad. This has now been discontinued and, although Rank is still financing films jointly with United States companies, they all now qualify as British films. With the films wholly financed by Rank these represent a substantial investment in British film production. Rank has also contributed £500,000 to a joint scheme with the National Film Finance Corporation for providing finance for independent producers, in which the selection of films is made entirely by the Corporation.

221. It appears to us that the growth of United States financing of British film production can be fully explained by the following factors and we do not consider that ABPC and Rank should be held responsible for it:

- (a) Production in Britain is economically attractive to United States film companies both because of the lower production costs and because of the subsidy provided by the British Film Fund Agency.
- (b) The American distributors have greater resources at their disposal than their wholly British counterparts, and are therefore in a position to offer attractive terms and facilities to British producers.
- (c) Financing by one of the American distributors carries the very important advantage that the film will normally have no difficulty in obtaining wide distribution in the lucrative United States market. It would be most unusual for a British film to get this if no United States company had a prior interest in it.

222. We would not wish it to be thought from the foregoing that we regard United States participation in British film production as undesirable. It has clearly been very welcome to many British producers and has brought them substantial benefits. It has done much to assure the continuance of a healthy film industry in Britain and has improved the employment opportunities of the actors, technicians and others engaged in film production. The drawbacks alleged to exist are by no means generally accepted. Some critics have suggested that the balance of payments suffers, and they point to the large subsidy payments which have been made to United States subsidiaries as a result of the outstanding success of certain films. On average, however, the films financed by the American distributors have not been more profitable in the British market than those financed by British distributors. It is true that the profits from the exhibition in the United States of a film made for an American distributor are likely to remain there, but it does not follow that the activities of these distributors result in any net loss to the balance of payments. It has not been possible to isolate payments figures relating to individual films, but on the following general grounds we see no reason to doubt the advice given us by one of

the major distributors concerned that over a period the net movement of funds resulting is from the United States to Britain:

- (i) The costs of production, including the producer's fee, are normally covered by a loan raised in this country against a distribution guarantee, and this has to be repaid from the film's takings before there are any profits to the distributor; if, as frequently happens, they are not covered by earnings in Britain then the repayment may be made by remittances from overseas.
- (ii) If there are profits (and many films are not in fact profitable), then a share of them accrues to the producer, even though exhibition outside the United States may not have brought in enough money to cover production costs. If on the other hand there is a loss, it has to be met by the distributor.
- (iii) Such profits as do accrue to the American distributors from the exhibition in Britain of films made in Britain with their backing are in general retained in Britain for financing further film production.
- (iv) In considering the retention of profits in the United States it has to be borne in mind that if the films were not financed by United States companies the question of any profits in the United States would probably not arise since they would not be shown there. Indeed there might not be profits from anywhere else either, since without access to the United States market such films might not achieve sufficient earnings even to cover their costs.

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Such payments figures as are published relating to films (see the table at Appendix 8) show that the balance of all the transactions, relating to foreign as well as British films, was favourable to Britain in 1963 and 1964 by £3.46 m. and £5.38 m. respectively.

223. Another criticism made of the financing by United States subsidiaries is that it changes the character of the films produced and gives them an American flavour (see paragraph 105). On this too there are divided views, and we were told that a distributor would find it very difficult to influence the way in which a British director made a film. It is true that, since they are concerned with exhibition in the United States as well as in Britain, the American distributors are unlikely to finance films which would appeal only to British audiences, and this may therefore cause difficulty for producers who want to make such films. But it does not necessarily follow that the films which are in fact made for such distributors are not entirely British in content. We note in particular the view expressed in the annual report of the National Film Finance Corporation (Cmnd. 2770) that

Many of the most talented British producers are now working with US finance but none of them is under the yoke of the organisations providing it. On the contrary, such producers are still emphatically free-lance even though they may regularly make use of the attractive facilities available to them and may have certain contractual arrangements with the organisations concerned.

Even where there are signs of American influence in a film, such as the inclusion of American actors in the cast, we would not consider this to be a matter affecting the public interest, bearing in mind the international nature of the film industry.

224. We were also warned of the serious consequences for British film production if United States financing were ever to be withdrawn, not so much because there would be difficulty in finding alternative sources of finance, as because much of the talent required for film production would be likely to follow the United States companies and would be very difficult to replace here. We have not considered this problem as falling within the terms of our reference since it is not, in our view, connected with the conditions which we have found to prevail. We are not in a position to assess the degree of risk of such a withdrawal, but a question of the public interest could arise if it should happen. No doubt the Board of Trade, in view of the amount of public discussion, are considering the effect of such an event on the British industry and, if at the time this were thought to be in the national interest, what steps if any should be taken to support the industry.

Effect on exhibition

225. The main complaint made by exhibitors connected with the dominance of ABPC and Rank concerned the difficulty which some exhibitors have experienced in securing what they consider an adequate supply of films in competition with cinemas belonging to one or other of the major circuits in the same locality (allocation of product—see paragraphs 124 to 126). This complaint was not in fact directed only against ABPC and Rank, and exhibitors had met similar difficulties as a result of the booking power of the smaller circuits. The essence of it is that (as stated in paragraph 196) the dominant position of the two major circuits in exhibition enables them to book virtually all the best films before they are offered to other exhibitors; that they can therefore put a film in one of their own cinemas before a neighbouring independent cinema has access to it, even if the independent cinema is in some way superior (i.e. it could offer higher potential earnings to the distributor); and that the favourable access to films which certain cinemas thus enjoy is fixed in the bars attached to the cinemas which are generally recognised by all distributors. It is argued that the resulting frozen pattern of distribution is against the public interest because it discourages independent exhibitors from improving the standard of their cinemas and it may deter people from building new cinemas which might be more suitable for the public demand now existing.

226. As we have said in paragraph 208, the rigidity of the present distribution arrangements is striking and we are impressed by the fact that this may be hampering desirable changes. Many of the existing cinemas are large and expensive buildings put up in the days when regular cinema-going was much more popular than it is now. This fact may itself contribute to the industry's difficulties and it could well be that under present conditions there would be advantage in having more numerous but smaller cinemas. There may also be scope for building cinemas in new situations. Development in different ways might succeed in winning back some custom. United States experience is relevant, since there has in recent years been a good deal of development there of cinemas of new types and in new situations; the decline in cinema-going there appears to have been halted, although whether and to what extent this is due to the development of new types of cinema is not clear (see paragraph 15 of Appendix 7).

227. It is not only in cinema building that the industry seems slow to change. Considering the changes that have been taking place in leisure habits and the difficulties with which exhibitors have been faced as a result, one might have expected more experiment in methods of exhibition. Little seems to have been done, for instance, to give the public the chance to show their preference for single film programmes or double features, or separate or continuous performances; nor do exhibitors compete for custom by trying the effect of varying prices, or by showing more attractive films on Sundays. In matters of this kind the industry follows the pattern set by the circuits, no doubt because their dominant position makes it very difficult for any smaller exhibitor to compete with them. The key to effective competition, however, is access to good films.

228. It is true that there are only a few actual situations in which it is contended that at the present time an independent cinema is being denied films by an inferior cinema belonging to one of the two major circuits. In each of them it is a matter of opinion whether or not the independent cinema is in fact superior, and we have not attempted to examine these cases in detail. But what is clear is that in any such situation the allocation of films between cinemas is determined not by free competition between the cinemas concerned, nor by the distributor's assessment of the cinema that will afford the best results from a film. As a result of the booking power which they derive from their whole circuits the decision rests effectively with the circuit companies. That this is so is confirmed by the two companies' own statements that in some places they have reached equitable arrangements with independent cinema owners over the sharing of a release, or have helped an independent cinema by making available some films from their release. It may be true that in present circumstances there are few places in which a distributor would choose to allocate films differently if he were free to do so, and few actual exhibitors are suffering any hardship. But it does not follow that the effect of this hold which the major circuits have on the distribution of films is not serious, since the known difficulty of getting an adequate supply of films must act as a real deterrent to new entrants to film exhibition and to investment in improvement and innovation. Thus the circuit system is an obstacle to the entry of new men and new ideas which might both help the industry and improve the service which it gives to the public.

Conclusion on the dominance of ABPC and Rank

229. In the preceding paragraphs we have analysed the ways in which, in our view, the dominance of ABPC and Rank affects film production and exhibition, and hence the service which the industry gives to the public. In drawing our conclusions from this analysis we start from the fact that this is not a manufacturing industry but an industry dealing in entertainment and the communication of ideas. The factors to be taken into account therefore differ from those in most of our inquiries. For one thing, films are not sold at any fixed price, and productive efficiency, though important to the ultimate profits of a producing company, is not an important factor in a film's competitive strength. Price plays some part in competition between exhibitors, at least to the extent of inhibiting price increases even

if price competition is not usually active ; but there is no reason to think that large chains of cinemas are significantly more economical to operate than single cinemas or small groups. Again, although films may be better or worse in their techniques, there is no formula for the quality of a film which will ensure its success with the public. It follows that there is no inherent economic advantage in large-scale organisation. It has not been claimed to reduce unit costs, either in production or exhibition, and it brings no significant benefit by way of research or marketing techniques. The strength of large organisations in fact lies not in their superior efficiency but in the bargaining power which they are able to wield. On the other hand, since the industry is dealing in artistic products whose reception is unpredictable, anything which tends to limit choice is likely to be undesirable. Variety is essential if artistic activity is to flourish and there ought in principle to be the greatest freedom for people with good ideas to translate them into films and get them to the public (subject, of course, to the limitation imposed by the cost of film making).

230. We consider that these general considerations are confirmed by the results of our investigations: that the dominance of ABPC and Rank, and the rigidity of the industry which results from this and from the practice of barring, are detrimental to the service which the industry gives to the public. In the first place film production is not governed directly by consumer choice and film makers are not free to make the films that they believe in, subject only to the willingness of the public to pay to see them. Instead, production is effectively determined by the policies of only two companies without the check of competition. Admittedly we have no reason to think that they do not act conscientiously and seek to meet what they believe to be the public demand. But the public's taste cannot be anticipated, and we believe that the public would be better served by a freer market. The direct effects of the dominance of ABPC and Rank on British film production could of course be wholly offset by governmental action through the provisions of the various films Acts, and whatever scale and nature of production was thought desirable could be established (see paragraph 250). But it is not only production that is affected. On the exhibition side consumer choice is limited in the selection of foreign as well as British films, and in general the dominance of two companies, the barriers in the way of effective competition with them and the almost hierarchical structure of the industry perpetuated by the system of bars prevent the industry from evolving new patterns and techniques to suit changing conditions. It is argued that there are independent limiting factors on the industry resulting from shortages of talent for film production and of finance both for production and for building cinemas. We consider on the other hand that these shortages may themselves result from the way in which the industry is organised. In a more competitive situation, with no barriers to exclude new entrants, more talent might be attracted, from television and the theatre for example, and new and unsuspected sources of finance might emerge. We therefore conclude that the lack of real competition in the industry is harmful. This lack of competition derives mainly from the first three 'conditions' which we have found to prevail (see paragraphs 178, 180 and 182), and we therefore find that these conditions operate and may be expected to operate against the public interest.

Distributors' practices

231. The conditions which we have found to prevail by virtue of distributors' practices (paragraphs 187 and 194) also contribute, although to a smaller extent, to the uncompetitive structure of the industry. Their immediate impact is on exhibitors, especially small exhibitors independent of the major circuits, but by helping to restrict competition in exhibition they also tend to reinforce the effect which the dominance of ABPC and Rank and the uncompetitive structure of the industry have on film production.

232. Thus the practice of distributors of sometimes making the hire of one film conditional, in effect if not formally, upon the acceptance of other films (paragraphs 130, 131 and 168) causes unnecessary difficulty for the small exhibitor by preventing him from selecting those films which he considers will be most successful in his cinema. This at the same time directly affects the interest of the cinema-going public, since the choice of films available to it in the period affected is limited to those which the distributor has forced upon the exhibitor, although there may be others which it would have preferred to see. It follows that there is also an indirect effect on film production, since the financial returns to producers are distorted in favour of those films which have benefited from the conditional sale at the expense of others which might have merited a higher return. None of these consequences is particularly serious regarded in isolation, but they contribute to the rigidity of the industry which derives primarily from the first three 'conditions' which we have found to prevail (paragraph 230). We therefore find that the practice of making the supply of a particular film conditional upon the acceptance of other films operates and may be expected to operate against the public interest.

233. The recommendations of the Kinematograph Renters' Society in respect of bingo (paragraphs 134(b) and 173) also tend to affect the public's ability to choose its entertainment. The Society states that it is in the interest of the industry as a whole to discourage the playing of games of chance in cinemas and to preserve cinemas for the exhibition of films. However, the Society recommends exceptions in respect of cinemas which can be saved from closure only by part-time playing of bingo, and in any case the Society's recommendations do not prevent (and might even encourage) exhibitors abandoning film exhibition and going over to bingo full time, or introducing part-time bingo and relying on non-members of the Society for the supply of films. We therefore doubt whether in practice the Society's policy has much effect.

234. We would have no objection to distributors individually declining to license films to exhibitors who use their cinemas for other purposes. But we doubt whether collective action of this kind is necessary for the well-being of the industry and we regard any collective action which restricts the public's choice of its form of entertainment and the cinema owner's right to decide for himself the use of his property as in principle undesirable. We conclude that collective action by members of the Kinematograph Renters' Society to limit the extent to which exhibitors use their premises for purposes other than the exhibition of films operates and may be expected to operate against the public interest.

235. The action which members of the Society take to prevent co-operative booking by exhibitors (paragraph 134(c) and 174) is potentially more serious. The Society has told us that it is generally prepared to recommend exceptions to this recommendation in cases where the convenience of exhibitors is concerned, and also that it would be prepared to recommend an exception if it received any proposal which would lead to a substantial booking group and thereby increase the assurances available to producers, although no such proposal has ever been made. The Society states that the object of Recommendation No. 17 is to prevent arrangements designed primarily to increase the booking strength of the exhibitor against the interest of the producers and renters with a view to securing lower terms for licences to exhibit films. In these cases no exception would be made and the recommendation would be implemented. Such arrangements between exhibitors, it says, would reduce competition between exhibitors and would also be against the interest of the industry as a whole since they would tend to reduce the ultimate return to producers. They would also be detrimental to small independent exhibitors outside the combination but in competition with those inside it.

236. We see two objections to the Society's practice in this matter. In the first place we agree that it is desirable that nothing should be done to prevent any genuine attempt to organise co-operative booking on a scale such as would lead to a new exhibition group big enough to take a third release and thus to stimulate production. The report of the Structure and Trading Practices Sub-Committee of the Cinematograph Films Council (Cmnd. 2324) in paragraph 73 expresses the view that 'there is much to be said for co-operative booking by substantial groups of independent cinemas' and that 'the KRS should be asked to give positive encouragement to such arrangements'. This view of the Sub-Committee was adopted unanimously by the Cinematograph Films Council itself, and we accept and endorse it. We accept that the Society makes, or would make, exceptions to its recommendation in the circumstances which it has indicated, and insofar as it did so the recommendation would not operate against the public interest. It may be that one of the reasons why exhibitors have not so far co-operated to form any significant booking group is that independent exhibitors are reluctant to lose their independence. But we doubt whether there is a clear distinction between proposals for co-operative booking which would be helpful to producers and those which, the Society claims, would be contrary to the interest of the industry; it is possible for instance that groupings falling well short of the size needed for a regular third release would sometimes provide openings for films which did not commend themselves to the major circuits. We think it undesirable that the decision on this should rest with the Society, and we believe that the existence of Recommendation No. 17 and the uncertainty about the circumstances in which exceptions to it would be made may well have acted as a deterrent.

237. Secondly we doubt that justification for the Society's actions even in cases which would not increase the assurance available to producers. We accept that any arrangement which led to a serious reduction in the return accruing to film producers might discourage production and therefore be contrary to the public interest, but the risk of this happening to any significant extent through co-operative booking arrangements seems small. The balance

of power between distributors and small independent exhibitors is weighted heavily on the side of the distributors and we think that there is a long way to go before co-operative booking would materially alter it. It is unlikely, for instance, that any group of independent exhibitors would emerge approaching the strength of the major circuits, and even the circuits have not exacted unreasonable terms. On the other hand co-operative booking, even if it did not lead to anything in the nature of a third release, might well be of significance to small exhibitors in increasing their booking power relative to both major and minor circuits and so increasing their chances of being able to remain in business in competition with them. It seems to us that such arrangements are likely to be concerned more with securing a better supply of films than with seeking a variation in licence terms, and they could well be useful in offering stronger competition to the circuits. Even where proposals did not offer any apparent benefit we think it undesirable that they should be prevented by the collective action of the Society.

238. In our view, therefore, this recommendation is both unnecessary for the purpose stated by the Society and undesirable in that it may deter co-operative booking arrangements which could be beneficial to the public. We conclude that Recommendation No. 17 of the Kinematograph Renters' Society operates, and may be expected to operate, against the public interest.

Remedies

239. In considering how the effects of the various conditions which we have found to operate against the public interest might best be dealt with, we examine first the various structural remedies that have been suggested, as outlined in Chapter 3. These are a third circuit, a partial third circuit (the third booking force proposed by the Federation of British Film Makers) and fragmented booking (either cinema by cinema or in small groups). The arguments against these proposals are summarised in Chapter 4. Mention has also been made of divorcement, that is the separation of the exhibition circuits from the production and distribution interests now associated with them. This remedy was enforced in the United States but, as explained in Appendix 7, it was intended to deal with a different problem and we do not consider that it is appropriate to the situation in Britain.

240. If we were starting with a clean slate we should, as indicated in paragraph 230, prefer to see some looser and more competitive structure in the film industry. But given the situation as it now exists we are impressed by the formidable, and probably expensive, practical problems in the way of adopting any of the proposals. These arise because, although in theory booking could be fragmented or re-arranged in three circuits without corresponding changes in the ownership of cinemas, it is most unlikely that this would be effective in practice and it would be impossible to ensure that cinemas under common ownership acted independently. It would therefore also be necessary to envisage compulsorily removing cinemas from their present owners, but there would be no assurance that purchasers would come forward for them, especially if the industry's prospects did not look favourable, nor that managers of sufficient ability would be immediately obtainable.

241. At the same time there would inevitably be uncertainty whether the benefits expected from any of the proposals would in the event be achieved.

As regards a third circuit or a third booking force, the difficulties which led Rank to do away with the former third circuit do not suggest that a greatly increased supply of films, other than foreign films of indifferent quality, would be forthcoming. It would not of course be necessary for three circuits to release three different and new films every week, and the possibility that a substantial number of the cinemas in two of the circuits could sometimes take the same film would permit a certain amount of flexibility in distribution. But when there were three releases the financial rewards would be spread more thinly and, unless the number of admissions or the level of seat prices were substantially increased, the average return on each film would tend to be lower than it is now. To that extent the financial incentive to additional British production would be reduced. Even apart from the practical difficulties we would not regard this as more than a partial solution to the industry's shortcomings. By providing an alternative outlet for producers it might increase the choice of films available to the public, but there would be no assurance that a third circuit would follow a policy any different from the present two. Moreover the exhibition side of the industry would be as rigid as it is now and there would be no greater encouragement to new entrants and new developments. We therefore think that judged by the public interest this solution has little to recommend it.

242. The only fully effective way of freeing the industry from dominance by circuits and of creating a competitive market would be to introduce a fragmented booking arrangement, either cinema by cinema booking or a limit to the number of cinemas (perhaps 25) which might book films as a group. How the industry would develop in the long run as a result of such a step cannot be foreseen, but we would expect that such changes as did occur would be in the direction of meeting public demand more closely. We do not accept the argument that film production would become so much more speculative that finance for it would dry up. Finance for film production is still forthcoming in France, for instance, despite the fragmentation of the market (see Appendix 9). There would no doubt be changes in the pattern of production, and there may be some force in the argument that the situation would favour those companies which do not depend on the British market. i.e., the American distributors, while wholly British financing might be confined to low cost films. But the final outcome would be uncertain. Apart from the practical difficulties mentioned in paragraph 240, however, which would apply more strongly to this solution than to a third circuit (good managers in particular might be a serious difficulty), it would have to be recognised that for some time following the imposition of fragmented booking there would be a good deal of disruption in the industry.

243. On balance therefore we think that, although the present system is itself undesirable, the suggested alternatives involving the dismantling or rearrangement of the two major circuits offer insufficient assurance of benefit to justify the difficulty and upheaval that they would entail, and we do not think that they should be considered unless other, less drastic, expedients prove ineffective.

244. We have also considered whether, without making any structural change in the circuits, it would be beneficial to require distributors to offer all films to both circuits in competition. It has been suggested that this might

have the effect of increasing the financial return to distributors and so to producers, and thereby make it easier to obtain finance for production.

245. A particular aspect of this is the allegation that the dominant position of the major circuits and the fact that they do not compete for films puts them in such a strong bargaining position in relation to distributors that they can dictate the break figures for their cinemas (see paragraph 112). Evidence was submitted to us about the conduct of negotiations of revised break figures which took place during the course of our investigation. The allegation was not supported by all the distributors concerned, however, and we saw no evidence which convinced us that either in the particular negotiations referred to or in general the circuits had succeeded in fixing break figures for their cinemas at an unjustifiably high level so as to reduce the share of takings accruing to distributors and producers.

246. Apart from this, if films were to be offered to the two major circuits in competition the circuit with the greater earning potential could always afford to bid higher for the best films, so that the results might be merely to strengthen still further the dominance of Rank at the expense of ABPC. Although therefore competition for films is in principle desirable, we would not recommend introducing it between the circuits as they stand. For competition to produce satisfactory results it would need to operate between individual cinemas, and the possibility of providing for this is considered in paragraphs 254 and 255.

247. Another theoretical possibility is that the practice of barring might be banned. Although, however, we can well understand the aggrieved feelings of some exhibitors who consider that the effects of bars deprive them of a fair chance to compete with their stronger rivals, we do not take the view that time and distance bars in principle are objectionable. Although any bar appears to limit competition, it is clear that some form of agreement on the extent of the exhibitors' exclusive right to exhibit a film is an essential part of the deal between a distributor and an exhibitor. The degree of exclusivity has a large effect on the earning power of a film, and the exhibitor could not be expected to agree upon terms for the hire of a film without knowing what rights he is being given. We therefore accept that bars of some kind are necessary and not, in principle, against the public interest. The practice of recognising a permanent bar attaching to each cinema, however, introduces an undesirable degree of rigidity into the distribution of films. It means moreover that, although formally the bar operates by agreement between a distributor and an exhibitor and its justification, as stated above, is that it enables the distributor to get the best return on a film, in practice it is enforced by the exhibitor. If another exhibitor wishes to secure a modification he has to negotiate with the exhibitor concerned, not with a distributor. This appears to tie the hands of distributors in deciding how a film may best be played off.

248. One way of avoiding this would be to insist that the bar must be negotiated afresh with every licence agreement, so that the distributor would consider what pattern of distribution was appropriate for each individual film. Over most of the field it is unlikely that in practice this would produce a pattern of distribution significantly different from the present one. Although some may have become out of date since they were originally fixed,

the existing bars are determined largely by local geography and communications and also by the relative earning potential of the cinemas concerned ; it is likely that distributors would still wish to have their films shown on much the same pattern as at present in order to achieve the maximum earnings. It would, however, allow some flexibility and might make it easier to introduce new developments and improvements, although at the expense of complicating distribution and possibly making it more expensive. On the other hand machinery exists within the industry for settling disputes over individual bars and this has been improved since we started our investigations (see paragraphs 56 to 58). As long as this safeguard exists and is operating satisfactorily we do not think that it is necessary or desirable to put an end to the practice of recognising permanent bars. (But see paragraphs 252 to 255 on allocation of product, to which this safeguard does not extend.)

249. Although therefore we have found that the first three 'conditions' which prevail in the industry are the basis of its uncompetitive structure and operate against the public interest, we cannot recommend any remedy which would result in the conditions no longer prevailing. Their detrimental effect could, however, be mitigated in other ways.

250. As mentioned in paragraph 230, the Government have at their disposal various instruments by which the development of British film production could be encouraged along whatever lines were thought desirable. In particular the operation of the levy/subsidy scheme administered by the British Film Fund Agency could be varied to produce different results. Exhibitors could, for instance, be exempted from the levy, or have to pay only at a reduced rate, when showing films of a class which it was thought desirable to encourage. The proceeds of the levy could be used in a more selective manner to encourage new talent in film production, instead of using it entirely to reinforce the box-office success of British produced films. We note for instance that the similar levy in force in Sweden is used partly to finance a film school. We think there is also much to be said for the Swedish arrangement whereby some of the money is devoted to awards to films judged by a panel to be artistically outstanding, irrespective of their box-office success (see Appendix 10). Another possibility is that the National Film Finance Corporation could be strengthened by an increase in its funds and could be encouraged to provide a larger share of the finance required for films. Measures such as these would help to offset the undesirable effects of the present situation in which production is largely determined by the booking policies of the two major circuits.

251. However, we recognise that in considering such measures the Government would have to take into account broader questions of national policy towards the film industry, which fall outside the terms of our reference. Viewing the narrower field covered by our inquiry in isolation we think that it would be helpful if British producers could be assured that the circuits' booking policies will not operate unfairly to their disadvantage and that the films they make will be free to compete on their merits. ABPC and Rank have already told us that they are ready to book every suitable British film. But in view of the controlling position which they occupy, and the lack of objective criteria for determining a film's suitability before it has been shown publicly, we think they are under an obligation to give the benefit of the

doubt whenever there is a difference of view about a film. The practice of flexible booking, that is both giving trial runs to any films whose appeal to the public is in doubt and giving limited or partial circuit bookings to films which appeal only to a section of the public (see paragraph 204), should therefore be extended and we recommend that ABPC and Rank should be asked to give an assurance on this.*

252. From the point of view of the public interest, however, it is more important to find means of introducing more competition into the exhibition side of the industry. We consider that this ought to be practicable without either breaking up the circuits or enforcing competitive bidding throughout film distribution. As we have argued in paragraph 228, the main barrier to competition, whether from new entrants to the industry or from existing independent exhibitors, lies in the power which the major circuits have over the supply of films. To counter this some provision is needed to enable any exhibitor or potential exhibitor to obtain films in competition with the circuits if he can offer a prospect of a higher return to the distributor than the circuit cinema with which he is competing locally. This is a field in which the willing co-operation of all concerned, distributors as well as exhibitors, is required and it would therefore be preferable, if possible, for satisfactory arrangements to be worked out by negotiation within the industry.

253. We note that the problem of disputes over the allocation of product has already been considered by the Structure and Trading Practices Sub-Committee of the Cinematograph Films Council (Cmnd. 2324). It recommended that an exhibitor who is starved of films by a competing circuit cinema, although his own cinema is superior in earning potential, should have a right of appeal to the barring disputes committee. Although this recommendation was adopted by a majority of the Cinematograph Films Council, it did not meet with general approval in the industry and has not been put into effect. We were told that any such arrangement would be impracticable because it would interfere with the distributors' right to decide how best to distribute their films. But we also note that a recent decision by the barring disputes committee, although not re-allocating the films in a particular release, did have the effect of determining how certain films should be distributed in one situation and, to a limited extent, reduced the distributor's right to decide this for himself. This decision, which was reported in *The Daily Cinema* for 28th March 1966, reads:

That the bar by the Pavilion, Attercliffe, on the Adelphi, Attercliffe, remains. It was however agreed that the bar be waived on any film not dated to play at the Pavilion within six weeks of the Pavilion's earliest coming-in date. This decision to be effective on all films dated to play at the Pavilion from 29th May 1966.

The bar referred to is expressed as 'first run Attercliffe', and this decision means that if the Pavilion does not play a film within six weeks of its becoming available it shall no longer have the right to play it first. Moreover arrangements made between exhibitors on the sharing of releases (see paragraph 228) also involve decisions on distribution being taken by someone other than the distributor, i.e. by the circuits themselves. We doubt therefore whether the arguments advanced against the use of impartial machinery for this purpose are valid, and we consider that the industry should renew its efforts to agree upon suitable arrangements.

* See Mr. Smith's note of dissent (paragraph 264).

254. The existing barring disputes machinery or, if the industry preferred, some other machinery should be able to settle disputes over the permanent allocation of product, for example transferring the right to all the films in a release from one cinema to another or arranging a split. But this alone would not go far enough. It is also necessary, in our view, to enable exhibitors, if they choose, to bid for individual films without any permanent change in release arrangements, in other words to introduce the possibility of a limited degree of competitive bidding. In some cases this would necessitate no more than overriding the arrangement for allocation of product embodied in a bar, but a generally accepted basis for competition would also have to be found in order to overcome the difficulty of the booking power of the circuits. This at present means that in considering the rival claims of a circuit cinema and an independent distributor inevitably has to bear in mind the importance of getting his film shown in the rest of the circuit concerned, which could be prejudiced if he chose to license the independent cinema in preference to the particular circuit cinema. In effect, a bid by an independent exhibitor in such circumstances is likely to be weighed against the value of a deal with a whole circuit. In addition a circuit might be financially strong enough to outbid an independent by raising the terms for its cinema to the point of making a loss, which for a time at least could be carried by the rest of the circuit.

255. We consider that the industry should be capable of devising and agreeing upon arrangements to safeguard against these difficulties. A possible basis for fair competition, for instance, might be that, if an independent exhibitor bids for a film which would otherwise go to a cinema circuit, (i) the bid must be considered in relation to the prospective return from the circuit cinema in isolation; (ii) the value of a booking in each such circuit cinema should be a pre-arranged proportion of the value of a booking in the whole circuit, so that the terms for that cinema could not be raised without also raising the terms for the rest of the circuit; and (iii) the exhibitor making the bid should have a right of appeal through the machinery established to settle disputes over allocation of product. However, we consider that the industry itself is best placed to work out the detailed provisions needed for an effective safeguard. Even if exhibitors did not make frequent use of the right to make a competitive bid, success with films bid for individually would nevertheless assist an exhibitor where it might be difficult otherwise to prove a case for a permanent change in the allocation of product. It should in particular make it easier for a newcomer to make a successful entry to exhibition. It would moreover be consistent with the interest of distributors and producers in showing their films in the cinemas which will bring the best return. We recommend that ABPC and Rank should take the lead in promoting agreement within the industry on appropriate proposals, which should then be put to the Board of Trade for approval.

256. We have also considered whether other measures might be desirable to mitigate harmful consequences of the practice of barring apart from the problem of allocation of product. There were widespread complaints from exhibitors about the operation of bars (see paragraphs 120 to 123, 127 and 128). Suggestions were made that the distances over which bars are normally allowed to operate were excessive, especially for 70 mm. films, and that bars should not be allowed to continue indefinitely when films are given extended runs.

257. We have not attempted to look into individual complaints about bars or to judge whether the distances covered by particular bars are reasonable. The complaints were put to us before certain improvements in the machinery for settling disputes had become effective, and it is possible that the grievances felt by some exhibitors will have been removed thereby. In principle we think it is right that there should be machinery of the kind which now exists for settling disputes, and that in doing so it should take the interests of the public into account as well as those of exhibitors and distributors, balancing the legitimate objective of getting the maximum return on each film against the convenience of the cinema-goers affected. It is still too soon to judge whether the improved arrangements will operate satisfactorily. We see two possible dangers. One is that the limits which have now been accepted in a code of practice on barring (paragraph 58) might come to be treated as a minimum, with exhibitors thinking it useless to challenge any bar that did not exceed them. The other is that, despite the appointment of an independent chairman to the appeals tribunal, small exhibitors might be inhibited from using the machinery by a feeling that the interests of more powerful exhibitors were still bound to prevail. We therefore recommend that the Board of Trade should keep the arrangements under review.

258. The safeguard provided by this agreed machinery does not extend to the duration of bars operated with extended runs. We think there is force in some of the complaints made by exhibitors about the effect of barring when films are shown for more than two or three weeks in one cinema (apart from the special case of West End cinemas), and in particular that it may add significantly to the difficulties of small exhibitors in keeping going, by reducing their chances of earning high returns on the most popular films to offset the losses made on others. Moreover it is another instance of the pattern of distribution being determined by the circuits rather than the distributor. It may be true, as the circuits claim, that it would not be in the distributor's interest to let another cinema in the same town have a film while a long extended run was in progress, but he would not in any case be obliged to do so, even if there were no bar. We consider that this ought to be a matter for decision by the distributor in the light of his assessment of the commercial advantages. We therefore recommend that no bar should operate for more than four weeks from the opening date of a film's run in a cinema (other than a West End cinema), and that any other exhibitor should have the right to make a bid for the film after that time under the conditions proposed in paragraph 255 (the bid could be either for a concurrent showing or for the transfer of the film). This would not in practice affect many films in the course of a year, but it might eliminate the most damaging cases and give the subsequent-run exhibitors concerned a firmer basis for planning their programmes.

259. Finally we consider that the three practices of distributors which we have found to operate against the public interest should be discontinued. That is to say:

- (i) Distributors should not make the hire of any film conditional upon the acceptance of others (paragraph 231).
- (ii) The Kinematograph Renters' Society should rescind its Recommendations Nos. 31 and 32 and should take no collective action to

limit the extent to which exhibitors use their premises for purposes other than the exhibition of films (paragraph 234).

- (iii) The Society should rescind its Recommendation No. 17 and should place no restriction on the licensing of films to exhibitors who book films co-operatively for cinemas which are not under common ownership or control (paragraphs 235 to 238).

Selective employment tax

260. At a late stage in our inquiry we were asked by the President of the Board of Trade to take account in our recommendations of the introduction of the selective employment tax. ABPC also drew our attention to the additional cost which it would incur as a result of this tax. Plainly the tax will have an effect on the finances of the industry. The finances of the industry did not, however, play a part in our conclusions about the subject of our reference, and this new factor does not affect either our conclusions or our recommendations.

Summary of conclusions and recommendations

261. To sum up, we agree with the view of the Cinematograph Films Council, expressed in the letter from its Chairman to the Secretary of State for Industry, Trade and Regional Development dated 8th February 1964 (Cmnd. 2324), that 'the introduction of a larger measure of competition into film exhibition . . . would be advantageous to the industry'; we would add that it would also be advantageous to the public. Competition is deficient partly because of various practices customary in the industry, but mainly because of the structure of the industry which results from the dominant position of ABPC and Rank. To give the industry a new and competitive structure would mean breaking up the circuits, but that would be a drastic step the results of which would be uncertain. Instead, we have recommended a series of less drastic remedies intended to mitigate the effects of the dominance of ABPC and Rank and to eliminate practices which restrict competition. Although each remedy individually could not be expected to have far-reaching consequences, it is our belief that, provided that they are all carried out, their combined effect should be to permit the development of greater and more effective competition.

262. Our detailed conclusions and our recommendations may be summarised as follows:

- (1) The conditions to which the 1948 Act applies prevail as respects the supply in Great Britain of films to exhibitors for exhibition in cinemas by virtue of:
 - (a) Rank's share of the supply of films (paragraph 178);
 - (b) the lack of competition between ABPC and Rank for films (paragraph 180);

- (c) the practice of barring (paragraph 182) ;
 - (d) the practice of making the hire of one film conditional upon the hire of others (paragraph 187) ;
 - (e) two practices of the Kinematograph Renters' Society (paragraph 194).
- (2) All these conditions operate and may be expected to operate against the public interest (paragraphs 230, 232, 234 and 238).
- (3) The preference which Rank gives to its own documentary films in cinemas which take more than one-third by value of the total supply of films is a thing done as a result of its monopoly position which operates and may be expected to operate against the public interest (paragraph 215).*
- (4) By way of remedies for the matters which we have found to be against the public interest we recommend that :
- (a) ABPC and Rank should give an assurance that they will further extend the practice of flexible booking, that is giving trial runs to films whose appeal to the public is in doubt and giving limited or partial circuit bookings to films of limited appeal (paragraph 251).*
 - (b) ABPC and Rank should take the lead in arranging for the film industry to make proposals to the Board of Trade providing (i) for machinery to deal with disputes over allocation of product and (ii) for exhibitors to have the right to bid for films in competition (paragraphs 253 to 255).
 - (c) Rank should discontinue its practice of giving regular weekly bookings to its own documentary films, and should book documentary and other short films on their merits (paragraph 215).*
 - (d) The Board of Trade should keep under review the arrangements for settling disputes over time and distance bars (paragraph 257).
 - (e) No cinema (other than a West End cinema) should operate a bar on a film for more than four weeks after starting to show the film, and any other exhibitor should have the right to bid for a licence to exhibit the film after that time (paragraph 258).
 - (f) Distributors should not make the hire of any film conditional upon the acceptance of others (paragraph 259).
 - (g) The Kinematograph Renters' Society should rescind its Recommendations Nos. 31 and 32 and should take no collective action to limit the extent to which exhibitors use their premises for purposes other than the exhibition of films (paragraph 259).

* See Mr. Smith's note of dissent (paragraphs 263 and 264).

- (h) The Kinematograph Renters' Society should rescind its Recommendation No. 17 and should place no restriction on the licensing of firms to exhibitors who book films co-operatively for cinemas which are not under common ownership or control (paragraph 259).

ASHTON ROSKILL (*Chairman*)

T. BARNA

A. H. BRUCE

BRIAN DAVIDSON

W. E. JONES

O. B. MILLER

J. M. A. SMITH

(*Subject to note of dissent below*)

LAURENCE WATKINSON

MISS M. DENNEHY (*Secretary*)

15th July 1966

Note of Dissent

By MR. J. M. A. SMITH

263. I do not agree (paragraph 262 (3)) that the preference which Rank gives its own documentary films is a thing done as a result of its monopoly position which operates or may be expected to operate against the public interest, and that it should therefore (paragraph 262 (4) (c)) discontinue its practice of giving regular weekly bookings to its own documentary films, and should book documentary and other short films on their merits. I take the view that Rank's replacement of two newsreels by its own product *Look at Life*, to the exclusion of other shorts and documentaries, is a decision which it is entitled to make, and not an unjustified interference with the choice of films available to the public. I do not consider that Rank should be required, contrary to its commercial judgment, to replace *Look at Life* in its own cinemas by shorts and documentaries produced by others, with the almost inevitable effect, in my opinion, of closing down that section of its business.

264. I also take the view that the remedy proposed in paragraph 262 (4) (a) should be moderated. I do not think that in giving the assurance indicated either ABPC or Rank should be under pressure to go beyond the limits of their good commercial judgment, as the word 'extend' to my mind suggests.

J. M. A. SMITH.

