

Conclusions and recommendations

The monopoly situation

8.1. We are required by our terms of reference to report whether a monopoly situation exists in relation to the supply of films to exhibitors for exhibition in cinemas in Great Britain. Films are defined by the reference as any record, however made, capable of being used as a means of showing a sequence of visual images as a moving picture. Exhibition is defined as exhibition to the public, and exhibitors as persons carrying on the business of exhibiting films to the public in Great Britain. Cinemas are defined as any premises in Great Britain used for the exhibition of films.

8.2. If we find that a monopoly situation exists, we are further required to report by virtue of which provision of section 6 of the Fair Trading Act 1973, and in favour of what person or persons, that monopoly situation exists. Under section 6(1)(a) and (c) of the Act, read in conjunction with section 9(1) (which provides that a reference may be limited to a part of the United Kingdom, in the present case Great Britain) a monopoly situation shall be found to exist if at least one-quarter of all the goods of the description specified in the reference which are supplied in Great Britain are supplied by or to:

- (a) one and the same person; or
- (b) members of one and the same group consisting of two or more persons (not being a group of interconnected bodies corporate) who, whether voluntarily or not, and whether by agreement or not, so conduct their affairs as in any way to prevent, restrict or distort competition in connection with the production or supply of goods of that description.

Under section 11 of the Act, a monopoly situation as described in (b) above is a complex monopoly situation.

8.3. In determining whether a monopoly situation exists by virtue of section 6(1)(a) we consider that the most appropriate method is to calculate the market shares of distributors and exhibitors by reference to the total licence fees received or paid. On this basis of measurement, paragraphs 3.7 and 3.23 show that in the four years 1978 to 1981, the average market shares of Columbia-EMI-Warner Distributors Ltd (CEW) and Cinema International Corporation Ltd (UK) (CIC(UK)) amounted to 30.7 per cent and 21.8 per cent respectively. Since November 1981 United International Pictures (UK) (UIP(UK)) has distributed not only on behalf of those distributors previously served by CIC(UK) but also on behalf of United Artists, whose market share in recent years has been of the order of 10 per cent, so that UIP(UK)'s market share may be expected to be substantially larger than that of CIC(UK) and greater than 25 per cent. Paragraphs 4.11 and 4.28 show that over the same period of four years the average market shares of EMI Cinemas Ltd (EMI) and Rank Leisure Ltd (Rank), calculated in the same way, amounted to 32.2 per cent and 26.2 per cent respectively. Because all these market shares, as

expressed, exceed 25 per cent, we conclude that a monopoly situation exists by virtue of section 6(1)(a) in favour of the distributors Columbia-EMI-Warner Distributors Ltd and (if allowance is made for the market share of United Artists) United International Pictures (UK) and in favour of the exhibitors EMI Cinemas Ltd and Rank Leisure Ltd.

8.4. We have explained in paragraph 2.27 that many distributors, including CEW and UIP(UK), adopt a practice (referred to in this report as the practice or system of alignments) of normally offering their films in the first instance either to EMI or to Rank in preference to all other exhibitors, but never to both.¹ EMI and Rank adopt the practice of accepting films on that basis. We consider that this practice restricts competition between distributors who do not obtain competing offers for licences to exhibit from EMI and Rank or from any other exhibitors. It also restricts competition between EMI and Rank who do not make such offers. Because of the market shares shown in paragraphs 8.3, we conclude that a complex monopoly situation exists by virtue of section 6(1)(c) in favour of those distributors, including Columbia-EMI-Warner Distributors Ltd and United International Pictures (UK), who adopt the practice, and in favour of EMI Cinemas Ltd and Rank Leisure Ltd who accept films on the basis on which they are offered by those distributors.

8.5. In paragraphs 2.36 to 2.39 we have described the system of barring. The bars which apply between cinemas are the results of long-standing settlements between exhibitors as to the order in which cinemas will show a film. Distributors accept the bars, and implement them by inclusion in their film hire agreements. Competition between distributors is restricted because they do not generally offer to license films to exhibitors except in the sequences determined by the bars. Competition between exhibitors is restricted because they do not generally attempt to obtain licences except in accordance with the bars. We conclude that a complex monopoly situation exists by virtue of section 6(1)(c) in favour of those exhibitors, including EMI Cinemas Ltd and Rank Leisure Ltd, and those distributors, including Columbia-EMI-Warner Distributors Ltd and United International Pictures (UK), who adopt the practice of barring.

The situation of the cinema industry in Great Britain

8.6. As shown in Table 2.4, the decline in cinema admissions which set in strongly after the early 1950s has continued. In 1965, the year before our previous report² was published, total admissions stood at 327 million. In 1981 the total had fallen to less than 84 million, with occasional increases such as in 1978-79 coinciding with the showing of a number of particularly popular films. Thus the industry has not attracted people into its cinemas in competition with other forms of entertainment. Its ability to compete is further threatened by the current rapid growth in the sales of video recorders allowing films to be shown on domestic television sets.

¹ The only exception which occurs regularly is that seven cinemas which have an allocation of product (see paragraph 2.56) receive some films on a first-run basis instead of the relevant EMI or Rank cinemas.

² The Monopolies Commission. *Films: A report on the Supply of Films for Exhibition in Cinemas*. Published on 28 October 1966.

8.7. The industry is considerably smaller than it was at the time of the previous report (1966). The number of cinemas in 1981 (877) is less than half the number that existed in 1965. During that period, total seating capacity has been reduced from 2,013,000 to 620,000 seats. In 1965 the industry began to provide multi-screen cinemas mainly by converting single-screen cinemas. The average size of auditorium has declined sharply from 959 seats in 1970 to 411 seats in 1981. The number of screens (auditoria) in 1970 was 1,529; in 1981 it was about the same, 1,514. Despite the fact that the number of screens has remained stable, the continued closure of cinemas has meant that more and more people have to travel further to go to the cinema. As auditoria have become smaller, it may be more difficult to reproduce the sound and visual effects for some films which the makers intended to achieve. Capacity utilisation has declined, from 20.7 per cent in 1970 to 18.9 per cent in 1981.

8.8. Average admission prices have increased by 431 per cent between 1970 and 1981, whereas the Retail Price Index increased by 304 per cent during the same period. In real terms, therefore, average admission prices increased by 31 per cent during 1970 to 1981. It appears to us that the record of the cinema industry in the United States has been better than that of the British industry, both in attracting the public into its cinemas, and in holding down the rate of increase of admission prices in real terms. Similarly, the record of the cinema industries in Western Europe appears to have been better, in that the rate of decline in admissions has not been so rapid as it has in Great Britain (see paragraphs 2.8, 2.15 and 2.16 and Appendix 2.3).

8.9. There has been a decline in the number of long films available for exhibition, from 302 in 1965 to 225 in 1981 (see Table 2.1). In recent years the number of British long films produced has declined sharply as a proportion of the total of such films exhibited in Great Britain. One response to the competition which the industry has faced, not only in the United Kingdom, has been the production of films which are likely to be most attractive to the public when shown in modern well-equipped cinemas, as distinct from films shown by competing methods, in particular on television. We were told in the course of our inquiry that the exhibition industry in Great Britain has become increasingly dependent on such popular films.

8.10. The changes outlined above have been accompanied by developments in the methods of releasing and distributing films. A gradual release progressing through the country is still frequently employed. Nowadays other strategies and methods are also employed for the more popular films. These are in particular the mass release and the television area release, described in paragraphs 2.31 and 2.32 respectively. At the other end of the scale are limited releases made at only a few cinemas, sometimes on a trial basis (see paragraph 2.34). Thus the industry has sought to respond to changes in the market place by developing a number of different strategies for different films.

8.11. In the exhibition sector, EMI's circuit, with 119 cinemas and 308 screens, has now become noticeably larger than Rank's, which has 89 cinemas and 225 screens. There are two other circuits of considerable size, Classic, with 61 cinemas and 129 screens; and Star, with 49 cinemas and 126 screens. Both Classic and Star have much smaller market shares than the two major circuits.

In terms of total licence fees paid by exhibitors, EMI's share in 1980 (the latest year for which the following analysis of market shares can be made) was nearly 34 per cent, and Rank's nearly 26 per cent; by comparison, Classic's share was 8 per cent, and Star's over 6 per cent. The market share of all other exhibitors was thus about 26 per cent.

8.12. The combined market share of EMI and Rank, in terms of film rentals paid, is about 60 per cent (see Tables 4.3 and 4.9). That share needs to be considered in the light of the fact that EMI and Rank do not compete with each other to obtain films from distributors on a first-run basis. Their combined market share also needs to be seen in relation to the fact that they operate, together, about 31 per cent of total cinemas in Great Britain, 39 per cent of total screens, and possess 48 per cent of total seating capacity (1981 figures). It is clear that EMI and Rank between them dominate the exhibition side of the industry.

8.13. There has been a considerable change in the structure of the distribution sector. In 1965, all major distributors operated independently of each other. The ten largest companies distributed virtually all first feature films. Since then, as described in paragraph 2.20, three joint distributor companies have been formed, CEW (comprising Columbia, EMI Films and Warner), UIP (comprising Paramount, Universal, Metro-Goldwyn-Mayer (MGM) and United Artists) and UK Film Distributors Ltd (comprising Twentieth Century-Fox and Walt Disney). These three joint companies thus distribute films on behalf of nine principal distributors. The next three largest companies are ITC, Brent Walker and Rank Film Distributors. These six distributor organisations received 90 per cent or more of film hire payments made in 1981. The film distribution sector is therefore now highly concentrated. Since 1966 there has been only one significant change in the alignments to supply films between major distributors and the two major exhibition circuits, namely that Paramount switched from Rank to EMI as its aligned circuit in 1973, upon the creation of CIC.

The monopoly situation

8.14. We think that the monopoly situation which we have found in paragraphs 8.3 and 8.4 are so closely interrelated, that their effects on the public interest can mainly be dealt with as part of our consideration of the complex monopoly practices, which constitute the principal arrangements under which the industry operates. We do that in paragraphs 8.15 to 8.51. We then deal, in paragraphs 8.52 to 8.56, with the separate question of concentration in the distribution and exhibition sectors of the industry and the relevance to that question of the scale monopoly situations which we have found in paragraph 8.3.

The alignments between distributors and EMI and Rank

8.15. It has long been the practice for many distributors to offer first use of their films, some distributors always to EMI, and the others always to Rank. Such offers are nearly always accepted. The alignments of which we are aware are shown in Table 2.7. We have been told that only on rare occasions has a film

released by one of those distributors not been shown in the cinemas of the aligned circuit on a first-run basis.

8.16. We put it to EMI and Rank as exhibitors and to CEW and UIP as the largest distributors that the alignments restricted competition between exhibitors and between distributors. They argued that even if the alignments were considered to be restrictive of competition, they nevertheless brought substantial benefits. The points they made are set out more fully in Chapter 7. The main benefit falling to the distributor was, it was suggested, the ready availability of a foundation of good cinemas for the national release of its films and exploitation of their potential; that applies not only to the most popular films but also to many which are not expected to have great appeal to the public, and some of which might not otherwise be so readily available to the public. For EMI and Rank, the main benefit suggested to us was that they had some assurance of a reasonable share of the more popular films.

8.17. The system of alignments is no doubt a convenient way of doing business between the major distributors and the two major exhibition circuits, but it restricts competition, because EMI and Rank do not compete to obtain films at first run, nor are the major distributors taking any steps to encourage them to do so. We conclude therefore that within a single system of decision-making operated by EMI and its aligned distributors on the one hand, and by Rank and its aligned distributors on the other, there is effective control of some 60 per cent of the film exhibition market and a still greater share of the film distribution market in Great Britain.

8.18. We therefore considered how competition might be less restricted. We looked at the possibility of another exhibitor establishing himself as a serious competitor to EMI or Rank, bearing in mind their market share, their place in the system of alignments, and the place their cinemas occupy in the barring system which we consider later. We were told of no instance in which another exhibitor had sought to obtain acceptance by a major distributor that he should be offered films on a competitive basis with EMI or Rank. Nor have we received any evidence that a major distributor might consider setting up any other exhibitor or group of exhibitors as a competitive outlet to EMI or Rank for his films on a first-run basis. We consider that, with the market in long-term decline, there is no present prospect of another exhibitor establishing himself as an equal competitor to EMI or Rank.

8.19. We considered the effects of the alignments on price competition in the industry which at present consists principally of differences between city-centre and other cinema seat prices. There is no price bidding or other form of price competition between exhibitors to obtain supply of films. Distributors do not offer price incentives for different films. When they seek to apply a higher range of break figures for some films, they adopt the same approach towards all cinemas. Individual cinemas do not in general vary their seat prices from film to film. There are some incentives in seat prices offered, for example on Monday at some cinemas, or at certain times of day, for example late at night, or for particular classes of films or of persons. With these exceptions there is a general absence of price competition within the industry. The trend of real admission

prices has risen considerably while capacity utilisation has continued to fall. We conclude that the lack of price competition in the industry, however it arose, would not have been so easily maintained without the existence of the alignments, and of their restrictive effect on competition as described in paragraph 8.17.

8.20. We considered whether any movement to change the system of alignment might come from major distributors. The alignments enable them to have all or nearly all of their films, successful or unsuccessful, exhibited in Great Britain. Most of the major distributors operate on behalf of American principals who are distributing films on a world-wide basis. The British market now accounts for not more than 4 or 5 per cent of the world market for films, and is less productive for American distributors than it used to be. Given the structure of the British film exhibition industry, and the fact that their two major customers do not wish to compete with each other, it appears to us that there is not much incentive for major distributors to change the present arrangements. We accept also that it would probably be difficult for them to do so, and indeed some of them told us that they thought they did not have the power to bring about major changes. Nevertheless, the result is a lack of innovation, and an acceptance of arrangements and practices, some of which were developed long ago when market conditions were entirely different from those that exist today.

8.21. We accept that the alignments are a convenient way of doing business, in that they provide some certainty of outcome, as compared with the risks of a more competitive system. However, the dominant market share of EMI and Rank as exhibitors prevents others from becoming effective competitors in circumstances of very limited price competition. The alignments both help to create the situation and to maintain it. They enable EMI and Rank to exploit the scale monopoly situations which exist in their favour. We conclude that the alignments operate and may be expected to operate against the public interest.

8.22. We considered whether there was any step we could recommend which would have the effect of ending the system of alignments. We concluded that an effective remedy would necessitate substantial reductions in the market shares of both EMI and Rank as exhibitors, in ways which would not lead to the re-creation of the degree of concentration in exhibition which exists at present. Such a remedy would be likely to require the divestment of substantial numbers of EMI's and Rank's cinemas. Taking into account the decline in cinema audiences, the continuing need to close cinemas, and the fact that some surviving cinemas are making losses, we concluded that such a remedy is not practicable and cannot be recommended.

8.23. We foresaw no other way in which the practice of the alignments as adopted by the two major exhibition circuits and the major distributors could be brought to an end except by the industry itself choosing to make different arrangements. We go on to consider some other ways in which it might be possible to mitigate the effects of the lack of competition between EMI and Rank, and between major distributors.

The present system of barring

8.24. Once the type of release for a film has been decided, and which cinemas will be involved, a long-standing system of bars negotiated and agreed between exhibitors, and then with distributors, is applied to determine the rights to exclusive exhibition which many cinemas will have and, in effect, the order in which those cinemas will show the film. The system is described in paragraphs 2.36 to 2.39. EMI and Rank obtain first run of virtually all films, and their cinemas are in most cases first-run cinemas in their own localities. The order in which the other cinemas in the locality, including sometimes other EMI and Rank circuit cinemas, will show the film, ie as second, third or still later run cinemas, relates to the first-run positions of EMI's and Rank's main cinemas. Distributors accept this system of bars and implement it by stating in the film hire agreement made out for each film and for each cinema the exclusivity conferred on the cinema by the bars. The distributor negotiates with the exhibitor on a week-by-week basis, up to the four-week maximum duration of the standard bars, whether the film will continue to be shown at a cinema on the basis of the exclusivity stated in the film hire agreement, or whether, in the light of the exhibitor's reaction, the film may be shown at competing cinemas barred by that particular cinema. At any one time, many films are thus being shown at varying stages of release, and subject to a variety of methods and patterns of release, throughout the country. We have been told of only a few occasions on which the bars have been relaxed, for a particular film, for example to permit a barred cinema to play concurrently with the one which is barring it. Such *ad hoc* relaxations are also settled primarily between exhibitors and then accepted by distributors.

8.25. We raised with EMI, Rank and other exhibitors, with CEW and UIP and with the relevant trade associations whether this system of barring was unduly inflexible and restrictive of competition and should cease to operate. Their views are set out in Chapters 6 and 7. In evidence to us EMI and Rank defended the system. They argued that it was necessary to establish the exclusivity a cinema should have for exhibiting a film and that the Commission had so found in their previous report by accepting that barring was not of itself against the public interest. The present system was reasonable, known to operators, and avoided unnecessary cost. EMI argued that the exclusivities conferred by the bars represented accurately the comparative merits of its cinemas, and suggested that distributors would continue to recognise those comparative merits if the system itself was removed, so that there would be no effective change in the distribution pattern of films.

8.26. The Association of Independent Cinemas, representing the views of the smaller exhibitors, did not seek the total elimination of bars. It thought that there was a legitimate place for some form of barring in the interests of orderly distribution, and that abolishing it would make little difference in practice. Distributors would make no more prints than they needed and would continue to supply their best customers first. The Association proposed a general review of the present bars, under which all bars should be removed if they could not be justified by the exhibitors operating them. This would hopefully lead to the elimination of unreasonable and anachronistic bars.

8.27. Some of the independent exhibitors who gave evidence complained about the difficulties in obtaining access to popular films, which they attributed to the barring practices of the major circuits and the pressures believed to be exerted by them on distributors. There were few suggestions that barring should be abolished; the point most frequently made was that unreasonable distance bars should be eliminated. We can understand that the smaller exhibitors see some value in arrangements which give their cinemas clear positions in the running order for films. However, they do not generally expect to obtain films at the earliest stages of releases. We consider that the cessation of the present system of barring is unlikely to make their position appreciably if at all more difficult than it is already. We deal later with the question of delays in the release of popular films to exhibitors other than EMI and Rank.

8.28. CEW and UIP said that the present barring system did not materially restrict their freedom of action and decision. It had become less restrictive with the passage of time and the emergence of many solo cinemas (see paragraph 2.28). Both distributors saw the need for arrangements to determine exclusivity; UIP pointed out that the Commission had agreed in their 1966 report that bars of some kind were necessary and not against the public interest. CEW thought that the present arrangements cost less to operate than would separate negotiations for each film, which would not produce very different results. However, it said that it would welcome some further relaxation of barring arrangements, and thought that bars as they exist at present would tend to disappear.

8.29. We can see that there may be somewhat less cost involved in operating the present system of barring instead of taking all exclusivity decisions on a case by case basis. But distributors have in any event to deal with many cinemas and most if not all exhibitors in respect of films released on a substantial scale. We do not think that their costs would increase to any substantial extent were they to operate differently.

8.30. The present system of barring gives predetermined answers to questions of exclusivity, except, as we understand, on infrequent occasions. But the industry nowadays needs to choose between a number of release strategies and apply them to suit different films, in greatly varying numbers of cinemas. This requires rapid responses to the public's reception of a film, and if necessary changes to the strategy of release. We note that it has, for example, already become necessary to have a substantial—but itself predetermined—variation on the present set of 'general' bars to provide for television area releases.

8.31. We now turn to what an exhibitor needs to consider in relation to exclusivity when entering into a hire agreement to show a film at a particular cinema. We think that he would need to know whether other cinemas which are in effective competition with his own cinema are intending to show the film at the same time or immediately before, because in his judgment that would be likely to reduce the audience he could hope to obtain. He would then need to decide whether to enter into an agreement on that basis, or on a different basis as regards those other cinemas if the distributor was prepared to agree to one, or whether instead to show a different film if he thought it would give him a better result. When he enters into the agreement, he would need to see that it

reflected the terms for exclusivity which he had agreed with the distributor. In the above sense, we accept the need to define exclusivity. We can see no great practical difficulty in terms for exclusivity being reached on a case by case, film by film basis, in the way we have outlined. We accept that such a process may produce broadly similar results to the present system at least for some time. However, the present system of deciding exclusivity produces results which are determined, largely, by EMI and Rank. It does not in our view achieve sufficient competition during the full period in which films are released. Although much of the industry is in favour of keeping some barring, many operators want to see changes made, towards less restriction and greater freedom of action and decision. Taking all those things into account, together with the restriction of competition caused by the alignments, on which the places of EMI and Rank in the system of barring partly depend, we conclude that the present system of barring operates and may be expected to operate against the public interest, and that other arrangements should be made to determine exclusivity.

8.32. We recommend that appropriate steps should be taken to ensure that both distributors and exhibitors bring to an end the present system whereby bars are decided and implemented, that they do not replace it with a like system, and that they conduct their respective businesses thereafter in such a way that provisions for exclusivity can be negotiated for each film hire agreement on a case-by-case basis.

8.33. If the above recommendation is implemented, it would follow that some of the Standard Conditions of the SFD, which deal with barring and related matters, would either no longer apply (in which case the SFD will doubtless wish to withdraw them) or would need to be amended to reflect the new circumstances in which exclusivity provisions will appear in film hire agreements. The Standard Conditions which would be mainly affected in this way are numbers 8(c), 13 and 14.

Delays in the release of popular films to exhibitors other than EMI and Rank

8.34. Exhibitors other than EMI and Rank expect to be able to show a popular film but often do not know how soon after its initial release they will be able to do so. They, no less than EMI and Rank, rely upon the earning capabilities of popular films. They often wish to show such a film at an early stage in its release, and they need to know with some degree of assurance when they will be able to obtain the right to do so. Exhibitors who are competing with EMI and Rank are disadvantaged when EMI and Rank obtain exclusive runs of unknown duration during which the film is unavailable to other exhibitors. A number of those exhibitors, including some operating in the suburbs of large cities, complained of the delays which occur before some popular films became available to them and suggested to us that a maximum bar of four weeks should be enforced, thus limiting the length of the run which a cinema could have (see paragraphs 6.10, 6.14 and 6.15).

8.35. The results of the studies we have made on this matter are set out in paragraphs 2.40 to 2.50 and Appendices 2.4 and 2.5. We conclude that exclusive runs of popular films in some of EMI's and Rank's central cinemas in

the large provincial cities have occurred for long periods, the longest we found being of 22 weeks.¹

8.36. We raised with EMI and Rank the question whether their market power, reinforced by the alignments, enables them to bring about delays in the release of films to other exhibitors. We asked them, and also CEW and UIP, whether delays in the release of films to those other exhibitors lead to a reduction in the choice of films available to the public, and the opportunities for the public to see films, or to see them at costs which they are prepared to meet. We asked all four companies for their comments on some particular cases of delays in popular films being released to other exhibitors in Glasgow and Manchester (see paragraph 2.45).

8.37. In Chapter 7 we have set out the comments we received from EMI, Rank, CEW and UIP. One of the main points made by EMI and Rank was that the release strategy and the pattern and speed of release are decided by the distributor, not by the exhibitor. They both said that they had not negotiated to retain films in their cinemas on an exclusive basis beyond the four weeks permitted by the bars; it was the distributors who decided whether or not it was in their interest to handle the releases in that way.

8.38. The main comments made by CEW and UIP were that they selected the release strategies which they thought would maximise audiences and establish the appeal of the films, taking into account a number of factors including the type of the film and the time of its release; and that they needed to be able to change those strategies and the detailed implementation of them in particular places depending on the appeal which the films achieved. If the film had greater appeal than originally estimated the total number of prints available would be insufficient; that had happened in some of the cases we put to them, and some cinemas had had to wait for prints to become available, sometimes on the basis of an altered strategy for the film. CEW and UIP both considered that the strategies they had employed, including the delays in release to exhibitors other than EMI and Rank which took place in Glasgow and Manchester, had been justified by the success achieved by the films concerned.

8.39. We also received comments on the consequences of the possibility of placing a fixed limit on the length of run which a cinema should have, if that run was on a basis which excluded other effectively competing cinemas from showing the film. The point was made that distributors needed to be free to decide on the type of release most likely to obtain public appeal for a film; in some cases, that objective was best achieved by showing the film on the basis of extended and exclusive runs, including in city-centre cinemas in the large cities. Particular concern was expressed at any arrangement which would require a distributor to make exhibition rights available to other cinemas which asked for such rights whether on the basis of concurrencies or not. It was argued that that could make the negotiation of film hire terms more difficult, and lead to loss of revenue, as well as to additional costs. If a film is sufficiently popular, commer-

¹ These long runs occasionally occur in some of the seven independent cinemas which have allocations of product. Only one such case occurred in the releases listed in Appendix 2.4. We are aware of one other case which occurred in 1979.

cial considerations would in any event point towards the granting of exhibition rights to other cinemas.

8.40. Because of the importance attributed to the availability of prints by the four principal parties in the comments to which we have referred in the preceding paragraphs, and by others in evidence to us, we made some study of the matter. The results are set out in paragraphs 2.47 to 2.50. We found that over 400 to 550 different cinemas showed the three very popular films which we studied in detail (see Tables 2.10 to 2.12) in the first three months of their releases, which is normally the most important period (all three films were among the particular cases which we put to EMI, Rank, CEW and UIP for comment). The number of prints which was available to supply those cinemas over that period was in one case somewhat less than 200, and in the other two cases rather more than that figure. We also found that, despite the popularity of those three films, considerable numbers of prints became available, and do not appear to have been used, within or by the end of the three month period, and that the peak phase of each release, in terms of the numbers of prints used, lasted about five weeks. Whatever the pattern of release in a particular area, and whatever its consequences may be for the number of prints available in that area, we do not regard those matters as providing justification for long delays in the supply of prints to exhibitors other than EMI and Rank. We discuss this question in more detail below.

8.41. We also found that the availability of prints in six of the largest cities while exclusive runs were taking place in the central cinemas was noticeably lower than in the country as a whole, and than in the London suburbs, for the three very popular films which we studied in detail (see Tables 2.10 to 2.12). We appreciate that a release strategy might entail a supply of prints earlier to one part of the country than to another. But we consider that, once it has been decided to supply prints for exhibition of the film in an area, then that supply should be sufficient to enable the public to have some choice of the cinemas in which they prefer to see the film, and not to be made to go to one cinema only if they wish to see the film reasonably early in its release.

8.42. We turn now to the comments made by the four principal parties. They, and particularly EMI and Rank, have put to us a situation in which decisions about the release of films, including whether they should be exhibited for long periods on an exclusive basis at some of the most important cinemas in the country, are taken unilaterally, and by the distributors. However, in other evidence which they have given us, CEW, UIP, EMI and Rank placed much emphasis on the consultation and co-operation which takes place between distributors and the two major circuits, beginning with the consultation between the circuit and the aligned distributor on the release strategy for a film and the part which the circuit cinemas will play in that release, before the distributor negotiates with any other exhibitor. The system of break figures by which box office revenue is divided between the distributor and the exhibitor—for the whole of the industry—is also one of sharing of risk and reward, and entails co-operation rather than arm's length dealing. We believe that it is not likely that a distributor, when coming to a decision to extend a film hire agreement, will lose sight of the totality of his relationships with the

aligned exhibitor. Given the distributor's involvement with EMI or Rank, it is not difficult for him to know what the aligned exhibitor would prefer him to do.

8.43. Two issues arise here. Given the dominant market positions of EMI and Rank, reinforced by the effects of their alignments with CEW and UIP, and with most other distributors, we consider that a situation exists which works generally to the disadvantage of exhibitors other than EMI and Rank, with the result that those other exhibitors obtain films later than they would have obtained them in the absence of the dominant positions of EMI and Rank, and of the alignments. We also consider that the public have an interest in being able to see popular films early in their release, in places and at prices which suit their choice. Some people prefer to go to the city-centre cinemas; others prefer to see the films locally and often at lower admission prices and perhaps lower costs of travel. The public does not have such a choice if the city-centre cinema alone shows the film for a prolonged period.

8.44. We therefore conclude that delays in the release of popular films and particularly where this has happened in city-centre cinemas in the large cities are a distortion of competition between exhibitors. They affect the choice available to the public. In almost all cases they constitute an advantage gained by EMI and Rank by reason of their market power as scale monopolists in exhibition, which power is reinforced by the system of the alignments between them and most distributors (see Table 2.7). We conclude that such delays operate and may be expected to operate against the public interest.

8.45. We have considered ways in which the delay in releasing popular films to exhibitors other than EMI and Rank could be limited. We recommend that arrangements be made to provide that, at any stage in the release of a popular film, that film would not be exhibited for more than four weeks—nor thereafter re-exhibited—in any cinema unless or until the film had been made available to all other cinemas in effective competition which had sought to exhibit the film. For the distributor to meet this requirement, cinemas in effective competition with the first cinema to show the film, or with any subsequent cinema to show the film, must be able to obtain the right to exhibit the film when they seek to do so (within the terms of the preceding sentence), and to conclude a film hire agreement on terms consistent with those applying generally to film hire in the industry. When a film is first released to EMI and for as long as the distributors remain aligned either to EMI or Rank, Rank cinemas would not be regarded as being in effective competition with any EMI cinema showing the film. Likewise, in the case of first release to Rank, an EMI cinema would not be regarded as being in effective competition with any Rank cinema.

8.46. We should make it clear that the above arrangements would need to be applied to all cinemas including, for example, cinemas other than those operated by EMI or Rank which receive popular films at first-run as part of their allocations of product. In view of some of the comments we have received, as set out in paragraph 8.39, we should add that we do not intend that a distributor should be required to grant exhibition rights to any particular cinema. The decision as to what course of action he should follow remains that of the distributor. Our recommendation would prevent one course of action, namely allowing the film to continue in one cinema for more than four weeks

while refusing exhibition rights to competing cinemas. If the first cinema in an area to show the film does so for four weeks, and requests for the film have been received from other competing cinemas in the area, the distributor will have various options open to him. He could grant concurrent rights to all the other competing cinemas wishing to show the film, thus enabling the film to continue for a fifth and subsequent weeks in the first cinema. Alternatively, he could decide not to grant exhibition rights to any other competing cinemas; or he might select one or more of those cinemas, but without meeting all their requests. In either of these cases, the first cinema to show the film would not be able to continue to do so beyond a fourth week, nor could it re-exhibit the film until all outstanding requests for it from competing cinemas had been met. The same situation would hold for any second or subsequent cinema to show the film if other cinemas in effective competition still wished to show the film but had not been able to do so.

8.47. In recommending the definition of a popular film, we wish to exclude films which do not obtain a first-run release in the EMI and Rank circuits and those which are not expected to achieve any substantial film hire rentals. A study of the results of a very large number of films released by CEW and UIP in recent years (see paragraphs 2.57 to 2.63 and Table 2.14) showed that somewhat less than 100 films earned virtually all the surplus above release costs, and nearly 90 per cent of film hire rentals; that is, just over one-third of all the films in the sample. When we looked at the numbers of prints used in the release of these films, we found that about the same proportion had been released with 60 or more prints. On the basis of the earning ability of the films in this large sample we recommend that a popular film can be currently defined as one for which 60 or more prints are or have become available in Great Britain. This definition should be reviewed after it has been in operation for a suitable period of time.

8.48. The arrangements should not apply to the well-known cinemas in the West End of London in which film premières are staged. We understand that at present there are around a dozen such cinemas. There will no doubt be changes in the composition of this group of cinemas from time to time.

8.49. We consider that the primary criterion for deciding whether two cinemas are in effective competition with each other is whether, in the relevant circumstances, one would take significant audience from the other. We believe that distributors and exhibitors will be able to decide on this matter, and that they will have information to support their judgments, at least for a time if only because they have together been operating a barring system. We propose later (see paragraph 8.61) that any dispute as to whether one cinema is competing with another should be capable of being referred to the Trade Disputes Committee.

8.50. In paragraph 8.45 we have recommended that film hire agreements should be negotiated on terms consistent with those applying generally in the industry. Cases may arise, nevertheless, in which a distributor or an exhibitor may feel that he is being subjected to undue pressure in a subsequent run situation to depart from such terms. If that happens sufficiently often as to be considered a course of conduct, as distinct from an occasional and mutually

acceptable departure from generally accepted terms, we recommend that the matter should be capable of being referred to the Trade Disputes Committee. If the Committee felt able to decide whether the situation was or was not in accordance with arrangements such as we have recommended in paragraph 8.45, its decision should then be taken into account in future negotiations by the exhibitor and distributor concerned.

8.51. If the delays in releasing popular films are limited, along the lines we have recommended, it would follow that Standard Condition 14 of the SFD dealing with runs would need to be reviewed (as we have already noted in connection with our recommendations on barring—see paragraph 8.33).

Other possible effects of the scale monopoly situations

8.52. We now consider whether there are any other effects on the public interest arising from the scale monopoly situations we have found, as described in paragraph 8.3.

8.53. We first looked at the distribution sector. Concentration in this sector has developed to the point that CEW and UIP are scale monopolists, and are likely to remain so. We considered whether this has led to an effective concentration of market power and to the restriction of competition.

8.54. The distributors told us that, in view of the shrinking market which they serve, and the declining numbers of long films being produced, they constantly seek to reduce their costs. Apart from EMI Films Ltd within CEW, the distributors who form these two groups represent companies controlled in the United States; they told us that by arranging to distribute their films jointly they had achieved that objective in Great Britain. They also argued that their market shares resulted solely from the public's response to the films they distributed, and that those films were competing with each other for public appeal irrespective of the existence of the joint arrangements; those arrangements, therefore, did not lead to the creation of market power for the group as a whole.

8.55. The principals of CEW and UIP reserve the right to approve the strategy and main elements in the release of their films, which broadly maintains the degree of competition between them which previously existed. We considered whether the way in which films are released by CEW and UIP lead to restriction of competition within or beyond these groups. UIP acknowledged, for example, that the joint arrangements enable it to programme the release dates of very popular films released on behalf of its different principals, so as to avoid clashes of dates which might lead to reduced audiences. Given the structure of the industry, this would be likely to happen in any event, if only because of the influence which EMI or Rank could also bring to bear. While the principals of CEW and UIP are likely to remain major suppliers of films in Great Britain in the long term, large variations can and do occur in the amounts of film hire rentals which are received from year to year on behalf of the principals, and in total by the two groups themselves. We therefore do not think that they are pursuing courses of conduct which operate or may be expected to operate against the public interest.

8.56. The degree of concentration in the distribution sector has recently increased as a result of the creation of UK Film Distributors Ltd (see paragraph 2.20). We are concerned at the possibility of still further concentration, because the way in which films are released, and the way in which the existing groups operate, could change; and because nearly all distributors are involved in the complex monopoly arising from the system of alignments, which we have found to operate against the public interest, but against which we have not been able to recommend any remedy. We think that any further moves which would increase the degree of concentration in film distribution in Great Britain, and especially if it involved any of the three existing groups, should be looked at carefully under the arrangements for dealing with mergers under the Fair Trading Act 1973.

8.57. It appears to us unlikely that EMI or Rank would seek to acquire cinemas, with the result that they increased their market shares in exhibition. But in the eventuality that they did, we believe that it would be detrimental to the public interest.

The Trade Disputes Committee and the Appeals Tribunal

8.58. The responsibilities of these two bodies, the arrangements under which they operate and the results of their work are described in paragraphs 2.67 to 2.69. At present they deal with disputes about barring, and decide on applications for allocation of product.

8.59. We deal first with the composition of the two bodies. We received criticisms (see paragraphs 6.12 and 6.14(b)) that the composition of the Trade Disputes Committee worked in favour of the major circuits; those criticisms included suggestions that decisions by the Trade Disputes Committee should be taken only by a person or persons independent of the industry. At present, the Committee includes no such members, but the sole member of the Appeals Tribunal is an independent person.

8.60. We think that representatives of the industry should continue to have a voice in decisions made by its Trade Disputes Committee. The Committee at present consists of four members, two representing the exhibitors and two the distributors; one of the four acts as chairman on an *ad hoc* basis. But we also think that independent persons could with advantage play a major role. We therefore recommend that two of the four members should become persons who do not have active involvement in the industry, while the other two should be persons who have such involvement. We further recommend that an independent person be appointed as Chairman of the Trade Disputes Committee, thus bringing its membership to five. In addition we recommend that a single-stage procedure should replace the present two-tier arrangement of the Trade Disputes Committee and the Appeals Tribunal, by dispensing with the Appeals Tribunal.

8.61. As to the fields in which the Trade Disputes Committee would be involved in future, the removal of the present system of barring, which we have recommended, would mean that no further disputes about that system or its operation would arise for the Committee to consider. However, if our recom-

mentations to limit exclusive runs are implemented, there will be a need to decide whether one cinema is in effective competition with another or not. If the operation of the new arrangements were to give rise to complaints, these could be made to the Trade Disputes Committee. If disputes occur, they could be settled by the Committee. We recommend that the Committee should be empowered to deal with these matters.

8.62. We also recommend, for the reasons given in paragraph 8.50, that the Committee should be empowered to deal with disputes or complaints about the terms on which film hire agreements are negotiated, in connection with the arrangements we have recommended to limit the delays in popular films being released to exhibitors other than EMI and Rank.

8.63. We emphasise that the recommendations in the two preceding paragraphs are not intended to restrict the Committee from considering any other problems in the distribution or exhibition of films which the industry may see fit to refer to the Committee.

8.64. The Trade Disputes Committee decides on applications for allocation of product, under arrangements described in paragraph 2.68. We received no representations that the arrangements should be brought to an end or substantially altered. We recommend that the Committee should continue to consider applications for allocation of product.

8.65. The suggestion was put to us that the arrangements for dealing with disputes and allocation of product would work better if reasons were given for decisions. We agree with this view and recommend that the Committee should give its reasons for all decisions, in writing, to the parties directly involved.

Undertakings given by EMI (ABPC) and Rank in 1967

8.66. In 1967 ABPC and Rank gave undertakings following the Government's acceptance of the 1966 report (paragraph 262(4)(c)) to extend further the practice of giving trial runs to films whose appeal to the public is in doubt, and giving limited or partial circuit bookings to films of limited or minority appeal.

8.67. Part of the concern behind that recommendation was that, because of the preference given to films of aligned distributors, other distributors found it more difficult to get their films released. Distributors' views differ as to whether a film will appeal to the public or not. We consider that some disagreements are inevitable. Some producers and distributors told us that they thought that EMI and Rank reach unjustifiable decisions. We also found that some people criticised EMI and Rank for being unduly narrow in their choice of films, and not being prepared to take the risk of showing films which they considered unlikely to appeal to many people. We found no direct evidence that EMI and Rank were intent upon encouraging any particular class of films which might be thought to be of appeal to the British public as a separate market. Rather it seemed to us that they were ready to accept in large majority the films offered by the major distributors, most of whom are dependent upon films produced by companies controlled in the United States of America.

8.68. We see no way of satisfactorily reconciling the views of the various parties, and we consider that there is now more inducement to EMI and Rank to show any film that they believe will attract more people into their cinemas than there was at the time of the Commission's previous report. We therefore recommend that the undertakings should be allowed to lapse.

The SFD's Standard Conditions and its Recommendations

8.69. We considered whether a Recommendation by the SFD to its members that they should use standard terms and conditions, as contained in its Standard Conditions and Recommendations, in transactions between members and exhibitors could be said to form the basis for finding that members of the SFD were involved in a complex monopoly situation. The arrangements operated by the SFD are described in paragraphs 5.6 and 5.7.

8.70. The SFD argued that there was no basis for such a finding. It had so ordered its affairs that its Standard Conditions and Recommendations relate exclusively to an agreement under which its members do no more than grant a licence to exhibit a film. This is not an agreement which relates to the supply of goods or services and accordingly, the SFD argued, it does not fall within the ambit of the Fair Trading Act 1973 and cannot be dealt with under this reference.

8.71. We are not impressed by this argument, which is similar to that put to the Commission by the SFD in 1966 during the course of the previous inquiry and which they rejected (see paragraph 5.9). We accept that, in law, a distinction may at times be drawn between the right to exhibit and the right to acquire the means to exhibit. But in the present context, our view remains that in practice no cinema exhibitor will enter into a transaction under which he will pay for the right to exhibit a film to the public in his cinema without, at the same time and in the course of the same transaction, securing the right to the film itself.

8.72. It is clear that for the cinema exhibitor, dealing with a distributor who is the only source of supply to which he can turn, the purchase of exhibition rights alone without the supply of the film itself would be pointless. The same can be said of the distributor, since his right to payment in respect of exhibition to the public is dependent upon the attendance of the public at a cinema which has been supplied with the film in question. For both parties to the transaction, the right to exhibit is inextricably bound up with the agreement to supply, and the transaction would be meaningless in the absence of one or the other. We believe that attempts to distort this position, and thus to avoid the consequences of competition law in the United Kingdom, by purporting to distinguish between what would otherwise be regarded as the inseparable elements of a straightforward (albeit particular) commercial transaction between distributor and exhibitor are inappropriate and unconvincing.

8.73. We then considered the substance of the Standard Conditions and the Recommendations. We noted that three of the Standard Conditions, 8(c), 13 and 14, deal with barring, advertising in relation to the operation of bars, and with runs. If the recommendations we have made on those matters are adopted,

it will be necessary for those Standard Conditions, and any others that may be affected by those recommendations, to be amended or withdrawn.

8.74. As regards the other Standard Conditions and Recommendations, we were concerned that some of them appeared to restrict the freedom of individual distributors and exhibitors to negotiate agreements, particularly as regards terms of credit. Some conditions dealing, for example, with the programming of films and with equipment in cinemas also appeared to us to be outdated or unnecessary. The SFD and the CEA gave evidence to us on this matter. They told us that there is agreement between distributors and exhibitors about the value of retaining a considerable number of the Standard Conditions. But we also found that our doubts about the case for retaining some of them as they stand were shared by parts of the industry.

8.75. The SFD has separately reviewed its Recommendations and has rescinded some of them. The SFD, the CEA and the AIC are undertaking a joint review of the Standard Conditions. The results of that review are not yet available, but in view of what we have been told we believe that it may lead to the removal or amendment of some of the Standard Conditions. We do not need to concern ourselves further with the SFD's Standard Conditions and Recommendations for the purpose of coming to our conclusions.

Summary

8.76. We have found the following monopoly situations to exist and, where we have been able to do so, we make recommendations in connection with them as shown:

- (a) Scale monopoly situations exist in favour of CEW and UIP(UK), and EMI and Rank, as described in paragraph 8.3.
- (b) The system of alignments gives rise to a complex monopoly situation, as described in paragraph 8.4. We find that that monopoly operates and may be expected to operate against the public interest. We considered divestment but decided not to so recommend.
- (c) The present system of barring gives rise to a complex monopoly situation, as described in paragraph 8.5. We find that that monopoly operates and may be expected to operate against the public interest. We recommend that the system should cease to operate, and be replaced by arrangements under which exclusivity will be negotiated for each film hire agreement on a case-by-case basis (see paragraph 8.32).
- (d) We find that the delays in the release of popular films to exhibitors other than EMI and Rank are a consequence of the market power which those companies possess as scale monopolists, which power is reinforced by the system of alignments as a complex monopoly. We recommend that arrangements be made to place limits on the length of time for which cinemas may exhibit popular films in certain circumstances (see paragraphs 8.45 to 8.48).

8.77. We also make recommendations as follows:

- (a) The procedures and membership of the Trade Disputes Committee and the Appeals Tribunal should be changed, as recommended in paragraph 8.60.
- (b) The Trade Disputes Committee should be empowered to deal with disputes relating to the extent of competition between individual cinemas (see paragraph 8.61). It should also be empowered to deal with disputes or complaints in connection with film hire agreements in certain circumstances (see paragraphs 8.50 and 8.62).
- (c) The present arrangements for awarding allocations of product to independent exhibitors should continue (see paragraph 8.64).
- (d) The Committee should give reasons for its decisions (see paragraph 8.65).
- (e) The undertakings which EMI (ABPC) and Rank gave, as a result of the Commission's previous report, to extend further the practice of giving trial runs to certain films whose appeal to the public is in doubt, and giving limited or partial circuit bookings to films of limited or minority appeal, should be allowed to lapse (see paragraph 8.68).

8.78. We have also expressed concern at the possibility of further concentration in the industry in Great Britain (see paragraphs 8.56 and 8.57).

J D ECCLES (*Chairman*)

P GOLDMAN

E A B HAMMOND

N L SALMON

R G SMETHURST

N E D BURTON (*Secretary*)

3 March 1983