

**TO: SECRETARY OF STATE FOR TRADE AND INDUSTRY**

**FROM: JOHN VICKERS  
CHAIRMAN**

**26 July 2004**

**REVIEW OF ORDERS FOLLOWING 1983 AND 1994 MMC MONOPOLY  
REPORTS ON THE SUPPLY OF FILMS FOR EXHIBITION IN CINEMAS**

**ISSUE**

1. Section 88(5) of the Fair Trading Act 1973 ('FTA') requires the OFT to keep under review Orders made under section 56 of the FTA as a consequence of a MMC monopoly report, and to advise you if we consider that, by reason of any change of circumstances, the Order should be varied, revoked or superseded by a new Order.
2. This advice relates to two Orders made in 1989 and 1996 on the distribution of films for exhibition in UK cinemas which resulted from MMC reports in 1983 and 1994.<sup>1,2</sup>

**RECOMMENDATION**

3. We recommend that you revoke the 1989 Order. We do not consider it is appropriate to make any changes to the 1996 Order.

**TIMING**

4. Routine.

**BACKGROUND AND ASSESSMENT**

5. The OFT has reviewed the two Orders as part of its programme of reviews of Orders and undertakings under section 88 of the FTA. Our report of the review is attached.

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<sup>1</sup> The Films (Exclusivity Agreements) Order 1989, SI 1989 No. 271; and The Films (Exhibition Periods) Order 1996, SI 1996 No. 3140.

<sup>2</sup> Monopolies and Mergers Commission (1983), *Films: a report on the supply of films for exhibition in cinemas*, Cmnd. 8858; and Monopolies and Mergers Commission (1994) *Films: a report on the supply of films for exhibition in cinemas in the UK*, Cm 2673.

### **The 1989 order**

6. The MMC in 1983 found that a system of 'barring' existed and operated against the public interest. The bars reflected arrangements between the main exhibitors and prescribed the order in which cinemas in the same locality could show a film. Distributors accepted the bars. In order to maintain such a system, exclusive agreements had to be made for several films at one time. The MMC recommended the practice should cease.
7. The 1989 Order made it unlawful for supply agreements between distributors and exhibitors to include exclusivity terms applying to more than one film or for exhibitors not to exhibit a film on the basis that exclusivity terms for other films had not been agreed.
8. Our review finds that there has been substantial change in the structure of exhibition since the early 1980s. Two decades ago, two exhibition chains received the bulk of exhibition revenue. Today, there are six major exhibition chains receiving films primarily from six major distributors.
9. There has also been substantial investment in cinemas since the early 1980s. The growth in the number of multiplex cinemas has meant the number of cinema screens has more than doubled over the period.
10. We have not found any evidence that a system of barring operates today.
11. We consider that the considerable change in the structure of exhibition, both in terms of the emergence of more national chains and in the increase of screen numbers, makes it most unlikely that there would be a return to a system of barring if the 1989 Order were revoked. This is because greater competition between exhibitors makes it more difficult to impose barring and distributors face little incentive to accept such a system.

### **The 1996 order**

12. In 1994, the MMC found that distributors sometimes insisted on lengthy minimum exhibition periods from exhibitors and that this practice operated against the public interest. The practice was considered to harm smaller exhibitors (those with fewer than four screens) and their customers in particular by restricting their ability to respond in a timely way to consumer demand. It was also considered to harm independent distributors by reducing the amount of screen space available to them.

13. The 1996 Order made it unlawful for distributors to require as a condition of supply of a film to an exhibitor that the exhibitor should exhibit the film longer than two weeks on first release, and one week subsequently.
14. Section 88(5) of the FTA obliges us to consider whether an Order should be varied, revoked or superseded by a new Order by reason of any change of circumstances. We do not consider that there has been any substantial change of circumstances in regard to the 1996 Order.
15. The increase in the number of screens available has reduced the likelihood of detriment to independent distributors in the event of revoking the Order.
16. However, we consider that the MMC's concern in relation to smaller cinemas remains. Although the number of this type of cinema is falling, some 60 per cent of UK cinemas are still not a part of a national chain and have fewer than four screens. There is concern within the industry that revocation of the Order would lead to a return to distributors sometimes insisting on lengthy minimum exhibition periods. We cannot rule this out. If this were to happen, the adverse effects on smaller cinemas would likely to be similar to those analysed by the MMC in 1994 as they would still face difficulties accommodating additional films that consumers may prefer to see.

#### **Interaction with the current competition laws**

17. Since the two Orders were made, the Competition Act 1998 ('CA98') has come into force. In addition, under the 'EC Modernisation Regulation', since May this year we have powers to apply Articles 81 and 82 of the EC Treaty.<sup>3</sup> We expect distributors and exhibitors operating in the UK to be mindful of their obligations under these competition laws.

#### **CONCLUSION**

18. Our examination of the changes in distribution of films to UK cinemas has led us to make two recommendations:
  - The Films (Exclusivity Agreements) Order 1989 should be revoked; and
  - The Films (Exhibition Periods) Order 1996 should be retained.
19. We will publish this advice and our report, having excised commercial information, once you have announced your decision.

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<sup>3</sup> Council Regulation (EC) No. 1/2003, OJ [2003] L1/1.

# 1 EXECUTIVE SUMMARY

## Introduction

- 1.1 This report reviews the operation of two films Orders, *The Films (Exclusivity Agreements) Order 1989* and *The Films (Exhibition Periods) Order 1996*, against the background of developments in the distribution and exhibition of films over the past 20 years. These Orders were made by the Secretary of State following reports by the Monopolies and Mergers Commission (MMC) under the monopoly provisions of the Fair Trading Act 1973 (FTA1973).

## Summary of findings

- 1.2 A substantial change has taken place in the structure of exhibition in the UK since the early 1980s and it is now much more competitive. Two decades ago, two major exhibition chains received the bulk of exhibition revenues. Today there are six large distributors dealing with six major exhibition chains.
- 1.3 There has also been considerable investment in multiplex cinemas, accompanied by more than a doubling of the number of screens in the UK.
- 1.4 These changes have had a significant impact on the level of competition in the industry and on the way exhibitors and distributors behave.
- 1.5 In particular, the practices of barring, which led to *The Films (Exclusivity Agreements) Order 1989*, and of alignment, which were both found to operate against the public interest, are no longer present to any significant degree.<sup>1</sup> The structural changes in the exhibition sector – both in the increased number of screens available and in the increase in the number and strength of competing national exhibition chains – make it unlikely these practices will return. In any event, distributors and exhibitors should have regard to current competition laws. The Office of Fair Trading (OFT) therefore concludes that *The Films (Exclusivity Agreements) Order 1989* is no longer needed.

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<sup>1</sup> Barring refers to arrangements between exhibitors that determined which cinemas, and in which order, would show a film. Alignment is a practice whereby certain distributors always first offer their films to their preferred exhibitor. Different distributors would have different preferred exhibitors and therefore different distributors and exhibitors would be aligned with each other.

1.6 Small cinemas still account for the majority of cinema sites. It was this type of cinema, and their users, that most concerned the MMC in its 1994 report. It considered that the practice of distributors imposing lengthy minimum exhibition periods operated against the public interest by reducing choice for cinema goers, and particularly users of small cinemas, and led to *The Films (Exhibition Periods) Order 1996*. The circumstances of the smaller cinemas are in essence unchanged. The OFT therefore considers that the Order relating to minimum exhibition periods should remain.

1.7 In sum, the OFT makes two recommendations in relation to the Orders.

- **Recommendation 1**

*The Films (Exclusivity Agreements) Order 1989* should be revoked.

- **Recommendation 2**

*The Films (Exhibition Periods) Order 1996* should be retained.

## 2 INTRODUCTION

- 2.1 Watching films in cinemas is an important and growing leisure activity in the UK. Each year some 400 films are released and UK cinema goers spend around £750 million on watching films in the cinema.<sup>2</sup> Some 80 per cent of the UK population go to the cinema at some point with a quarter going once a month or more.<sup>3</sup> Around 170 million admission tickets were sold in 2002, and cinema going is on a rising trend.<sup>4</sup>
- 2.2 The two films Orders were made following recommendations contained in MMC reports in 1983 and 1994 on the supply of films for exhibition in cinemas.<sup>5</sup>
- 2.3 It is the duty of the OFT to consider from time to time whether, by reason of any change of circumstances, an Order should be varied, revoked or superseded by a new Order, and to give advice to the Secretary of State to this effect as it may think proper in the circumstances.<sup>6</sup> On 21 July 2003 the OFT announced a review of the two Orders concerning the supply of films to UK cinemas.<sup>7</sup> The review has been undertaken using statutory powers under the FTA 1973 and the Enterprise Act 2002 (EA02).<sup>8</sup>
- 2.4 In 1983 the MMC found that the system of barring in Great Britain operated against the public interest.<sup>9</sup> The bars reflected arrangements between exhibitors and prescribed the order in which cinemas in the same area could show a film. Distributors accepted the bars. In order to maintain such an intricate system of barring, several films and their exhibition periods had to be agreed upon together through exclusive agreements. The MMC recommended the practice should cease. *The Films (Exclusivity Agreements) Order 1989* (the 1989 Order) made it unlawful for supply agreements between distributors and exhibitors to include terms about exclusivity applied to more than one film or for

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<sup>2</sup> UK Film Council (2003) *Film in the UK 2002 Statistical Yearbook*, pp5,13,14. For further detail on box office trends refer to Table D.3 in annexe D.

<sup>3</sup> British Film Institute (2003) *BFI Film & Television Handbook 2004*, p 40

<sup>4</sup> BFI 2003. p39.

<sup>5</sup> Monopolies and Mergers Commission (MMC) (1983) *Films: a report on the supply of films for exhibition in cinemas*, Cmnd. 8858; and MMC (1994) *Films: a report on the supply of films for exhibition in cinemas in the UK*, Cm 2673.

<sup>6</sup> FTA 1973 s.88 (5).

<sup>7</sup> Refer to: <http://www.of.gov.uk/news/press+releases/2003/pn+101-03.htm>

<sup>8</sup> s.88 Fair Trading Act 1973 and ss.4, 5 & 7 Enterprise Act 2002.

<sup>9</sup> MMC 1983, para. 8.24.

exhibitors not to exhibit a film on the basis that exclusivity terms for other films have not been agreed.<sup>10</sup>

2.5 In 1994, the MMC found that the practice of distributors insisting on lengthy minimum exhibition periods for their films operated against the public interest.<sup>11</sup> The required minimum periods were considered to harm smaller cinemas (especially single-screen ones) and their customers the most by restricting their ability to respond quickly to consumer demand. The MMC was also concerned that minimum exhibition periods were being used by distributors to protect their monopoly position by denying screen space to independent distributors. This was seen to add to difficulties faced by independent distributors in getting their films shown. The MMC recommended that the minimum exhibition period that distributors could insist on be restricted to a maximum of two weeks on first release and one week subsequently.<sup>12</sup> The recommendation was adopted and reflected in *The Films (Exhibition Periods) Order 1996* (the 1996 Order).<sup>13</sup>

2.6 This report draws on information from the key stakeholders and secondary sources and contains a number of case studies. Chapter 3 describes how film exhibition and distribution in the UK has changed since the early 1980s. Chapter 4 considers the 1989 Order which concerns barring, and chapter 5 the 1996 Order which concerns exhibition periods. Further details of the industry, the methodologies used, the MMC reports and subsequent Orders and the case studies are contained in the annexes.

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<sup>10</sup> Statutory Instrument No 271.

<sup>11</sup> MMC 1994, paragraph 2.242.

<sup>12</sup> MMC 1994, paragraph 2.244.

<sup>13</sup> Statutory Instrument No 3140

### 3 FILM EXHIBITION AND DISTRIBUTION IN THE UK

3.1 This chapter looks at the key changes that have taken place in film exhibition and distribution over the last two decades. It finds that a more competitive industry structure has developed. Instead of the two leading exhibition chains of the 1980s there are now six large competing exhibition chains. Over the past two decades there has been considerable growth in the number of multiplex cinemas and, correspondingly, in the number of screens.

#### Exhibition

##### THE STRUCTURE OF EXHIBITION

3.2 There has been a substantial change in film exhibition in the UK over the past two decades. Although site numbers since the first MMC report in the early 1980s have only increased by eight on current numbers (from 660 sites to 668), the number of screens has more than doubled (from 1,271 to 3,258 screens, annexe D, table D.1). This is due to the growth in the number of multiplex cinemas since the mid-1980s.<sup>14</sup> Of the current 668 cinema sites, almost a third are multiplexes and almost three-quarters of all screens are in multiplex cinemas (annexe D, table D.2).

3.3 Cinema admissions have increased from about 72 million in 1985 to 176 million in 2002, reversing a long run decline (annexe D, figure D.1).<sup>15</sup>

3.4 The structure of the film exhibition industry has also undergone considerable change since the two MMC reports were published in 1983 and 1994.

3.5 In 1981, almost 60 per cent of film hire payments in Great Britain were accounted for by two large exhibition chains – EMI (32 per cent) and Rank (25 per cent).<sup>16</sup> There were also two smaller chains, Classic and

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<sup>14</sup> A multiplex is defined as a cinema with 5 or more screens, MMC 1994, paragraph 4.101.

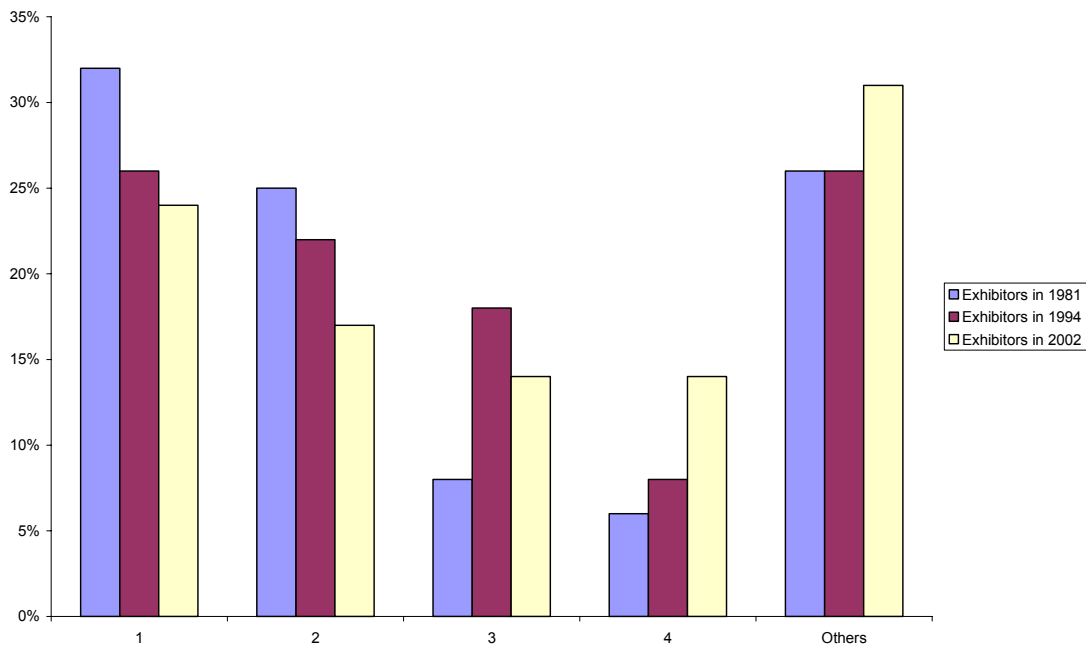
<sup>15</sup> British Film Institute (2003), *BFI Film and Television Handbook 2004*, pp 39-40

<sup>16</sup> MMC 1983, paras. 4.11 and 4.28.

Star.<sup>17</sup> The remaining exhibitors, representing about 26 per cent of film hire payments, comprised hundreds of independent cinemas.<sup>18</sup>

3.6 By 1994, a new major multiplex exhibition chain, UCI, had emerged to compete with MGM (formerly EMI) and Odeon (formerly Rank). UCI had grown its share to over 20 per cent of film hire payments, pushing Odeon into third place in the ranking.<sup>19</sup>

CHART 3.1: EXHIBITOR SHARE OF FILM HIRE PAYMENTS, 1981, 1994 AND 2002.



Note: '1' denotes the top exhibitor, '2' the second largest exhibitor, '3' the third largest exhibitor, and '4' the fourth largest exhibitor. Data for positions five and six are not available for each of the years and so are included in the 'others' category. Each exhibitor did not necessarily hold the same rank in each of the three years.

Sources: MMC 1983, paragraphs. 4.11, 4.28 and 8.11; MMC 1994, p 95; and OFT analysis of data provided by exhibitors.

3.7 By 2002, there were six main exhibition chains, accounting for [...] per cent of box office takings and over 70 per cent of screens.<sup>20</sup> There was a greater evenness among the larger exhibitors with four chains (Odeon, UCI, UGC and Warner Village) each with [...] per cent or more of the

<sup>17</sup> MMC 1983. paragraphs 4.33 and 4.34.

<sup>18</sup> MMC 1983, paragraph 8.11.

<sup>19</sup> MMC 1994.

<sup>20</sup> Screen number shares are based on OFT analysis of data published in UK Film Council (2003), *Film in the UK 2002 Statistical Yearbook*. Box office shares are based on Great Britain only, from OFT analysis of data provided by parties.

box office. A further two exhibitors each had just under [...] per cent of box office takings.<sup>21</sup> These changes are summarised in chart 3.1.

## MULTIPLEX AND SMALLER CINEMAS

3.8 Over the past two decades there has been considerable growth in the number of multiplex cinemas in the UK. As a result, the number of screens has more than doubled since the mid-1980s.<sup>22</sup> The growth is continuing. Over the five years to 2002 the number of multiplex cinema screens increased by almost 60 per cent and the number of screens overall rose by a quarter.<sup>23</sup> Most of this investment has been by major exhibition chains. Of the 34 per cent of sites and 74 per cent of screens accounted for by multiplex cinemas, 80 per cent are owned by the 6 largest exhibitors.<sup>24</sup>

3.9 At the same time, closures of cinemas (mostly smaller cinemas) have continued. In 2001, overall closures were 44 and in 2002, 63 cinemas closed.<sup>25</sup> Non-multiplex closures have averaged around 40 closures per year over the last six years.<sup>26</sup> From 1998 to 2002 the number of screens in smaller cinemas has reduced by 20 per cent, from 1,224 to 959.<sup>27</sup>

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<sup>21</sup> UK Film Council (2003). For further detail on key exhibitor share of box office takings, share of sites and share of screens, refer to annexe D, tables D4, D.5 and D.6.

<sup>22</sup> BFI (2003), *Film and Television Handbook 2004*, p40.

<sup>23</sup> OFT analysis of data published in UK Film Council (2003), *Film in the UK 2002 Statistical Yearbook*

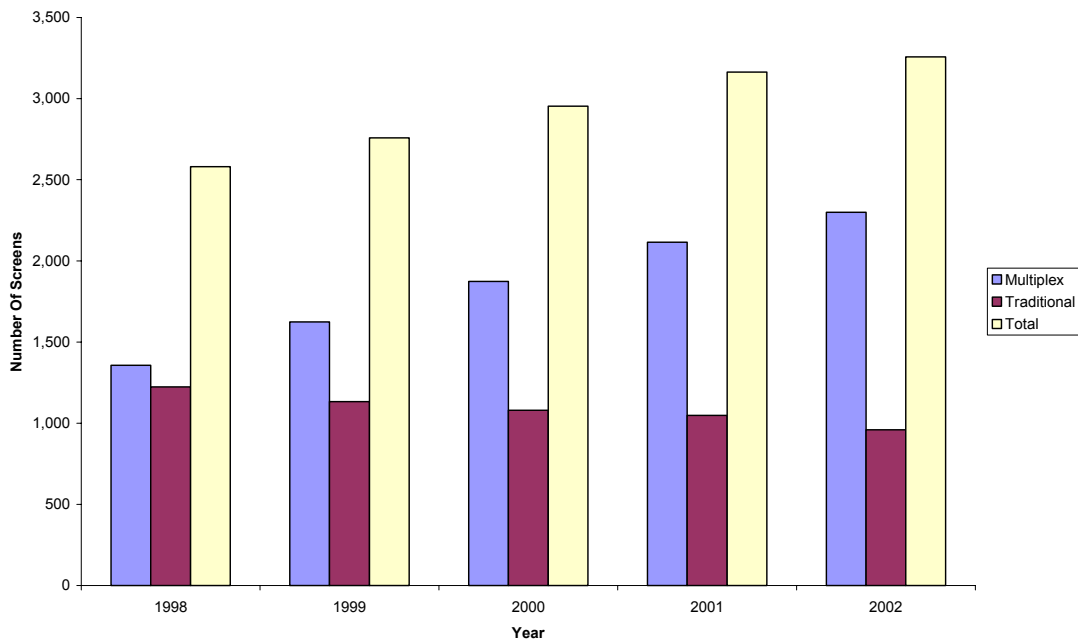
<sup>24</sup> OFT analysis of data published in the BFI (2003), *Film and Television Handbook 2004*

<sup>25</sup> UK Film Council (2003), *Film in the UK 2002 Statistical Yearbook*, p31

<sup>26</sup> Dodona Researches *Cinema Going* annual publication, 2003-4

<sup>27</sup> Cited in UK Film Council (2003), *Film in the UK 2002, Statistical Yearbook*, p33

CHART 3.2: NUMBER OF SCREENS BY TYPE OF CINEMA, 1998-2002.



Source: Dodona Research. Cited in UK Film Council (2003), *Film in the UK 2002, Statistical Yearbook*, p33.

3.10 Table 3.1 shows that two thirds of sites are still accounted for by non-multiplex cinemas. These account for only 26 per cent of all UK screens. The great majority of these smaller sites (around 90 per cent) are not owned by the six largest exhibitors.<sup>28</sup>

TABLE 3.1: CINEMAS BY TYPE AS A PROPORTION OF ALL UK CINEMAS,

	Percentage of total sites (%)	Percentage of total screens (%)
Non-multiplex cinemas	66	26
Non-multiplex cinemas that are not owned by the top 6 exhibitors	60	22
Multiplex cinemas owned by the top 6	27	60

Note: where data on screen numbers were unavailable, the cinemas in question were discounted from the analysis.

Source: OFT analysis of data in BFI (2003), *Film and Television Handbook 2004*.

#### NATURE OF LOCAL COMPETITION

3.11 The MMC decided that, in exhibition, there were both national and local elements of competition.<sup>29</sup> National elements included the bargaining relationship with distributors and competition for sites, whereas local

<sup>28</sup> OFT analysis of data published in the BFI (2003), *Film and Television Handbook 2004*

<sup>29</sup> MMC 1994, paragraph 4.24.

elements included admission prices and allocating screen space and time to particular films, which in turn depended on the presence of other cinemas in the catchment area.

- 3.12 Discussions with the larger national chains indicated that they tend to locate their cinemas in larger towns and cities. This is confirmed by the OFT's analysis of the population densities of areas where cinemas are located (table 3.2). Competition in these areas is more often than not between multiplex cinemas owned by the main national chains.
- 3.13 The independent cinemas are geographically more widespread. Many that the OFT talked to were located closer to other independents than they were to cinemas owned by the large exhibition chains.
- 3.14 The very low figure representing the median population density for areas where independent cinemas are located (table 3.2) suggests that many independent cinemas are found in smaller towns in areas of low population density, where they are isolated from other cinemas and hence many face little or no competition in their catchment area.<sup>30</sup>

TABLE 3.2: AVERAGE POPULATION DENSITIES AND TOWN SIZES OF CINEMA LOCATIONS

<i>Average population densities (people/km<sup>2</sup>)</i>	<i>'Independents'</i>	<i>Top six chains</i>
Median	376	1,946
Mean	1,214	2,067

<i>Town size (population)</i>	<i>'Independents'</i>	<i>Top six chains</i>
Median	127,048	212,235
Mean	921,181	1,272,043

Note: Population densities data are based on the country or unitary authority in which a cinema is based. 'Independent' cinemas refer to cinemas not owned by the six largest exhibitors (namely Odeon, UCI, UGC, Vue (Warner), Cine-UK and National Amusements). Source: National Statistics data, Census 2001.

### **Changes in the structure of film distribution**

- 3.15 The structure of the film distribution industry has not changed significantly since the 1994 MMC report. For example, the top four distributors' share of takings has remained between 70 per cent and 80 per cent (table 3.3).

<sup>30</sup> This is similar to the situation at the time of the 1994 MMC report (paragraph 2.45).

3.16 Within the overall pattern, there have been shifts in the position of individual distributors. A distributor's share of box office fluctuates significantly from year to year according to the commercial success of the films they have the distribution rights to. Consequently, average performance over four years may provide a better indication of the position of the main distributors.

3.17 Table 3.3 shows the distributors' shares of box office revenues in 1993, their annual average shares of film hire payments (1990-1993) and box office receipts (1999-2002).

TABLE 3.3: SHARES OF SUPPLY IN DISTRIBUTION, BY BOX OFFICE AND FILM HIRE PAYMENTS

<i>Distributor</i>	<i>Box office percentage, 1993 (%)<sup>1</sup></i>	<i>Percentage of film hire payments, average, 1990-1993 (%)<sup>1</sup></i>	<i>Average box office percentage, 1999-2002 (%)<sup>2</sup></i>
20 <sup>th</sup> Century Fox	4.5	8.2	12.8
Entertainment Film Distributors (EFD)	n/a	2.5	9.2
Warner Bros	23.3	27.7	12.9
Buena Vista	12.2	3.8	18.4
UIP	25.6	24.9	23.6
Columbia TriStar	16.7	12.0	9.3
Others	17.7	20.9	13.9
<i>C4 Ratio</i>	<i>77.8</i>	<i>72.8</i>	<i>67.7</i>

Note: C4 ratio represents the total share of supply accounted for by the top four firms in the industry.

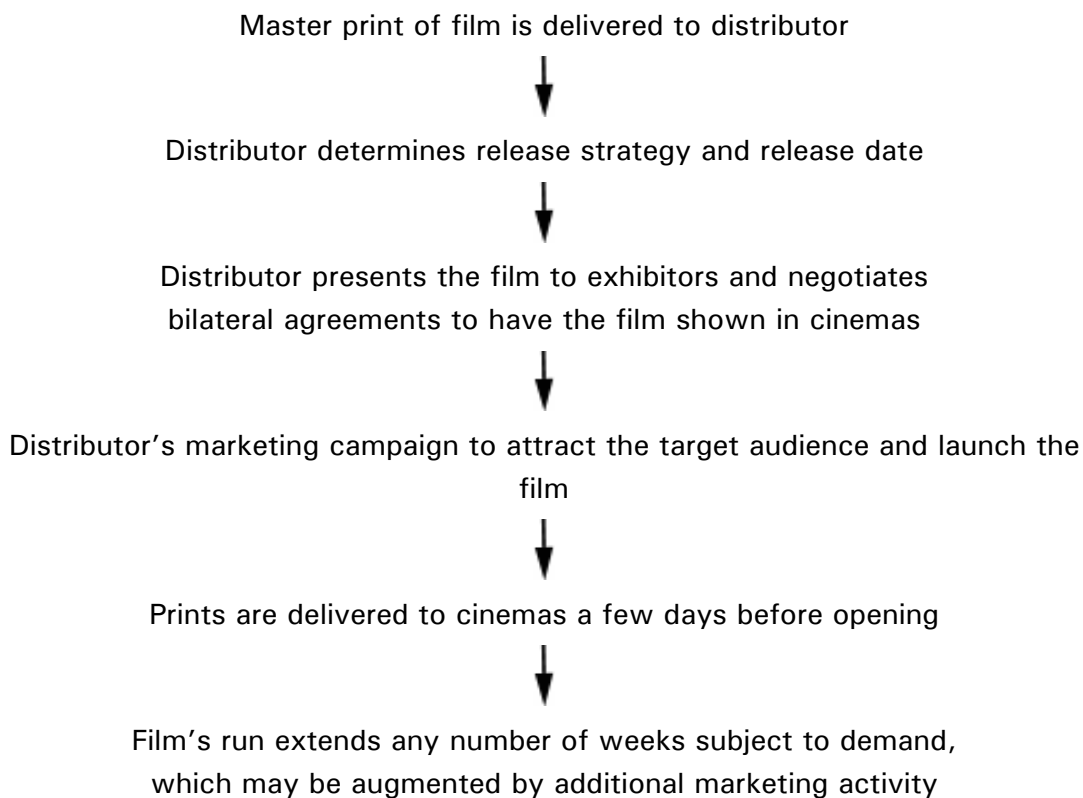
Sources: <sup>1</sup> MMC (1994), p82, p84; <sup>2</sup> OFT analysis of data from UK Film Council (2003), 'Film in the UK 2002 Statistical Yearbook'.

## THE PROCESS OF DISTRIBUTION

3.18 This section outlines how prints of films are usually supplied to cinemas, after the distributor acquires the rights from the studio or producer to distribute the film, under licence.

3.19 Distributors have a number of responsibilities. In any given case, some of the stages summarised below<sup>31</sup> may overlap or be combined:

<sup>31</sup> Adapted from the Film Distributors' Association *Guide to UK film distribution*, 2003-2004.



- 3.20 The distributor will decide the most appropriate release date, target audience and the release strategy taking into account factors such as seasonal issues (e.g. Christmas films), school holidays and cinema availability, particularly for premieres. Distributors try to reduce their risk by not releasing a film which is expected to perform well in the same week as another film which is expected to do well (whether a film from another distributor or a film which it distributes). In 2002, no two top 20 films were released in the same week.<sup>32</sup>
- 3.21 When deciding which cinemas they would like to license, distributors take into account factors such as the quality of the cinema, the character of the catchment area, the cinema's past record for the type of film being released, its past takings for their films, and the cinema's payment record.
- 3.22 Which cinemas receive a licence to exhibit the film is established through a process of negotiation between the distributor and exhibitor. A part of the negotiation process involves agreeing on terms of

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<sup>32</sup> Top 20 as measured by box office performance. Data from FDA's website, <http://www.launchingfilms.com>.

exhibition. This negotiation includes rental terms, which can be 'sliding scale', 'house nut' or increasingly 'special terms'.

- The 'sliding scale' method of renting works on the basis that the more the film takes at the box office, the greater the proportion the distributor receives.
- The traditional 'house nut' method allows the exhibitor to recover all its operating costs of the cinema first. It is usually calculated on a per seat basis. Therefore, distributors do not receive any payments until these costs are recouped. It is usual to split the surplus over the exhibitor's costs 90/10 in the distributor's favour.
- Film distributors sometimes impose 'special terms' for some films. Special terms are film hire payments calculated as a fixed percentage.<sup>33</sup> It was commonly put to the OFT that special term payments are at a higher rate than the usual terms, providing further indication of the shift away from exhibitor negotiating power.

3.23 Whichever payment method is used, it is also usual for the Film Distributors' Association's (FDA's) 'standard conditions' for licensing the commercial exhibition of a film or films to be used, sometimes with agreed variations by both parties (for example, sometimes including 'restrictions on screen use'). Once the contracts have been agreed, the distributor allows the exhibition of the film to go ahead.

3.24 Opening weekends in cinemas are usually crucial to a film's success. The opening weekend normally draws the largest daily audiences during the cinema run. Indeed, it is not unusual for a film to generate 25 to 30 per cent of its entire box office takings in its opening weekend.<sup>34</sup>

3.25 More generally, films make most of their revenue in the first few weeks of being on release. Table 3.4 shows the breakdown of box office receipts by week for the top 60 films in the UK in 2002. For the top 60 films in 2002, over half of the revenues were made in the first two weeks, and over three quarters in the first four weeks.

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<sup>33</sup> 'The Business of Film Hire... 'Special Terms': A Fair Share for All?', *Screentrade*, September 2003.

<sup>34</sup> Film Distributors' Association Guide to UK film distribution, 2003-2004, p21.

TABLE 3.4: BOX OFFICE BY WEEK, TOP 60 FILMS, 2002

	<i>Proportion of box office, by week(%)</i>				
	<i>1<sup>st</sup> week</i>	<i>First Two Weeks</i>	<i>First Four Weeks</i>	<i>First six Weeks</i>	<i>First Eight Weeks</i>
Top 20	34.3	51.8	75.9	87.2	92.8
Ranked 21-40	31.4	60.2	87.1	96.0	98.1
Ranked 41-60	36.1	62.2	86.7	94.1	96.4
Top 60	33.9	58.1	83.2	92.4	95.8

Source: OFT analysis of Nielsen EDI data.

3.26 Every Monday morning, the distributor's sales team discusses with each exhibitor the continued exhibition (holding over) of any current release for a further week from the coming Friday. These negotiations take into account new film openings and any previews planned for the coming weekend, all of which are competing for the available screens.

### **Films Complaints Panel**

3.27 The Films Complaints Panel was set up in 1997, following an MMC recommendation in 1994. It is non-statutory and aims to resolve disputes between exhibitors and distributors. In theory, it can look at any complaint brought in front of it. But in practice it has only ever dealt with cases concerning a distributor's alleged 'refusal to supply' a film to an exhibitor.

3.28 The Cinema Exhibitors' Association estimates that there are about 15 to 20 complaints a year concerning 'refusal to supply' of which only about three to four ask for papers to take the issue up with the Panel. To date, only two cases have gone to full Panel hearing. Most cases appear to be resolved earlier in the process.

## 4 EXCLUSIVITY AGREEMENTS

- 4.1 This chapter examines whether the practices of barring and alignment, which were found by the MMC to operate against the public interest, are still present. It finds no evidence to suggest that they are present to any significant degree today. Moreover, we conclude that because of the significant structural changes that have occurred in film exhibition, barring would be unlikely to occur in the absence of the 1989 Order, which was put in place to address these issues. It therefore recommends that this Order be revoked.

### Introduction: MMC reports of 1983 and 1994

#### BARRING

- 4.2 One of the adverse findings in the MMC's 1983 report was against the system of barring which operated at the time. Bars were the result of long-standing arrangements between exhibitors as to which cinemas, and in which order, would show a film.<sup>35</sup> This practice was accepted by distributors and incorporated into their film hire agreements with the exhibitors.
- 4.3 The two scale monopolist exhibitors, EMI and Rank, were found to be practitioners and beneficiaries of the system of barring. They obtained first run of virtually all films and their cinemas were in almost all cases first run cinemas, usually for a period of four weeks.<sup>36</sup> Others, predominantly the smaller independent exhibitors, would receive a print of a film later. In effect, barring resulted in fixed patterns of release in local areas across many films. Therefore, competition between exhibitors was restricted.
- 4.4 Competition between distributors was also restricted because it reduced the degree to which they competed for cinema space.
- 4.5 The 1989 Order addressed barring by making it unlawful for distributors and exhibitors to agree exclusive exhibition terms for more than one film at a time (but, despite its name, the 1989 Order did not prohibit 'exclusivity' on a film-by-film basis)

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<sup>35</sup> MMC 1983, para 8.5.

<sup>36</sup> MMC 1983, paragraph 8.24.

- 4.6 The MMC revisited these issues in 1994. It said that barring had been ended by the 1989 Order, and that the development of multiplex cinemas in the UK made it more difficult for the two original national exhibition chains to obtain film-by-film exclusivity agreements from distributors.<sup>37</sup> The MMC found that the role of exclusivity agreements in film exhibition was significantly reduced and concluded that they were not expected to operate against the public interest.

#### ALIGNMENT

- 4.7 The system of barring was also accompanied by a system of alignments between certain distributors and exhibitors.<sup>38</sup> Alignment entailed that certain distributors always first offered their films to their preferred major exhibitor, either EMI or Rank, and never to both.<sup>39</sup> The exhibitors invariably accepted them. The practice of alignment effectively resulted in market sharing between the two national exhibition chains.<sup>40</sup> The MMC concluded that it also restricted competition between distributors, since there was no competitive process by which exhibitors would bid for film licences.
- 4.8 While alignment was the subject of one of the adverse findings identified in the MMC 1983 report, it did not recommend a remedy because the state of the exhibition industry, characterised by falling cinema admissions, was not conducive to an effective remedy.<sup>41</sup>
- 4.9 In 1994, the MMC noted that the practice of distributor alignment to either Odeon (previously Rank) or MGM (previously EMI) was still present in 20 local areas, and recommended that it be prohibited, and that the parties involved in alignment provide information to the OFT in order to monitor compliance.<sup>42</sup> The recommendation was not implemented as part of the 1996 Order.

#### **Current evidence: barring and exclusivity**

- 4.10 To examine whether exclusivity and barring still occur in the film industry, we used case studies to examine the nature of local competition in a number of areas in the UK, met with the key industry

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<sup>37</sup> MMC 1994, paragraph 2.132.

<sup>38</sup> MMC 1983 paragraph 8.4.

<sup>39</sup> MMC 1983 paragraph 1.10

<sup>40</sup> MMC 1994 paragraph 2.119.

<sup>41</sup> MMC 1983, paragraph 8.22.

<sup>42</sup> MMC 1994 paragraph 2.120.

participants, and contacted independent exhibitors and distributors by letter, telephone and e-mail.

- 4.11 Our case studies (annexe G) suggest that neither exclusivity nor barring are widely present in the film industry. Across the case study areas, the proportions of cinemas that received the sample films were high, as were the proportions of cinemas that received the films 'on release'. (Table G.11) With one exception, the London West End, the case studies provide no evidence to suggest that, in general, cinemas are being granted exclusivity, or that barring is taking place.
- 4.12 **The top five exhibitors** interviewed, Odeon, UCI, UGC, Cine-UK and Vue Warner, gave similar accounts of national distribution patterns. They all said that the system of barring no longer takes place.
- 4.13 While some of these exhibitors suggested that they are sometimes disadvantaged, usually in the West End of London, by exclusivity agreements between a certain exhibitor and a distributor, no evidence of illegitimate exclusivity terms has been provided.<sup>43</sup>
- 4.14 A few **independent cinemas** complained about not receiving prints of films 'on release'; some argued that the fact that nearby multiplex cinemas received multiple prints suggested the presence of exclusivity. However, it is important to bear in mind that for distributors, there may be efficiency or quality considerations over and above creditworthiness and recoupment of print costs reasons that lead them to provide one cinema with multiple prints while not supplying to another cinema in the vicinity. The MMC considered refusal to supply with a view to maximising profits on individual films to be unobjectionable provided effective competition existed in distribution and exhibition.<sup>44</sup> For example, certain cinemas may be better suited to particular films.
- 4.15 It also should be noted that this complaint was not common. Out of approximately 160 independent exhibitors that were contacted to find out whether they thought that the Orders were working properly, only 12 responded to the survey and, of these, only four expressed concerns about exclusivity.
- 4.16 We were told by exhibitors that distributors do not license films as bundles. A few exhibitors said that, in order to maintain good

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<sup>43</sup> Exclusivity terms means terms restricting a distributor from authorising the exhibition of a film at a cinema.

<sup>44</sup> MMC 1994, paragraph 2.153.

relationships with distributors, they sometimes showed films that they did not believe would be particularly successful. Again this seems to be voluntary, and based only on the belief that the chances of gaining access to more popular films are improved by this practice. None of the exhibitors saw this as problematical. No large exhibitor provided evidence of not getting access to more popular films as a result of not taking another film.

- 4.17 **The six main distributors** interviewed – UIP, 20th Century Fox, BVI, EFD, Warner Bros and Columbia TriStar – held similar views on the questions of exclusivity and barring. They all said that they do not bundle films together for exclusive distribution. All also said that barring no longer exists, and that they do not grant exclusivity to exhibitors unless it is in their commercial interest to do so. However, three distributors did state that, in this respect, the West End was an exception, and suggested that negotiations on exclusivity still occurred here.

#### **Current evidence: alignment**

- 4.18 We used two approaches to test whether alignment still occurs in the film industry.
- 4.19 First, on an aggregate level, the OFT considered the proportions of rental revenues of the six main distributors that came from each of the main film exhibition chains.
- 4.20 The data shows that all six major distributors are supplying films to all of the six main exhibitors. Indeed, the proportions of rental revenues that different distributors obtain from the different exhibitors are very similar, and mirror the exhibitors' shares of the box office. This strongly suggests that alignment is not taking place. The revenue proportions that distributors get from exhibitors are also highly correlated with the proportions of screens that the different exhibitors own, although it is notable that the level of revenues received from smaller exhibitors is lower than the proportion of screens that these cinemas command.
- 4.21 The second approach undertaken was a series of case studies (annexe G). Across the study areas considered, all six films in our sample were distributed by five different distributors to all of the main exhibition chains as well as to numerous smaller exhibitors.

4.22 Table 4.2 shows the proportions of the cinemas owned by each of the major cinema chains that received the films in our sample, taken as an aggregate across all the case study areas. It indicates that, across the case studies, all the major exhibition chains analysed were able to get hold of the films in the sample in the majority of locations. Again, this supports the view that alignment no longer occurs.

TABLE 4.2: PROPORTION OF CINEMAS, BY OWNERSHIP, THAT RECEIVED THE FILMS ANALYSED IN THE CASE STUDIES

<i>Proportions (%)</i>	<i>Harry Potter 2</i>	<i>Black Hawk Down</i>	<i>Oceans 11</i>	<i>Road to Perdition</i>	<i>The Scorpion King</i>	<i>Spy Kids 2</i>
Odeon	70	50	60	80	60	40
UGC	71	86	86	86	71	71
Warner	80	100	100	80	80	100
UCI	80	80	60	80	60	80
All cinemas	61	52	60	60	54	55

Source: OFT analysis of Nielsen EDI data for 2002 (annexe G).

4.23 Moreover, all of the parties that were spoken to, both exhibitors and distributors, said that alignment no longer takes place. However, one exhibitor suggested that something akin to alignment, resulting in exclusivity, still occurred in the West End of London, and that the choice of which exhibitor a film is placed with is determined along ownership lines.

#### THE CASE OF THE LONDON WEST END

4.24 In the West End in London, the percentages of cinemas which showed the case study sample films were significantly lower than in the other case studies. The data give rise to a possibility of exclusivity or barring in this area.

4.25 In addition, a number of major distributors and exhibitors suggested that exclusivity still occurs in the West End. One major party in particular suggested that there was exclusivity based on particular ownership patterns, akin to alignment:

'In practical terms, the West End bar operates so that Fox, Columbia and BVI supply films exclusively (or on a West End bar basis) to Odeon, whilst UIP is more likely to provide its films exclusively to the UCI Empire. Warners is more likely to support

Warner cinemas exclusively, and if it does so, it will also supply either the UGC cinema in Shaftesbury Avenue or the Haymarket'.

- 4.26 This matches the pattern of distribution noted by the MMC in its 1994 report.<sup>45</sup>
- 4.27 Data for the first 11 months of 2003 show that there were 24 cases of a film on general release being shown exclusively at one cinema in the West End. All but one (at the UCI Empire, Leicester Square) concerned Odeon cinemas, 10 at the Odeon Leicester Square and 13 at the Odeon West End, also in Leicester Square.
- 4.28 The data also shows that, for the first 11 month period of 2003, Odeon Leicester Square showed 67 films in all, and only 10 on an exclusive basis. Therefore, the proportion of films affected is relatively low.
- 4.29 The evidence does not lead us to conclude that the pattern in the West End is based on alignment. Both Warner and UIP have supplied films to Odeon Leicester Square. Similarly, the only film in 2003 for which the Empire had exclusive rights, 'Gangs of New York', was distributed by EFD. Finally, there is no reason to believe that exclusive showings are not being agreed on a film-by-film basis.
- 4.30 There is still the question of whether the patterns of distribution in the West End are a result of contractual exclusivity or arise because distributors prefer not to dilute their returns by showing a film in more than one cinema in a particular locality.
- 4.31 In interpreting the figures, it needs to be borne in mind that Leicester Square cinemas are a special case. Two factors may help to explain the incidence of exclusive exhibition of a minority of films:
- screen sizes at Odeon Leicester Square, the UCI Empire, and the Odeon West End are the largest in the West End (their largest screens have capacities of 1,943, 1,330, and 800 respectively). For film premieres, distributors are likely to choose the largest and next largest. Following the premiere, their screen size may allow the one cinema to meet the West End demand. This allows the **distributor** to maximise profits by reducing the number of cinemas that receive the film. Alternatively, **exhibitors** in Leicester Square may need exclusivity to ensure a satisfactory audience size; and

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<sup>45</sup> MMC 1994, paragraph 4.161.

- the prestige associated with a film premiere, particularly at Odeon Leicester Square, may provide these exhibitors with greater negotiating power to secure exclusivity.

4.32 There is also a notable difference between the exclusives at Odeon Leicester Square and those at Odeon West End. At the former, exclusive viewings tend to be for popular mainstream films, and often follow a premiere, while the latter's exclusives are films that have more limited appeal. It may therefore be that the reasons for the perceived exclusivity are different for the two cinemas.

4.33 There is some evidence to suggest that there might be a persistence of exclusivity agreements in the West End, and we note that the prices in Leicester Square cinemas tend to be higher than in the rest of the West End. However, the MMC 1994 report also suggested a persistence of exclusivity in the West End.<sup>46</sup> We note, as the MMC did in 1994, that any exclusivity is likely to result from the distributors' profit maximising distribution strategies, such that 'the practical impact of exclusivity is currently small', and that it is therefore not expected to operate against the public interest.<sup>47</sup> We have no evidence to suggest a different conclusion.

## Views of the parties on the Order

### DISTRIBUTORS

4.34 On the whole, the main distributors were ambivalent about the 1989 Order, believing that the film industry has changed substantially since the 1980s, to the extent that the Order no longer impacts on industry behaviour. In particular, the distributors said that the industry was now characterised by wider distribution of films for exhibition over a shorter period. The distributors also said that the development of multiplexes and greater competition in exhibition has meant that it would no longer be in their interests to distribute films in accordance with a system of bars. On the other hand most thought the Order did no harm.

4.35 Further, most distributors said that because the multiplex exhibitors demand many films at once, it is likely that they will show a range of films from each distributor anyway, such that bundling of films in return for exclusivity (which was linked to the practise of barring) was no longer as important to distributors.

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<sup>46</sup> MMC 1994 paragraph 4.170.

<sup>47</sup> MMC 1994 paragraph 2.141.

- 4.36 Nonetheless, two major distributors favoured keeping the Order. They argued that were barring allowed to re-emerge, it could lead to films which did not warrant exhibition nevertheless getting screened as a part of a licensing agreement involving a more popular film. They saw this as being damaging to both distributors and to the consumer.

## EXHIBITORS

- 4.37 All of the main exhibitors interviewed, and the generality of independents contacted, were agreed that, with the possible exception of the West End of London, barring and exclusivity no longer take place. But with one exception they were concerned about a return to past practices such as alignment or film bundling and so were in favour of retaining the Order, which was seen to keep distributors and larger exhibitors in check.
- 4.38 One major exhibitor suggested that distributors were already attempting to bundle trailers with the motion pictures. This exhibitor said bundling would be extremely harmful both to exhibitors and to the consumers.
- 4.39 However, it is important to note that the MMC did not make any adverse findings on bundling of films (except in so far this constituted a part of the practice of barring), and that the Orders do not prohibit film bundling by distributors.

## Conclusions

- 4.40 The 1989 Order was put in place to curb the practice of barring which was found to operate against the public interest. The adverse effects were augmented by alignments between distributors and the two large cinema chains, which limited competition in film exhibition.
- 4.41 There has been a significant change of circumstances since the introduction of the 1989 Order, which has meant that the public interest concern identified by the MMC is, in the OFT's view, no longer present.
- 4.42 The evidence in the OFT's possession suggests that neither barring nor alignment has continued in the film industry. All of the industry respondents agreed that the practice of barring no longer took place.<sup>48</sup>

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<sup>48</sup> While some industry participants referred to 'barring' in the West End, the practice discussed resembles 'exclusivity' rather than barring as defined in MMC's reports.

Neither the OFT, nor the Film Complaints Panel have had any complaints relating to this Order for at least the last five years. Similarly, to the OFT's knowledge, no action has been taken in this regard in a civil court.

- 4.43 Moreover, with the exception of the London West End, barring has not been replaced by the use of exclusivity agreements between exhibitors and distributors, even though exclusivity agreements on a film-by-film basis are not prohibited by the Order.
- 4.44 While film-by-film exclusivity is a feature of exhibition of a minority of films showing in the West End, there may be good efficiency explanations for it; it is interesting to note that most of the distributors that commented on the existence of 'barring' in the West End did not complain about it.
- 4.45 Since the introduction of the 1989 Order, there has been significant structural change in the film exhibition sector. In particular, the increase in the number of large exhibitors, and with it the increase in screen numbers, has had two important effects.
- Greater screen numbers have made it easier for distributors to get their films screened. This has largely removed their incentive to engage either in film bundling or in alignment, which are likely to have been reasons why distributors in the past accepted the system of bars imposed by the exhibitors; and
  - New exhibition chains have been able to match (or better) the incumbent national chains on cinema numbers and quality grounds. This produced a more competitive exhibition sector, and reduced the negotiating power of the leading exhibition chains, making it more difficult for them to insist on a system of barring in return for giving distributors access to their cinema chains.
- 4.46 There is therefore no reason to think that the removal of the Order will result in a return to barring.
- 4.47 The most frequent reason put forward by exhibitors for the retention of the Order was the concern that, in its absence, distributors might impose bundling of films. However, bundling is not prohibited under the current Order, and there is no reason for us to suspect that it would return in conjunction with exclusivity if the 1989 Order was no longer in place.

- 4.48 In any event, the OFT expects the parties to have careful regard to current competition laws, including the Competition Act 1998.
- 4.49 **The OFT recommends that The Films (Exclusivity Agreements) Order 1989 be revoked.**

## 5 EXHIBITION PERIODS

- 5.1 This chapter examines the appropriateness of the 1996 Order. It finds that there is still a role for the Order in the industry.

### Introduction: MMC report of 1994

- 5.2 In 1994 the MMC found the practice of distributors insisting on lengthy minimum exhibition periods to be against the public interest, because it reduced the freedom of cinemas, especially those with few screens, to respond to consumer demand.<sup>49</sup> The practice also added to the difficulties faced by independent distributors in getting their films shown.
- 5.3 As a result, the Secretary of State, by Order in 1996 made it unlawful for a distributor to require, as a condition of supply of a film to an exhibitor, that the exhibitor should exhibit the film for a period longer than two weeks in the first six weeks of general release and one week in any other case.<sup>50</sup> However, mutually agreeing longer exhibition periods is not unlawful.
- 5.4 In 1994, the MMC found that lengthy minimum exhibition periods were being imposed as a condition of supply of prints of popular films which represented a disproportionate share of box office receipts.<sup>51</sup> The MMC also considered that if any minimum exhibition periods were to be restricted to two weeks, the popular films would in any case be kept on for longer periods if agreed between distributors and exhibitors.<sup>52</sup>
- 5.5 The MMC was particularly concerned about the effect of minimum exhibition periods on the exhibition of films in cinemas with fewer than four screens. It did not consider these effects arose in connection with multiplex cinemas.<sup>53</sup> Cinema goes at smaller cinemas, which lacked the ability of multiplexes to move films to screen sizes best suiting the audience size, were more likely to suffer greater detriment as a result of

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<sup>49</sup> MMC 1994, paragraph 1.11.

<sup>50</sup> The 'day of general release' in relation to any film is defined as (a) the first day on which the film is exhibited in 5 or more cinemas on the same day, or (b) the day on which the total number of cinemas in which the film has been exhibited exceeds 9, whichever shall first occur (Article 2 of SI 1996 No. 3140).

<sup>51</sup> MMC 1994, paragraphs 1.11 and 2.243.

<sup>52</sup> MMC 1994, paragraph 2.243.

<sup>53</sup> MMC 1994, paragraph 2.163

imposed minimum exhibition periods which act to block these cinemas from showing of other films that might attract a greater audience.

- 5.6 The MMC considered that cinema goers were best served if these smaller sites were free from the restrictions of imposed lengthy extended exhibition periods, to allow them to respond better to consumer demands.

### **Current position**

- 5.7 Popular films, while not large in number, still account for a large proportion of the UK box office. For example, in 2002, the top 20 films in terms of box office returns accounted for around 5 per cent of all new releases, but for almost 40 per cent of the total box office.<sup>54</sup>
- 5.8 It is the mass of middle ranking films which stand to be more affected by the 1996 Order. They are not popular enough to have long playing periods determined by consumer demand but are not so unpopular as to make it in the distributors' and exhibitors' mutual best interests to remove the film from exhibition in less than two weeks (as sometimes occurs).<sup>55</sup>

### **DISTRIBUTOR AND EXHIBITOR VIEWS**

- 5.9 The OFT met the six leading distributors, the five leading exhibition chains, contacted independent distributors through the Film Distributors' Association, and had telephone discussions with 17 independent exhibitors and several 'bookers' who act for independent exhibitors.
- 5.10 The bulk of **distributors** considered that the 1996 Order does not now play a significant role in their distribution strategies. Most of the box office is now taken in the early weeks of release, so that the Order has less impact on distribution strategies. The distributors therefore did not hold strong opinions about it. They did not see the 1996 Order as being particularly influential but did not see it as being harmful either.
- 5.11 Two took the view that consumer demand now determines how long a film stays on and did not give a view as to whether the 1996 Order

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<sup>54</sup> FDA ([www.launchingfilms.com](http://www.launchingfilms.com)). Data include the Republic of Ireland.

<sup>55</sup> For example, films ranked 21-60 in box office performance in 2002 collected around 60 per cent of their revenue in the first two weeks and around 85 per cent in the first four weeks (chapter 3).

should be kept or removed. In addition, distributors commonly said that if a film proves to be very unpopular they may allow it to be taken off after one week.

- 5.12 Three of the leading distributors were nevertheless in favour of keeping the 1996 Order. One commented that two weeks was a helpful guideline in the early stages of discussions between distributors and exhibitors.
- 5.13 One of the major distributors objected to the 1996 Order and wanted the restriction on minimum exhibition periods relaxed to three or four weeks. It believed that a two week minimum had increased the commercial risk for medium grossing films and was not long enough to allow those films for which demand builds slowly to reach their full revenue and profit potential. The distributor believed the 1996 Order had caused films to be exhibited now over shorter periods of time and had resulted in an alteration of film release strategies.
- 5.14 Only one smaller distributor responded to our request for views on this 1996 Order, which leads us to think that smaller distributors also do not now regard the 1996 Order as influential. It believed that the independent distributor is rarely, if ever, in a position to request exhibition periods longer than two weeks. Therefore, it considered the 1996 Order has not been effective in alleviating the disadvantage to independent distributors of minimum exhibition periods.
- 5.15 All but two of the **exhibitors** were in favour of keeping the 1996 Order; two small exhibitors were indifferent.
- 5.16 The key concern of exhibitors was a fear that if distributors could demand exhibition periods of greater than two weeks, they would do so. This was seen as a particular problem for the showing of the middle range films where the 1996 Order has the greatest impact.
- 5.17 Cinemas with fewer screens do not have the screen capacity to move films around according to demand. There was therefore a concern amongst the independent exhibitors that in the absence of the 1996 Order there would be demands for longer runs which would jeopardise the ability of such cinemas to exhibit other films, and reduce consumer choice.
- 5.18 Two exhibitors (one larger and one independent) argued for a reduction of the minimum exhibition period to one week. Both were concerned at

having to commit to show a film for two weeks regardless of its success, bearing in mind that a lot of films fail. One argued that films are usually most successful in the first seven to 10 days of general release after which box office receipts start to fall off.<sup>56</sup> They said that the requirement to show a film for two weeks on first release prevented them from operating a flexible exhibition programme, more responsive to consumer demand, and made access to screens by other distributors more difficult and to some extent restricted price competition between distributors.

5.19 Another argument advanced was that the period in which a film is classed as a first release, and in which the two week minimum exhibition period can be imposed, was too long, and should be reduced from six weeks to three weeks. After that a one week minimum exhibition period would apply.<sup>57</sup>

5.20 A number of independent exhibitors were concerned about distributor action to evade the 1996 Order.<sup>58</sup> These exhibitors believed that if they propose to exhibit a film for two weeks or less then all too often the distributors find other reasons for refusing to supply the film, for example that no print is available.

## Discussion

5.21 In undertaking this review the OFT needs to consider whether, by reason of any change of circumstances, the 1996 Order should remain in place, be varied or be superseded by a new Order.<sup>59</sup>

5.22 **Revoking the Order** would remove the restriction on distributors and may strengthen their negotiating power. Distributors would of course seek to impose exhibition periods which they believe would maximise their profits. They would be free to refuse to supply prints on the basis that their minimum exhibition periods were not agreed by the exhibitor.

5.23 Our survey showed that there is a general concern, shared by the larger exhibition chains and nearly all the independent exhibitors, that

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<sup>56</sup> Our research shows that on average around half the box office revenue was taken in the first two weeks, with a rapid reduction in revenues afterwards (table 3.4).

<sup>57</sup> The Order applies to films 'commencing' their exhibition within the defined period. Therefore, if the defined period was reduced to say 3 weeks, depending on when the film commenced its exhibition, the imposed exhibition period could carry into weeks 4 and 5.

<sup>58</sup> Further details surrounding enforcement of this Order is given in Annexe H

<sup>59</sup> FTA 1973 s.88 (5).

revoking the Order would lead to distributors imposing longer exhibition periods. We have no reason to conclude that they would not. The distributor would seek to increase a film's share of screen time, to reduce the commercial risk for the film.

- 5.24 It is however notable that the arguments advanced to the MMC by the distributors, that imposing minimum exhibition periods helped them plan efficient timetables for release of their films, and allowed films that start slowly at the box office to build up an audience through word of mouth recommendations, were not often put to the OFT during its review.
- 5.25 From the point of view of the distributor, the shift toward multiplex cinemas and the increase in screen numbers have made it easier for them to plan release schedules. As the MMC noted, multiplex cinemas have the ability to move films to screens which match the number of seats to the estimated audience size.<sup>60</sup>
- 5.26 From the consumer viewpoint, these structural changes and the strengthening of competition generally make it unlikely that revoking the Order would lead to a significant reduction of choice, if any, for the large majority of cinema goers who live in the larger towns and cities served by multiplexes.
- 5.27 There are two reasons. First, longer exhibition periods, tying up screen time at the more popular cinemas, are much less likely to exclude other films which the exhibitor would prefer to show.
- 5.28 Secondly, if one cinema could not show a film because it did not have a screen available, another cinema in the area may be able to do so. It is worth bearing in mind that most multiplexes compete with one another and that the number of screens available in most large urban areas is high.
- 5.29 The MMC noted in 1994 that it was mainly the smaller independent exhibitors which were disadvantaged by the imposition of lengthy minimum exhibition periods.<sup>61</sup>
- 5.30 This type of cinema remains numerically significant, despite a steady rate of closure and a falling share of box office returns. Today around 60 per cent of all cinemas are both owned outside of the top six exhibition chains and are not multiplexes. They account for the great

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<sup>60</sup> MMC 1994, paragraph 2.163.

<sup>61</sup> MMC 1994, paragraphs 2.163 and 2.242.

majority (90 per cent) of independent exhibitors.<sup>62</sup> We have also established that a majority of these cinemas are in outlying areas of lower population density, where cinema goers often have little or no choice of cinema.

- 5.31 As noted earlier, we have no reason to think that, in the absence of the Order, distributors would not seek to impose longer exhibition periods. It is the smaller independent cinemas that would be more at risk if there were to be a return of lengthy imposed minimum exhibition periods, and the consumer detriment would fall more heavily on those dependent on these cinemas. Certainly the operators of these cinemas are aware of the risk, and other exhibitors and distributors recognise that concern.
- 5.32 Moreover the loss of variety of films might in marginal cases threaten the viability of smaller cinemas, through its effect on overall attendance over an extended period.
- 5.33 The Order could in theory be **varied** to apply only to those smaller cinemas through which the bulk of consumer detriment arose. Distributors and larger exhibitors would then be left to negotiate freely on exhibition periods. The structural changes in exhibition, and their effects in larger urban areas, would seem to provide the necessary change of circumstances to underpin such a variation.
- 5.34 But having a rule which treats exhibitors differently runs the risk of leading to distortion. While the MMC report is clear that the problem arises with cinemas with less than four screens, the report does make an adverse finding in general terms, and the recommended remedy likewise relates to supply of films to all cinemas.<sup>63</sup> Because of the risk of distortion, we recommend against a more targeted approach.
- 5.35 There are several reasons for concluding that the effects on **distributors** are not disproportionate. First, they have told us that the Order has little impact now on their distribution arrangements. Secondly, their box office returns are more heavily concentrated in the first few weeks of release than they were a decade ago, so that the expected revenue losses for a film would be less than in a similar position a decade ago. Thirdly, revenue losses on one film will be offset by gains from improved access for other films: in effect there is a transfer of revenue between distributors rather than overall losses. And fourthly, if exhibitors can be more responsive to cinema goers' tastes, then there

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<sup>62</sup> OFT analysis of data published in the BFI (2003), *Film and Television Handbook 2004*

<sup>63</sup> MMC 1994, paragraphs 2.163 and 2.164.

ought to be an increase in overall ticket sales, which will also benefit distributors.

## **Conclusion**

- 5.36 The OFT's responsibility under section 88(5) of the FTA is to consider whether, by reason of any change of circumstances, the Order should be revoked, varied or superceded by a new Order. There is a widespread concern amongst exhibitors that a revocation of the Order would result in distributors re-imposing lengthy minimum exhibition periods. We cannot discount that possibility.
- 5.37 We consider that the current number of multiplex cinemas and screens means that an increase in minimum exhibition periods would be unlikely to adversely affect the ability of smaller distributors to get their films shown. Nor do we consider that it would result in adverse effects on consumer choice in larger urban areas. But we consider that in the case of cinemas with less than four screens, which are usually in outlying areas, a return to longer minimum exhibition periods may well prevent these cinemas from showing other films which they would prefer to show, thus restricting consumer choice. We conclude that the basis for the particular concern of the MMC, which was that cinemas with less than four screens should be able to be responsive to consumer demands, remains.<sup>64</sup>
- 5.38 We conclude that there is therefore no change of circumstance to warrant a revocation of the Order, and therefore the restriction on the minimum exhibition period which can be imposed by distributors should remain.
- 5.39 **The OFT recommends that The Films (Exhibition Periods) Order 1996 should remain in place.**

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<sup>64</sup> In particular, independent cinemas with less than four screens.