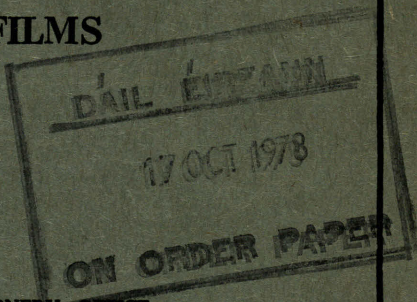


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RESTRICTIVE PRACTICES COMMISSION

REPORT OF ENQUIRY into the SUPPLY AND DISTRIBUTION OF CINEMA FILMS

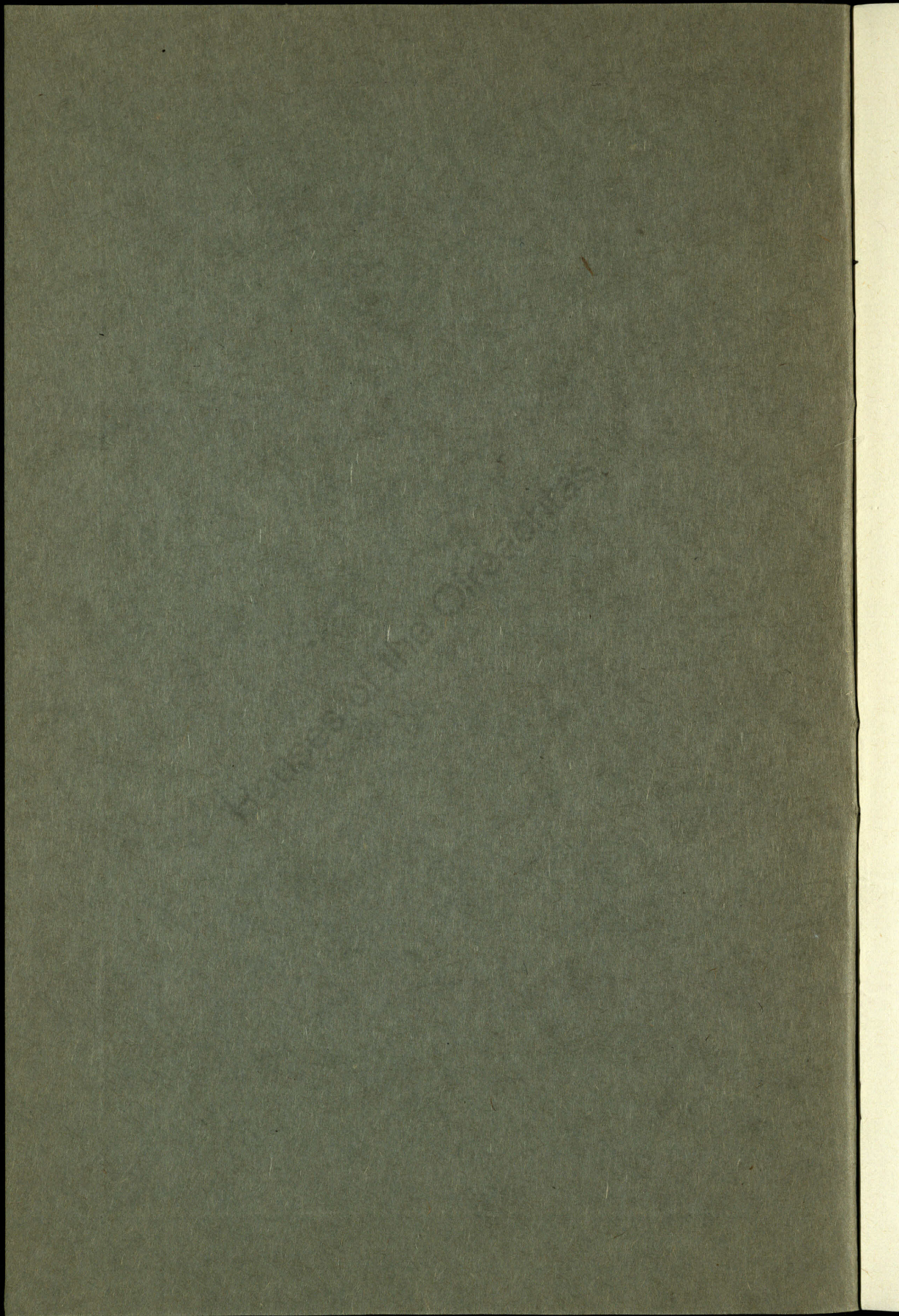


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RESTRICTIVE PRACTICES

COMM

Restrictive Practices Commission,
50 Upper Mount Street,
Dublin 2.

26th April, 1978.

Desmond O'Malley, Esq., T.D.,
Minister for Industry, Commerce and Energy.

Dear Minister,

I have the honour to submit to you, on behalf of the Restrictive Practices Commission, the report of their enquiry into the supply and distribution of cinema films. The enquiry, under Section 5 of the Restrictive Practices Act, 1972, was undertaken on the recommendation of the Examiner contained in the report of his investigations in the matter under Section 14 (1) (a) of the Act.

Yours faithfully,

(sgd) John J. Walsh,
Chairman.

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Restrictive Practices Commission,
50 Upper Mount Street,
Dublin 2.

26th April, 1978.

Donald O'Malley, Esq., T.D.,
Minister for Industry, Commerce and Energy.

Dear Minister,

I have the honour to submit to you, on behalf of the Restrictive Practices Commission, the report of their inquiry into the supply and distribution of electric fans. The enquiry, under Section 5 of the Restrictive Practices Act, 1973, was undertaken on the recommendation of the Examiner contained in the report of investigations in the matter under Section 14 (1)(a) of the Act.

Yours faithfully,

(sgd) John A. Walsh,
Chairman



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Hours of the Director

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STATIONERS' HALL, LONDON, E.C. 4A

CHAPTER 1

INTRODUCTION

1.1 In March, 1977 the Examiner of Restrictive Practices, in accordance with Section 16 (1) of the Restrictive Practices Act, 1972 furnished the Restrictive Practices Commission with a report of his investigation under Section 14 (1) (a) of the Act into the distribution of cinema films. The Examiner recommended that the Commission hold an enquiry under Section 5 of the Act into the supply and distribution of cinema films.

1.2 Notice of intention to hold the public enquiry was published in the daily press and announcements were made on radio and television on 29th April, 1977. The notice stated that copies of the Examiner's report in the matter were available on application. Organisations or persons desiring to make submissions were invited to do so in writing not later than 27th May, 1977. The period for making submissions was extended where requested. Copies of the report were issued to 60 applicants and 23 submissions were received. The list of submissions is shown in Appendix 1.

1.3 A questionnaire was sent to 190 cinema exhibitors requesting information on the ownership, seating capacity, type of projection equipment and normal admission charges, together with details of major capital expenditure on the cinema and particulars of their competitor cinemas. The response on the whole was disappointing, only 52 completed questionnaires being returned. Financial accounts, covering a period of 3 years, were obtained from a number of Dublin city centre cinemas.

1.4 It was announced on 3 June in the daily press that public hearings of the enquiry would commence on 23rd June, 1977. The public hearings concluded on 4th November and in the course of the period evidence on oath was taken on 16 days. In all 21 witnesses gave evidence. A list of witnesses is shown in Appendix 2 to the report together with the names of counsel and the parties whom they represented. We desire to place on record our appreciation of the assistance given to us by those who made submissions, the witnesses who gave evidence, their counsel and all those companies and individuals who supplied us with information.

CHAPTER 2

BACKGROUND

2.1 Following complaints in early 1970 from a number of cinema operators that they had experienced difficulties in securing an equitable supply of films of good quality in competition with other cinemas discussions took place between the Fair Trade Commission and associations and certain individual companies in the trade. The outcome of the discussions was the formation of the Cinema Trade Complaints Committee in May, 1970. The Committee was a voluntary one seeking acceptance of the decisions solely through the goodwill of the trade. It was representative of renters and exhibitors, drawing equal representation from the Theatre and Cinemas Association, the Irish Cinemas Association, and the Kinematograph Renters' Society Ltd. The purpose of the Committee was to consider complaints concerning the supply and distribution of films. It was open to anyone in the trade to submit a complaint, whether or not he was a member of one of the bodies constituting the Committee. The chairmanship was to rotate from meeting to meeting between the constituent bodies. It was required that decisions should be unanimous. The work of the Committee was subject to review by the Fair Trade Commission and if, in the view of the Commission, it was not functioning effectively it was open to the Commission to consider more effective measures for dealing with complaints.

2.2 In the early months after its establishment the Complaints Committee was reasonably active and effective but it is notable that apparently there was no meeting of the Committee between early 1971 and early 1975.

2.3 The office of Examiner of Restrictive Practices was established under new legislation introduced in 1972. Under the legislation the Fair Trade Commission was renamed the Restrictive Practices Commission and its investigatory functions were transferred to the Examiner.

2.4 In January, 1976 two cinema operators claimed at a meeting at the Examiner's office that the large exhibitors were in a position to obtain the cream of the releases from the film distributors. They thought that no useful purpose would be served by bringing their complaint to the Committee which had not been effective in countering the influence of the large exhibitors. The Examiner promised that if the machinery established within the trade should prove to be ineffective his office would investigate the matter.

2.5 In January, 1976 articles appeared in two national newspapers alleging, in one case, unfairness in the treatment of suburban picture houses and in the other, that "a large number of provincial independent cinema owners" were being "muscled out" by the bigger cinema chains around the country and that the bigger city cinemas were holding on to successful films for too long. The Chairman of the Cinema Trade Complaints Committee was invited by the Examiner to discuss these press articles. According to the Examiner's report the Chairman said that the Committee had not been approached on a collective basis by suburban cinema owners or by owners of provincial cinemas. He admitted that there was some dissatisfaction and that the Committee was considering how best this might be met.

2.6 At about this time the Theatre and Cinema Association ceased to exist, and two new associations were formed: the Society of Cinema Exhibitors and the Independent Film Renters' Association. Each of these Associations declined an invitation to join the Complaints Committee. The Examiner referred to the provision in the terms of reference of the Committee according to which, if the Committee was not functioning effectively, the Fair Trade Commission (now the Examiner) might consider alternative measures to deal with complaints. As he deemed that this stage had been reached the Examiner decided to take over the investigation of complaints.

2.7 In May, 1976 the Examiner met representatives of the Irish Cinemas Association. The representatives of the Association stated that Dublin suburban cinemas were unable to get worthwhile films; one result was the closure of the Classic and Kenilworth cinemas. The Cinema Trade Complaints Committee had tried to secure fair distribution, and promises of remedial action had been made by the renters but apart from sporadic action as a result of the work of the Committee, the situation had remained unchanged over a number of years. According to the Examiner's report the representatives also stated that suburban cinemas had to wait for two to fourteen months for product and that this delay was due to the privileged status of the Green Cinema which got the second runs in Dublin after the first-run cinemas in the city centre. In regard to provincial cinemas the Association representatives, according to the report, claimed that the cinemas controlled by Mr. Leo Ward and Mr. Kevin Anderson got all the first runs outside Dublin. Other provincial exhibitors, it was claimed, "were forced to settle for low grade films and could not obtain the box office attractions until the benefits had been almost completely squeezed out by repeated showings all over the country; numbers of independent cinemas were unable to compete and had been bought by the Ward/Anderson group."

2.8 The Examiner invited the Irish Advisory Committee of the Kinematograph Renters' Society Ltd. to discuss the criticisms made

by the representatives of the Irish Cinemas Association. The meeting took place in June, 1976. The representatives of the Irish Advisory Committee rejected the contention of the Irish Cinemas Association that there was unfair discrimination in the distribution of films. The Examiner's report states that "they agreed that many exhibitors were getting films when it was no longer possible to make a profit by exhibiting them but stated that the reason for this was their lack of interest in updating their premises and making them comfortable and attractive to film goers." They suggested the reactivation of the Cinema Trade Complaints Committee but this was rejected by the Examiner. The Examiner also rejected their suggestion that Mr. Ward and Mr. Anderson should be consulted by the Irish Cinemas Association or by himself in order to seek agreement on a system that would be acceptable to the complainants, on the grounds that the complainants should not be asked to approach their competitors; the onus was entirely on the renters to ensure an equitable system of film distribution. Each renter, the Examiner held, should adopt a fair system of distribution based on objective criteria. Otherwise the Examiner would recommend the holding of a public enquiry.

2.9 Towards the end of June, 1976 proposals were furnished to the Examiner's office by the Irish Advisory Committee of the Kinematograph Renters' Society Ltd. Following a meeting in November these proposals were developed in relation to problems arising in Dublin suburban cinemas and in large centres outside Dublin. They did not propose any procedure for dealing with problems arising in Dublin city centre. The Irish Advisory Committee undertook to implement the proposals at once if the Examiner would not recommend a public enquiry. When this was not acceptable to the Examiner they withdrew their proposals. On 6th December, 1976 the Kinematograph Renters' Society Ltd. submitted a scheme to the Examiner for the distribution of films. It entailed the establishment of a Trade Disputes Committee and an Appeal Tribunal. The Examiner did not find the proposals acceptable on the grounds that in his view, they "go directly contrary to our ideas which derive from administration of the Restrictive Practices Act, 1972." He submitted some proposals of his own for discussion but these were considered by the Kinematograph Renters' Society Ltd. to be impracticable and contrary to principles of film distribution which were accepted internationally. Early in 1977 the Kinematograph Renters' Society Ltd. stated that they proposed to put their own proposals into operation without delay. It might be added that proposals for the solution of the difficulties of the independent cinema owners were submitted by the Irish Cinemas Association to the Examiner and to the Irish Advisory Committee of the Kinematograph Renters' Society Ltd. in August, 1976. The proposals were not acceptable to the renters represented on the Irish Advisory Committee. The Examiner was not optimistic about the proposed revival of a committee representative of the different interests in the trade as such a committee had not been successful in the past. The Association undertook to expand their

proposals and to draw up a set of objective criteria. There is no indication that this had been done.

2.10 We do not propose to go into the various proposals at this stage; the principal ones are described and examined in Chapter 6 in the light of our analysis of the structure and development of the trade.

2.11 In the course of his investigations of the complaints the Examiner selected a total of 17 films distributed by members of the Kinematograph Renters' Society Ltd. and recorded the progress of most of these from first showing through different cinemas. A substantial proportion of the Examiner's report and a considerable proportion of the evidence at the enquiry related to this exercise. The Examiner's report observes: "A mere glance . . . shows that all six renters have given priority to Adelphi-Carlton Ltd., or Odeon (Ireland) Ltd. and the Green Group" (p. 36).^{*} It was claimed in the report that the pattern of distribution of the films afforded many examples "of the priority in booking accorded to the three groups which established them in monopoly positions. Other cinema operators were unable to obtain films until their commercial value had been almost fully exploited" (p. 40). Certain information on rental fees for these films was also obtained by the Examiner. Examination of these fees, the report claims, "shows that there was wholesale discrimination in the charges to different exhibitors" (p. 41) and that "the conclusion is inescapable that the rentals charged amount to discrimination in favour of the monopoly groups whose position has been thereby further strengthened" (p. 43). Information obtained by the Examiner regarding films distributed by three members of the Independent Film Renters Association led to his conclusion that "Discrimination is also apparent here although to a lesser degree where bookings are concerned than in the case of the renters who are members of the Kinematograph Renters' Society Ltd. . . . It is obvious from Appendix VI that the Green Group cinemas received preferential rental terms—to take one example, they were charged 25 per cent rental for each of thirty-two showings throughout the country of "Canterbury Tales" between November, 1975 and January, 1977 while terms to independent cinemas during the same period ranged from 25 per cent in a few cases to 33½ per cent in the majority of cases with some in between at 27½ per cent and 30 per cent" (p. 43/44).

2.12 On page 36 of his report the Examiner states: "Agreements between the renters who are members of the Kinematograph Renters Society Ltd. and Adelphi-Carlton Ltd., Odeon (Ireland) Ltd. and the Green Group have given these groups monopolies in two areas. Adelphi-Carlton Ltd. have a monopoly of first-run films in the centre

^{*}The description "The Green Group" was the subject of an objection by the Ward/Anderson interests as being seriously misleading. (See para. 3.10).

of Dublin from Cinema International Corporation (U.K.) and Columbia-Warner Distributors Ltd., and Odeon (Ireland) Ltd., have similarly, a monopoly in the showing of films from Rank Film Distributors Ltd., Twentieth Century Fox Film Co. Ltd. and United Artists' Corporation Ltd. These five renters in addition to Scotia-Barber Distributors Ltd. established the Green group in a monopoly position throughout the country outside Dublin. The existence of these monopolies was acknowledged by all parties and the correspondence reproduced in Appendix II, copies of which were made available by the renters and others, bears witness to the existence of these agreements as do the tables in Appendices III and IV." The Examiner said that he took the definition of "monopoly" from the Bill on monopolies, mergers and takeovers where it applied to a person who had at least 50 per cent of the supply of goods or the provision of services. Certain groups had a preponderance of first-runs; of the 17 films selected for investigation, 8 opened in the Adelphi-Carlton cinemas and 7 opened in the Odeon cinemas.

2.13 The conclusions of the Examiner were given on p. 70 of his report. "I conclude that agreements, between film renters on the one hand and Adelphi Carlton Ltd., Odeon (Ireland) Ltd. and the Green Group on the other, have conferred monopolies on these groups of exhibitors. As a result independent film exhibitors outside of these groups have been the victims of unfair discrimination which has made it difficult and, in some cases, impossible for them to compete. The position of these exhibitors is precarious and unless their plight is alleviated quickly inability to make profits may force numbers of them out of business. I feel that all film renters (and agents for such renters) should be required by legislation to adopt systems of distribution which are fair to all parties and which are based on objective criteria; to adopt terms and conditions which are reasonable; and to apply these terms and conditions equitably to all exhibitors."

2.14 The Examiner claimed that it was a reasonable inference that an international cartel existed in practice. In his final submission, the Examiner said that the Organisation for Economic Co-operation and Development had defined a cartel as "any agreement between enterprises, decisions of associations of enterprises or concerted practices between enterprises, which have the purpose or effect of preventing, restraining or distorting competition." According to OECD, he submitted, an agreement might be either explicit or implicit depending on whether it was manifested in words, oral or written, or merely inferred from the conduct of the parties. The Examiner stated that the Organisation's Guide to Legislation on Restrictive Business Practices shows that it was internationally accepted that collusion might be inferred from the conduct of enterprises, and quoted an expert on EEC competition law as writing "insofar as that conduct constitutes a concerted practice, it is unnecessary to prove the existence of an agreement." The Examiner stated that he drew the inference that the pattern demonstrated by these 17 films showed that there was an

agreement, whether it was written or tacit, whether just a gentleman's agreement, an arrangement or an understanding. It appeared that certain distributors favoured particular international companies with branches or subsidiaries in this country. For example films which are shown in the Odeon cinemas in London are shown in Odeon cinemas in Dublin. He submitted that an international cartel makes it impossible for the renter to distribute in any other way.

2.15 Finally, the Examiner argued that the customer should have choice not only as to where but also under what conditions he might like to see films. He said that the closure of cinemas was contrary to the public interest, not only because of unfairness to independent cinema exhibitors, but also because it deprived cinema patrons of the opportunity of viewing films in their own localities. The Examiner did not want to see any of the Adelphi-Carlton or Odeon cinemas adversely affected, but he had to insist that other cinema operators were entitled to get a fair deal. He felt that, whether the trade expanded or decreased, the question of who survived should be determined by free competition and not by restrictive practices. He had not found any valid reason in the course of the enquiry why he should alter or modify his own conclusions as outlined in the report he submitted to the Commission.

3.3 In addition after its first run there usually follow second and subsequent runs. Re-releases are also a feature of the trade: these occur usually with the more profitable films, which are withdrawn from circulation for a period, usually of a few years, and are then re-released almost as if they were new first-run films. A more recent development, which is not very common, is the mass-release of a film. In this case, the same film is shown simultaneously in a large number of cinemas in the same area or throughout the country, and this is accompanied by widespread advertising. In subsequent runs of films which were originally issued separately may be included in the same programme, as a "back-to-back" presentation. Rental charges tend to be highest for the first run of a film, and lower thereafter. The length of time which a film is played in one cinema is usually longest for the first run, especially in the first release centres.

Grand National Film Distributors Ltd.

3.4 A very considerable decline in cinema audiences in recent decades has been a world-wide phenomenon leading to a reduction

CHAPTER 3

THE STRUCTURE OF THE CINEMA TRADE

1.1 General

3.1 The cinema trade consists of producers, distributors or renters, and exhibitors or cinemas. Substantial amounts of capital are frequently invested in the production of a film. This capital is provided by the producers and by the distributors, or by outside investors, individually or in combination. The producer retains the copyright in the film and grants a licence to a renter, who in turn grants a sub-licence to exhibitors. On occasion, renters also own one or more cinemas. The renter is expected to obtain the maximum financial return for the producer as quickly as possible.

3.2 In most countries, there has been established a hierarchical pattern of distribution for a film when it is first released, or on its "first run". A film is first exhibited in those centres which are felt to be most profitable, both financially and in terms of publicity, so as to benefit subsequent distribution. Thus the capital city of a country usually obtains the film first, followed by the other major centres of population, then smaller towns, and so on. The most important cinemas are located in the larger cities and towns, where revenue-earning capacity is greatest, and as a film moves through progressively smaller towns so the revenue generated by it tends to decrease.

3.3 In addition, after its first run, there usually follow second and subsequent runs. Re-releases are also a feature of the trade; these occur usually with the more profitable films, which are withdrawn from circulation for a period, usually of a few years, and are then re-released almost as if they were new first-run films. A more recent development, which is not very common, is the mass-release of a film. In this case, the same film is shown simultaneously in a large number of cinemas in the same area or throughout the country, and this is accompanied by widespread advertising. In subsequent runs of films, two films which were originally issued separately, may be included in the same programme, as a "back-to-back" presentation. Rental charges tend to be highest for the first run of a film, and lower thereafter. The length of time which a film is played in one cinema is usually longest for the first run, especially in the first release centres.

3.4 A very considerable decline in cinema audiences in recent decades has been a world-wide phenomenon leading to a reduction

in the number and size of cinemas, and to a reduction in the number of cinema films produced. All of these features will be examined in more detail below in the context of the cinema trade in Ireland.

3.5 Ireland differs from other countries in one important respect, namely that there is no extensive production of films by Irish producers. A number of films have been wholly or partly made in Ireland, but by U.K. or U.S.A. producers. Almost all films shown in Irish cinemas, therefore, are imported, mainly originating from the U.S.A. or the U.K., but also from continental and other countries.

3.6 To a great extent, Ireland has always been regarded as part of the U.K. film distribution network, whether the films were produced in the U.K. or elsewhere. There are in Ireland a number of distributors who are either subsidiaries or agents of distributors in the U.K. All of the U.K. distributors concerned are members of the Kinematograph Renters Society Ltd. (KRS), which has its headquarters in London. The members of the KRS which have subsidiary companies in Ireland are represented by its Irish Advisory Committee (IAC) which consists of:—

- Cinema International Corporation U.K. (formed by amalgamation of Paramount Universal and MGM);
- Columbia Warner Distributors Ltd.;
- Rank Film Distributors Ltd.;
- Scotia Barber Film Distributors Ltd.;
- Twentieth Century Fox Film Co. Ltd.;
- United Artists Corporation Ltd.;
- Walt Disney Productions Ltd.

3.7 The Irish Advisory Committee, it was stated, deals with any problems arising within the industry or with any day to day matters of common concern for their members, and advises the Council of the KRS on any matters pertaining to the Irish situation.

3.8 Three Irish companies are agents of KRS members and are not represented on the IAC. Abbey Films Ltd., are agents for the following:—

- Cathay Films Ltd.,
- E.M.I. Film Distributors Ltd.,
- Gala Film Distributors Ltd.,
- G.T.O. Film (Distributors) Ltd.,
- Hemdale International Films Ltd.

Abbey Films Ltd. and Impact Films Ltd., are agents for Brent Walker Film Distributors Ltd. National Film Distributors Ltd., act as agents for

- Crawford Films Ltd.,
- Eagle Films Ltd.,
- Grand National Films Distributors Ltd.,
- Tigon Film Distributors Ltd.

These three companies, together with Independent Film Distributors Ltd., are members of the Independent Film Renters' Association (IFRA). These companies have not been asked to become members of the IAC, nor have they requested membership. In addition to acting as agents for some important distributors, the members of the IFRA claim to account for a fairly high proportion of all films released in Ireland.

3.9 One member of the IAC, Rank, is associated in the U.K. with the company through which are owned the Odeon, Savoy and Metropole cinemas in Dublin. E.M.I., for which the independent renter Abbey Films acts as agent, owns the Adelphi and Carlton cinemas in Dublin. Both parent firms have substantial cinema interests in the U.K.

3.10 The shareholders of Abbey Films Ltd., Impact Films Ltd., and Independent Film Distributors Ltd., also operate cinemas. Abbey Films Ltd., is controlled by Mr. Leo Ward and Mr. Kevin Anderson, who are also major shareholders in the Green Group Ltd., a public company which owns a number of cinemas, including the Green, Ambassador, Regent and Academy cinemas in Dublin city centre, as well as several other cinemas. Mr. Ward and Mr. Anderson jointly also have controlling or shareholding interests in a large number of cinemas throughout the country, and both have separate interests in a small number of other cinemas. Mr. Ward also acts as a film booker for some cinemas which are independently owned. Mr. Ward and Mr. Anderson also have interests in the field of cinema advertising, publicity and equipment. Reference in this report to Ward/Anderson or the Ward/Anderson interests will include all or any such interests in relation to cinemas which Mr. Ward or Mr. Anderson either jointly or separately own or in which they have a controlling interest.

3.11 The pattern of distribution in Ireland follows that which is normal in most other countries. A film is usually launched in Dublin, followed by Cork, Limerick, Waterford and Galway. Thereafter the graduation downwards tends to be related to the earning capacity of the particular town. The view of the trade generally was that the launch and release of a film in Dublin largely affected the subsequent sale of that film, and it was vital for the future of a film that it should have a good first run in Dublin, and that it should be seen to do well. Any alternative pattern, such as opening a film outside the Dublin city centre would, it was considered by the trade, be detrimental to the finances of the Industry.

3.12 Only one new print of a film is provided for showing initially in Dublin city centre—this is the typical situation—but should there be public demand for the film more copies can be made available quickly from the U.K. Exceptionally if more than one copy is available at the release date, the film can open simultaneously in Dublin and, for example, Cork.

3.13 Another type of distribution, particularly in the major centres of population, is that of concurrencies, where the same film plays simultaneously in two or more cinemas in the same city or town. This system has been used occasionally, especially for the major box-office films, and reactions to its more widespread use were mixed.

2. *Cinemas in Ireland*

(a) *The trend since 1960*

3.14 While new cinemas have been opened in Dublin and in a number of other centres, and some existing cinemas have been subdivided into two, or occasionally three or four, separate units, there has been a substantial decline in the total number of cinemas in the country. It is estimated that there were 324 screens in 1962, but only 177 in mid-1977. In that period about 190 cinemas closed, but some 43 new screens or cinemas were added. Information supplied to the Commission indicates that there were 87 closures since 1971, 30 being in the year 1976 alone. By way of comparison, statistics in the U.K. show that the number of cinemas and seating capacity each dropped by over 50 per cent in the period 1950 to 1964. Up to 1975 there was a 22 per cent fall in the number of cinemas, and a reduction of 56 per cent in cinema seats, compared to 1964.

3.15 While exact figures for Ireland are not known, it is widely accepted that total cinema attendance in 1976 was only about 10 per cent of its level in 1954. The main reason adduced for this dramatic change has been the increasing competition from other leisure sources. Undoubtedly, television has been a major influence in this regard, and the decline occurred later in Ireland than in the U.K., due to the later advent of television. People felt disinclined to leave the comfort of their own homes, unless they could watch first-class films in first-class surroundings. In many cases, adequate investment was not undertaken to improve comfort and amenities in cinemas, contributing to the decline in their popularity. Films became more expensive to produce, and less were available. Not only were films shown on television only a few years after their first-run cinema release, but the film studios turned increasingly to producing films specifically for television, and not for the cinema. In addition, in 1956 court decisions under the anti-trust laws in the U.S.A. forced a separation of cinema-owning from production and this, it was suggested, also discouraged producers from making cinema films. Other alternative leisure outlets were developed and became increasingly popular, and the added mobility given by an increasingly widespread ownership of motor cars was also stated to be a big factor in reducing cinema attendances. While the decline was experienced throughout the country, circumstances differed in each area.

(b) *Dublin City Centre*

3.16 Since the introduction of the cinema in Ireland, Dublin city centre has been regarded as the focal point of the trade, and it has

witnessed some of the more important changes since the 1950's. At that time, the Odeon group, a subsidiary of a U.K. firm, owned five major cinemas in Dublin city centre—the Savoy, the Metropole, the Theatre Royal, the Regal, and the Corinthian, with a total of some 8,700 seats. In the late 1950's and early 1960's the Theatre Royal and the Regal were closed, followed by the Metropole. A new, and smaller, Metropole cinema was constructed on the site of the old Theatre Royal. Due to the difficulty of booking films into the Savoy with well over 2,000 seats, it was converted into twin cinemas of 1,072 and 780 seats in 1969. A third screen was added in 1975, and the Savoy cinemas now have seating capacities of 1,072, 780 and 220. In 1975, also, the Corinthian, renamed the Odeon, was converted into twin cinemas with 200 and 323 seats. The Metropole has 878 seats. The Odeon group now has 6 screens in 3 buildings with a total of 3,473 seats. According to the Odeon group, in 1956 it operated 18 cinemas (including several in the Dublin suburbs and one each in Cork and Limerick) with a total of 25,117 seats. In that year admissions were 10.5 million. In 1976, in the 6 cinemas remaining, all in Dublin city centre, admissions were only 1.1 million.

3.17 The Adelphi-Carlton group, a subsidiary of the EMI group in the U.K., owned for some time very large cinemas in the Adelphi and the Carlton, with 2,304 and 2,000 seats respectively. In 1970, the Adelphi was converted into 3 cinemas, with 1,054, 614 and 360 seats, a reduction of 276 seats. It was further subdivided in 1973, the largest cinema being replaced by cinemas with 543 and 286 seats. The four Adelphi cinemas now have 1,803 seats, a reduction of 501 on the original cinema. The Carlton was converted into 3 cinemas in 1976, with 467, 589, and 268 seats, a total of 1,324 seats or a reduction of nearly 700 seats.

3.18 The Ambassador has also been a major city centre cinema for a number of years, with 1,100 seats. After closing down in 1976, it was acquired and reopened by Ward/Anderson in 1977. At the same time, these interests also acquired the Regent (369 seats) which had opened in 1967, and the Academy, with 634 seats (of which 220 are currently in use) all being purchased from Capital and Allied Theatres. Ward/Anderson also own the Green cinema, which was twinned in 1972 to provide 340 and 377 seats.

3.19 There are 5 other city centre cinemas, which are referred to as "independent." These are the Astor (320 seats) which opened in 1963, the Film Centre (204 seats) which opened in 1966, the Curzon (400 seats) which commenced operations in 1968, the Cameo (280 seats) which opened in 1976, and the Plaza. The Plaza, which has 754 seats, had been in existence as a cinema prior to 1967, when it was converted to exhibit Cinerama films. Since such films are no longer being produced, the Plaza relies on the same type of films as the other centre city cinemas. The Film Centre and the Cameo are both owned by the same person. Another large cinema, the inde-

pendently owned Capitol, was closed down some years ago. The International Film Theatre (Earlsfort Terrace) having been opened with 240 seats several years before by the owner of the Curzon was closed in 1976, largely because of the move from the neighbourhood of University College and St. Vincent's Hospital. From the Metropole on the south side of the Liffey to the Plaza on the north side there are now 20 screens, roughly double the number eleven years ago, not including the Academy and the Green cinemas. The number of cinema seats, just over 10,000, would appear to have decreased by about one third since the early 1960's.

(c) *Dublin Suburban Area*

3.20 The pattern in the Dublin suburban area has been one of continual closures over the last few years. In 1974, the Odeon group closed down its six suburban cinemas, and several more have been closed at various times by interests associated with Ward/Anderson, as well as by a number of other operators. In all some 40 cinemas have been closed in the area since 1960. Among those closed are cinemas in Skerries, Balbriggan, Sutton, Crumlin, Rialto, Cabra, Terenure, Dundrum, Rathmines (the Leinster), Killester, Lucan, Finglas, Mount Merrion, Blackrock, and Dun Laoghaire (2). One cinema in Dun Laoghaire, the Adelphi, with 1,621 seats, was closed by Adelphi-Carlton in 1970, and the Royal in Bray was sold by the Odeon group in 1975.

3.21 In the suburban area now there are the following cinemas:— the Classic; the Forum, Dun Laoghaire; the Grande, Fairview; the Stella, Rathmines (a large cinema); the Sandford in Ranelagh; the State, Phibsboro; the Pullman, Inchicore; the Panorama, Lucan; the Ormonde, Stillorgan; the Royal in Bray, and the Savoy in Balbriggan. Ward/Anderson have interests in cinemas in Inchicore, Ballyfermot, Lucan and Rathmines.

(d) *Provincial Areas*

3.22 At the moment there are 7 screens in Cork City, five owned by Ward/Anderson and 2 owned by an independent operator. The former are the Pavilion, Lee, Palace, and Capital (2 screens) and the others are the Classic and the Cameo (a suburban cinema). There are now 5 screens in Limerick City, all owned by Ward/Anderson. These are the Royal, Centre Studio, Carlton and Movieland (2 screens). The three cinemas in Galway are also owned by Ward/Anderson—the Savoy, Claddagh and Town Hall. In Waterford, the Regina cinema is owned by Ward/Anderson, and has three screens.

3.23 A number of other towns have two or more screens. In Dundalk, the Casino (2 screens) and the Adelphi are owned by Ward/Anderson, while the Magnet is a parish hall. In Drogheda, Ward/Anderson own the Abbey (2 screens) while the Oscar (2 screens) is an independent. There are 3 screens in the cinema in Killarney, owned by Ward/Anderson. The two screens in Kilkenny,

the two in Youghal and the two in Tralee are owned by Ward/Anderson, although only one screen is operated in Tralee. Other towns with two screens are Ballinasloe, Tuam, Ballina, Sligo, Navan, Tullamore, Mallow, Athlone and Ballyhaunis, in some cases both being in one cinema under the same ownership; there are some 87 other towns each with a single screen. Ward/Anderson own some of these cinemas. Representatives on behalf of Ward/Anderson stated that they were primarily interested in film renting, but that they had an interest in seeing that cinemas were kept open; their acquisition of cinemas arose not from any specific policy of theirs to acquire cinemas, but due to the fact that the owners, finding it difficult to continue in operation, approached them to purchase their cinemas.

3.24 In many of these towns, cinemas have been closed or taken over, some new cinemas have been built, and cinemas have been subdivided. Since 1962, 47 cinemas have been closed in "solo" situations, where there was only one cinema in the town, and in 3 towns where one cinema was closed, the two original cinemas were both owned by the same person. In the country as a whole, some 40 or more cinemas are owned by Ward/Anderson. There is only one other circuit which consists of 11 cinemas—the Sullivan/Melia circuit—and this is owned by independent Irish interests.

(e) *The Subdivision of Cinemas*

3.25 One important feature of the cinema trade in Ireland over the last ten years has been the subdivision of existing large cinemas, into two, three or even four smaller cinemas—twinning, tripling and quadrupling—and, in some cases, the new construction of twin or triple cinemas. This has resulted in there being more screens in some areas than there were previously, particularly in Dublin city centre. This phenomenon occurred in other countries before it started in Ireland, and the reason for this development and its effects are of interest.

3.26 Cinema owners stated that they had experienced declining audiences and a shortage of suitable films. They were faced with the alternatives of abandoning the trade, and disposing of the cinema property or converting it to other uses, or of making fundamental changes to their properties and injecting large amounts of capital. At first it was considered that existing cinemas, with around 2,000 seats or more, were too large. At a later stage, it was widely thought that even a cinema with 1,000 seats was too large, and that 600 or 700 seats was an optimal size for the largest cinema, and that there was a need also for smaller cinemas, with some having as few as 90 or 100 seats.

3.27 The large cinema it was felt has two main disadvantages. In the first place, it is harder to fill a large cinema to capacity than a small cinema, and a house with a large number of empty seats

loses a great deal of atmosphere and audience participation, thus discouraging people from attending the cinema. In the second place, particularly for the run of the mill films which are the great majority of films, the large cinema would exhaust its potential audience in a very short time. When audiences began to drop the film had to be replaced in order to avoid half-empty houses. There was nowhere else to move the film to cater for the remaining smaller audiences. Thus a large number of films were required—weekly replacement of films even in the major Dublin cinemas was commonplace—but sufficient suitable films were becoming scarcer. Another point is that films of limited audience appeal, for example, cultural and foreign films, could not be exhibited in large cinemas.

3.28 The conversion to, or provision of, smaller cinemas, with two, three and, in one case, four screens in a single complex, was stated to have a number of significant advantages for the exhibitors. The more important films could be shown in the larger cinemas, with 600, 700 or 1,000 seats, while films of minority appeal could be shown in the smaller cinemas. The public were provided with a larger choice of films, and there was the benefit of "spill-over". Some of those who could not get into the cinema which was showing the film of their first preference might go to another film in the same complex, which they might never have attended in the first place. They might otherwise have gone to another cinema or not attended any cinema. This is particularly the case where one of the films was a major attraction drawing people to the complex. The renters stated that doing business with such complexes was thereby made more attractive.

3.29 Films would also have longer runs in the smaller cinemas. A film which would run for two weeks in a 2,000 seat cinema, might run 8 or 10 weeks in a 600 seater. It was also stated that having two cinemas in a complex did not mean that twice the number of films would be required. Indeed, because of the longer runs, less films might be required than in the original single cinema. This was claimed to be true also for three and four screen complexes. Evidence was given that in the Adelphi cinema before conversion about 23 films were exhibited each year. In the 4-cinema complex only 23 films are required at the moment each year. It was stated that the Corinthian (now the Odeon), which twinned in 1975, is now using about the same number of films as in 1969. The same pattern was stated to be present in many of the other cinema complexes.

3.30 Another important advantage claimed was the facility of "moveover", in order to extract as much revenue from a film as possible in the one complex. Generally speaking, a film is moved over from a large cinema in a complex to a smaller one, when its audiences in the larger house diminish. The smaller house can still be comfortably filled for another few weeks, whereas with a large single cinema, it could not be moved over anywhere else within

the same premises. Indeed, it has happened on occasion that when the potential audience for a film which opens in a small cinema exceeds expectations, it can be moved to the larger house, and then back to the smaller one. This adaptability was claimed to be of great benefit. A moveover in the strict sense applies only where a film moves on the very next day from one cinema to another usually in the same complex. The moveover of a film is a matter for negotiation between the exhibitor and the renter.

3.31 While a moveover is usually understood to mean a change of cinema in the same complex, it was claimed by some exhibitors that they could move over pictures from one of their larger cinemas to a smaller one nearby also owned by them. It was stated that on a few occasions, for example, films had been transferred from the Carlton (before it was tripled) to a small cinema in the Adelphi. On the other hand it was claimed that this movement to a separate location loses many of the advantages of a moveover within a single complex.

3.32 Complexes were also claimed to have certain cost advantages. A twin cinema, for example, did not double or even necessarily increase the staff compared to that required in a single screen cinema. It sometimes resulted in a lower staff requirement. Automatic projection equipment was becoming commonplace, and since the projection booths were adjacent, one person could operate two or three projectors. Some cinemas, indeed, are controlled largely by computers, requiring a minimum projection staff in case of breakdowns. By starting the films at different times, the one cashier could handle two or more cinema audiences. It was also claimed that, particularly in the smaller towns, whereas a single 100 seat cinema might be uneconomical, two of that size in the same premises could be quite profitable, since both could attract capacity houses with the same staff requirement.

3.33 These conversions cost a great deal of money since they involve re-building, the installation of modern equipment, and the provision of comfortable seating and fittings. Adelphi-Carlton, Odeon and Ward/Anderson, in particular have spent large amounts of money in this way on their cinemas, totalling around £2 million. Such is the attraction of twin cinemas that, notwithstanding the expense, plans have been prepared for several more throughout the country, including Dublin. It is of some significance that where proprietors have not invested in modernising their cinemas they have gone out of business or have barely survived in recent years.

(f) *The Barring System and Splits*

3.34 The cinema trade in Ireland still bears traces of the old system of bars and splits, which was highly restrictive. Under the barring system, a cinema in one town could prevent another cinema in the same town from showing a particular film before the first cinema

showed it and usually for some fixed period thereafter. Bars were also operated between adjacent towns. These were usually reciprocal, in that each cinema of a pair had a barring arrangement with a different set of renters. Thus cinema A could insist that no films from certain renters could be shown in cinema B before they had been shown in cinema A, and cinema B could likewise insist that it should show films from the other renters before they could be shown in cinema A. In some cases the bars were unilateral, with for example, Dublin city centre barring all other cinemas in the city and county, with no reciprocal arrangement.

3.35 This was closely allied to the system of splitting films. In some cases two cinemas arranged that one would take all the films from one group of renters and the other would take all the films from the other group of renters. In other cases, the cinemas arranged that each would get half the films from a particular renter, and this involved various selection processes.

3.36 These arrangements have now largely disappeared. It seems, however, that Dublin city centre still bars the suburban and county cinemas, and Cork, Limerick and Galway cities bar their respective counties. In the Dublin suburbs, the Classic bars the Stella, and vice versa. It would also appear that Carlow bars Tullow/Bagnalstown, and there are possibly a few similar examples. The gradual disappearance of the splitting system some years ago, appears to have been not unconnected with the increasing spread of Ward/Anderson cinemas.

(g) *Cinema Associations*

(i) *The Irish Cinemas Association*

3.37 The Irish Cinemas Association was established in 1952. The Rules of the Association provide that membership of the Association shall be confined to the owners or proprietors of 35 mm. commercial cinemas in centres of population not exceeding 10,000 in the Republic of Ireland, but in exceptional circumstances the Executive Committee of the Association shall have power to extend membership to suitable applicants from larger centres. Membership at one time exceeded 150. It now has a membership of 30, representing 46 cinemas throughout the country. It was represented on the Cinema Trade Complaints Committee. Early in 1977, the Dublin city centre independents joined the Association.

(ii) *Society of Cinema Exhibitors*

3.38 The Society of Cinema Exhibitors was established at the beginning of 1976 to promote the general interests of the cinema trade and to advocate the removal of VAT from films. It came into existence with the demise of the Theatre and Cinema Association, which ran into difficulties and was wound up at the end of 1975. A major difference is that whereas the Association had a trade union

negotiating licence, the Society does not involve itself in labour matters. It has a membership of approximately 160, which overlaps to a large extent with the membership of the Irish Cinemas Association. It was stated that as yet it has not concerned itself with the problems of cinema film distribution.

3.35 This was closely allied to the system of splitting films between two cinemas arranged that one would take all the films from one group of renters and the other would take all the films from the other group of renters. In other cases, the cinemas arranged that each would get half the films from a particular renter and this involved various selection processes.

3.36 These arrangements have now largely disappeared. It seems however that Dublin city centre still has the suburban and County cinema and Cork, Limerick and Galway cities have their respective counties in the Dublin suburbs. The Classic bars, the stalls, and vice versa. It would also appear that the art house bars, Tullow, Ballyshannon, and there are possibly a few smaller examples. The gradual disappearance of the splitting system some years ago appears to have been not unconnected with the increased interest of Ward Anderson in the cinema.

(g) Cinema Association. The Irish Cinema Association was established in 1922. The Rules of the Association provide that membership of the Association shall be confined to the owners or proprietors of 35 mm. commercial cinemas in centres of population not exceeding 10,000 in the Republic of Ireland, but in exceptional circumstances the Executive Committee of the Association shall have power to extend membership to suitable applicants from larger centres. Membership at any time exceeded 120. It now has a membership of 30 representing 46 cinemas throughout the country. It was represented on the Trade Committee Early in 1977, the Dublin city centre incidents joined the Association.

(ii) Society of Cinema Exhibitors. The Society of Cinema Exhibitors was established at the beginning of 1976 to promote the general interests of the cinema trade and to advocate the removal of VAT from film. It came into existence with the demise of the Theatre and Cinema Association which ran into difficulties and was wound up at the end of 1975. A major difference is that whereas the Association had a trade union membership of two and a half times their membership in 1976, the Society of Cinema Exhibitors had a membership of 160.

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CHAPTER 4

FILM DISTRIBUTION ARRANGEMENTS

1. *Films Available for Distribution*

4.1 Table 1 shows details of the main feature films presented for censorship in Ireland from 1965 to 1976.

TABLE 1

Films presented for Censorship

(5,000 feet and over)

Year	Total	Less Films Rejected		Films Available		General Viewing		Limited Certificates		Over 18's only	
			%		%		%		%		%
1965	275	42	15.3	233	84.7	197	84.6	5	2.1	31	13.3
1966	292	49	16.8	243	83.2	203	83.5	10	4.1	30	12.4
1967	291	22	7.6	269	92.4	183	68.0	25	9.3	61	22.7
1968	313	34	10.9	279	89.1	178	63.8	33	11.8	68	24.4
1969	259	68	26.2	191	73.8	121	63.4	44	23.0	26	13.6
1970	291	70	24.1	221	75.9	102	46.2	65	29.4	54	24.4
1971	336	86	25.6	250	74.4	103	41.2	87	34.8	60	24.0
1972	301	24	8.0	277	92.0	122	44.0	78	28.2	77	27.8
1973	363	16	4.4	347	95.6	100	28.8	91	26.2	156	45.0
1974	310	19	6.1	291	93.9	63	21.7	97	33.3	131	45.0
1975	315	30	9.5	285	90.5	51	17.9	89	31.2	145	50.9
1976	279	19	6.8	260	93.2	79	30.4	57	21.9	124	47.7

NOTE:

The expression "limited certificate" means a certificate granted by the Official Censor under the Censorship of Films Act, 1923, containing a condition or restriction as to the places at which, or the special conditions under which or the persons before whom the picture to which such certificate relates may be exhibited, and the "general certificate" means any such certificate not containing any such condition or restriction.

There were approximately the same number of films presented for censorship in 1976 as in 1965 but the number available has increased. It is notable, however, that the pattern of films available has changed significantly in the period in that there has been a marked decrease in the number of films with a general viewing certificate while the number granted over-18 certificates in 1976 was four times that for 1965. This would appear to reflect the more liberal approach to the granting of certificates adopted by the Censor in recent years and would explain to some extent the apparent conflict between the figures shown in the Table and evidence given in the course of the enquiry that there has been a considerable drop in the number of films made. It appears that films of the type presented for censorship

in 1976 would not have been presented in 1965 and many of the films made available for showing in 1976 would have been rejected in 1965.

4.2 Information on films presented for censorship for the years prior to 1965 is available, but it is not comparable to that presented in Table 1. In 1950, 524 films over 2,000 feet in length were presented for censorship, 12 being rejected, leaving 512 films available. In 1955, 462 films were presented, of which 47 were rejected, leaving 415 films available. The number of films between 2,000 and 5,000 feet is not available, but it might have been around 70 in each year; thus there were probably around 440 films available in 1950, and around 345 in 1955. The number of films exceeding 5,000 feet in 1960 was 398 (an additional 68 were between 2,000 and 5,000 feet) and 53 were rejected, leaving 345 films available. These figures can be compared directly with the 275 films presented in 1965, shown in Table 1, of which only 233 were available. Thus there appears to have been a considerable drop in feature films available between 1950 and 1955, and again between 1960 and 1965.

4.3 Censorship has been considerably relaxed in recent years and in general censorship was felt by trade representatives at the enquiry to present no serious problem regarding film distribution in Ireland. It is of interest to note that more full-length feature films (more than 72 minutes), are registered in the U.K. each year than are presented for censorship in Ireland, the difference in recent years varying from 20 or so to over 80. It may be presumed that in the majority of cases it would not have been worthwhile to present them to the Censor because of the content of the films. It is possible, however, that some acceptable, minority-audience films might not have been presented because the costs of having a film censored were not justified by the potential revenue which the films might have been expected to earn. As a rule the cost of censorship to the renter was relatively small in the case of films capable of earning adequate revenue. It should be emphasised, of course, that the number of films is no indication of the quality or audience-attracting power of the films.

2. *Film Rental Charges*

4.4 It has been traditional in the cinema trade worldwide for film rentals to be based upon a percentage of the weekly takings of that film. This is because film exhibition is regarded as a joint venture involving the producer, the renter, and the exhibitor. This system recognises that, even if the film earns little revenue, the exhibitor must be allowed some money to cover his costs, but that the renter must earn something; as the total takings grow larger, however, then both parties will benefit. Since cinemas have widely different earning capacities, even in the same town or city, this system has benefits over a straight cash charge for a film, and this makes film rentals different from most other prices and charges. There are,

however, a wide variety of percentage rental systems, depending both on the quality of the film and of the house, and also upon whether the film is first-run or subsequent run. Where the percentage system is applied (i.e. in the majority of cases in Ireland) it is applied to net receipts, that is total receipts less value added tax.

(a) *Flat-rate Rentals*

4.5 In this case the rental is expressed as a straightforward percentage of net receipts, say 30 per cent or 50 per cent, in which case 30 per cent or 50 per cent of the net receipts respectively are paid as rental for the film. It is obvious that the more a cinema takes in receipts the higher will be the rental paid, even though the percentage remains the same.

(b) *Nut Rentals*

4.6 These are usually applied in the case of major box-office attractions. The terms take the form, for example, of 50 per cent up to a certain figure, and 90 per cent in excess of that figure. Thus all takings up to the figure are split equally between exhibitor and renter, but any takings in excess of that figure are divided so that the exhibitor gets 10 per cent but the renter gets 90 per cent of the excess. If the figure were set at £1,000, the rentals and percentage rentals at different net receipts are shown in Table 2.

TABLE 2

Example of 50/90 Nut Terms

Receipts	Amount to Exhibitor	Amount to Renter	Percentage rental
£ 500	£ 250	£ 250	50%
1,000	500	500	50%
1,250	525	725	58%
1,500	550	950	63.3%
2,000	600	1,400	70%

4.7 Thus the exhibitor always gets 50 per cent of the net receipts up to the nut figure, but his percentage drops as receipts rise above that figure, although his actual cash income is increasing. The renter, on the other hand, never receives less than 50 per cent of the receipts, and above the nut figure his percentage rental rises constantly, and his money rental rises rapidly. The nut figure is usually a matter for negotiation by the parties, but the percentages are set by the renter.

4.8 On occasion in the case of the smaller cinemas the exhibitors may be allowed the option of a straight percentage instead. The alternative in this case would probably be 55 per cent, in which

in 1976 would not have been presented in 1965 and many of the case the renter would always receive a rental of 55 per cent of the net takings. Up to a total of £1,143 the exhibitor would be recovering less than under the nut scheme, this being the figure at which the nut scheme gives the renter 55 per cent. Above this level, the exhibitor would still be receiving 45 per cent, whereas his percentage would be lower under the nut scheme, and his cash income would be lower as well.

(c) *Break Figures*

4.9 Break figures consist of a system of rental charges based on a percentage of the takings, usually weekly takings, by a particular cinema. The break figure, which is fixed by agreement between the renter and the exhibitor, is the amount of net receipts below which a relatively low percentage is taken by the renter. As receipts exceed the break figure, a progressively higher percentage accrues to the renter. The system usually involves a scale of break figures which is fixed for each cinema, and does not vary from film to film. Some cinemas operate a simple system which does not utilise a scale of figures. Break figures are subject to revision from time to time. The principle behind break figures is that at the lower end of the scale, the exhibitor is left with an amount at least sufficient to cover his operating costs; after this point, the renter expects to receive a much larger share of the net receipts. Thus the exhibitor is not called upon to pay high rentals until the film has earned them at the box-office.

4.10 The initial establishment of break figures was stated to be based upon overhead operating costs, such as payroll, rates, advertising, insurance, light, heat and other immediate outgoings in operating each cinema, and these are certified by audited accounts. Break figures may be negotiated on this basis for an existing cinema, or revised figures to replace existing break figures may be agreed on this basis when a cinema is twinned or tripled, or reduced in size, since the operating costs may have changed. Newly-established break figures might be subject to later review in the light of experience.

4.11 There are two occasions when a request will be made for a revision of the break figures. If overheads rise, the exhibitor will want an upward revision of the break figures, since they no longer cover overheads to the same extent as before. In the second place, break figures may be adjusted upwards when admission prices are increased; if this were not done, then a large portion of net receipts than before would be taken by the higher rental percentages, and the cinema would benefit very little from the higher admission charges.

4.12 A hypothetical scale of break figures is given in Table 3.

TABLE 3

Example of a break scale

	Net receipts	Percentage rental
	£	
50% Failing	6,000	45%
	5,400	40%
	4,900	35%
	4,500	30%
	4,200	25%

The percentage rentals are usually the same for all cinemas using the scale system, but the net receipts figures vary from one cinema to another. The percentage rentals apply to all receipts up to each of the quoted receipts figures. If receipts are below £4,200, a rental of 25 per cent of the receipts is payable; if receipts are between £4,200 and £4,500, a rental of 30 per cent is payable on all receipts; a rental of 50 per cent is payable on all receipts in excess of £6,000. The simple break figure system is similar to the nut terms, and is of the form—30 per cent up to a given figure and 70 per cent in excess, with, usually, a maximum rental of 50 per cent. The 70 per cent is charged only on receipts in excess of the break figure, and not on total receipts. Under both systems, the percentage rental increases as receipts increase, and while the systems are not comparable with each other at all points, above a certain figure the maximum rental of 50 per cent is payable in both cases.

4.13 In the case of Dublin city centre, the sliding scale applies to the Adelphi, Carlton, Ambassador, Regent, Academy and Plaza cinemas. Break scales, sometimes in a shortened form, are also found in the Stella, Classic and State cinemas in the Dublin suburbs, in the Pavilion and Palace in Cork, and also in cinemas in Wexford, Kilkenny, Athlone, and Ballina (from one or more renters). The simple break system is applied at all the Odeon group cinemas and at the Green cinema.

4.14 When an application has been made for the establishment or revision of break figures, the request, along with the audited accounts, is examined by one or two members of the KRS. If they agree to break figures, then these are usually accepted by the other KRS members, thus avoiding a repetition of negotiating with each individual renter. Thus break figures for a cinema tend to be the same for each renter, even for non-members of the IAC.

4.15 It is, of course, in the interests of the exhibitor that the break figure should be as high as possible, so that he can obtain a reasonable return before the higher rentals become payable to the renter. At the same time, if the break figures are too high, so that the renter has little chance of a relatively high return, then that cinema will

not be attractive to the renter, and he will tend not to offer his films to that cinema.

3. *Other Variations in Rental Charges*

(a) *Small Towns and Parish Halls*

4.16 For a number of years, small towns and parish halls have been allowed to deduct 30 per cent from the net takings before the percentage rentals are calculated. Thus if net takings are £100, and the rental is 55 per cent, the exhibitor deducts £30, and pays 55 per cent rental on the balance of £70, which amounts to £38.50, or 38.5 per cent. Cinemas in adjoining larger towns, or in other cinemas in a large town where there is a parish hall cinema, have no such concession, thus giving some advantage to its recipients. In the case of the concession for small towns, that is those towns with a population of 2,000 or less, this was allowed when entertainment tax was removed. Previously receipts upon which rentals were charged were net of this tax, and it was felt that the small town cinemas in particular should receive some benefit from its removal, which would not have occurred if the percentage rental was applied to all net receipts.

(b) *Flat Rentals and Minimum Rentals*

4.17 In a number of cases, small cinemas are charged a fairly small flat rental for Sunday bookings rather than a percentage. This was considered to be of considerable benefit to the cinema since this was the day upon which their receipts were highest. Minimum rentals have been established in some cases also, because the percentage rental produced low returns. While the minimum guarantee is fairly low, it is still set at a level which makes it barely economical for the renter to supply that cinema—some were between £6 and £10. Information made available shows rentals as low as £3 from some cinemas. In this context, it is of note that the cinemas are responsible for paying the carriage on the films, or otherwise providing carriage.

(c) *Moveovers, Subsequent Runs and Re-negotiation*

4.18 A moveover is regarded as being a continuation of first run, and thus rental terms for first run are still applied. The moveover is usually from a large cinema to a smaller one, and where break figures are in operation, there are lower break figures in the smaller cinema, but the same percentages are in operation. After the moveover, total net receipts and rentals usually are smaller than in the large cinema. The second and subsequent runs are, in almost all circumstances charged a lower rental than on the first run, and, because of the lower revenues expected, break figure systems are seldom applied anywhere outside the first run. Finally, whereas terms are agreed before the film is exhibited, the actual rental might be renegotiated at a lower figure after showing if the returns are particularly disappointing, but such occurrences are relatively infrequent.

4. Length of Exhibition Period

4.19 It is usual with any film for a minimum length of exhibition period to be agreed between the renter and the exhibitor. This also is part of the hierarchical structure of the cinema trade. In the smaller centres, in particular, there is not the potential audience to show a film for 7 days, and so the length of run might be limited to 3 days, 2 days or even 1 day. In the major centres, the exhibitor will decide each week in consultation with the renter whether to continue playing the film for another week, since, essentially, the length of run is controlled by the public. If the audience does not attend the film is replaced; if there is still a potential, the film is retained.

4.20 In the case of the major box-office films, the renter will stipulate a definite minimum playing period. This might be four weeks in Dublin, Cork and Limerick, two weeks in other large towns, and one week elsewhere. Exhibition periods of less than one week, which are generally liable for lower rental charges, are not allowed until the second or subsequent runs of such films, which is often a considerable time after their initial release in Dublin.

CHAPTER 5

EVIDENCE OF WITNESSES

5.1 The renters, whether they were members of the IAC or the IFRA, unanimously denied under oath that there were any agreements, arrangements or understandings conferring monopolies on groups of exhibitors such as were alleged by the Examiner. They all denied the Examiner's statement that "the existence of these monopolies was acknowledged by all parties". While admitting that they had a normal and traditional pattern of trading with specific Dublin city centre cinemas, each renter said that there were no prior arrangements whereby their firms were committed to these cinemas, nor had these cinemas any obligation to take any films from them. They denied that there was any collusive action by members of the KRS or the IAC and stated that distribution policies were never discussed at KRS or IAC meetings. They accepted that there were problems of distribution in the trade, but that these arose very largely from declining audiences and the shortage of available product, and were not to be confused with commercial abuse, monopolies or unfair practices. They also denied the existence of an international cartel as alleged by the Examiner. It was stated by a representative from the KRS in London that no agreements in the cinema trade had been notified to the EEC competition authorities nor had the trade been subject to any investigation by these authorities.

5.2 The existence of any agreements, arrangements or understandings such as were alleged by the Examiner was also denied by the exhibitors who were stated to be parties to these agreements. None of the independent exhibitors who gave information at the enquiry could substantiate the allegation that any such agreements existed. All however voiced strong suspicions that there must be some type of agreement. A witness on behalf of Ward/Anderson said that they felt that there was an agreement in respect of Dublin city centre although they denied that they were themselves a party to any agreement elsewhere in the country. Most of the independent exhibitors expressed some doubt that the pattern of releases was explained solely by the desire of the renters to act in their best commercial interests; while this partly explained the situation these independent exhibitors felt that the renters could also be involved in some restrictive arrangement.

5.3 The Examiner in his report had selected a number of films and their pattern of release and distribution had contributed largely

to his conclusion that the agreements, arrangements or understandings existed. There was considerable criticism at the enquiry, particularly from the renters and the large groups, about the number and nature of films selected by the Examiner. In the first place, the Examiner had selected only seventeen films, whereas some 300 or 400 films had first run openings over the relevant period. The films, it was submitted, had not emerged as a result of a random selection process, which would have had statistical validity for the drawing of meaningful inferences, but had been selected by the Examiner on the basis of certain assumptions made in advance. The films selected, it was stated, were greater box-office successes than the general run of films. While not disputing the fact that "block-buster" films were important to all exhibitors, such films were only a very small minority of all films, and it was misleading to take the pattern of distribution of such films as being typical of the pattern of distribution of all, or the majority of films.

5.4 It was furthermore stated by witnesses for the renters and for the large cinema groups that there were a number of factual errors and misrepresentations in the material presented by the Examiner, particularly in the case of rentals. No reference was made to the fact that rental terms were on a weekly basis, that there was a 30 per cent reduction for cinemas in small towns and parish halls, that the same percentage produced a different cash rental at different levels of receipts, that different percentages and cash rentals were produced from break figures and nut figures, and that exhibitors had an option on terms and had the possibility of renegotiation after showing; in addition, certain figures had been omitted from the tables in the report. Not only were the cash rentals entirely ignored but no mention was made of the costs involved in distribution. In view of these factors they claimed that the justification was removed from any of the inferences made by the Examiner in his report.

5.5 The renters agreed however that the films selected by the Examiner did tend to demonstrate a specific pattern of release and distribution and in rejecting the Examiner's allegation of agreements they provided instead an alternative explanation which was contrary to the inferences drawn by the Examiner. The only reason, they claimed, for the existence of the pattern was that the renters were acting in their best commercial interests. They claimed that their job was to maximise the returns to film producers as quickly as possible. There was always a limited number of copies of any film and some form of priority in distributing them had to be established. The renters recognised that a regular complaint was that there were too few copies of most films made available for circulation in the country. This was said to be the main cause of delay in exhibiting films widely. While this was accepted by the renters, they said that because of the cost of prints—£400 each—any extra prints in Ireland could only be justified if they could earn at least the revenue they would earn in the U.K. The pattern of distribution had to take

account of such factors as the revenue earning capacity of a particular cinema, the fact that certain cinemas were more suitable than others for certain types of films, the reputation of the cinemas for comfort, and the quality of its presentation, the length of running time expected and the possibility of a moveover. The renters emphasised that the subsequent showing of a film throughout the country could be affected significantly by the standing of the cinema in which it opened in Dublin, and its performance there. The renter had to take into account the overall distribution pattern, and if a particular outlet was prepared to take all his product—the good film with the bad—then he tended to regard that outlet as one of his best customers. In this way trading relationships were established.

5.6 In regard to Dublin city centre, the two main cinema groups stated that their views were similar to those of the renters. When a renter offered them good films they established “a best customer” relationship and would tend to take the less good films, but they were not committed to taking all films from any one renter nor were they prevented from obtaining films from other renters. They also took a large number of films from the independent renters. Representatives of these cinemas stated that the pattern presented by the Examiner in relation to the seventeen films was entirely consistent with the proposition that their cinemas attracted product because of the financial—and legitimate—advantages which they offered to the renters and that they were not engaged in agreements, arrangements or other restrictive practices. They provided evidence regarding receipts, rentals and exhibition periods of a large number of films.

5.7 Regarding the pattern of distribution outside Dublin city centre, the renters stated that it was baseless to claim that they had established Ward/Anderson in a monopoly position and witnesses on behalf of Ward/Anderson in turn claimed that they did not have a monopoly, that they did not have an unfair advantage over others, and that they had not exerted their commercial power unfairly. The renters said that it was not surprising that Ward/Anderson cinemas figured prominently in the tables in the Examiner’s report showing the distribution of films, not necessarily because of intrinsic merits in the circuit, but simply because they owned most of the cinemas in the cities and towns in which the films were shown immediately after the Dublin release. Ward/Anderson had five of the seven cinemas in Cork, all five cinemas in Limerick and all three in Galway. They were also well represented in many other large towns. In addition it was claimed that Ward/Anderson offered very considerable attractions as exhibitors of the renters’ product because of the quality of the cinemas and their expertise as exhibitors. It was easier to book a film to a circuit with forty cinemas than to make forty individual bookings around the country. There were also advantages in booking to a circuit where one copy of a film could be passed from one cinema to another in the same circuit very quickly with little or no loss of showing time. It was added that where a

large circuit supported a film with bookings this justified the renter in bringing in more copies, so that the film could be distributed earlier than would otherwise be the case and this was also to the advantage of independent operators. Since Ward/Anderson had an office in central Dublin, they were in closer contact with the renters than were other exhibitors, some of whom sought a list of available films only two or three times a year. Ward/Anderson were also more knowledgeable about the quality and potential of films as they were released. It was accepted that Ward/Anderson had more bargaining power than individual exhibitors although this applied to bookings and not to rentals. Representatives of the renters also said that operators of independent cinemas might be at a disadvantage through the commercial strength of Ward/Anderson and the attractions or benefits they offered, but in dealing with them they were pursuing their best commercial advantage and they tried to ensure that no individual was treated unfairly either by accident or design. It was suggested that, in any event, some exhibitors in the country were reluctant to book films at an early date.

5.8 Having regard to the above considerations the renters therefore claimed that there were no restrictive practices involved in conferring on any cinema the status of "a best customer", nor was there any restrictive practice in the distribution of films by placing them in certain cinemas to their best commercial advantage. They also stated that the traditional distribution patterns were not invariably followed and one renter stated that if he had more product available he would certainly deal with other cinemas. Two exhibitors, who were also independent renters, said that they did not always open their own films in their own cinemas, but fairly frequently opened them in the major group cinemas because they thought that particular films would be more suitable for those cinemas and that this placing would help the subsequent distribution of the film throughout the country. A further point made by the three major groups of cinemas to demonstrate that they had no unfair advantage was that they had in fact closed a large number of cinemas, both in Dublin and elsewhere in recent years. Notwithstanding their size, the big groups claimed they were in a vulnerable position.

5.9 It was alleged by one witness that in the U.K. certain films played in Rank cinemas and others in ABC cinemas, and that when they came to Dublin over 90 per cent of the films went the same way that is, to the Odeon and the Adelphi-Carlton groups respectively. A number of witnesses expressed considerable doubt regarding the autonomy of the Dublin branch managers; it was felt that the real power of control resided with the KRS parent companies in London although the branch managers had authority over a number of local matters. It was claimed that the cinemas selected for certain films and the rentals to be charged had to be approved from London. Some of the witnesses gave evidence to the effect that on a number of occasions they had been in communication,

either personally, by telephone, or by letter, with the London headquarters of the renters, or with the KRS in London.

5.10. The renters claimed that while they were answerable to their parent companies in London, they enjoyed considerable autonomy in Ireland, making their own decisions and doing their own deals. In evidence, the representative of Cinema International Corporation stated that of 25 programmes released first run in 1976, 13 were shown in the Adelphi-Carlton, 7 in the Ambassador, 2 in the Academy and one each in the Regent, Plaza and Green. The representative of Rank said that in 1976, 11 of its films went to the Odeon circuit, but that 7 went to independent cinemas. The representative of Twentieth Century Fox denied that the placing of the films was predetermined by where they had opened in London, since the company had its own cinema in the West End of London. Representatives of the two major group cinemas in Dublin stated that they would not necessarily be influenced by the circuit in the U.K. which had played the films before they came. It was accepted, however, by a representative of Adelphi-Carlton that had his traditional sources of supply and that the Odeon had their established suppliers, and that he was reluctant to encroach too much in their area.

CHAPTER 6

PROPOSALS SUBMITTED

6.1 While there were highly conflicting statements concerning the existence of alleged agreements, arrangements or understandings there was general agreement that there were serious problems of distribution in the trade. During the public hearings, it became apparent that by far the most serious problems were connected with the physical distribution of films and preferential treatment of some cinemas. It was also clear that there were separate problems in three specific areas, namely the provincial cities and towns, Dublin suburbs and Dublin city centre.

Provincial Cities and Towns

6.2 The complaints from cinemas in provincial cities and towns concerned their inability to get first-run product and concerned as well the long delay in getting films. The complaints came on the whole from those who were experiencing difficulty in attempting to compete with the Ward/Anderson cinemas. Where certain splitting arrangements had existed, these had been relaxed or abandoned some years ago with the appearance of Ward/Anderson cinemas.

6.3 In the case of Dundalk, it was stated that the problems experienced by the Magnet cinema coincided with the advent of Ward/Anderson in the town. In the case of Youghal it was claimed that the Regal cinema had been doing better than its competitor with whom there was a splitting arrangement until Ward/Anderson took over the competing cinema causing the Regal eventually to close. In the case of Drogheda, the exhibitor at the Oscar cinemas stated that he had experienced discrimination in the supply of films which made competitive trading difficult, and in the case of Cork city, the proprietor of the Cameo and Classic cinemas also claimed that there was discrimination in supply against him and in favour of the Ward/Anderson cinemas.

6.4 A witness for Ward/Anderson submitted that if they had an advantage in trading, it arose from perfectly legitimate competition. Ward/Anderson had spent a lot of money on their cinemas to make them first class and they had considerable expertise in booking and exhibiting films as well as having a circuit of cinemas with which the renters found it convenient and profitable to book their films. The witness went on to claim that other cinemas had not modernised as they had and in the case of Cork, that the proprietor of the Cameo and Classic booked his films on a weekly basis and did not

use an advance dating book; this latter course caused serious difficulties for the renters who never knew when a film would be demanded or returned. He also observed that some cinemas in various centres were used for bingo from time to time.

6.5 From the renter's point of view, apart from Ward/Anderson and perhaps some others, a good deal of the difficulty seemed to spring from the fact that some exhibitors did not wish to get films any earlier. In some cases the proprietors wanted only a short run at a cheap rental but that was not acceptable to renters on the first run, particularly of a major film. Examples were given of films which were offered to cinemas in small towns shortly after they opened in Dublin and although they were showing very successfully in Dublin, either no interest was shown in them or the earliest booking sought was for a date six or nine months later.

6.6 Nevertheless, a problem clearly existed. Ward/Anderson presented to the enquiry a study which attempted to estimate the number of cinema seats required in a town. The estimation was based on the size of the population and on the assumption, based on research, that the mean number of visits to the cinema each year by an adult is twelve. It was estimated that, if one did not take into account the population in areas outside each town, then all towns had more seats than was justified, many having considerably more. It followed from this, in their view, that if the available product was split between two cinemas then the result would be that both cinemas would do bad business and not just one. In those circumstances, they considered that no intervention in the market was desirable.

6.7 On the other hand, the proprietor of the Cameo and Classic cinemas in Cork suggested a special agreement in Cork between himself, Ward/Anderson and the renters which, in his view, should be the subject of legislation. He was not seeking parity with the opposition for the major first-run films, which he thought should open in the larger cinemas. (This was necessary in order to be fair to the renters and in order not to delay subsequent distribution). His desire was to receive first runs of the non-major films and second runs of the major films. He said that the split should be one-third or two-fifths to the Cameo and the Classic and the rest to the Ward/Anderson cinemas.

Dublin Suburbs

6.8 The main complaint made by the Dublin suburban exhibitors was that the delays before they could show films were excessive. This was given as one of the main reasons for the many closures in recent years; they expected that more closures would occur if the system were not changed. The main cause of the delay was stated to be the very long runs of films in Dublin, which resulted from the reduction in the size of cinemas. A representative of the suburban exhibitors said that while some specialist films could

do well by opening first run in the suburbs they had themselves no wish to show films first run; many films needed the kind of launch that could only be done in the major Dublin city centre cinemas. The renters agreed that the complaints of long delays by the suburban cinemas were fully justified.

Dublin City Centre

6.9 The complaints in the case of Dublin city centre came principally from the independent exhibitors in the city centre and from Ward/Anderson who are concerned with the Ambassador, the Regent and the Academy in addition to the Green cinema. The complaints were that they could not obtain first-run films from the KRS even though they had first-run cinemas and that the majority of good films went to the Adelphi-Carlton and Odeon group cinemas. The five independent exhibitors claimed that they had experienced severe difficulties in supply although their cinemas were in good locations and although they had spent a great deal of money on them, some of them being newly constructed as cinemas. They believed that their cinemas were comparable with the Adelphi-Carlton and Odeon cinemas in terms of comfort, cleanliness, seating capacity, quality of presentation and general ambience. Furthermore, they claimed, the five cinemas concerned were regarded as first run by the KRS. Nevertheless, the supply of first-run product had dried up, especially in recent years. Moreover, because they were regarded as first-run cinemas, they had not been included in the KRS second-run scheme for the Green cinema and the suburban cinemas which had been recently introduced (see para. 6.17). Submissions which they had made to the renters and the KRS had, they claimed, been largely ignored.

6.10 There was a general view that the problem in Dublin was that the demand for films exceeded supply. However, a representative from the Plaza cinema stated that if his cinema obtained equality of treatment with the major group cinemas, he doubted whether the latter's business would suffer. Nor would the renters be at a loss since he believed his cinema was in the past and would continue in the future to be as attractive to the public as the cinemas in or near O'Connell Street. The Curzon cinema representative stated that they had experienced a decline in the supply of first-run films that was exceptionally severe. In 1969, shortly after the cinema was opened, they played six KRS first-run films for thirty-one weeks, but in 1976 they had only one such film which ran for a single week. They therefore had to show a type of product which they did not wish on the whole to show. They believed that even if they offered a higher percentage rental than, for example, the Odeon they would still not get the product. Nevertheless, they accepted that there was no concerted effort by the Adelphi and its suppliers to force the Curzon to close. Plans had been made to twin the Curzon but these had been abandoned after advice had been given to them by the KRS to the effect that it

would be foolish to open a second cinema when it was not possible to get product for the first. On behalf of the Astor cinema, it was stated that although it had a better appearance than the Odeon next door and could take more money because it was larger than one of the Odeon cinemas, the KRS did not supply it with any first-run product.

6.11 A witness for Ward/Anderson said that they had purchased the Ambassador, the Regent and the Academy cinemas after these had been forced to close recently because of lack of product. He claimed that they were still facing great difficulties in obtaining films for these cinemas even though all three were first-run cinemas. Although the Ambassador had lower break figures than other large cinemas and it might be assumed that it was in the commercial interests of the renters to open there they did not do so. The Green cinema, in which they also had an interest for a number of years, had been unable to get first-run films, and often had to wait a considerable time for second-run films, sometimes as much as eighteen months. Plans for constructing two new cinemas on the site of the Green had been postponed as also had been the twinning of the Ambassador. It was stated on behalf of Ward/Anderson that unless the situation was rectified immediately, all these cinemas might be faced with closure.

6.12 The renters, for their part, said that the independent cinemas had never complained to them that they had been unable to get first or second-run product up to the time the enquiry commenced. They were aware now, however, that the independent cinemas were making representations both to the Examiner and to the Commission that they could not get first-run product. In general, the representatives of the renters, while claiming that their distribution policies were in their best commercial interests, nevertheless, recognised that there were certain cinemas in Dublin which had supply difficulties.

Proposals for the Improvement of Distribution

6.13 Against this background, there were a number of proposals made for the improvement of distribution and these have already been summarised in Chapter 2.

6.14 The Examiner had decided for a number of reasons that the Cinema Trade Complaints Committee was not fulfilling its functions properly in dealing with the complaints which had arisen; he therefore decided that his office should take over the investigation of these complaints from April, 1976. His main concern was to find a satisfactory procedure and in June, 1976 he had met representatives of the Irish Advisory Committee of the KRS. They subsequently made certain proposals to him to deal with all the problems in the trade. While favouring the establishment of an industry committee with representation from the four main associations, the

IAC proposed that after the termination of first run in Dublin city, not more than six weeks would be allowed for the commencement of a second run, after which the film would be made available to the suburban cinemas. In the case of a provincial centre, after the first run, films would be made available to other cinemas in the city, town, or county, subject to normal commercial considerations. Provision would also be made for allocation of product in provincial cinemas, the allocation to be reviewed after nine months. In regard to this and subsequent proposals the position of the Examiner was that serious attempts were not being made to arrive at a solution of the difficulties. He considered that the distribution of films should be governed by objective criteria and that these proposals were not in accordance with such a view.

6.15 In August, 1976 the Irish Cinemas Association also sent proposals to the Examiner and to the IAC for the solution of the difficulties being experienced by the independent cinema owners. These proposals included the suggestion that a committee of representatives of the KRS and the ICA, with an observer from the Examiner's office, be established to adjudicate on applications for the allocation of films. It was suggested that outside the Dublin area, films should be allocated to cinemas on a percentage basis in accordance with the date of their first showing in specified first-run cinemas. In the Dublin area, copies would be made available to suburban cinemas immediately after their first run or not later than the ninth week after first-run opening, whichever was the earlier. The suburban cinemas experienced no conflict among themselves concerning the allocation of product. These proposals were rejected by the renters in the following month, September, 1976.

6.16 In November, 1976 the Examiner met with London members of the KRS. These representatives proposed that films should be released to the Dublin suburban cinemas not later than twelve weeks after their first-run opening and that there would be equality of treatment in the distribution of films in other cities and large towns. They said that they would implement their proposals immediately on condition that a public enquiry would not take place. The Examiner informed them that this condition could not be met.

The KRS Scheme for Dublin Suburban Cinemas

6.17 In early 1977 the KRS went ahead with their scheme for the distribution of films in the Dublin suburban area. This was during the later part of the Examiner's investigations but before our enquiry commenced. Up to that time only when a film's first run was finished, or indeed when a period had elapsed after the run had finished, was it made available to the suburban cinemas. Such a film, however, could be exhibited in provincial cinemas during the city centre first-run period. Under the new scheme films were released to the suburban cinemas not later than the beginning of the thirteenth week after their opening in the city centre. In the case of the Green cinema,

however, films were released for second-run showing not later than the beginning of the eleventh week after opening in the city centre. Films are made available earlier still if the first-run period is shorter than twelve weeks. The scheme, it must be noted, does not apply to the city centre independent cinemas.

6.18 The suburban proprietors regarded the scheme as a considerable improvement. They had no objection to the fact that the Green cinema could get films two weeks before the suburban cinemas. They had hoped that they would be able to get films at the beginning of the ninth week rather than the thirteenth, and at the enquiry they suggested that nothing should be done to prevent them from seeking further improvements in the scheme. They did make the point strongly at the enquiry, however, that they were afraid that this scheme might be abandoned at some time in the future and that some way should be found of ensuring its continuance. It was suggested by one witness that the scheme should be extended to County Dublin cinemas.

6.19 Representatives of the city centre cinemas had reservations about the scheme. At the enquiry, a witness for Ward/Anderson said that they had not sought the eleven-week arrangement; it had been forced upon them by the thirteen-week arrangement for the suburban cinemas. They did not object to the arrangement as such only to those aspects of it which affected the Green cinema. Here their experience had been disastrous, and they believed that the Green cinema showing should come in much earlier. In the case of the city centre independents, it was stated that the scheme significantly worsened their circumstances; they could not obtain a film until well after it had been shown in the suburban cinemas and the scheme had benefited the suburban cinemas at the expense of the city centre. A representative of the Odeon cinemas expressed some concern about the scheme although recognising that it was too early as yet to judge its full effects; a representative of Adelphi-Carlton said that while it was impossible to quantify its effects, they considered that if it were to have an adverse effect on their cinemas, this would be minimal. The vast majority of films already ran for less than twelve weeks in the city centre and consequently the scheme would have its most significant impact on the first-run cinemas in respect of the major block-buster films.

The IAC Allocation Scheme for Provincial Cinemas

6.20 In December, 1976, the IAC had submitted a revised proposal to the Examiner for the allocation of product. The scheme had been amended, largely because certain associations did not agree to participate in it. Certain further modifications were agreed during the enquiry. We refer to these in the paragraphs below. In January, 1977 the scheme was put into operation. It is to a great extent based upon the system used by the KRS in the U.K. We have reproduced it in Appendix 3 as it was implemented.

6.21 The scheme applies to all cinemas with the exception of cinemas in the Dublin city centre or suburbs. It is open to any provincial cinema therefore whether it is in a competitive or a solo situation and can be applied to a barring arrangement. The procedure is as follows. Any cinema seeking an allocation of product must first discuss the situation with his competitors and if agreement is reached, the percentage distribution of product is recorded by the Product Allocation Committee as if it were a decision reached by that Committee. If agreement is not reached, the cinema may send an application to the Product Allocation Committee which consists of three distributor representatives, nominated by the IAC. The applicant, and any cinemas who might be affected by an allocation, may present their case to the Committee, who decide on an allocation expressed in terms of a percentage. The Secretary of the IAC would be present at all meetings as an observer. The Secretary of the ICA would be present where a member of that Association was involved and the Secretary of the SCE would also attend where the latter have an interest. During the enquiry objections were raised against the requirement that a person seeking allocation should first have to consult with his opposition, who were, it was claimed, preventing him from obtaining a fair share of the product. The IAC representative said that such consultation was not essential although it seemed desirable in the case of a complaint, in order to see if the difficulties could be reasonably settled by the cinemas involved. Another objection was that the Committee was comprised only of IAC members. The IAC representatives said that they had no desire to run the allocation system on their own. In the original scheme, it was proposed that representatives of the ICA and SCE should be on the Committee; their consent, however, was not immediately forthcoming and due to the urgency of the situation the IAC decided to go ahead unilaterally to put the scheme into operation. The IAC stated that they would welcome participation from all sections of the trade. The representative of the SCE said that it was not necessary for the Society to be represented on the Allocation Committee, and it could be invidious to arbitrate at times since two of its members might be involved in an allocation dispute. If the Secretaries of the organisations were present as observers, it was suggested, they could give the reasons for decisions to their members, which would meet any complaint about the secrecy of the procedures.

6.22 The scheme went on to provide that any party dissatisfied with the decision of the Product Allocation Committee could appeal to an Appeal Tribunal. This consists at present of an independent Chairman, who has had some experience of the trade, and two distributor representatives nominated by the IAC; the latter would not have served on the Product Allocation Committee at the earlier hearing of the same case. Furthermore, they would act in an advisory capacity only. While, at the enquiry, the idea of an independent Chairman of the Appeal Tribunal was accepted, there were suggestions that representatives from the Examiner's office or the Res-

trictive Practices Commission should be present as observers at meetings of the Committee and the Tribunal and that the work of these bodies should be reviewed annually by the Commission. The IAC representatives had no objection to these suggestions. This would tend to follow the arrangement in the U.K. where, in a similar scheme upon which the present Irish scheme is based, representatives from the Department of Trade and Industry and the Office of Fair Trading attend meetings of the Allocation Committee as observers without actively participating in order to satisfy themselves that the Committee is acting in a proper and correct manner.

6.23 The scheme applies to all films supplied by members of the KRS whether they are represented on the IAC or IFRA. When the final decision on the percentage allocation is made, films are allocated in a specific fashion. It was originally intended that films would be numbered consecutively as they passed through the Censor's office. This was abandoned mainly because there were often delays between censorship and release date, and also because important re-issues would be excluded. Instead all Dublin first-run cinemas are listed, and as films are launched in these cinemas they are numbered consecutively. The films are then allocated in specified fashion according to number. Originally only sixteen cinemas were included, the seven Adelphi-Carlton cinemas, the six Odeon cinemas, and the Ambassador, Plaza and Regent. Since other cinemas had first-run films and re-issues, (the Academy, Astor, Cameo, Curzon and Film Centre) it was felt that they should be added to the end of the list to make a total of twenty-one cinemas in all.

6.24 The percentage allocation is worked as follows. If a cinema is allocated 50 per cent of the product, it receives the first film in every two. If the allocation is 25 per cent, it receives the first film in every four. If the allocation is 40 per cent, it gets the fourth and fifth film in every five, and if it is $33\frac{1}{3}$ per cent, it gets the third film in every three. An allocation of 15 per cent brings the sixth, thirteenth and twentieth film in every twenty, and so on.

6.25 According to representatives of the renters, the original Complaints Committee had no teeth, since it made recommendations which were not binding and which were not always fully observed. The members of the IAC now regard any recommendations from the Product Allocation Committee or the Appeal Tribunal as binding, subject to "normal commercial considerations prevailing in the film industry in each case". At the enquiry, objection was made to this condition on the grounds that it provided a loophole for the renters, but their representatives said that there would be no objection from them to its removal from the arrangement.

6.26 It was also stated that any film allocated could be refused if, for example, it were considered to be unsuitable or it could be exchanged with an opposition cinema. This had not been clear to

the proprietor of the Cameo and the Classic in Cork who understood that he had to play, under the scheme, all films allocated to him. The fact that he could refuse a film made the scheme acceptable to him.

6.27 The scheme further provided that any person intending to modernise or improve an existing cinema or build a new cinema might seek from the Committee an advance indication of the product which was likely to be available to that cinema. The appeal procedure was also available in these circumstances. There was no obligation upon any person to refer to the Committee.

6.28 The scheme, since its introduction, has been well received and a representative of the ICA said at the enquiry that they had been told by their country members that there had been a distinct improvement in the situation. In the case of Drogheda, the two Oscar cinemas there were allocated 40 per cent of the product, and the two Ward/Anderson cinemas were allocated 60 per cent, which the Committee felt was a fair allocation. Reasons were given in some detail to the Commission during the enquiry on the reasons for the difference between the two and it was stated that if the Oscar cinemas could provide justification for seeking an equal allocation at a future hearing a decision along these lines could be made. It is also of interest that in the case of Dundalk an allocation was made, which was subsequently made the subject of an appeal.

6.29 Witnesses on behalf of Ward/Anderson were the only witnesses who expressed opposition to the scheme of allocation. They said that they had asked the KRS to set up such a scheme ten years ago, when it was first introduced in the U.K. and when it could have prevented closures here but this was not acceptable to the KRS at that stage. They pointed out that allocation could only work if all cinemas were of a reasonably comparable standard. In addition, they said that if the allocation system were equitable and good, as the KRS argued, then it should be applied everywhere, including Dublin city centre, and not just in the country outside Dublin. They suggested instead a joint industry committee to consider all the problems of the trade including, in addition to allocation, such matters as the effects of television on the cinema. The KRS representatives on the other hand, said that the most urgent problem was one of allocation, and this would not be solved if the same Committee spent time discussing such matters as VAT, publicity, censorship, and television.

6.30 An objection raised by certain witnesses to the scheme concerned the question of delays. In the case of the Magnet in Dundalk, the original application was presented early in February and the decision was not taken until the end of April. The subsequent appeal was not dealt with until mid-June. The allocation commenced only after the decision or the appeal and its effect was

not retrospective. In addition, a second application or a counter appeal, could not be made for a further six months. The IAC representatives said that they were conscious of the delays but pointed out that the Magnet case was the first of its kind and they lacked experience; they were anxious to ensure that the system would be seen to be operating efficiently and quickly.

6.31 It was suggested by some witnesses that the allocation scheme should be extended to cover second runs, as there was presently no guarantee that second-run films would be made available. The IAC representative said that the scheme was envisaged as being confined to first-run films; in their opinion it would be next to impossible to establish a scheme of allocation for second-run films.

6.32 In relation to the operation of the scheme there was some concern expressed by the renters about possible damage to films because of bad projection equipment or inexperienced staff. It was generally agreed at the enquiry that all cinemas in provincial areas should be entitled to an allocation but that some time limit should be set, possibly twelve months, during which time the exhibitor would have to show his interest in the cinema trade by making positive improvements. With better product, there should be money available for the improvement of the cinema. If this were not done, then the allocation could be withdrawn, to protect both the distributors and the trade as a whole.

6.33 The question that was raised most frequently by the witnesses at the enquiry was that of the permanence of the arrangements. It was stated that there was really nothing to ensure that the allocation system would remain in being, and that it might disappear overnight. It was suggested that it should be enforced by legislation. The reaction of the IAC representatives was that because their members were totally committed to the scheme, as were the KRS in London, (which had not been the case with the Complaints Committee), there was nothing more needed to ensure that it continued in effective operation.

The Proposals of the Examiner

6.34 The Examiner received the KRS proposals in December, 1976. He expressed his dissatisfaction with them in principle. He informed the KRS that the proposals for solving the problem of fair distribution of cinema films went, in his opinion, directly contrary to the principles upon which the Restrictive Practices Act of 1972 was based. In his view, the onus was on the renter to adopt a fair system and there should be no question of the renters' actions depending on the grace and favour of people operating a chain of cinemas; each renter should have his own set of terms and conditions of supply. He therefore put forward to the KRS his own proposals for the distribution of cinema films. These proposals and some comments by the Examiner, which are given on pages 63 and 64 of his report, are as follows:

“ 1. Each cinema in each county to have, in turn, first choice from lists of coming films.

2. Maximum first run for every film of one month when the film would go to other cinemas in the county for maximum periods of a fortnight until all cinemas had shown the film when the same pattern of distribution would begin again.

3. New cinemas to be admitted to the system as they apply.

4. Conditions could be laid down as to the standards to be observed by cinema operators in regard to furnishing, facilities and equipment, provided that these conditions are reasonable.

Comments :

It is felt that the adoption of the county as a unit of distribution and the extension of first runs to every cinema in the county would not adversely affect the box-office. The contrary might be the case. If a cinema outside a city centre cannot draw crowds in sufficient numbers it would be in the interest of the operator to let it go to another cinema and the drawing power of centre city cinemas should still ensure them long runs.

It is understood that cinema attendances have fallen over recent years and it may be that there are still too many cinemas but the factor to decide which cinemas thrive and which close should be competition and not the decisions of cartels.

In regard to reasonable standards, (mentioned at paragraph 4) it seems relevant to remark that the customers have an influence—they may and do stay away if the cinema is not attractive and this factor, in the context of the proposals, would redound to the advantage of other, more up-to-date, cinemas. There is also the consideration that independent cinema operators who have been denied profitable films over the years should be given time to make improvements and also given the confidence to expect that a fair system would operate.”

6.35 In regard to the use of the county as the appropriate area, the Examiner, in his closing statement at the enquiry, stated that he realised that a wider area might be necessary in some cases because a number of counties had only one or two cinemas and such counties might have to be combined. He said that conditions attached to the supply of films should be minimal and related to standards of equipment and the employment of skilled personnel. He also stated in his closing statement that his proposals did not envisage any change in the place where films were given their first run in this country.

6.36 These proposals were not supported by any sector of the trade.

As far as the exhibitors were concerned, the view appeared to be that they were not workable in their present form, although a few witnesses thought they might form a starting point for discussions. Other exhibitors, who it might also be thought would benefit from the proposals rejected them. One said that on a county basis the proposal was too extensive; another was opposed to it on the grounds that he would not wish to play a film in his cinema before it played in the large centre. A representative of the Dublin suburban cinemas said that the proposals were completely unrelated to the accepted standards of the trade.

6.37 The renters were unanimous in their strong condemnation of the proposals, considering them to be unworkable and they believed their effect would be disastrous. If they were implemented, they stated, they would lead to the closure of many cinemas, particularly those in which investment had been greatest. They stated that to direct by law that films should be shown in cinemas in an unprofitable way would only hasten the demise of the cinema trade. They said that throughout the world the pattern was the same, that the film was released in the key centre first. Since the number of prints was limited, the smaller cinemas with low receipts always showed the film later than the other cinemas. The introduction of a system such as that proposed by the Examiner, it was stated, might bring about a situation where it was not worthwhile for any films to be imported into Ireland.

6.38 The renters furthermore said that they had to use considerable responsibility and expertise in deciding where to place their films to maximum advantage, and this could not be done simply by pulling numbers out of a hat, as would occur under the Examiner's proposals. One renter stated that the proposals were related strictly to the box-office successes, and that they took no account of the less successful films, which were in the vast majority, and that the scheme would seriously undermine the distribution system. The orderly circulation of prints would be seriously disturbed. Finally, it was stated that if for example a major film had to be launched in a small town in Cork, the exhibitor would be horrified. A proprietor might invest money to improve his small cinema if he were assured of first-run films, but in County Cork he would only get one first-run out of every twenty or so and the operation would not be economic or viable.

Dublin City Centre

6.39 Neither the suburban thirteenth week system nor the allocation scheme of the IAC were applied by the renters to the independent Dublin city centre cinemas nor to the Ward/Anderson cinemas there. The IAC representatives had not produced any solution for these cinemas even though the renters realised that difficulties were being experienced. The Examiner's proposals were not favoured either by the renters, the large cinema groups, or the independent exhibitors.

6.40 In so far as the Examiner's proposals entailed a system of allocation for the city centre they were rejected by all the IAC renters. It was stated that there was not sufficient product to make allocation all round, to give everyone a fair share, and for all to make a profit; a fixed allocation within the Dublin area was stated to be completely impracticable, and would produce insurmountable difficulties. Allocation was done in no other capital city. Just because an allocation system worked well in one area which had only 2 or 3 cinemas, it was not logical to suggest that it was the appropriate remedy for the quite different problem which existed in Dublin. A representative of Ward/Anderson suggested that there should be three circuits in Dublin—Adelphi-Carlton with seven screens, Odeon with six screens, and theirs with five screens. Each should be allowed first choice in turn from forthcoming groups of three films, putting the biggest films in their biggest theatre. He suggested also that there should be concurrencies between the smaller circuit cinemas and the independent cinemas, and also when the major pictures moved over into smaller cinemas (see para. 6.44). A representative of a major cinema said that an allocation system would eliminate any expertise in the selection of films, since films would be allocated automatically and this would amount to a distortion of competition. It would eliminate distribution on the basis of suitability of particular films for particular cinemas as regards location and size. It would remove the incentive to keep costs competitive, since there would be no point in reducing costs so as to pay higher rentals and to trade more successfully. One of the prime purposes of the conversion of their cinemas would be set at nought, and there would be no reward for investment or the improvement of a cinema.

6.41 Representatives of the independent cinemas stated that it would be unrealistic to adopt an allocation or a rota system since in those circumstances they would have to take whatever emerged, thus removing all expertise from themselves and the renters. During the course of the enquiry some of the independent cinema representatives developed a proposal under which they would be granted concurrencies with major group cinemas; this eventually emerged as a strongly held view.* Under this system films would open on the same day in two cinemas, one major and one independent situated some distance apart. It was suggested that cinemas be specifically paired for this arrangement, the Plaza with the Savoy, for example, and the Curzon with the Carlton. The representatives of the Curzon said that it would not be good policy for the Curzon to play concurrently with the Adelphi, which was in the same street.

6.42 The representatives of the independent cinemas stated that the major film needed a large cinema for release but that if it played concurrently with a smaller cinema this would not affect its box-office

*This view was supported at the enquiry by the Irish Cinemas Association which had recently accepted the Dublin City centre independents as members.

potential in the larger cinema but both cinemas would do well because they could attract audiences from either the north side or the south side if paired in the way suggested. They maintained that the audiences were sufficient for a concurrency in Dublin and that there had been concurrencies in the past between the Savoy and the Odeon or Metropole, between the Adelphi and the Carlton, within some of the complexes and between two or three of the independent cinemas. Films would not necessarily run for half the time or for less than they would normally have done. Indeed the renters would receive their money more quickly. They accepted that there would be some films for which concurrencies would not be suitable and admitted that poor films would tend to do worse in an independent cinema than in one of the major cinemas. There were many films, however, which would do well in smaller cinemas even on the basis of a concurrency. All centre city cinemas should participate in concurrencies.

6.43 The representatives stated that there had to be some flexibility in the system just as there was in the allocation scheme. They would expect some freedom of choice, with the possibility of taking off a film while it was still showing in the major cinema, or of running it longer on occasion. They said that closures would be inevitable unless there were concurrencies, and that there should be legislation on these lines exclusively for Dublin city centre. At the very least, a scheme of concurrencies should be given a 12 month's trial, to prove whether it worked and was advantageous or not, after which legislation could be enacted. Finally, they said that while a thirteenth week concurrency with the suburban cinemas, or on the eleventh week with the Green cinema would help them a little, it would in no way solve their problems.

6.44 Ward/Anderson also favoured the idea of concurrencies, with some variations on the suggestions made by the independent proprietors. All centre city cinemas should be regarded as first run cinemas. Concurrencies should not apply to major films, nor to the larger cinemas. The Savoy 1 and 2, the Carlton 1 and 2, the Adelphi 1 and 2, and the Ambassador should all keep their films to themselves, as they needed the best possible films to fill their cinemas. Concurrencies should be applied to Savoy 3, Odeon 1 and 2, Carlton 3, Adelphi 3 and 4, the Green 1 and 2, the Curzon, the Astor, the Regent and the Academy (although the two latter could show some exclusive first run films). There should also be a concurrency when a film moved over from a large cinema to a smaller one. It was argued that this procedure would not necessarily employ more films than at present, although the lesser films might have shorter runs. Better use would have to be made of the available films. In a concurrency, one cinema could charge prices higher than another, where amenities were superior. Flexibility should be limited to stop some cinemas unfairly choosing all the best films. Any cinema should be allowed to take off a film after the first week, and this could be to the advantage of the other cinema.

6.45 A representative of the IAC said that there was not one supply problem in respect of the five independent cinemas, but there could be five separate problems. The circumstances of each cinema would have to be looked at individually to find out whether a problem existed, and separate solutions, which they had not found at the moment, might be required for each of these cinemas. The Ambassador was regarded as a first run cinema by the renters, although its large size limited the number of films available to it and it was said that the Regent was suitable for a particular type of film. The Academy was felt to be in a bad location, away from the city centre. The Green cinema was not regarded as a first run cinema by the renters.

6.46 There was general opposition from the renters to the idea of "day and date"* concurrencies. A representative of the IAC said that a solution like concurrency would create another problem by having a very detrimental effect on some of the other cinemas. It was tantamount to creating the obsolete super-cinema all over again—two different entrances in two different places in a fairly small area. The running time of films would be shortened. The second cinema might be switching films frequently and filling the cinema all the time, but continuously harming the other cinemas. It was stated that one concurrency had been tried in the Adelphi, and one between the Carlton and the Adelphi 1; the arrangement had not given satisfaction, and it had not been repeated. A representative of this group said that a concurrency would only be suitable for films of popular appeal, which were in the minority. They agreed that the old system of large cinemas would be restored, and there would be the added expense of two locations. Since the length of playing times would be curtailed substantially more product would be required in a dwindling market. Renters would only be participating at the lower percentages of break scales, and they would not get to the higher levels. The proper place to play certain films would be eliminated, and the free competitive situation would be destroyed.

6.47 A representative of Adelphi-Carlton said that to make moveovers concurrent with another cinema would defeat the original purpose of the moveover, since the combined capacity of the two cinemas might be greater than the cinema in which it was first shown. The longer a concurrency was deferred, however, for example, to the 11th or 13th week, the less damage it would do to them. There was general rejection of any "highest bidder" system for films in Dublin.

6.48 The overall opinion of the renters and the major groups was that Dublin was over-seated, though it might not have too many

*"Day and date" is the term used in the trade for situations where a film opens on the same day in two cinemas.

screens. It was also strongly stressed that any change in the present arrangements had to be very carefully considered, in order not to make the ultimate situation worse than the original situation.

6.49 In his concluding statement at the enquiry, while admitting that the schemes of the IAC had brought about significant improvements, the Examiner continued to insist that the arrangements were not adequate to deal with the situation. There was no proposal at all to solve the difficulty of the Dublin city centre cinemas. The allocation scheme outside Dublin was patently a theoretical document, which like its predecessor, the Complaints Committee, would not even be availed of by most of the people in the trade who needed a fair deal. He said that it was essentially objectionable because it purported to turn upside-down a commonly accepted principle of competition policy that the onus was on a supplier to be fair in the treatment of those he supplied. What was needed was a system of distribution based on objective criteria.

CHAPTER 7

CONCLUSIONS

7.1 The supply and distribution of films have a number of features which are rarely found in the supply and distribution of goods or in the provision of services. Unlike the units of a branded product where uniform quality and design are expected each film is a separate entity with its own distinctive merits or demerits, and its own potential for attracting audiences. To some extent it might be said that each film presents a separate marketing requirement. This situation has led to the adoption of certain procedures in film distribution. Experience and judgment on the part of the distributor are required in assessing the potential of a particular film, and until it is presented in a cinema to the public it is difficult to arrive at a firm conclusion on its earning capacity. The practice has developed of first showing a film in a leading cinema in a capital city where it benefits from the association of widespread publicity with a cinema that has established prestige as a first-run house. In this way, it is sought to maximise the film's potential attraction to the public and to the trade, and its performance in this setting may have considerable influence on its subsequent career. This procedure has led to a hierarchical system of distribution in the U.K. and in certain other countries under which films launched in the capital subsequently are supplied to first-run houses in other large centres followed by distribution to second-run houses and to a similar pattern of distribution in smaller centres, a procedure which has, in broad outline, tended to persist over a period of changing fortunes in the cinema business. In the Republic a similar structure of distribution commencing with a first showing in a cinema in the centre of Dublin has been described in Chapter 3. While the preferences of the Irish cinema-going public may, and sometimes do, differ from those of audiences in the U.K., and the U.S.A., the prior showing of films, and their critical appraisal, in these countries should provide distributors and exhibitors in Ireland with some guidance on their qualities and drawing powers.

7.2 Another factor influencing the method of distribution is the number of copies of a particular film provided for showing in this market (see para 5.5). In view of the cost of copies it would not be practicable to supply more than a limited number of copies. For a limited number of films the average number of copies can be considerably exceeded for what is termed "a mass-release" (see para. 3.3). We express the view below that in many other cases, it might be feasible to increase the number of copies available, thereby

speeding up distribution. However, even allowing for some improvement in the supply of copies, the relatively small number available for the average film seems to imply some selection of outlets in a sequence related to their earning capacity, as they clearly vary considerably in this respect, if the underlying object, the maximisation of earnings from a film within a specified area, is to be achieved.

7.3 In the course of the enquiry frequent reference was made to what was regarded by distributors as the primary object of efficient distribution—to maximise the return from films for the benefit of the producer, and also, of course, of the distributor. This object would not preclude adjusting terms to help an exhibitor to avoid or to minimise losses on particular films, nor would it exclude the distributor, in his own interest, fostering an exhibitor who was prepared to take films of indifferent quality as well as good films from him. Procedures have developed in the U.K. and in this country which provide for terms of rental that are intended to take some account of the financial circumstances of the cinema concerned (see paras. 4.4 to 4.18). In particular break terms and nut terms are the outcome of negotiation between the exhibitor and his principal supplier. The exhibition of films by a particular cinema has traditionally been protected by a system of bars (see paras. 3.34 to 3.36), and more recently by the operation in practice of the hierarchical system of distribution. We consider below whether, in our view, there has been any abuse of dominant positions in the negotiation of rental arrangements.

7.4 In this country as in Western Europe generally in recent decades a considerable decline in cinema attendances took place. Generally the sharpness of the decline was associated with the advent of television. The consequent attempt by the industry to adjust to this situation led to the closure of many cinemas, both large and small, and apparently irrespective of whether or not they formed part of cinema circuits. As time went on the larger cinemas were adapted to suit the pattern of the changing demand. The decline also resulted in fewer films suitable for general cinema exhibition being produced. This development gave rise to what the trade terms "a shortage of product". The problem was rendered more acute by the form taken by the adaptation of cinemas; the twinning and tripling of many remaining large cinemas in central locations created a number of screens serving smaller auditoriums, but requiring a supply of product at times not very different from what it had been before the number of large cinemas had declined. Moreover popular films tended to run for longer periods in the smaller outlets thus putting back the time of exhibition in other centres and particularly in the Dublin suburbs.

7.5 The shortage of product serving an undiminished or larger number of screens in Dublin city centre exacerbated problems which had already emerged. What had once been a buyers' market in

which active salesmen from the distributors visited the cinemas around the country seeking orders, changed to a situation where pressure from exhibitors was such that some distributors could reduce, if not almost abandon, any positive selling efforts. Shortage of supply had created a strong sellers' market. In these circumstances buyers with offices in Dublin, who also had a number of advantages over their competitors, tended to be in a strong bargaining position. The position was particularly acute in Dublin city centre where the number of screens for which first-run product was claimed tended to outstrip the available supply of films, particularly those that were popular. Cinemas in the suburbs of Dublin frequently obtained films long after they had first been shown in the city centre, and usually subsequent to their exhibition in the principal centres outside Dublin, and when the initial impetus given by their exhibition in the city centre had progressively diminished. The position outside Dublin was increasingly affected by the growth of the circuit of cinemas controlled by Ward/Anderson, who were in a position to exercise substantial bargaining power, and offered advantages to the distributor in the quality of cinemas in the circuit, and the expertise displayed by management. The strength of this circuit, however, created problems for competing independent exhibitors in some centres who complained of inequity in the distribution of product, or of inability to get adequate product of good quality. Some of the independent operators sold their cinemas to Ward/Anderson thus enhancing the dominant position of the latter particularly in the major provincial centres. Our principal tasks are firstly to decide whether there exist or existed agreements, express or implied, between distributors and dominant exhibitors which unfairly or contrary to the common good, limited or restricted competition, and secondly whether there was an abuse of dominant positions or whether positions of dominance tended to operate unfairly to the detriment of independent operators.

7.6 Complaints to the Fair Trade Commission of unfairness in the distribution of films were not of any significance until about 1970. By that time the number of cinemas throughout the country had already declined substantially which would lead to the conclusion that these closures reflected a decline in demand rather than anything else. We believe that the cinema Trade Complaints Committee, established as a result of early complaints, tried to resolve the difficulties complained about, but with limited success. It is perhaps symptomatic of the trade's lack of confidence in the Committee that apparently it did not meet for several years, presumably because no complaints were submitted to it. That such a Committee was accepted by the different interests in the trade is however an indication that the existence of an effective instrument to resolve complaints was justifiable by reference to inequities that might arise in the distribution of films. It was claimed that the Committee was relatively ineffective because it lacked any power to enforce its decisions. Despite the experience of this Committee, we were assured in the

course of the enquiry that distributors have undertaken to implement the recommendations of the Product Allocation Committee which was established by the Kinematograph Renters Society and its Irish Advisory Committee. Indeed we were told that the latter Committee has already made recommendations which have been adopted. Subject to our observations below we are inclined to accept this assurance. It is, however, notable that the active support and sponsorship of the KRS should make so much difference to the assumed effectiveness of this Committee in contrast with the ineffectiveness of the earlier Complaints Committee. The KRS appear to have been reluctant to use its influence in this area. There can be no doubt that the pressure exerted by the Examiner was effective in inducing the KRS to introduce the present Allocation of Product Scheme.

7.7 The Examiner in his report concluded that "agreements between film renters on the one hand and Adelphi-Carlton Ltd., Odeon (Ireland) Ltd. and the Green Group on the other, have conferred monopolies on these groups of exhibitors" (see para. 2.11). Agreements in this context were later defined by the Examiner to include tacit agreements or understandings as well as written agreements. "As a result", he continued, "independent film exhibitors outside of these groups have been the victims of unfair discrimination which has made it difficult and, in some cases, impossible for them to compete."

7.8 The issue to which we must address ourselves is whether the evidence as a whole that emerged from the enquiry supports the conclusion reached by the Examiner or whether the alternative interpretations of the evidence may not be more compelling. We feel that our understanding of the overall situation regarding rentals and the pattern of distribution throughout the country would have been more readily achieved if the selection of films in the Examiner's report had been more representative of the majority of films, and not largely confined to box-office successes. Representatives of all the parties named by the Examiner denied emphatically the existence of any agreements or understandings of a kind referred to by him. They claimed that the pattern of distribution of films reflected the requirements of efficient commercial practice and nothing else. In regard to Adelphi-Carlton and Odeon it was submitted that both companies had invested considerable capital sums to provide centre city cinemas of high quality, eminently suited to the launching of new films, ensuring a substantial financial return to the producer and renter, and lending prestige to films on their first run in this country from which they subsequently benefited. These exhibitors said that they did not feel themselves obliged to accept, nor did they accept, all of the films offered by a particular renter, and the renters, in their turn, stated that they did not consider themselves under an obligation to offer films to particular cinemas. The renters did feel a responsibility to seek the best return on each film and freely chose the distribution channels that appeared most likely to ensure this result. The diffi-

culties faced by independent exhibitors arose from other causes. These causes included an acute shortage of suitable films, and the decline in cinema audiences. The representative of Odeon in particular pointed out that they themselves had been forced to close several cinemas throughout the country because of falling attendances and still found it extremely difficult to maintain a sufficient flow of suitable films for those few cinemas that they have retained in operation.

7.9 Both Adelphi-Carlton Ltd., and Odeon (Ireland) Ltd. are subsidiaries of British Companies operating large circuits throughout the United Kingdom. In 1966 the Monopolies Commission in the U.K. reported on "the Supply of Films for Exhibition in Cinemas" (HC 206). The Commission observed that distributors' best customers are those who operate the biggest circuits, the two dominant circuits being Ranks and Associated British Picture Corporation Ltd. Release through one or the other circuit was generally regarded as being essential to the success of a film. The Commission concluded that the two circuits "so conduct their respective affairs as to restrict competition in connection with the supply of films in that for circuit deals each makes a practice of booking films mainly from certain distributors, and in general does not deal with distributors who supply the other" (para. 180). We regard it as significant that the practice of the Irish subsidiaries of the companies controlling the two main circuits in the U.K. is somewhat similar. It appeared that Adelphi-Carlton had their traditional sources of supply and Odeon had theirs and they preferred not to encroach on each others areas. While the distributors supplying each of the Irish companies may not have been necessarily the same as those supplying each of the parent companies, it is reasonable to assume that the Irish companies obtain some benefits from the considerable bargaining strength of their parent companies. The Monopolies Commission found it difficult to propose practicable remedies for what they regarded as excessive rigidities in the distribution of films. They suggested the possibility of competitive bidding for particular films by independent exhibitors against particular cinemas in a circuit (as contrasted with the terms for a circuit as a whole) as a means of increasing competition (para 254). It was appreciated that cinemas forming part of a circuit might well be in a position to outbid independents. A more serious criticism of this approach is that it could lead to a creaming off of good films, departing from the practice whereby an exhibitor undertook to take films of indifferent quality as well as good films.

7.10 We accept the statements of the witnesses for the Adelphi-Carlton and Odeon and for the renters that they are not parties to any binding agreements, either tacit or otherwise, which are designed to, or have the effect of, creating monopolies in Dublin city centre. We also accept that the managers or agents for the renters have some degree of freedom of action in relation to the distribution of individual films. Nevertheless we consider that

Adelphi-Carlton Ltd. and Odeon (Ireland) Ltd. enjoy dominant positions in the exhibition of first-run films in Dublin and that these positions are enhanced through advantages derived from the arrangements adopted by their parent companies in the U.K. We consider below whether it is desirable and, if so, to what extent it may be feasible, to introduce procedures which might moderate this dominance in favour of other cinemas in the city centre. Irrespective of the advantages they enjoy from their associations the cinemas operated by the two companies, located as they are, provide a level of facilities which, in any event, would make them a prime attraction to renters.

7.11 We did not find any evidence for the contention that an agreement of any kind existed between the renters and Ward/Anderson conferring a monopoly on the cinema circuit operated by the latter. In our view the growth of the Ward/Anderson circuit could reasonably be attributed to other factors. Over a period of declining attendances when most cinemas were under pressure and many closed, Ward/Anderson invested in the modernisation of their cinemas to make them more attractive to the public, and appear to have been diligent and skillful in management and in the exploitation of opportunities for extending their activities. According to their evidence, they were approached, in some cases, by proprietors to purchase their cinemas. Being in a position to negotiate for a growing number of cinemas from an office in Dublin, their bargaining strength has become substantial. In contrast some individual cinema operators, perhaps especially those with diverse business interests, appear to have been less professional in their performance. We are satisfied in present circumstances that a strong cinema circuit is to the advantage of the public, in ensuring investment in facilities, and in providing a degree of countervailing power to the renters in what has become a seller's market. The Ward/Anderson circuit has emerged as the only major cinema circuit in the country. It would clearly be desirable from the standpoint of enhanced competition to have more than one national circuit but there is some doubt whether in present market conditions demand would be sufficient to sustain a second circuit. In a number of major provincial centres the circuit has either an outright monopoly or is in a strong dominant position. In these circumstances we believe that there is a need for the existence of a procedure to ensure equity to independent cinemas in order to avoid possible abuses. It is, however, notable that although owning a number of cinemas in Dublin city centre, Ward/Anderson have not been in a position of dominance there.

7.12 The Examiner in his report concluded that "all film renters (and agents for such renters) should be required by legislation to adopt systems of distribution which are fair to all parties and which are based on objective criteria; to adopt terms and conditions which are reasonable; and to apply these terms and

conditions equitably to all exhibitors". He made his own proposals for distribution which are described in some detail in paras. 6.34 and 6.35. Essentially these were that each cinema, fulfilling certain minimum conditions in regard to facilities, within each county (or in some cases possibly a larger area) would have, in turn, first choice from lists of incoming films. As already noted, while a few thought that they might provide a starting point for discussion, none of the parties represented at the enquiry supported the proposals as being realistic. We agree generally with the views expressed by witnesses as set out in paras 6.36 to 6.38, as to why the proposals put forward by the Examiner were unworkable. In our view the Examiner's proposals would introduce too rigid a system of regulation into the distribution of films which would have the effect of restricting rather than enhancing competition. We conclude that they do not offer a practicable basis for a solution to the problems of distribution. Our conclusion relates to the circumstances of the trade, outlined in the opening paragraphs of this Chapter, which make film distribution in some important respects different from the distribution of other goods. The distinctive character of each film, the uncertainties surrounding its prospects, and the need for experience and flair in promotion and distribution make it, in our view, impractical to apply to it criteria that might be appropriate to the distribution of goods. While we are forced to reject the Examiner's contention that the system of distribution is inherently unfair and discriminatory we consider that in some respects a more equitable and speedy system of distribution could be achieved.

7.13 It is convenient to consider possible solutions to the various difficulties on an area basis as described in Chapter 6: provincial cities and towns, Dublin suburbs, and Dublin city centre. It should, however, be borne in mind that what happens in one area may, to a greater or lesser extent, impinge on the others.

Provincial Cities and Towns

7.14 We consider that the scheme adopted by the Irish Advisory Committee with the full support of the KRS offers reasonable prospects of meeting the requirements of this area subject to certain adjustments to the scheme. In fact certain amendments to the scheme suggested in the course of the enquiry were acceptable to representatives of the KRS. We believe that it should not be mandatory for a complaining exhibitor to engage in prior negotiations with his competitor; both would have a right to be heard by the Product Allocation Committee. It is also important that exhibitors should have appropriate participation as members of the Committee if they so wish. On the Appeal Tribunal the independent Chairman should be acceptable to both the renters and exhibitors represented on the Committee. One of the two other persons on the Tribunal should be a representative of the exhibitors acting in an advisory capacity. We consider that the Examiner's office should be invited

to send an observer to meetings of the Allocation Committee. Finally we note that the KRS on behalf of the renters have undertaken to accept the recommendations of the Allocation Committee and the Appeal Tribunal. In this regard we recommend, as appears to have been accepted, that the qualification "subject to normal commercial considerations" be deleted from the terms of the proposals.

Dublin Suburbs

7.15 We agree with the view expressed by some witnesses during the enquiry that the KRS scheme for the Dublin suburbs represents a considerable improvement in distribution arrangements for the cinemas concerned and we recommend that the scheme should continue in operation. While we appreciate the difficulties arising from the possible repercussions of change, particularly on city centre cinemas, we consider that the scheme should be kept under review with a view to minimising delays affecting Dublin suburbs.

Dublin City Centre

7.16 The arrangement adopted by the KRS for product allocation in provincial centres and for the improvement of distribution to suburban cinemas implies on acceptance of the need for them. It might be thought that the need for some form of intervention in Dublin city centre was also apparent. We recognise, however, that there are difficulties. We appreciate that the choice of a first-run house for a particular film is important for the distributor who might reasonably expect the widest discretion in his choice. This consideration, while undoubtedly valid, should not, in our view, be exaggerated in respect of films which have already been launched in London and possibly elsewhere. It also appears that there is over capacity in the city centre in relation to the availability of films of adequate quality. It may also be that cinemagoers are more reluctant than in the past to visit the city centre in the evening. There is in our opinion, a real danger that an effort to divide first runs in any arbitrary manner between all available city centre cinemas could have grave financial consequences for some existing cinemas. Moreover city centre cinemas differ from each other in location, size, and facilities, and some were established when the decline of cinema attendances was already far advanced and this development should have been present to the minds of the people concerned. It does, however, appear to us to be harsh that some of the city centre cinemas fare considerably worse than suburban cinemas in the matter of the timing of product supply. We must also have regard to the dominant positions of Adelphi-Carlton and Odeon and to the possibility of unfairness in supply stemming from this situation. We accordingly make the following recommendations:

1. Problems arising from distribution of films in Dublin city centre should also be referred to the Product Allocation Committee and to the Appeal Tribunal which have been established. However, the terms of reference of the Product Allocation Com-

mittee and the Appeal Tribunal for Dublin city centre must be directed not to systematic product allocation but rather to the resolution of disputes. The Committee should be ready to consider complaints from Dublin city centre operators relating to the first run of particular films, having regard to such matters as comparative terms of rental, location, facilities, and past experience. Regard might also be had to the financial impact of any proposals on the cinemas concerned. It would be essential that the Tribunal's Decisions should be accepted by the renters. The Appeal Tribunal should also deal with complaints relating to 'bars' and 'splits' in both city and provincial areas. While it is noted (para. 3.36) that the practices of barring and splits have to a great extent disappeared we feel that provision should be included for dealing with any complaints which may arise in relation to these matters.

2. Although we recognise the difficulties the IAC should encourage renters to promote experiments with concurrencies, particularly where there is a move-over, and should also accord independent city centre cinemas, second-run status at least on a par with the suburban cinemas, if so requested by the exhibitor concerned.

7.17 Two other matters require our consideration: the claim of the Examiner that rental terms were discriminatory, favouring in particular the Adelphi-Carlton, Odeon and Ward/Anderson cinemas, and the question of the supply of copies of films.

Discrimination in Rental Terms

It transpired in the course of the enquiry that some rental terms quoted by the Examiner in his report required considerable modification in the light of important factors which were not taken into account in his report. These are described in some detail in Chapter 4. They include particularly the important influence of break figures, the existence of special discounts for cinemas in small centres, and for parochial halls, and the importance of the size of financial returns in relation to costs notwithstanding apparent percentage rentals. The factors influencing rental terms are quite complex; whether they related to a first or subsequent run; whether the film is a major box-office attraction; and the location, facilities, and potentialities of the cinema concerned. It appeared that renters are also open to an appeal to moderate a rental if a film has proved to be a disappointing earner in a particular cinema. We ourselves in so far as we had evidence in the matter did not find that the terms of rental applied to different cinemas by various renters, while varying in different locations and situations, were unfairly discriminatory. Furthermore, our examination of the accounts of the principal cinema companies did not lend support to a conclusion that terms had been unfairly discriminatory. However, the systems themselves

lack transparency and could lend themselves to some abuse which would be difficult if not impossible to isolate.

Copies of Films

A number of witnesses suggested that the problems of distribution would be significantly eased if more copies of films were made available at appropriate times. It was claimed that new copies are expensive, and additional copies would need to be justified by results. Copies on loan, some renters said, might be in poor condition. On a few occasions for a film that was suitable for the purpose a mass-release in several cinemas at once was successfully achieved. We recommend that an examination should be undertaken by the IAC, in consultation with other distributors, of the possibility of increasing the number of copies of films available for distribution in this market. In our opinion even a moderate increase in the number of copies could have a significant influence in improving the speed and efficiency of distribution.

7.18 In his report the Examiner relates the past and prospective closure of cinemas to the prevailing methods of film distribution which, in his view, were inequitable. We incline to the view that irrespective of the system of distribution adopted, many cinemas would have closed in recent decades for other reasons. Of these reasons the most important has been the continuing decline in cinema attendances, referred to in para. 7.4 above, which has adversely affected cinemas of varying sizes in various locations. The position of the cinema industry as a whole has been rendered more difficult by the shortage of product mentioned in para. 7.5. The procedures adopted by the IAC for helping Dublin suburban cinemas, and for product allocation outside Dublin should ease the difficulties of some cinemas, but are unlikely to remove the underlying trends which have been in operation for some considerable time. Even if all the proposals of which we approve are vigorously put into operation the possibility of further cinema closures will remain unless public demand is at least stabilised. The proposals of the Examiner, in their present form, if implemented, would not, in our view, improve the situation.

7.19 The recommendations we make here are an extension and development of proposals made and already implemented by the trade itself for the purpose of self regulation. Subject to the adjustments we propose above we believe that the arrangements already adopted for Dublin suburban cinemas, and for centres outside Dublin are the most appropriate that could be devised in the circumstances of the trade. We have made some recommendations which we consider will contribute to easing the somewhat intractable problems in Dublin city centre. We were urged by some witnesses that we should recommend legislation as a basis for reform. From what we have learnt of the problems of film distribution in the course of the enquiry we are satisfied that a statutory order would be too rigid and inflexible

APPENDIX I

List of Submissions

- Kinematograph Renters Society Ltd.
- Independent Film Renters Association.
- Cinema International Corporation U.K.
- Columbia Warner Distributors Ltd.
- Rank Film Distributors Ltd.
- Scotia-Barber Film Distributors Ltd.
- Twentieth Century Fox Film Company Ltd.
- United Artists Corporation Ltd.
- Irish Cinemas Association.
- Society of Cinema Exhibitors.
- Adelphi-Carlton Ltd.
- Irish Cinemas Ltd. (Odeon Cinemas).
- Ward/Anderson.
- Mrs. Joan Roughneen, Astor Cinema, Dublin.
- M. Butler, Cameo Cinema, Dublin.
- M. Collins, Curzon Cinema, Dublin.
- T. A. Rooney, Plaza Cinema, Dublin.
- P. L. Flanagan, Pavilion Cinema, Skerries.
- S. Quinn, Classic and Cameo Cinemas, Cork City.
- Fr. P. F. Shields, Magnet Cinema, Dundalk.
- P. Gleeson, the Regal Cinema, Cappamore, County Limerick.
- D. Lass for Dublin University Film Society.
- P. Woodworth for Project Arts Centre.

APPENDIX 2

(i) *List of Witnesses*

Kinematograph Renters Society Ltd.	Morton, M. C.
Irish Advisory Committee K.R.S.	Sullivan, D. L.
Rank Film Distributors Ltd.	Sullivan, D. L.
Independent Film Renters Association	Anderson, K.
Society of Cinema Exhibitors	Anderson, K.
Ward/Anderson	Anderson, K. and Ward, L.
Cinema International Corporation U.K.	McGuinness, H.
Columbia Warner Distributors Ltd.	Crofton, G.
Twentieth Century Fox	Duffy, G.
United Artists Corporation	Band, H.
Irish Cinemas Association	Culliton, C.
Adelphi-Carlton Ltd.	Robinson, H.N. and O'Keeffe, D. P.
Irish Cinemas Ltd. (Odeon Cinemas)	Walls, J.
Astor Cinema/Curzon Cinema	Collins, M.
Plaza Cinema	Rooney, T.
Dublin Suburban Cinemas	Kelly, A.
Pavilion Cinema, Skerries	Flanagan, P. L.
Classic and Cameo Cinemas, Cork City	Quinn, S.
Magnet Cinema, Dundalk	Shields, Rev. P. F.
Oscar Cinemas, Drogheda	Cassidy, O.
Regal Cinema, Youghal	Hurst, R.
Elliman Circuit	Elliman, G.

(ii) *Appearances*

Kinematograph Renters Society Ltd.	Frank Murphy, S.C., instructed by Whitney, Moore & Keller, Solicitors.
Adelphi-Carlton	Robert Barr, S.C., instructed by T. P. Robinson & Co. Solicitors,
Odeon (Ireland) Ltd.	John Cooke, Barrister-at- Law, instructed by A. & L. Goodbody, Solicitors.
Green Group Ltd.	Kieran Foley, Barrister-at- Law, instructed by Anderson & Co., Solicitors.
Ward/Anderson	Peter Sutherland, Barrister- at-Law, instructed by J. G. O'Connor & Co., Solicitors.

APPENDIX 3

TERMS OF REFERENCE

ALLOCATION OF PRODUCT

IRISH PROVINCIAL CINEMAS

HEADNOTE

A Trade Disputes Committee and an Appeal Tribunal for the Hearing of applications for an Allocation of Product has been established by the KRS—Irish Advisory Committee (IAC). The purpose of this document is to record the Terms of Reference under the Trade Disputes Committee and Appeal Tribunal operation in Éire.

SPECIAL NOTE

(a) It has been accepted by individual KRS members, in whom the final decision to implement an allocation of product will rest, that they will co-operate to the full in implementing the decision of the Product Allocation Committee and the Appeal Tribunal, subject to their right to take into account normal commercial considerations prevailing in the film industry in each individual case.

(b) It is emphasised that any exhibitor wishing to modernise and improve his cinema or any person intending to build a new cinema is at liberty to do so without reference to the Product Allocation Committee.

(c) It is the desire that applications be dealt with by the IAC as speedily as possible.

THE TERMS OF REFERENCE ARE:—

1. To deal with applications within the following categories:—

(a) Applications for an allocation of product by:—

Category A: An Exhibitor claiming that he is unjustifiably deprived and should have an allocation of product.

Category B: An Exhibitor claiming that, having materially modernised and improved his cinema, he is unjustifiably deprived and should have an allocation of product.

(b) Applications:—

Category C: A person intending, but not within twelve months, to modernise and improve an existing cinema or to build a new cinema who seeks for an advance indication of the product which is likely to be available to that cinema.

2. To have regard to:—

(a) The public interest.

(b) The need to encourage the modernisation and improvement of existing cinemas and the building of new cinemas.

(c) The situation of the cinemas.

(d) The bona fides of the applicant.

(e) All other relevant factors including the economic effects on other cinemas.

3. If satisfied that the applicant is or would be unjustifiably deprived of product to give a decision:

(i) In cases within Category A or Category B in terms of an allocation of product.

(ii) In cases within Category C in terms of an indication of product conditional upon the proposed modernisation and improvement or the building being commenced within twelve months from the date that the application was lodged with the Secretariat or within such other period as the Committee or Tribunal may allow.

Every allocation of product shall be expressed in terms of a percentage allocation of films selected in the manner approved by the Signatories.

4. To convey each decision to IAC for implementation.

5. The procedure and rules for hearing and settlement of disputes over allocation of product shall be as set out in the annexe to these Terms of Reference.

PROCEDURE AND RULES FOR HEARING AND
SETTLEMENT OF DISPUTES OVER THE
ALLOCATION OF PRODUCT

1. The following words and phrases shall have the meanings set against them :—

- (a) "Applicant" means the exhibitor or other person who initiates an application to the Product Allocation Committee.
- (b) "Respondent(s)" means the exhibitor(s) named in the Applicant's application or named by any Respondent named by the Applicant as being the exhibitor(s) who will or may be affected by an allocation of product in Categories A or B who may be affected by an indication in Category C, and any other exhibitor who notifies the Secretariat that he will or may be affected by the application or in the case of an application for the hearing.
- (c) "The parties" means the Applicant and the Respondent(s).
- (d) "The Signatories" means the organisations referred to in the headnote to this document or their successors.
- (e) "Indication" means an indication given by the Product Allocation Committee or the Appeal Tribunal in cases within Category C.
- (f) "Hearing" means the meeting of the Product Allocation Committee at which the application is considered.

2. (a) The Product Allocation Committee shall consist of three distributor representatives, which shall be nominated by the IAC. One of the distributor representatives shall act as Chairman of the Committee.

(b) IAC shall act as Secretariat for the hearing and settlement of disputes over the allocation of product.

3. An exhibitor or other person intending to make an application in categories A, B or C shall first get in touch with such other exhibitors as may be affected by his application and shall endeavour to agree with them a basis on which the available product should be allocated. If agreement is reached between the intending applicant and all other exhibitors as may be affected, the agreement may be recorded with the Secretariat as if it were a decision of the Product Allocation Committee and referred by the Secretariat to the individual distributors concerned for approval.

4. (a) If agreement and approval are not obtained under Rule 3 the Applicant may initiate a reference to the Product Allocation Committee by completing and lodging with the Secretariat an application in the form prescribed by the Secretariat. The Applicant shall state in his application the names of such other exhibitors (Respondents) who will or may be affected by the application, together with copies of any accompanying documents.
- (b) At the same time as he lodges the application with the Secretariat, the Applicant shall send to the Secretariat for each Respondent named by him, a copy of the application.
- (c) If a Respondent shall name as Respondent another exhibitor who has not previously been so named and such exhibitor agrees to be a Respondent, the Secretariat shall send to each such new Respondent a copy of the application and of the questionnaire(s) as answered by the other Respondent(s) and copies of any accompanying documents together with a sufficient number of questionnaires to enable such Respondent to comply with sub-paragraph (d) below.
- (d) The Respondent(s) shall within fourteen days of receipt of the questionnaire answer and lodge with the Secretariat together with one copy for the Applicant and one for each other Respondent (if any) together with in each case copy of any accompanying documents. When all questionnaires are received, or the fourteen days elapsed, the Secretariat will circulate copies of the questionnaires to all parties concerned.
- (e) The Product Allocation Committee may consider and determine any reference notwithstanding that one or more of the Respondents has failed to return an answered questionnaire or to deliver copies thereof within the time allowed, or fail to attend before the Committee.
- (f) Unless all the parties agree that a reference be determined solely upon the written answers of the parties, each reference shall be determined by the Committee after a hearing of oral evidence.
5. (a) Following a decision in Category C, if for reasons beyond the Applicant's control or for such other sufficient reason the modernisation and improvement or building has not been completed or is not likely to be completed within the time allowed by the Committee or Tribunal, the Applicant may apply to the Product Allocation Committee for an extension of time and the Product Allocation Committee

shall have power to grant such extension of time as it thinks fit.

(b) Unless otherwise ordered by the Committee or Tribunal an architect's certificate shall be sufficient evidence that the work concerned has been completed.

(c) Following an indication within Category C, the Applicant will be required to make an application within Categories A or B in order to obtain an allocation of product. Any indication given by the Tribunal or Committee under Category C shall lapse if the applicant shall fail to complete the modernisation and improvement of the building within 12 months from the date that the indication was given.

6. Every decision or indication to be given by the Committee shall require to be supported by two affirmative votes; failing a decision or indication any party concerned shall have the right to refer the matter to the Appeal Tribunal. The Chairman of the Committee shall have no casting vote.

7. Any party may appeal to the Appeal Tribunal against any decision or indication or other ruling given or made by the Product Allocation Committee under paragraph 3 of the Terms of Reference or under Rules 4, 5 or 11.

8. Any appellant under rule 7 or any applicant referring a matter under rule 6 shall send to the Secretariat and to all other parties, written notice of his intention to refer or appeal (as the case may be) before the expiry of fourteen days following the day on which the Trade Disputes Committee gave or notified its decision or indication or stated that it had been unable to reach agreement by the required majority.

9. (a) The Appeal Tribunal shall consist of an Independent Chairman sitting with two distributor representatives who shall not have served on the Product Allocation Committee at the hearing from which the Appeal is being made. The two distributor representatives shall be nominated by IAC.

(b) The Independent Chairman shall be appointed by the IAC.

(c) The representatives sitting with the Independent Chairman on the Appeal Tribunal shall act purely in an advisory capacity.

10. (a) On an appeal or a reference under rules 6 or 7 the Appeal Tribunal shall give fresh consideration to all the facts and

4. Other issues. The parties and their representatives may attend and give oral evidence and make oral representations.

(b) The decision of the independent Chairman shall be final.

11. No fresh application to the Product Allocation Committee in respect of the same location may be made before the expiration of six months from the date of the decision or indication by the Committee or the Appeal Tribunal (as the case may be) and where the dispute has been the subject of an appeal under rule 7 no fresh application may be entertained unless the Product Allocation Committee is first satisfied that a material change of circumstances has occurred.

12. In nominating representatives under rules 2 and 9, IAC shall exclude any person who is directly connected with any of the parties.

13. The Secretary of the Irish Cinema Association (ICA) (if one of the parties) the Secretary of the Society of Cinema Exhibitors (SCE) (if a member of the SCE is one of the parties) and the Secretary of the IAC may attend as observer at all meetings of the Product Allocation Committee or the Appeal Tribunal.

14. The Secretariat shall keep records of all decisions and indications of the Product allocation Committee and of the Appeal Tribunal.

15. The IAC shall be responsible for the expenses of the Product Allocation Committee, the Appeal Tribunal and the Secretariat.

Name of Exhibitor	Address	Circle	Seating	Admission	Capacity
			Price	Value	

TRADE DISPUTES COMMITTEE

Questionnaire to be completed by the RESPONDENT

1. Application for allocation of product under Category

Delete where not applicable—See
Terms of Reference for Categories

A	B	C
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2. Applicant

Cinema
Address
Name of Exhibitor

3. Cinema from whom allocation is sought

Cinema
Address
Name of Exhibitor

4. Other Cinemas likely to be affected

Cinema	Number of days per week	Weekdays	Sundays	Renovations	Improvement	Any other information

Details of Applicant's Cinema

5. Seating and Admission Prices

	Seating	Admission Price	Capacity Value
Circle			
Stalls			

6. Hours of Screening

Number of days per week	Weekdays	Sundays

7. Use of Cinema on Non-Screening days (if any)

--

8. Weekly Booking Policy

Number of days	Days of the Week

9. Present position as to booking (when are films available)

10. Product available

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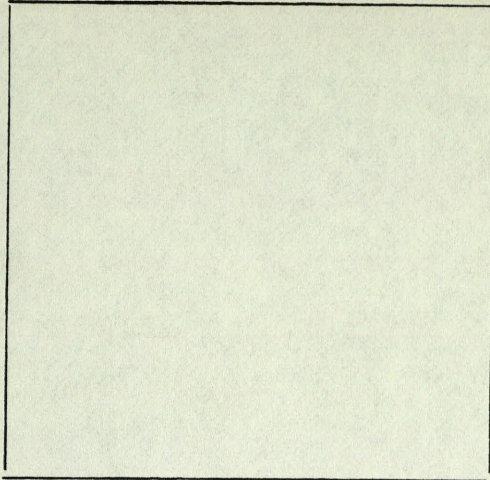
**11. Particulars of
Cinema**

Equipment

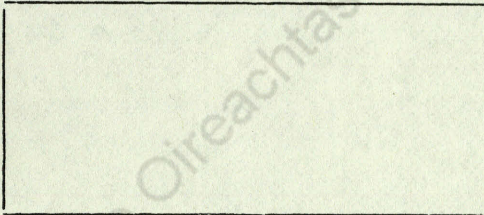
Renovations

Improvement

Any other information



**2. Result of direct
approach between
exhibitors for an
agreed allocation,
prior to this
application.**



Houses of the Oireachtas

5. Hours of Screening	Number of days per week	Particulars of Cinema
		Equipment
		Renovations
		Improvement
		Any other information
7. Use of Cinema on Non-Screening days (if any)		

8. Weekly Booking Policy	Number of days	Result of direct approach between exhibitors for an agreed allocation prior to this application
9. Present position as to booking (when are films available)		

10. Product available

