
STATUTORY INSTRUMENTS

1989 No. 271

MONOPOLIES AND MERGERS

The Films (Exclusivity Agreements) Order 1989

Made - - - - 28th February 1989
Laid before Parliament 7th March 1989
Coming into force - - 4th April 1989

Whereas the Secretary of State, in accordance with section 91(2) of the Fair Trading Act 1973⁽¹⁾, published on 19 August 1988 a notice stating his intention to make this Order, indicating the nature of the provisions to be embodied in it and stating that any person whose interests were likely to be affected by it and who was desirous of making representations in respect of it should do so in writing before 30 September 1988;

And whereas the Secretary of State has considered the representations made to him in accordance with that notice;

Now, therefore, the Secretary of State, being the appropriate Minister within the meaning of section 56 of the said Act, in exercise of the powers conferred by sections 56(2) and 90(2) and (4) of, and paragraphs 1, 2 and 4 of Schedule 8 to, the said Act and for the purpose of remedying or preventing adverse effects specified in a report of the Monopolies and Mergers Commission entitled "A Report on the Supply of Films for Exhibition in Cinemas"⁽²⁾, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Films (Exclusivity Agreements) Order 1989 and shall come into force on 4th April 1989.

Definitions

2. In this Order—

“cinema” means any premises in Great Britain which are used for the exhibition of films and which require a licence or consent for that purpose under section 1 or 2 of the Cinemas Act 1985⁽³⁾;

(1) 1973 c. 41.
(2) Cmnd. 8858.
(3) 1985 c. 13.

“distributor” means a person carrying on the business of supplying films to exhibitors for exhibition;

“exhibition” means exhibition to the public;

“exhibitor” means a person carrying on the business of exhibiting films;

“film” means any record, however made, capable of being used as a means of showing a sequence of visual images as a moving picture;

“terms about exclusivity” means terms restricting a distributor from authorising the exhibition of a film at a cinema.

3.—(1) Subject to paragraphs (3) and (4) of this article, it shall be unlawful for an exhibitor or a distributor to make or carry out any agreement relating to the supply of any film for exhibition at a cinema if the agreement contains or provides for terms about exclusivity applied or to be applied to more than one film.

(2) Paragraph (1) above shall apply to prohibit the carrying out of an agreement already in existence on 4th April 1989 (including any agreement already in existence on 28th February 1989) and any distributor or exhibitor who is a party to such an agreement shall terminate it before 2nd May 1989.

(3) This article shall not apply to an agreement in so far as it is or, if made, would be an agreement to which the Restrictive Trade Practices Act 1976(4) applies or, as the case may be, would apply.

(4) This article shall not apply to an agreement if it relates to not more than three films in respect of their exhibition at the cinema in question as a single programme.

4. It shall be unlawful for an exhibitor to withhold or to threaten to withhold any order for exhibition of a film at a cinema on the ground that terms about exclusivity in respect of any other film have not been agreed or are not being complied with.

Francis Maude
Parliamentary Under Secretary of State for
Corporate Affairs,
Department of Trade and Industry

28th February 1989

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes it unlawful for any distributor or exhibitor to make or carry out an agreement (whether existing or future) for exhibition of a film at a cinema if that agreement contains exclusivity terms (terms restricting distribution) relating to more than one film. The Order also makes it unlawful for an exhibitor to refuse to deal with a distributor on the ground that exclusivity terms for more than one film have not been agreed or complied with.

The Order does not apply to agreements in so far as they are agreements to which the Restrictive Trade Practices Act 1976 (c. 34) applies. Nor does it apply to two or three films being shown as a single programme.

Copies of the report of the Monopolies and Mergers Commission on which the Order is based (Cmnd. 8858) may be obtained from Her Majesty's Stationery Office.