



Comment to the Department of Justice Antitrust Division on its review of the Paramount Consent Decrees

By

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For over 70 years, the Paramount Consent Decrees have regulated how movie studios distribute films to movie theatres.

The Department of Justice's review of legacy antitrust judgements has its uses. It is important to question certain judgments to see if they are still relevant in today's economy. Makan Delrahim, Assistant Attorney General, stated that there has been no review since 1949 and that the motion picture industry has changed a great deal. He mentions the need to examine if the decrees "still serve to protect competition."

The Paramount Consent Decrees did and still do protect competition. Not only did the decrees prevent anticompetitive practices from the five largest movie studios, but it also set the standard for all studios in the industry. The decrees successfully reduced the studios' market power. This benefitted the theatres by enabling them to choose their own showings and prices, and therefore consumers by providing them a broader selection at fair market prices. The disruption of market power across these five previously-vertically-integrated firms not only benefitted those connected down the production and distribution channels, but it also provided smaller independent studios with the ability to compete. The decrees prevented those studios from being completely foreclosed from showings in certain regions of our country. Finally, the Paramount Decrees were a substantial contributor to breaking up the so-called "Studio System" in Hollywood, whereby powerful studios locked actors, directors, writers, and other creators down with long exclusive contracts--which they had no choice but to sign if they wanted their work to reach the market.

The Department of Justice acknowledges changes to the industry as reasons to question if the decrees are still necessary. "None of the Paramount defendants own a significant number of movie theatres." The can be expected as the decrees forced divestiture and set the standard that significant ownership of exhibition channels would be likely to trigger antitrust liability. There are also many more movie theatres than there were 70 years ago, but the vast majority are owned by AMC, Cinemark, and Regal. Removing the decrees and allowing vertical integration could lead to a merger between a major studio and one of these three. The shift to multiplex theatres would mean block booking wouldn't be much of an issue, but could easily be if a vertical merger or contract was in place, following a potential revocation of the decree.

The DOJ suggests that consumers would be fine without the decree as the industry shifts towards cable and streaming. In its request for comments, the division writes:

Finally, consumers today are no longer limited to watching motion pictures in theatres. New technology has created many different distribution and viewing platforms that did not exist when the decrees were entered into. After an initial theatre run, today's consumers can view motion pictures on cable and broadcast television, DVDs, and over the Internet through streaming services.



However, this point should instead be used as a reason to maintain the decrees as they have been successful so far, and consider similar decrees for the newer methods for content distribution. In fact, all of the major Hollywood studios are now part of large content conglomerates like NBC-Universal, Time Warner, and Viacom. These content companies seek to merge with telecommunications distribution channels (and in the case of Time Warner and Universal, have already done so, in the former case over the DOJ's challenge). This indicates not that the Paramount Decrees are obsolete, but rather that they are more necessary than ever and similar prohibitions against vertical integration should be extended elsewhere in the now-united telecoms-content sector, rather than rolled back.

In 1947, no one would have guessed that movie production and distribution would have anything to do with the phone company, but now, the spheres are united. As the economy changes, especially due to changes in technology, so should our laws--but in such a way that recognizes past success with structural separations such as the Paramount Decrees. In this industry, the decrees reduced market power and protected economic agents and stakeholders throughout the supply chain. The decrees should serve as an example for effective rules among the newer content distributors. In the past, the content creators were acquiring their distributors, and now we see the content distributors acquiring the content creators. The potential for anticompetitive practices exist through foreclosure and discriminatory pricing and the harms may pass down to consumers. Following AT&T - Time Warner (which did not have a decree) and Comcast - NBCU (which the decree expired this year), the Department of Justice needs to have an industry wide standard of prohibited conduct--including through structural separation--to protect competition.

