EXPLANATORY MEMORANDUM TO

THE FILMS (EXCLUSIVITY AGREEMENTS) (REVOCATION) ORDER 2005

2005 No. 3098

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Films (Exclusivity Agreements) Order 1989 ("the 1989 Order")[1]

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative background

4.1 The Monopolies and Mergers Commission (MMC) - the predecessor of the Competition Commission - found that a system of "barring" existed within the film distribution and exhibition market and operated against the public interest. The bars reflected arrangements between the main exhibitors and prescribed the order in which cinemas in the same locality could show a film. Distributors accepted the bars. In order to maintain such a system, exclusive agreements had to be made for several films at one time. The MMC recommended the practice should cease. The 1989 Order was made under the Fair Trading Act 1973 (FTA) for the purpose of remedying or preventing the adverse effects specified in the Monopolies and Mergers Commission report[2].

4.2 The 1989 Order made it unlawful for supply agreements between distributors and exhibitors to include exclusivity terms applying to more than one film or for exhibitors not to exhibit a film on the basis that exclusivity terms for other films had not been agreed.

4.3 Section 88(5) of the Fair Trading Act 1973 (FTA)[3] requires the Office of Fair Trading (OFT) to keep under review Orders made as a consequence of an MMC monopoly report and to advise the Secretary of State if they believe that changes are appropriate. The OFT recommended that the Secretary of State revoke the 1989 Order.

4.4 The Order revoking the 1989 Order is being made under FTA provisions, which have been saved[4].

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[1] SI 1989 No. 271

[2] "Films: a report on the supply of films for exhibition in cinemas", Cm 8858

[3] The Enterprise Act repealed the majority of the provisions of the FTA, but saving provisions continue to apply in relation to monopoly references made under the FTA.

[4] See footnote 3.

4.5 The statutory consultation provisions contained in section 91(2) of the Fair Trading Act have been complied with. These require a Notice to be published stating the Minister's intention to make the Order, indicating the nature of the provisions to be contained in it and asking for representations. There has to be a minimum of 30 days consultation. The section 91(2) Notice was published on the DTI website and in the trade press on 3 December 2004.

5. Extent

This instrument applies to the United Kingdom.

6. European Convention on Human Rights

No statement is required..

7. Policy background

7.1 In its 1983 report *Films: a report on the supply of films for exhibition in cinemas*, Cm 8858 the MMC found that a system of "barring" existed and operated against the public interest. The bars reflected arrangements between the main exhibitors and prescribed the order in which cinemas in the same locality could show a film. Distributors accepted the bars. In order to maintain such a system, exclusive agreements had to be made for several films at one time. The MMC recommended the practice should cease.

7.2 The 1989 Order made it unlawful for supply agreements between distributors and exhibitors to include exclusivity terms applying to more than one film or for exhibitors not to exhibit a film on the basis that exclusivity terms for other films had not been agreed.

7.3 The OFT has reviewed the Order as a part of its programme of reviews of Orders and undertakings under section 88 of the FTA. The OFT recommended that the Secretary of State revoke the 1989 Order, as the review found that there has been substantial change in the structure of exhibition of films since the early 1980s. Two decades ago, two exhibition chains received the bulk of exhibition revenue. Today, there are six major exhibition chains receiving films primarily from six major distributors. There has also been substantial investment in cinemas since the early 1980s. The growth in the number of multiplex cinemas has meant the number of cinema screens has more than doubled over the period.

7.4 The OFT have not found any evidence that a system of barring operates today. They consider that the considerable change in the structure of exhibition, both in terms of the emergence of more national chains and in the increase of screen numbers, makes it most unlikely that there would be a return to a system of barring if the 1989 Order were revoked. This is because greater competition between exhibitors makes it more difficult to impose barring and distributors face little incentive to accept such a system.

7.5 In light of this advice, and following the statutory consultation period, the 1989 Order is no longer required as a matter of policy and is therefore being revoked.

7.6 The announcement will be uncontroversial, with little coverage outside the business pages or trade press.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies. A full Regulatory Impact Assessment however was prepared for the Enterprise Act, a copy of which was placed in the Libraries of the House of Commons and House of Lords.

8.2 There is no impact on the public sector.

9. Contact

Philip Martin (020 7215 6363), Consumer and Competition Policy, Department of Trade and Industry, can answer any queries regarding the instrument.