UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

PARAMOUNT PICTURES, INC.,

Defendant.

UNITED STATES OF AMERICA,

Plaintiff,

-against-

LOEW'S INCORPORATED, ET AL.,

Defendants.

19 Misc. 544 (AT)

ORDER

ANALISA TORRES, District Judge:

This antitrust action concerns consent decrees known as the *Paramount* Decrees (the "Decrees"), which ended the motion picture horizontal distributor cartel of the 1930s and 40s and have regulated aspects of the movie industry for the last seventy years.[1] The Antitrust Division of the United States Department of Justice moves to terminate the Decrees effective immediately, except for a two-year sunset period on the Decrees' provisions banning block booking and circuit dealing. *See* Gov't Mot. at 2, ECF No. 1; Gov't Mem. at 2, ECF No. 2. *Amici curiae,* the Independent Cinema Alliance ("ICA") and the National Association of Theatre

[1] *See United States v. Paramount Pictures, Inc.*, Equity No. 87-273, 1948-49 Trade Cas. (CCH) ¶ 62,377 (S.D.N.Y. Mar. 3, 1949) (Paramount Pictures, Inc.); 1950-51 Trade Cas. (CCH) ¶ 62,861 (S.D.N.Y. June 7, 1951) (Twentieth Century Fox Film Corp.); 1950-51 Trade Cas. (CCH) ¶ 62,573 (S.D.N.Y. Feb. 8, 1950) (Columbia Pictures Corp., Universal Corp., and United Artists Corp.); 1950-51 Trade Cas. (CCH) ¶ 62,765 (S.D.N.Y. Jan. 4, 1951) (Warner Brothers Pictures, Inc.); and 1952-53 Trade Cas. (CCH) ¶ 67,228 (S.D.N.Y. Feb. 7, 1952) (Loew's Inc.); *see also* ECF No. 2-1 for copies of these Final Consent Judgments.

Owners ("NATO") oppose the motion. *See* ICA Opp., ECF No. 41; NATO Opp., ECF No. 45. For the reasons stated below, the Government's motion is GRANTED.

BACKGROUND

In 1938, the Department of Justice brought an antitrust action against eight companies—Paramount Pictures, Inc. ("Paramount"), Twentieth Century Fox Film Corp. ("Fox"), Warner Brothers Pictures, Inc. ("Warner"), Loew's Incorporated ("Loew's"), Radio-Keith-Orpheum ("RKO"), Universal Corp. ("Universal"), Columbia Pictures Corp. ("Columbia), and United Artists Corp. ("United Artists") (collectively, "Defendants")—that, at the time, dominated the production and distribution of motion pictures in the United States. *See United States v. Paramount Pictures*, 334 U.S. 131, 140 (1948); *see also United States v. Loew's Inc.*, 783 F. Supp. 211, 212 (S.D.N.Y. 1992). The companies fell into two groups: (1) those that produced, distributed, and exhibited movies and (2) those that produced or distributed films, but did not exhibit them. *See Paramount*, 334 U.S. at 140; *see also* Gov't Mem. at 6–7.

Five of the Defendants, Paramount, Loew's, Warner, RKO, and Fox (collectively, the "Major Defendants") owned large movie theater circuits, including over seventy percent of the best and largest "first-run" theaters in the ninety-two largest cities in the United States. *Paramount*, 334 U.S. at 167. This market structure eventually led to cooperation and collusion, wherein Defendants established a cartel for the purposes of (1) limiting the first run of their pictures, as much as possible, to the theaters that the Major Defendants owned and controlled; and (2) closing off first-run theaters to their competitors, independent motion picture distributors. *Id.* at 154–55. In other words, Defendants created an intricate system of sequential and non-overlapping theatrical "runs" for their films. Gov't Mem. at 8–9. Pursuant to that scheme, Defendants classified all movie theaters into specific "run" categories. *Id.*; *see also Paramount*,

334 U.S. at 144 n.6 The first run was exclusively reserved what were then called first-run theaters. Gov't Mem. at 8–9. This was the highest priced and most profitable "run" because most moviegoers saw movies within a few weeks of release. *Id.* Defendants agreed to designate almost all of the theaters that Major Defendants owned and controlled as first-run. *Id.* at 9. After the first run ended, Defendants distributed their movies to discount-priced theaters in the second-run market, and after the second run, to a more-discounted third, fourth, or later theatrical run. *Id.* Defendants agreed to relegate most independent theaters to the later and less profitable runs. *Id.*

At trial, the district court found that Defendants had (1) monopoly power in the distribution market for first-run motion pictures; and (2) engaged in a conspiracy to fix licensing practices, including admission prices, run categories, and "clearances" for substantially all theaters located in the United States. *Paramount*, 334 U.S. at 170–71; *United States v. Paramount Pictures*, 85 F. Supp. 881, 884, 896 (S.D.N.Y. 1949) ("[W]e have found that a conspiracy has been maintained through price fixing, runs and clearances, induced by vertical integration," and that "this conspiracy resulted in the exercise of monopoly power"); *see also Loew's Inc.*, 783 F. Supp. at 212 ("The proof at trial established that the five [Major Defendants] had, *inter alia*, engaged in a 'horizontal' conspiracy to monopolize the exhibition business by foreclosing independent exhibitors from access to first-run films, and the [other Defendants] acquiesced in that scheme.").

The Supreme Court affirmed the district court's finding that Defendants were liable under the Sherman Act, and remanded the matter to the district court to fashion relief that would "uproot all parts of [the] illegal scheme—the valid as well as the invalid—in order to rid the

trade or commerce of all taint of the conspiracy" and undo "what the conspiracy achieved." *Paramount*, 334 U.S. at 148, 171; *see id.* at 141–61.

On remand, the United States and each Defendant entered into separate decrees, now known as the *Paramount* Decrees, to remedy the competitive harms. The Decrees required the Major Defendants to sell their theaters to new independent companies. *See* Gov't Mem. at 11. For the Major Defendants, the Decrees applied equally to the distribution companies and the new companies set up to own and operate each of their movie theater circuits. *Id.* The Warner, Fox, and Loew's decrees also prohibited their distribution companies from acquiring any theaters unless the district court found that such acquisitions would not unreasonably restrain competition. *Id.* Because they were entered earlier, the RKO and Paramount decrees did not contain that restriction. *Id.* RKO and Paramount, like Universal, Columbia, and United Artists, have always been free to acquire theaters without court approval. *Id.* at 11–12.

In addition to the theater divestiture requirements, the Decrees restricted the ways in which all Defendants could license and distribute movies to theaters. Specifically, the Decrees barred each Defendant from engaging in the following practices:

- Resale price maintenance – setting minimum movie ticket prices (section II, paragraph 1 and section III, paragraph 1 of the Warner decree);
- Unreasonable clearances – granting exclusive film licenses for overly broad geographic areas (section II, paragraphs 2, 3, and 4 and section III, paragraphs 2, 3, and 4 of the Warner decree);
- Block booking – bundling multiple films in one theatrical license (section II, paragraph 7 and section III, paragraph 7 of the Warner decree); and
- Circuit dealing – licensing a film to all theaters under common ownership or control instead of theater by theater (section II, paragraphs 6 and 8 and section III, paragraphs 6 and 8 of the Warner decree).

Id. at 12.

In 2018, the Antitrust Division announced an initiative to review, and where appropriate, terminate or modify "legacy antitrust judgments that no longer protect competition" because of

"changes in industry conditions, changes in economics, changes in law, or for other reasons." *See* U.S. Department of Justice Press Release, *Department of Justice Announces Initiative to Terminate "Legacy" Antitrust Judgments* (Apr. 25, 2018), https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments.

The Government's review of the Decrees included a 60-day notice and public comment period. Gov't Mem. at 4–5. It received over eighty comments, many of which oppose termination of the Decrees. *Id.* at 5. The Government now moves to terminate the Decrees, effective immediately, and, in response to the comments received, proposes to add a two-year sunset period to the Decrees' block booking and circuit dealing provisions to provide a transition period to minimize market disruption. *Id.* at 5–6.

DISCUSSION

I. Standard of Review

Under Rules 60(b)(5) and 60(b)(6) of the Federal Rules of Civil Procedure, on "motion and just terms, the court may relieve a party . . . from a final judgment [when] . . . applying it prospectively is no longer equitable; or any other reason that justifies relief." Fed. R. Civ. P. 60(b). Each of the Decrees provides that this Court retains jurisdiction to enable "any of the parties . . . and no others, to apply to the Court at any time for any such further order . . . as may be necessary or appropriate for the construction, modification, or carrying out of the same, . . . or for other or further relief." *See, e.g.*, Loew's Inc. Decree 1952-53 Trade Cas. (CCH) ¶ 67,228 (S.D.N.Y. Feb. 7, 1952) at Section X, ECF No. 2-1 at 74.

"Where, as here, the United States consents to the proposed termination of the judgment in a Government antitrust case, the issue before the Court is whether termination of the judgment

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