



ALERTS

Old Antitrust Consent Decrees In The Movie Business Terminated By Court, Will Others Follow?

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Highlights

Tight restrictions on a range of business practices of Hollywood studios are now relaxed

With this decision, the Antitrust Division has shown responsiveness to changed market conditions and legal standards

Legacy consent decrees in other industries may be able to be similarly terminated

In confirmation of William Faulkner's observation that "The past is never dead. It's not even past," the [U.S. District Court for the Southern District of New York agreed on Aug. 7](#) to the U.S. Department of Justice's Antitrust Division's request to terminate antitrust consent decrees that had dogged the motion picture industry for 70 years. It let stand a two-year sunset provision regarding selling films as a package, known as "block booking," and circuit dealing.

The consent decrees at issue, popularly referred to as the Paramount Decrees, resolved antitrust litigation that the federal government pursued against the major Hollywood studios in the 1930s and 1940s. That

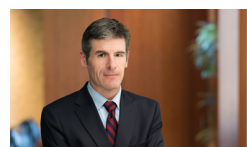
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litigation grew out of what amounted to a horizontal conspiracy among the studios to limit “first-run” distribution of their pictures to theaters they owned.

Among other things, the Paramount Decrees forced divestment of the studios theaters and barred them from a range of practices, including setting minimum movie ticket prices, granting exclusive film licenses for overly broad geographic areas, bundling multiple films in one theatrical license, and licensing a film to all theaters under common ownership or control instead of theater by theater. For some of the studios, the decrees prevented acquisition of theaters without court approval.

There are numerous reasons for terminating the Paramount Decrees, but essentially they come down to two that are pivotal. First, the market for the production and distribution of motion pictures has changed dramatically, as new market participants have entered and new methods of distribution have been perfected (e.g., streaming). Second, antitrust standards have evolved since the 1940s in ways that undermined the legal basis of the original cases. For example, setting minimum ticket prices would no longer be considered per se illegal.

As interesting as this development may be to those in the entertainment business, there are larger antitrust implications to consider as well. Per the court’s opinion, “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.” As such, an industry operating under a legacy antitrust decree may similarly have the opportunity to get out from under it.

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