



Europa Distribution Answer to the Consultation on State Aids September 30 2011

Who are we?

Europa Distribution is a professional European network of independent distributors headed by award winning filmmaker Cristian Mungiu.

- 110 independent film distributors members of the network
- 26 countries
- 500M€ average turnover 2008-2010
- 780 films released in 2010, among them 540 European films
- 69% of the films released by the members are European films
- 56% of the films released by the members are non-national European films
- 70% of these releases are supported by MEDIA (via the automatic or the selective schemes)
- Of the European films included in the Official Selection of the Cannes Film Festival during the past three years, roughly 85% were distributed by independents.
- Of the films awarded prizes at Cannes, Venice and Berlin during the past 6 years, 80% were distributed by independents. Among them : Ken Loach, Michael Haneke, Wim Wenders, Lars Von Trier, Nanni Moretti, Pedro Almodovar, Roman Polanski, Jacques Audiard, Theo Angelopoulos, Aki Kaurismäki, Krzysztof Kieslowski, François Ozon, Stephen Frears, Manoel De Oliveira, Emir Kusturica.....

To begin with, we would like to recall the **distributor's role in the cinematic chain**. The distributor is an intermediary between the producer and the exhibitor who performs three functions: financing the production of films through a guaranteed minimum, financing their release (promotion, manufacturing of prints) and maintaining relationships with cinemas. In this sense, they're the ones in the cinematographic chain with marketing expertise and knowledge of their territory. Depending on the contracts they have with producers, the distributors may have the following rights: theatrical distribution, DVD, VOD, TV (free or pay TV), Internet.

European distributors are facing a challenging time nowadays: credit crunch, competition distortions by bigger groups and American major studios, increased integration, inflation of costs, lower revenues from traditional second markets (TV, DVD...) and especially the arrival of new technologies and the digital switch. **Digital means of course new opportunities for European distributors:** new revenues (VOD, catch up TV...), new aggregators looking for European content, flexibility, better circulation of European works, pan-European opportunities and economies of scale. **But during the transition period, European distributors will face higher costs to release their movies as well as fewer revenue and this has to be taken into account.**

Our contribution will focus in particular on the activity of distributors and we'll let our colleagues from other sectors of the industry answer for their own fields of activity.



1. Why do we fund film?

What should be the objective of State aid for films and audiovisual works?

We consider that the only objective of state aid is cultural, and has to take into account the diversity and richness of the various European countries. It's about ensuring the expression and renewal of artistic creation in Europe, strengthening the cultural diversity on European territories, diversifying the choices offered to spectators, raising awareness on European cinema, supporting the innovation and creativity of European productions and fostering their diffusion. The fragmentation of the European markets for cultural and linguistic reasons as well as the fragmentation of the cultural sector in SME's has to be taken into account. The works produced by these companies under a system of territorial and chronological exclusivities which are the counterpart of the finance brought by private operators to film production should be fully able to reach their public.

- Distribution (theatrical) and diffusion supports, like production supports, have a cultural finality and are directed to a "cultural product". European works are, by definition, cultural products: European cinema is both a strong component and a powerful catalyst of European identity. Going to the movies is cultural. And there is an inseparable link between the work and its dissemination.
- The objective of distribution aid is to increase the visibility and presence of European cinema on European screens and new distribution platforms by supporting the co-production and acquisition of European films as well as the prints and advertising expenses. The final aim is to increase audience choice, build audiences for European films and ensure the cultural diversity of content.

How should one measure that this objective is fulfilled?

The measurement of such an objective is difficult because of the nature of the film industry itself.

The cultural industry is characterized by its unpredictability and by the difficulty to match demand with supply. In this sense, the most important thing is to be able to keep on producing good European works and bringing them to European audiences.

What would be the most effective way for the Commission to control this subsidy race?

We let our colleagues from the production sector answer this question.

2. What activities other than production should be included in the scope of the Communication and which State aid criteria are appropriate for such activities?

- Europa Distribution is in favour of extending the scope of products to be supported in the new Communication. This extension enables to take into account the evolution of state aids since 2001 (and especially distribution aids), to give these new aids some legal certainty and ease their notification process.
- In this sense, the Communication should cover activities such as theatrical distribution and diffusion in general (dvd, vod.....). National production supports have enabled Europe to produce a large number of rich and varied European films, which reflect Europe's cultural diversity within and outside the European Union. It is now important



to ensure that these works get distribution in their country, circulate in Europe and reach audiences via both traditional (theatres) and new platforms.

- Including distribution & diffusion supports in the Cinema Communication would be a good incentive for Member States to develop such aids (because of the legal certainty and the easiness of notification) and to ensure a better distribution and promotion of the works they support in production. Theatrical distribution supports have a structural role to play for the release of European movies in Europe and for the competitiveness of European distribution companies.
- Specific requirements regarding territoriality and aid intensity have to be determined for these distribution aids.

What factors should be taken into account by State aid assessment criteria for activities other than production?

- Territorial conditions seem unsuitable to assess activities such as distribution, exhibition and diffusion which are by nature regionalised activities. For example in the case of theatrical/dvd/vod distribution, distributors are working on a national release (or even a regional release if there are different languages in the same country), not a European release.
- Therefore, any public aid will necessarily be spent on the national territory.

How should the switch of cinemas to digital projection be covered by future rules on aid to cinema?

- The Commission mentions the 2010 Communication on opportunities and challenges for European cinema in the digital age. This issue is particularly important for theatrical distributors which now face the most important technical change since the origins of their industry.
- During the transition period, distributors will indeed face higher costs to release their movies.
 - o On the one hand, distributors contribute to the financing of the digitization of the European screens (via the VPF mechanism or via a digital contribution: the anticipated savings of the distributors with digital prints are aimed at financing the digital equipment of exhibitors) for a certain period of time (between 6 and 10 years depending on the contracts). In addition, with digitalization, there will be no more second-hand prints: distributors from smaller territories or with late releases who used to rely on the use of second-hand prints to distribute a film will have to pay full VPF.
 - o On the other hand, distributors have to provide screens that are already equipped in digital and screens that are not, so they have to pay for 35mm as well as digital material.
 - o These elements rule out the anticipated cost savings that could derive from the lower cost of a digital copy.
- For distributors, 3 elements are very important regarding the digital switch :
 - o It is important to have all screens equipped to avoid the creation of a two-tier system. Some states have started implementing supports for exhibitors who cannot benefit from the VPF system. Whether these supports have to be included or not in the communication, we let our colleagues from the exhibition sector comment on that issue.



- It is important to disconnect the financing of digital equipment by distributors with the programming of the screens.
- It is essential that the financing of digital equipment by distributors is limited in time (maximum 10 years).

3. What should be the scope of products to be supported?

Should the scope of the Communication extend beyond films and TV productions to other types of audiovisual projects? If so, what definition of 'audiovisual project' should be used?

We represent distributors whose core activity is to release films so we leave the answer to our colleagues from other sectors.

4. What should the maximum aid intensities be?

If activities other than production are to be covered by the Communication as well, would it be appropriate to set the maximum overall aid intensity as 50% of the total project budget (covering script-writing, development, pre-production, principal photography, post-production, distribution, promotion and marketing costs)?

- First we would like to underline that the 50% rule must apply to each operator and not be cumulative on a project.
- The distribution support cannot be linked to the production budget, it has to be a separate support with its own criteria and aid intensity and it has to be linked directly to the distribution budget. The distributor advances the prints and promotion/advertising costs at its own risk and recoups them from his share of the receipts coming from cinemas, after deduction of the commission which pays his service. So if the film does not do well at box office, then the distributor does not recoup the advanced expenses. The unpredictability of this business explains that only one film out of ten does actually recoup the advanced expenses.
- Distribution expenses include :
 - Minimum Guarantee (MG) given to producer
 - Technical expenses (production & transportation of 35mm and digital material and prints)
 - VPF costs
 - Subtitling and Dubbing costs
 - Advertising and promotion
- It is often considered that the risk is higher at the earliest stages of film production. We would like to underline that presenting the film to audiences is also a very risky activity: only a few films recoup their release costs (prints and advertising) from the revenues coming from cinemas. These costs and the minimum guarantee given to the producer will – in most cases - not be recovered by the distributor. This risk is even higher for 'difficult films' or low-budget films.
- In this regard, theatrical distribution aid intensity should at least amount to 50% of the prints and advertising (P&A) budget (as for production aids). For "difficult films" or low-budget films, this aid intensity should be increased under the principle of subsidiarity regarding culture and according to the specificities and local practices of the markets in the various Member States. In any case, theatrical distribution aid intensity should not be limited to less than 50% of the distribution budget in order to take into account the risky nature of the theatrical distribution activity.



- Any distribution support shall be intended as a support exclusively assigned to the distributor and shall remain the exclusive property of the distributor. It shall be used by the distributor solely, exclusively and directly in discharging eligible expenses incurred and shall never be qualified as eligible revenues and be included in the royalty statement for the benefit of producers.

Would it be appropriate to encourage cross-border cooperation by allowing a higher overall aid intensity (of perhaps 60%) for film projects which involve activities in more than one Member State, including co-productions?

- Cross-border cooperation is exactly what professional networks like Europa Distribution are aiming at: it's about exchanging information, experiences and costs.
- So Europa Distribution is willing to work on this proposal of the Commission and see if distribution aids for co-productions should have a higher overall aid intensity.

6. To what extent are territorial conditions justified?

Should Member States be allowed to impose territorial conditions on aid for audiovisual projects? If so, would it be fair to limit this to 100% of the aid amount or is there a more appropriate benchmark?

- Distribution is by nature a national activity, and pan-European distribution does not reflect the reality of the market today.
- In this sense 100% of the expenses are territorial expenses. There should not be any territorial conditions imposed for distribution aids.

7. Does the digital revolution affect the State aid rules?

Should conditions on production support be imposed to encourage a smooth digital transition, such as ensuring that a digital master is produced and requiring that publicly-funded works are released under Creative Commons Attribution-ShareAlike licences?

- As mentioned earlier, distributors will have additional costs during the transition period because they have to release films in both formats (digital and 35mm). This is why it's important that producers provide digital masters. In most national production supports, the creation of a digital master is already required.
- Regarding Creative Commons Attribution-ShareAlike licences, this falls under the contractual freedom of the producer/rights owner and should not be imposed by state aids.

Should distribution support cover distribution on all platforms (ie, not only, for example, for releasing in cinemas)?

- From a strictly economic point of view, new distribution platforms seem little favorable to European works. VOD platforms are largely in the hands of non-European operators that have no natural inclination to defend European films. Not surprisingly, the market share of European works on these new distribution channels is also much lower than they are in theatres or on DVD. This affects directly distributors who most of the time own VOD and Internet rights when they buy non-national movies.



- In this regard, it is important – for economic coherence - to support not only theatrical distribution but also distribution on new platforms. New distribution channels can in the end represent a great opportunity for European cinema if state aids support the presence and editorial visibility on larger distribution platforms so that these works can find new audiences.

Since most European films receive public support, it could help to develop film culture/literacy and ensure that supported films are safeguarded for future generations if such funding is conditional on the supported films being deposited and available for cultural/educational use. Should a new Communication invite Member States to do so, especially if the public funding is over 50% of the film's budget?

In most national production supports, it is required to deposit a copy in the film archive.

Should a new Communication include additional State aid rules for supporting initiatives designed to encourage businesses to take advantage of the digital revolution?

We believe it is necessary to support innovation during the digital revolution and that the communication should tackle this issue.

8. Are there any other issues?

Are there any other issues which the Commission should consider in a new Communication?

- The Commission is raising here some issues that are not covered by the Communication but are at stake in other discussions: the question of windows and territorial licensing.
- As mentioned earlier, cinematographic distribution is currently based on:
 - o Exploitation by distribution territories
 - o In each territory the “windows” (cinemas, DVD, VOD, pay and free TV) allow scrupulous exploitation of rights
- This guarantees to the different media exclusivities per “window” and per territory in return for their pre-financing of works.
- In this sense, any questioning of the territorial exploitation of rights which forms the basis for the pre-financing of works would immediately lead to a drastic reduction in the production of European works.
- Pan-European licenses would favour cinema majors and blockbusters, as opposed to independent distributors and European films, and paradoxically impede the circulation of European films by endangering independent distributors.
- Territorial promotion is a necessity because the distribution of European films is generally progressive, territory by territory, with different release dates. Distributors have the expertise and the know-how of their territories. Pan-European licenses would therefore give a serious competitive advantage to few organisations operating on a Europe-wide basis, i.e. the American majors, while seriously reducing the number and variety of European films released outside of their home country, of which there are already very few.