

EN

Case No
COMP/M.5076–
ODEON/
CINEWORLD/ CSA JV

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 4(4)
Date: 23-IV-2008



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23-IV-2008
SG-Greffe(2008) 201906

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 4(4) DECISION

To the notifying parties and to the Office of Fair Trading:

Dear Sirs,

**Subject: Case No COMP/M.5076 – ODEON/ CINEWORLD/ CSA JV
Reasoned submission pursuant to article 4(4) of Regulation No 139/2004
for referral of the case to the United Kingdom.**

I. INTRODUCTION

1. On 14 March 2008, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 ("EC Merger Regulation") with respect to the transaction cited above. The parties request the operation to be examined in its entirety by the competent authorities of the United Kingdom.
2. According to Article 4(4) of the EC Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition in a market or in markets which present all the characteristics of a distinct market.
3. A copy of this Reasoned Submission was transmitted to all Member States on 19 March 2008.
4. By fax of 25 March 2008 the Office of Fair Trading (OFT) as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

II. THE PARTIES

5. Odeon Cinemas Limited ("Odeon") is a UK based cinema operator belonging to the private equity firm Terra Firma Capital Partners Limited ("Terra Firma"). Odeon currently operates 108 cinemas in the United Kingdom, making it the largest cinema exhibitor in the UK. Its parent company Terra Firma also owns United Cinemas International ("UCI"). UCI currently owns and operates cinemas under the UCI brand

in Germany, Austria, Italy and Portugal and under the Cinesa brand in Spain. UCI also operates cinemas in Ireland under a management agreement.

6. Cineworld Cinemas Limited ("Cineworld") is also a UK based cinema group. It belongs to the private equity and investment management firm The Blackstone Group L.P. ("Blackstone"). Cineworld operates 72 cinemas across the United Kingdom, thus making it the second largest cinema exhibitor in the UK. Apart from that, Cineworld also operates one cinema in Dublin, Ireland.

III. THE OPERATION AND CONCENTRATION

7. The proposed transaction concerns a concentration within the meaning of Article 3(1)(b) of the EC Merger Regulation, namely the acquisition of joint control by Odeon and Cineworld, through the newly created joint venture company Digital Cinema Media Limited ("DCM"), of certain assets of Carlton Screen Advertising Limited ("CSA"). CSA is a UK based company active in the sale of cinema screen advertising to advertising agencies and advertisers in the UK and Ireland. Odeon and Cineworld have entered into a legally binding heads of terms with CSA, subject to which DCM will acquire the cinema advertising sales business and ancillary administrative and support functions of CSA in the UK.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregated world-wide turnover¹ of more than EUR 5 billion². Each of them has a Community-wide turnover in excess of EUR 250 million³. The undertakings do not achieve more than two-thirds of their Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension within Article 1(2) of the EC Merger Regulation.

V. ASSESSMENT

A. Relevant product markets

9. The transaction would create a vertical link between cinema exhibitors (Odeon and Cineworld) and a cinema screen advertiser (CSA), which purchases screen time from exhibitors. The relevant product markets to be considered for the purpose of this decision are therefore the (i) cinema exhibition market and the (ii) cinema screen advertising or display advertising market.

¹ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice of 10/07/2007. Odeon and Cineworld are controlled by the Terra Firma and Blackstone groups, respectively. The groups' turnovers have been taken into account when calculating the turnover of the undertakings concerned.

² Terra Firma: €[CONFIDENTIAL]; Blackstone €[CONFIDENTIAL].

³ Terra Firma: €[CONFIDENTIAL]; Blackstone €[CONFIDENTIAL].

Cinema exhibition

10. The cinema exhibition market comprises all business activities of public performance of films for paying audiences. In its Vue/Ster Report⁴, the UK Competition Commission considered four possible definitions of the market, namely (i) all ways of using discretionary spend; (ii) all ways of watching films; (iii) all cinemas; and (iv) separate markets for multiplex cinemas and traditional cinemas). Ultimately, the Competition Commission concluded that the relevant product market is no wider than all cinemas and that, within this market, the closest constraint on multiplex cinemas appears to be other multiplex cinemas.

Cinema screen advertising

11. Cinema screen advertisers acquire from cinema exhibitors the right to show advertising films prior to the feature film and then sell this screen time either directly to advertisers or to advertising agencies. CSA is one of the two UK cinema screen sales houses, the other one being Pearl & Dean (P&D). The parties consider cinema screen advertising to be part of a wider market for display advertising, as nowadays it does not offer any unique characteristics that cannot be replicated by other media, such as television and the internet. In any case, the assessment of the case for the purpose of the present referral decision would not change, even if the relevant product market were to be limited to cinema screen advertising, thus excluding other forms of display advertising.

B. Relevant geographic market

12. On the basis of the information submitted in the Reasoned Submission, the geographic focus of the proposed concentration would be the United Kingdom given that the parties do not intend to acquire any of CSA's business activities outside of the United Kingdom. Both potential affected markets are national, if not local in scope.
13. As regards the market for cinema exhibition, the UK Competition Commission confirmed in its Vue/Ster Report⁵ that it considered the relevant geographic market to be local, comprising a 20-minute drive-time isochrone around the relevant cinema. As regards cinema screen advertising, or a possible wider market for different forms of display advertising, the Commission has concluded in case COMP/M.2813 – Carlton + Thomson/Circuit A, RMBI, RMBC that this market would be national in scope as advertising space is mainly traded locally due to differences in language, tastes and perception of customers. This is also consistent with the approach taken by the UK competition authorities in past investigations.⁶

⁴ A Report on the completed acquisition of A3 Cinema Limited by Vue Entertainment Holdings (UK) Ltd, dated 24 February 2006, http://www.competition-commission.org.uk/rep_pub/reports/2006/fulltext/508.pdf.

⁵ A Report on the completed acquisition of A3 Cinema Limited by Vue Entertainment Holdings (UK) Ltd, dated 24 February 2006, http://www.competition-commission.org.uk/rep_pub/reports/2006/fulltext/508.pdf.

⁶ See, for instance, the MMC's report on "The supply of Cinema Advertising Services", Cmd. 1080, May 1990; and the Competition Commission's approach with regard to television advertising markets in its 2003 report on the proposed merger of Carlton and Granada, http://www.competition-commission.org.uk/rep_pub/reports/2003/482carlton.htm.

C. Assessment

14. On the basis of the information provided by the parties in the Reasoned Submission, the proposed transaction is an appropriate candidate for pre-filing referral from the Commission to the OFT in accordance with Article 4(4) of the EC Merger Regulation.
15. The transaction meets the legal requirements set out in Article 4(4) of the EC Merger Regulation. The transaction is a concentration within the meaning of Article 3 of the EC Merger Regulation, it has a Community dimension and it may significantly affect competition in distinct markets in the United Kingdom.
16. The relevant geographic markets present all the characteristics of a distinct market. The proposed concentration concerns only the acquisition of CSA's activities in the UK and does not include CSA's activities in Ireland. There are no affected markets which extend outside the territory of the United Kingdom. It follows that the markets in question are within one Member State and present all the characteristics of distinct markets within the meaning of Art. 4(4) of the EC Merger Regulation
17. The proposed concentration creates a vertical link between Odeon's and Cineworld's cinema exhibition activities and CSA's activities in the sale of cinema screen advertising in the UK. Both relevant markets are to be considered as technically affected markets. According to the parties' estimate on the basis of box office revenues, Odeon and Cineworld have market shares of [20-30]% and [20-30]% respectively in the cinema exhibition market in the UK in 2007. In addition, if the sale of cinema screen advertising in the UK were to constitute a separate product market (in relation to other forms of display advertising in the UK), CSA's current market share by revenue in the sale of cinema screen advertising in the UK would be approximately [70-80]% in 2006. According to the Commission Notice on Case Referral in respect of concentrations, the presence of technically affected markets within the meaning of Form RS can be considered sufficient to meet the requirements of Article 4(4)⁷.

Additional factors

18. The UK competition authorities (the OFT and the Competition Commission) are also well placed to examine the case given that the UK is the likely locus of the competitive effects of the proposed transaction and that the UK competition authorities have experience in assessing the impact of transactions involving cinema exhibitors⁸.

VI. REFERRAL

19. On the basis of the information provided by the parties in the Reasoned Submission, the case meets the legal requirements set out in Article 4(4) of the EC Merger Regulation in that the concentration may significantly affect competition in a market

⁷ See footnote 22, Commission Notice on Case Referral, Official Journal C 56, 05.03.2005, p. 2-23.

⁸ OFT decision on the Acquisition by Terra Firma Investemnts (GP) 2 Ltd of United Cinemas International (UK) Limited and Cinema International Corporation (UK) Limited dated 7 January 2005; OFT decision on the Completed Acquisition by the Blackstone Group of UGC Cinemas Holdings Limited dated 28 April 2005; Report on the completed acquisition of A3 Cinema Limited by Vue Entertainment Holdings (UK) Ltd, dated 24 February 2006, see footnote 6 above.

within a Member State which presents all the characteristics of a distinct market. The Commission notice on case referral in respect of concentrations⁹ (point 17) indicates that, in seeking a referral under Article 4(4), “*the merging parties are ... required to demonstrate that the transaction is liable to have a potential impact on competition in a distinct market within a Member State, which may prove to be significant, thus deserving close scrutiny*”, and that “*such indications may be no more than preliminary in nature...*”. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the concentration is liable to take place on distinct markets in the United Kingdom, and that the requested referral would be consistent with point 20 of the notice.

VII. CONCLUSION

20. For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the United Kingdom. This decision is adopted in application of Article 4(4) of Council Regulation (EC) No 139/2004.

For the Commission
(Signed)

Philip LOWE
Director General

⁹ OJ C 56, 05.03.2005, p.2.