

Case No COMP/M.6977 - OMERS/ AIMCO/ VUE

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 25/07/2013

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EUROPEAN COMMISSION

Brussels, 25/07/2013
C(2013) 4921 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.6977 - OMERS/ AIMCo/ Vue
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

- (1) On 21 June 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertakings OMERS Administration Corporation (“OMERS”, Canada) and Alberta Investment Management Corporation (“AIMCo”, Canada) acquire within the meaning of Article 3(1)(b) of the Merger Regulation indirect joint control of Vue Entertainment International Limited (“Vue”, UK), by way of purchase of shares. OMERS and AIMCo are hereinafter referred to as the “Notifying Parties”. OMERS, AIMCo and Vue are hereinafter jointly referred to as the “Parties”.

1. THE PARTIES

- (2) OMERS is one of Canada’s leading pension funds providing retirement benefits for its members across Ontario. OMERS manages a diversified global portfolio of stocks and bonds as well as real estate, infrastructure and private equity investments.

¹ OJ L 24, 29.1.2004, p. 1 (“the Merger Regulation”). With effect from 1 December 2009, the Treaty on the Functioning of the European Union (“TFEU”) has introduced certain changes, such as the replacement of “Community” by “Union” and “common market” by “internal market”. The terminology of the TFEU will be used throughout this decision.

- (3) AIMCo is one of Canada's largest and most diversified institutional investment fund managers, investing globally on behalf of its clients which are various pension, endowment and government funds in the Province of Alberta.
- (4) Vue is active in cinema exhibition services (by acquiring film exhibition rights from film distributors) and in cinema screen advertising services across the UK, Ireland, Germany, Denmark, Portugal and Taiwan².

2. THE OPERATION

- (5) Following a Sale and Purchase Agreement ("SPA") signed on 9 June 2013 the Notifying Parties will acquire within the meaning of Article 3(1)(b) of the Merger Regulation the entire issued share capital of Vue and its subsidiaries through a 50/50 joint venture. As a result of the transaction, OMERS and AIMCo will acquire joint control over Vue.
- (6) In view of the above, the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million³ (OMERS: [...] Vue: [...])⁴. OMERS and Vue have an EU-wide turnover in excess of EUR 250 million (OMERS: [...] Vue: [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

4. COMPETITIVE ASSESSMENT

A. Market definition

(i) Cinema exhibition services

- (8) In previous cases concerning cinema exhibition services, the Commission left open the precise product market definition⁵.

² Vue is in the process of acquiring Multikino S.A. (Multikino), a chain of cinemas with operations in Poland (28 sites), Latvia (one site) and Lithuania (one site). This acquisition is the subject of a separate sale and purchase agreement and regulatory approval under Polish merger control law

³ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁴ A country-by-country breakdown of AIMCo's EU turnover was not readily available. The Notifying Parties requested a waiver of turnover information in respect of AIMCo as the turnover thresholds of Article 1(2) of the Merger Regulation are met in any event with the turnovers of OMERS and Vue alone.

⁵ Case No IV/M.902, *Warner Bros/Lusomundo/Sogecable*, Commission decision of 12 May 1997; Case No COMP/M.2813, *Carlton+Thomson/Circuit A, RMBI, RMBC*, Commission decision of 21 June 2002; Case No COMP/M.5076, *Odeon/Cineworld/CSA JV*, Commission decision of 23 April 2008.

- (9) In the UK, which is the most relevant jurisdiction in respect of Vue's activities, in a recent decision the Office of Fair Trading (OFT) considered that film exhibition services constitute a separate market for film distribution. The OFT also considered that the closest constraint on a multiplex cinema is another multiplex cinema and that other cinemas should be considered on a case-by-case basis. The OFT also considered that 2D and 3D formats might be considered as separate frames of reference⁶.
- (10) In relation to the geographic market definition, the Commission considered, but ultimately left open, that the market for film exhibition services is national and that there could be a series of local markets since some cinemas are geographically isolated from other cinemas and do not face much competition from other exhibitors⁷.
- (11) In the UK, the OFT considered the geographic scope of the film exhibition market is a 20 minute drive-time isochrone around the acquired cinema with a 30 minute drive-time isochrone used as a sensitivity analysis⁸.
- (ii) *Cinema screen advertising*
- (12) 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. In previous decisions, the Commission considered, but ultimately left open, whether cinema screen advertising constitutes a separate market or whether it is part of a wider market for display advertising, as it does not offer any unique characteristics that cannot be replicated by other media, such as television and the internet⁹.
- (13) In relation to the geographic market definition, the Commission considered that the market is national, if not local in scope¹⁰, similar to the related market for cinema exhibition services.
- (iii) *Conclusion on market definition*
- (14) For the purposes of the assessment of the proposed concentration, the exact product and geographic market definition for (i) cinema exhibition services and (ii) cinema screen advertising can be left open since the proposed concentration does not raise any competition concerns under any alternative market definition.

⁶ *Completed acquisition by Vue Entertainment International Limited of Apollo Cinemas Limited*, 24 August 2012.

⁷ Case No IV/M.902, *Warner Bros/Lusomundo/Sogecable*, Commission decision of 12 May 1997; Case No COMP/M.2813, *Carlton+Thomson/Circuit A, RMBI, RMBC*, Commission decision of 21 June 2002; Case No COMP/M.5076, *Odeon/Cineworld/CSA JV*, Commission decision of 23 April 2008.

⁸ *Completed acquisition by Vue Entertainment International Limited of Apollo Cinemas Limited*, 24 August 2012.

⁹ Case No COMP/M.5076, *Odeon/Cineworld/CSA JV*, Commission decision of 23 April 2008.

¹⁰ Case No COMP/M.5076, *Odeon/Cineworld/CSA JV*, Commission decision of 23 April 2008.

B. Competitive assessment

- (15) In the EEA, Vue currently operates multiplex cinemas in the UK, Germany, Denmark, Ireland and Portugal and is in the process of acquiring the Polish company Multikino. In particular, Vue is principally active in film exhibition services (which includes acquiring film exhibition rights from film distributors) and to a lesser degree in cinema screen advertising services.
- (16) Neither OMERS nor AIMCo owns or operates any cinemas in the EU. In addition, neither OMERS nor AIMCo controls any company that is active in a market that is upstream or downstream of any of Vue's areas of activity.
- (17) Thus the concentration will not result in any horizontal overlaps between the activities of Vue on the one hand and those of OMERS or AIMCo, including the portfolio of their controlled companies, on the other hand. Similarly, the concentration will not result in any vertical relationship between the activities of Vue on the one hand and the activities of OMERS or AIMCo, including the portfolio of their controlled companies, on the other hand.
- (18) OMERS and AIMCo are active in a range of investments worldwide. Although the Notifying Parties did not identify any markets on which there would be horizontal overlaps or vertical or conglomerate relationships between the activities of OMERS and AIMCo and/or their respective portfolio companies in other markets not related to the activities of Vue, the existence of such overlaps cannot be excluded.
- (19) However, the proposed transaction does not lead to any risk of coordination between the Notifying Parties and/or their respective portfolio companies on these other markets within the meaning of Article 2(4) of the Merger Regulation as these markets would not in any way be related to those in which Vue is active.
- (20) There is no mechanism by which the proposed concentration could increase the likelihood of coordination between the Notifying Parties' businesses. It is highly unlikely that the joint ownership of Vue by the Notifying Parties will have any impact on their respective incentives to manage independently the business activities which are unrelated to the concentration.

5. CONCLUSION

- (21) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(Signed)

Joaquín ALMUNIA

Vice-President