

**COMPLETED ACQUISITION BY CINEWORLD GROUP PLC OF  
CITY SCREEN LIMITED**

**Notice of proposal to accept Final Undertakings pursuant to section 82 and  
Schedule 10 to the Enterprise Act 2002 and public consultation on the  
proposed undertakings**

1. On 30 April 2013, the Office of Fair Trading (OFT) referred the completed acquisition by Cineworld Group plc (Cineworld) of City Screen Limited (City Screen) to the Competition Commission (CC) for investigation and report under section 22 of the Enterprise Act (the Act).
2. In its report, *Cineworld Group plc and City Screen Limited, A report on the completed acquisition by Cineworld Group plc of City Screen Limited* (the Report) dated 8 October 2013, the CC concluded that:
  - (a) the completed acquisition by Cineworld of City Screen has resulted in the creation of a relevant merger situation;
  - (b) the creation of that situation has resulted or may be expected to result in a substantial lessening of competition (SLC) in the markets for cinema exhibition services in:
    - (i) Aberdeen;
    - (ii) Bury St Edmunds; and
    - (iii) Cambridge.
  - (c) the CC should take action to remedy the SLCs and the effects flowing from them; and
  - (d) undertakings should be given by Cineworld and City Screen to the CC to give effect to the remedies identified by the CC in Section 8 of the Report.
3. The CC has reached agreement with Cineworld and City Screen as to the terms of the draft Final Undertakings (the Undertakings) and invites written representations on them from any interested person or persons. Representations should reach the CC by 5pm on 17 January 2014 and should be addressed to:

Brid McHugh  
Competition Commission  
Victoria House  
Southampton Row  
London WC1B 4AD

or by email to [brid.mchugh@cc.gsi.gov.uk](mailto:brid.mchugh@cc.gsi.gov.uk).

4. The CC will have regard to any representations made in response to this Notice and make any modifications to the proposed Undertakings as a result. In the absence of any written representations, or in the event that the CC decides on consideration of representations made not to amend the Undertakings, the CC proposes to accept the Undertakings in their present form pursuant to section 82 of the Act. If the CC

considers that any representation necessitates any material change to the proposed Undertakings the CC will give notice of the proposed modifications.

5. The Undertakings may be varied, superseded or released by the CC under section 82(2) of the Act.
6. This Notice and a non-confidential version of the proposed Undertakings will be published on the CC website. The CC has excluded from the non-confidential version of the Undertakings information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [✂].

*(signed)* ALASDAIR SMITH  
*Group Chairman*  
23 December 2013

# COMPLETED ACQUISITION BY CINEWORLD GROUP PLC OF CITY SCREEN LIMITED

## Proposed Final Undertakings to be given to the Competition Commission by Cineworld Group plc and City Screen Limited

On 30 April 2013, the Office of Fair Trading (OFT) referred the completed acquisition by Cineworld Group plc (Cineworld) of Picturehouse Cinemas Limited, formerly named City Screen Limited, (City Screen) to the Competition Commission (CC) for investigation and report under section 22 of the Enterprise Act (the Act).

The CC published its report, *Cineworld Group plc and City Screen Limited, A report on the completed acquisition by Cineworld Group plc of City Screen Limited* (the Report) on 8 October 2013.

The Report concluded that:

- (a) the completed acquisition by Cineworld of City Screen has resulted in the creation of a relevant merger situation;
- (b) the creation of that situation has resulted or may be expected to result in a substantial lessening of competition (SLC) in the markets for cinema exhibition services in:
  - (i) Aberdeen;
  - (ii) Bury St Edmunds; and
  - (iii) Cambridge;
- (c) the CC should take action to remedy the SLCs and the effects flowing from them; and
- (d) undertakings should be given to the CC to give effect to the remedies identified by the CC in Section 8 of the Report.

Cineworld and City Screen propose to give to the CC the following undertakings under section 82 of the Act for the purpose of remedying the SLCs identified in the Report and the adverse effects which flow from them.

### **1. Commencement**

- 1.1 The Undertakings shall come into force on the Commencement Date.

### **2. Divestiture Undertakings**

- 2.1 In order to remedy the SLCs in the markets for cinema exhibition services in Aberdeen, Bury St Edmunds and Cambridge identified in the Report, Cineworld and City Screen undertake that they shall to the satisfaction of the CC bring about the Effective Disposal of the Divestiture Package within the Initial Divestiture Period.
- 2.2 In the event that the Picturehouse cinema in Bury St Edmunds is divested Cineworld and City Screen undertake that they shall give candidate purchasers the option of including in the package of assets that they acquire the café located at the site.

2.3 Cineworld and City Screen undertake to obtain the CC's prior approval of the Divestiture Package.

### **3. Interim obligations**

3.1 Cineworld and City Screen undertake that until such date that an Effective Disposal occurs, they will continue to abide by the Interim Undertakings adopted by the CC on 1 May 2013, reproduced in Annex A, except insofar as the CC has consented to derogations from the Interim Undertakings.

### **4. Monitoring Trustee**

4.1 Cineworld and City Screen undertake to appoint a Monitoring Trustee in the event that the CC considers that such an appointment is reasonably necessary, for example to safeguard any of the assets which may be included in the Divestiture Package.

### **5. Reporting obligations**

5.1 Cineworld and City Screen undertake to provide a written report to the CC within five working days of the Commencement Date, setting out the timetable that they propose to adopt, subject to the CC's approval, to ensure Effective Disposal within the Initial Divestiture Period. The report shall outline the progress that Cineworld and City Screen have made towards such Effective Disposal, the steps that have otherwise been taken to comply with these Undertakings and shall in particular report on:

(a) the steps taken by Cineworld and City Screen to find a purchaser for the Divestiture Package;

(b) the name, address, email address and telephone number of any candidate purchaser;

(c) the status of any discussions that have been held with any candidate purchaser;

(d) the status of the information memorandum (if any), the identities of the persons to whom it has been circulated and the responses to the information memorandum;

(e) the status of the data room (if any), its contents and the persons who have had access to it;

(f) the progress that has been made towards agreeing Heads of Terms;

(g) details of any draft Heads of Terms;

(h) the steps that have been taken towards reaching an Approved Agreement and the identity of persons to whom any agreement has been distributed; and

(i) such other matters as may be directed by the CC from time to time.

5.2 Thereafter, Cineworld and City Screen undertake to provide similar reports to the CC at fortnightly intervals or at other times to be agreed with or directed by the CC during the Initial Divestiture Period.

5.3 In the event that Cineworld and City Screen do not meet a step as set out in the approved timetable, or are otherwise delayed in implementing the remedy, Cineworld

and City Screen undertake to inform the CC, and the Monitoring Trustee in the event that one is appointed pursuant to paragraph 4.1 (Monitoring Trustee), promptly in writing of the occurrence and the reasons for the failure, and in any event no later than two working days after becoming aware that a step in the approved timetable has not been met.

## **6. Procedure for Consent and Notification**

- 6.1 Cineworld and City Screen undertake that where the consent or approval of the CC is required (however the requirement is expressed in these Undertakings) they will seek the consent or approval in writing, which includes by email, and in accordance with paragraph 16.5 (Service).
- 6.2 Cineworld and City Screen undertake that any application by them for the CC's consent or approval shall make full disclosure of every fact and matter within their knowledge that they believe is relevant to the CC's decision.
- 6.3 Cineworld and City Screen recognize that where the CC grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CC.
- 6.4 In the event that Cineworld or City Screen discovers that an application for consent or approval has been made without full disclosure, the relevant party undertakes to:
- 6.4.1 inform the CC in writing identifying the information that it omitted to include in the application for consent within two working days of becoming aware that the application is incomplete; and
- 6.4.2 at the same time or no later than two working days starting with the date on which the CC has been informed of the omission in accordance with paragraph 6.4.1 above, provide to the CC an application for consent that is complete.
- 6.5 Cineworld and City Screen undertake to use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CC at least five working days, or such lesser period as the CC may allow, before the day on which the CC's consent or approval is necessary to avoid a breach of these Undertakings.
- 6.6 Cineworld and City Screen recognize that the CC will not be required to use more than reasonable endeavours to grant or refuse any consent or approval within the five-working-day period referred to in paragraph 6.5 above. This provision is without prejudice to the CC's duties under the Act.

### ***Approved Purchaser***

- 6.7 Cineworld and City Screen recognize that the CC may require any candidate purchaser to provide the CC with such documents and other material or information as the CC may require for the purpose of these Undertakings.
- 6.8 Where in their reasonable opinion Cineworld and City Screen have identified a candidate purchaser with a real interest in the acquisition of all or part of the Divestiture Package, they undertake to promptly apply to the CC for a decision on whether the candidate purchaser is an Approved Purchaser.

- 6.9 In order for the candidate purchaser to satisfy the CC's purchaser suitability criteria as set out in Annex B, Cineworld and City Screen each undertake to use reasonable endeavours to assist the CC in obtaining further information from the candidate purchaser where necessary.
- 6.10 Cineworld and City Screen undertake to send the CC a Heads of Terms Notice within two working days of Heads of Terms being agreed.

### **Approved Agreement**

- 6.11 Cineworld and City Screen recognize that in order to bring about an Effective Disposal, the CC must approve before it is signed any agreement that is intended to be binding, such approval not to be unreasonably withheld.
- 6.12 Cineworld and City Screen recognize that in considering whether to approve an agreement the CC shall consider whether:
- 6.12.1 the terms of the agreement (and any other agreements or arrangements ancillary or connected to the agreement) are such as to give rise to a significant risk that the SLC and adverse effects identified in the Report will not be remedied; and
- 6.12.2 the agreement includes a warranty, breach of which is actionable in damages or other compensation at the suit of any purchaser that the obligations in paragraph 3 (Interim Obligations) and the obligations in the Undertakings have been complied with (except insofar as the CC has consented to derogations from those obligations).
- 6.13 Cineworld and City Screen undertake to send all sale documentation to the CC for approval promptly but in any event no later than ten working days before the day on which any binding agreement will be signed.

## **7. Appointment of Divestiture Trustee**

- 7.1 Cineworld and City Screen undertake at the written Direction of the CC to appoint the Divestiture Trustee nominated and approved by the CC in accordance with the procedure contained in paragraph 8 (Nomination of Divestiture Trustee).
- 7.2 The CC will keep under review the need for a Divestiture Trustee and in particular may, when it is reasonable to do so, issue Directions for the appointment of a Divestiture Trustee where:
- 7.2.1 the CC considers that the reports received in accordance with paragraph 5 (Reporting Obligations) and/or the advice of the Monitoring Trustee if one has been appointed pursuant to paragraph 4 (Monitoring Trustee), inter alia, indicate that Cineworld and City Screen are not making satisfactory progress towards an Effective Disposal within the Initial Divestiture Period; or
- 7.2.2 there is no Effective Disposal within the Initial Divestiture Period; or
- 7.2.3 the CC considers that Cineworld and/or City Screen is in material breach of any of the provisions of these Undertakings or has failed to comply with the Undertakings and that such breach or failure is not remedied within a reasonable period of time.

7.3 Cineworld and City Screen recognize and acknowledge that the CC may choose not to appoint a Divestiture Trustee immediately upon becoming entitled to do so, or at all, and further recognize:

7.3.1 that any delay by the CC in making a written Direction regarding appointment of a Divestiture Trustee shall not affect Cineworld's and City Screen's obligations at such time as the CC makes any written Direction under paragraph 7.1 above; and

7.3.2 in the event that in respect of any breach or failure to comply with these Undertakings the CC directs the appointment of a Divestiture Trustee in respect of part only of the Trustee Obligation, or only in respect of matters preparatory, that Direction shall not affect Cineworld's and City Screen's obligations under paragraph 7.1 should the CC choose to make a further Direction in respect of that breach or failure to comply.

## **8. Nomination of Divestiture Trustee**

8.1 In the event that Cineworld and City Screen have not achieved Effective Disposal within the Initial Divestiture Period, or in the event that the CC issues Directions for the nomination of a Divestiture Trustee, Cineworld and City Screen undertake within a period of four working days from the expiry of the Initial Divestiture Period or within the time period stipulated in the Directions to submit to the CC for approval a list of two or more persons whom they propose to appoint as Divestiture Trustee. The proposal shall contain sufficient information for the CC to verify that each proposed person fulfils the requirements set out in paragraph 8.2 and shall include:

8.1.1 the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil the Trustee Obligation; and

8.1.2 a schedule of the steps to be taken to give effect to the mandate.

8.2 Each person on the list referred to in paragraph 8.1 shall be independent of and unconnected to Cineworld and/or City Screen and the Group of Interconnected Bodies Corporate to which either of them belongs, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.

8.3 The CC may approve or reject any or all of the proposed persons (approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Trustee Obligation. If only one proposed person is approved, Cineworld and City Screen shall each use best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestiture Trustee in accordance with the mandate approved by the CC. If more than one proposed person is approved, Cineworld and City Screen shall be free to choose the Divestiture Trustee to be appointed from among the approved persons. Cineworld and City Screen undertake to appoint the Divestiture Trustee within two working days from the CC's Direction under paragraph 7.1 and on the terms of the mandate approved by the CC.

8.4 If all the proposed Divestiture Trustees are rejected by the CC, Cineworld and City Screen shall submit the names of at least two further persons within five working days from being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 8.1 to 8.3 above.

- 8.5 The provisions of paragraph 8.6 shall apply if:
- 8.5.1 Cineworld and City Screen fail to submit for approval persons whom it proposes to appoint as Divestiture Trustee in accordance paragraph 8.1;
  - 8.5.2 Cineworld and City Screen fail to submit the names of further persons in accordance with paragraph 8.4; or
  - 8.5.3 those further persons whose names were submitted by Cineworld and City Screen in accordance with paragraph 8.4 are rejected by the CC (acting reasonably); or
  - 8.5.4 Cineworld and City Screen are unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CC.
- 8.6 The CC shall give written Directions for the appointment of one or more persons to act as Divestiture Trustee after informing Cineworld and City Screen at least one working day before the written Directions are issued of the name of the proposed Divestiture Trustee, and Cineworld and City Screen undertake that they shall appoint or cause to be appointed such Divestiture Trustee within two working days from the CC's Direction under paragraph 7.1 under the terms of a Divestiture Trustee mandate approved by the CC.

## **9. Functions of Divestiture Trustee**

- 9.1 The Divestiture Trustee shall fulfil the Trustee Obligation.
- 9.2 The Divestiture Trustee shall undertake such matters preparatory to giving effect to the Trustee Obligation or part thereof as the CC may specify in any written Directions.
- 9.3 The Divestiture Trustee shall take such steps and measures it considers necessary to discharge the Trustee Obligation and to that end the Divestiture Trustee may give written directions to Cineworld and/or City Screen, and Cineworld and City Screen each undertake to comply with such directions or to procure compliance with such directions as are within its powers and to take such steps within its competence as the Divestiture Trustee may reasonably specify.
- 9.4 Cineworld and City Screen each undertake to enable the Divestiture Trustee to carry out the Trustee Obligation.
- 9.5 Cineworld and City Screen each recognize and acknowledge that:
- 9.5.1 the CC may, on its own initiative or at the request of the Divestiture Trustee or Cineworld and City Screen, give written Directions or instructions to the Divestiture Trustee in order to assist it in the discharge of the Trustee Obligation (including Directions as to the disposal of such property, assets, rights, consents, licences, privileges, or any other matters, including those set out in paragraphs 7.1 (Appointment of Divestiture Trustee) and 8 (Nomination of Divestiture Trustee), as the CC considers necessary to bring about Effective Disposal);
  - 9.5.2 the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of the Trustee Obligation such terms and conditions as it considers appropriate; and



9.5.3 the Divestiture Trustee shall protect the legitimate financial interests of Cineworld and City Screen subject to the Divestiture Trustee's overriding obligations to give effect to the Trustee Obligation.

9.6 Cineworld and City Screen recognize and acknowledge that in the performance of the Trustee Obligation the Divestiture Trustee shall act solely on the instructions of the CC and shall not be bound by any instruction of Cineworld or City Screen and Cineworld and City Screen each undertake not to seek to create or vary the obligations and duties of the Divestiture Trustee except with the CC's prior written consent.

## **10. Divestiture Trustee—duties and obligations of Cineworld and City Screen**

10.1 Cineworld and City Screen undertake to provide the Divestiture Trustee with all such cooperation, assistance and information (including by the production of financial or other information whether or not such information is in existence at the time of the request, but excluding any material properly the subject of legal privilege) as the Divestiture Trustee may reasonably require in the discharge of the Trustee Obligation.

10.2 Cineworld and City Screen recognize and acknowledge that the Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligation (save where material is properly the subject of legal privilege) and Cineworld and City Screen each undertake to provide the Divestiture Trustee upon request with copies of any such document. On the request of the Divestiture Trustee, Cineworld and City Screen each undertake to make available to the Divestiture Trustee one or more offices on its premises for meetings in order to provide the Divestiture Trustee with all information necessary for the performance of the Trustee Obligation.

10.3 Cineworld and City Screen undertake to grant reasonable comprehensive powers of attorney on terms approved by the CC, duly executed, to the Divestiture Trustee to enable it to discharge the Trustee Obligation including by the appointment of advisers to assist with the disposal process. Cineworld and City Screen each undertakes that upon the reasonable request of the Divestiture Trustee Cineworld and City Screen shall execute the documents required to give effect to the Trustee Obligation.

10.4 Cineworld and City Screen undertake to hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Trustee Obligation and Cineworld and City Screen each recognizes and acknowledges that the Divestiture Trustee, its employees, agents or advisers shall have no liability to Cineworld or City Screen or any of their subsidiaries for any liabilities arising out of the proper performance of the Trustee Obligation, except to the extent that such liabilities result from the negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.

10.5 Cineworld and City Screen undertake that at their expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) if the Divestiture Trustee considers the appointment of such advisers reasonably necessary or appropriate in the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Should Cineworld or City Screen refuse to approve the advisers proposed by the Divestiture Trustee, the CC may, after consulting with Cineworld and City Screen, approve and direct the appointment of such advisers at the expense of Cineworld and City Screen.

- 10.6 Where Cineworld and City Screen wish to make an objection to any disposal on the grounds of bad faith or failure of the Divestiture Trustee to protect the legitimate financial interests of Cineworld and/or City Screen, subject to the Trustee Obligation, it shall submit a notice setting out its objections within seven working days from the day on which it became aware of the fact or facts giving rise to its objection.

## **11. Divestiture Trustee—replacement, discharge and reappointment**

- 11.1 Cineworld and City Screen acknowledge that if the Divestiture Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest, the CC may, after consulting the Divestiture Trustee, require Cineworld and City Screen to replace the Divestiture Trustee.
- 11.2 If the Divestiture Trustee is removed under paragraph 11.1 the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has affected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure contained in paragraph 8 (Nomination of Divestiture Trustee).
- 11.3 Cineworld and City Screen recognize and acknowledge that, other than in accordance with paragraph 11.1, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CC has discharged it from its duties at a time at which all the functions with which the Divestiture Trustee has been entrusted have been met.

## **12. Directions**

- 12.1 Cineworld and City Screen undertake to comply with such written Directions as the CC may from time to time (acting reasonably) issue to take such steps as may be specified or described in the Directions for the purpose of bringing about an Effective Disposal within the Initial Divestiture Period.
- 12.2 Cineworld and City Screen recognize and acknowledge that the CC may choose not to issue Directions immediately upon becoming entitled to do so, and further recognize that any delay by the CC in making a written Direction shall not affect Cineworld's and City Screen's obligations at such time as the CC makes any written Direction under paragraph 12.1 above.

## **13. Compliance**

- 13.1 Cineworld and City Screen undertake to comply with such written Directions as the CC or the OFT may from time to time (acting reasonably) issue to take such steps within their competence for the purpose of carrying out or securing compliance with these Undertakings.

## **14. Extension of Time Limits**

- 14.1 Cineworld and City Screen recognize and acknowledge that the CC may where it considers appropriate, in response to a written request from Cineworld or City Screen showing good cause, or otherwise at its own discretion, grant an extension of any period specified in the Undertakings within which Cineworld must take action.

## **15. Provision of Information to the CC and the OFT**

- 15.1 Cineworld and City Screen undertake to promptly provide to the CC such information as the CC may reasonably require for the purpose of performing any of its functions under these Undertakings or under sections 82, 83 and 94(7) of the Act.
- 15.2 Cineworld and City Screen undertake that they will promptly provide to the OFT such information as the OFT may reasonably require for the purpose of performing any of its functions under these Undertakings or under sections 92, 93(6) and 94(6) of the Act.
- 15.3 Should Cineworld or City Screen at any time be in breach of any provision of these Undertakings, they will notify the CC within five working days from the time Cineworld or City Screen become aware of the breach to advise the CC that there has been a breach and of all the circumstances of that breach.

## **16. Service**

- 16.1 Cineworld and City Screen hereby authorize Olswang LLP whose address for service is 90 High Holborn London WC1V 6XX to accept service on their behalf of all documents connected with these Undertakings (including any document of any kind which falls to be served on or sent to Cineworld, City Screen or any of their subsidiaries in connection with any proceedings in Courts in the UK, orders, requests, notifications or other communications connected with these Undertakings).
- 16.2 Unless Cineworld and City Screen inform the CC in writing that Olswang LLP has ceased to have authority to accept and acknowledge service on their or any of their subsidiaries' behalf, any document, order, request, notification or other communication shall be validly served on Cineworld and City Screen if it is served on Olswang LLP; and service shall be deemed to have been acknowledged by Cineworld and City Screen if it is acknowledged by Olswang LLP or such other nominee.
- 16.3 Paragraph 16.2 above has effect irrespective of whether, as between Cineworld, City Screen and Olswang LLP or other nominees, Olswang LLP or other nominees has or continues to have any authority to accept and acknowledge service on Cineworld's and City Screen's or any of its respective subsidiaries' behalf.
- 16.4 No failure or mistake by Olswang LLP or other or other nominees (including a failure to notify Cineworld and/or City Screen of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Undertakings including any proceedings or judgment.
- 16.5 Any communication from Cineworld and/or City Screen to the CC under these Undertakings shall be addressed to Brid McHugh, Competition Commission, Victoria House, Southampton Row, London WC1B 4AD or such other person or address as the CC may direct in writing.
- 16.6 Any communication from Cineworld and/or City Screen to the OFT under these Undertakings shall be addressed to Director of Mergers, Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JY, or such other address as the OFT may direct in writing.

## **17. Technical assistance**

- 17.1 Cineworld and City Screen undertake to remunerate in full, and to pay all the reasonable costs and expenses of, any Independent Expert whose assistance the CC may reasonably require in connection with any of the matters in paragraph 17.2.
- 17.2 The matters in this paragraph are:
- 17.2.1 the determination of a person as an Approved Purchaser;
  - 17.2.2 the determination of an agreement as an Approved Agreement; and
  - 17.2.3 any other matter on which the CC may reasonably require the assistance of an Independent Expert in connection with these Undertakings.
- 17.3 For the purposes of enabling Cineworld and City Screen to fulfil their obligation in paragraph 17.1, the CC shall give Cineworld and City Screen advance notice of its intention to seek the assistance of any Independent Expert and an indication of likely costs.

## **18. Effect of invalidity**

- 18.1 Should any provision of these Undertakings be contrary to law or invalid for any reason, Cineworld and City Screen undertake to continue to observe the remaining provisions.

## **19. Governing Law**

- 19.1 Cineworld and City Screen recognize and acknowledge that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 19.2 In the event that a dispute arises concerning these Undertakings, Cineworld and City Screen undertake to submit to the courts of England and Wales.

## **20. Termination**

- 20.1 Cineworld and City Screen recognize and acknowledge that these Undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 20.2 Cineworld and City Screen recognize and acknowledge that the variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

## **21. Interpretation**

- 21.1 Words and expressions defined in the recitals to these Undertakings shall have the same meaning in these Undertakings.
- 21.2 In these Undertakings the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives should be construed accordingly.
- 21.3 The headings used in these Undertakings are for convenience and shall have no legal effect.

- 21.4 Expressions in the singular include the plural and vice versa and references to persons include corporations.
- 21.5 References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.
- 21.6 References to recitals, paragraphs, subparagraphs and annexes are references to the recitals to, paragraphs and subparagraphs of and annexes to these Undertakings.
- 21.7 The annexes to these Undertakings form part of these Undertakings.
- 21.8 References in these Undertakings to 'disposal' are references to such legally recognized transfer, assignment, delivery or other disposal, creation or assumption of property, rights, assets, liabilities and other obligations, and to such combination of them, as the context requires.
- 21.9 For the purposes of these Undertakings and the annexes, the following terms mean:

<b>Affiliate</b>	an Affiliate of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under the common control for the purposes of section 26 of the Act;
<b>the Act</b>	means the Enterprise Act 2002;
<b>Approved Agreement</b>	means a binding agreement or agreements approved by the CC in advance of signature by any party to enable an Effective Disposal within the Initial Divestiture Period;
<b>Approved Purchaser</b>	means a purchaser that the CC is satisfied meets the CC's purchaser approval criteria, set out in Annex B; and the purchaser will obtain all necessary approvals and consents, including the consent of any regulatory or competition authority;
<b>CC</b>	means the Competition Commission and any successor body;
<b>Cineworld</b>	means Cineworld Group plc and any Subsidiary or division thereof as the context requires;
<b>City Screen</b>	means City Screen Limited and any Subsidiary or division thereof as the context requires;
<b>Commencement Date</b>	means the date on which these Undertakings are accepted by the CC;

<b>Divestiture Package</b>	means one of the cinemas of Cineworld and City Screen in each of: (i) Aberdeen; (ii) Bury St Edmunds; and (iii) Cambridge;
<b>Effective Disposal</b>	means the completed sale and purchase to an Approved Purchaser of the Divestiture Package;
<b>Group of Interconnected Bodies Corporate</b>	has the meaning given in section 129(2) of the Act; reference to a Group of Interconnected Bodies corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;
<b>Heads of Terms</b>	means an agreement in principle to acquire the Divestiture Package that sets out the transaction structure and its terms, and that is expressed by all parties to be final (1) subject to contract and (2) on all the issues that in the reasonable opinion of the parties will form the basis of a subsequent binding agreement;
<b>Heads of Terms Notice</b>	means a notice (1) stating that Heads of Terms have been agreed; and (2) attaching the Heads of Terms to the notice;
<b>Independent Expert</b>	means a person of suitable expertise appointed by the CC;
<b>Initial Divestiture Period</b>	means the period ending [X] and any extension granted by the CC in accordance with paragraph 14 of these Undertakings (Extension of time limits); in the event of the appointment of a Divestiture Trustee pursuant to paragraph 7 of these Undertakings (Appointment of Divestiture Trustee) the Initial Divestiture Period shall include the Trustee Divestiture Period;
<b>Interim Undertakings</b>	means the undertakings given to the OFT on 24 December 2012 and adopted by the CC on 1 May 2013, and any directions, variations or derogations made or granted by the CC;
<b>Monitoring Trustee</b>	means a person appointed to monitor the compliance of Cineworld and City Screen with these Undertakings, including the Interim Undertakings in Annex A;
<b>OFT</b>	means the Office of Fair Trading and any successor body;
<b>Picturehouse</b>	means the brand of cinemas operated by City Screen Limited;
<b>Report</b>	means the report published by the CC on 8 October 2013 titled <i>Cineworld Group plc and City Screen Limited, A report on the completed acquisition by Cineworld Group plc of City Screen Limited</i> ;

<b>Subsidiary</b>	unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;
<b>Trustee Divestiture Period</b>	means the period of [ <del>3</del> ] or such longer period as the CC may in its absolute discretion allow from the date on which a Divestiture Trustee is appointed in accordance with paragraph 8 (Nomination of Divestiture Trustee) and subject to any extension granted by the CC under paragraph 14 of these Undertakings (Extension of Time Limits);
<b>Trustee Obligation</b>	means bringing about Effective Disposal at no minimum price but recognizing always the need to protect the legitimate financial interests of Cineworld and City Screen and the performance of all ancillary tasks as are necessary or desirable for the purpose of bring about Effective Disposal promptly and in any event within the Trustee Divestiture Period;
<b>Undertakings</b>	means these Undertakings and the annexes given by Cineworld and City Screen for the purpose of remedying the SLC in the markets for the supply of cinema exhibition services in Aberdeen, Bury St Edmunds and Cambridge and the adverse effects flowing from the SLC in these markets.

**FOR AND ON BEHALF OF CINEWORLD**

.....	Signature	.....	Signature
.....	Name	.....	Name
.....	Title	.....	Title
.....	Date	.....	Date
(Director)		(Director/Company Secretary)	

**FOR AND ON BEHALF OF CITY SCREEN (now PICTUREHOUSE CINEMAS LIMITED)**

.....	Signature	.....	Signature
.....	Name	.....	Name
.....	Title	.....	Title
.....	Date	.....	Date
(Director)		(Director/Company Secretary)	

**Interim Undertakings adopted by the CC on 1 May 2013**

**COMPLETED ACQUISITION BY CINEWORLD GROUP PLC OF  
CITY SCREEN LIMITED**

**Adoption of Initial Undertakings**

1. On 30 April 2013, the Office of Fair Trading (OFT) made a reference to the Competition Commission (CC) under section 22 of the Enterprise Act 2002 (the Act) concerning the completed acquisition by Cineworld Group Plc (Cineworld) of City Screen Limited (the Reference).
2. The Reference has not been finally determined.
3. On 24 December 2012, the OFT accepted the undertakings reproduced below (Initial Undertakings) from Cineworld in accordance with section 71(2) of the Act.
4. The Initial Undertakings are still in force.
5. The CC hereby adopts the Initial Undertakings in accordance with section 80(3) of the Act for the purpose of preventing pre-emptive action being taken pending the determination of the reference, which might prejudice the reference or impede the taking of any action which may be justified by the decisions of the CC under Part 3 of the Act.

*Signed by authority of the CC*  
PROFESSOR ALASDAIR SMITH  
*Deputy Chairman*  
1 May 2013



## COMPLETED ACQUISITION BY CINEWORLD GROUP PLC OF CITY SCREEN LIMITED

### UNDERTAKINGS GIVEN BY CINEWORLD GROUP PLC AND CITY SCREEN LIMITED TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 71 OF THE ENTERPRISE ACT 2002

Pursuant to section 71 of the Enterprise Act 2002, for the purpose of preventing pre-emptive action, Cineworld Group Plc ('**Cineworld**') hereby gives to the OFT on behalf of itself and City Screen Limited ('**City Screen Limited**') the following undertakings (the '**undertakings**') in respect of the acquisition by Cineworld of City Screen.

#### **Management of the parties' respective businesses until determination of proceedings**

1. Except with the prior written consent of the OFT, each of Cineworld undertakes that they will not during the specified period take any action which might:
  - (a) lead to the integration of the Cineworld business with all or any part of the City Screen business;
  - (b) transfer the ownership or control of the Cineworld business or the City Screen business;
  - (c) otherwise impair the ability of the Cineworld business or the City Screen business to compete independently in any markets affected by the acquisition; or
  - (d) otherwise prejudice any reference to the CC or impede the taking of any action under the Act which may be justified by the CC's decisions on any such reference.
  
2. Without prejudice to the generality of paragraph 1, except with the prior written consent of the OFT, Cineworld will at all times during the specified period, procure that:
  - (a) the City Screen business is carried on separately and under a separate brand identity from the Cineworld business and separate sales of the City Screen business are maintained;
  - (b) the City Screen business and the Cineworld business are each maintained as a going concern and sufficient resources are made available for the development of the City Screen business and the Cineworld business on the basis of their respective pre-merger plans;
  - (c) no substantive changes are made to key staff or to the organisational structure of, or the management responsibilities within the City Screen business or the Cineworld business;
  - (d) in relation to the assets of each of the City Screen business and the Cineworld business, and otherwise than in the ordinary course of business:
    - (i) the assets are maintained and preserved, including facilities and goodwill;
    - (ii) none of the assets is disposed of; and
    - (iii) no interest in the assets is created or disposed of;

- (e) the nature, description, range and standard of goods and/or services supplied in the United Kingdom by the City Screen business and the Cineworld business at the date of these undertakings are in all material respects maintained and preserved;
- (f) there is no integration of the information technology of the City Screen business with the information technology of the Cineworld business and the respective software and hardware platforms of the City Screen business and the Cineworld business shall remain unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of each of the City Screen business and the Cineworld business shall be operated and updated separately and any negotiations with the customers and suppliers in relation to the City Screen business will be carried out by the City Screen business alone and for the avoidance of doubt Cineworld will not negotiate on behalf of City Screen or enter into any joint agreements with City Screen;
- (h) all existing contracts continue to be serviced by the business to which they were awarded;
- (i) all reasonable steps are taken to encourage all key staff of the City Screen business and the Cineworld business to remain with the business in relation to which they were employed prior to the merger;
- (j) no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the City Screen business or the Cineworld business (**'Confidential Information'**) shall pass, directly or indirectly from the City Screen business (or any of its employees, directors, agents or affiliates) to the Cineworld business (or any of its employees, directors, agents or affiliates) or vice versa, except:
  - (i) where strictly necessary in the ordinary course of business and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information wherever they may be held will be returned to the relevant business and any copies destroyed other than as may be required for the purposes of regulatory compliance under applicable law; and
  - (ii) the flow of Confidential Information from the City Screen business (or any of its employees, directors, agents or affiliates) to the Cineworld business (or any of its employees, directors, agents or affiliates) is permitted to the extent that such disclosure of information is strictly necessary for compliance with external regulatory and/or accounting obligations.

## Compliance

3. Cineworld shall procure that each of their subsidiaries complies with these undertakings as if it had given them.
4. Cineworld shall forthwith provide to the OFT such information as the OFT may from time to time require for the purposes of monitoring compliance by Cineworld and their subsidiaries with these undertakings. In particular, on the 7 January 2013 and subsequently every 10 working days thereafter (save where the obligation does not fall on a working day, in which case the first working day thereafter), the Chief Financial Officer of Cineworld shall provide a statement to the OFT on behalf of Cineworld confirming compliance with these undertakings in the form set out in the Appendix to these undertakings.

5. At all times, Cineworld will actively keep the OFT informed of any material developments relating to the City Screen business, which includes, but is not limited to:
  - (a) details of key staff who leave or join the City Screen business or the Cineworld business;
  - (b) any City Screen business or Cineworld business plant breakdowns which have halted production for more than 24 hours or changes in the City Screen business' or Cineworld business' production arrangements which have affected the working pattern of more than five City Screen business or Cineworld business employees;
  - (c) all substantial customer volumes won or lost by the City Screen business or the Cineworld business including any substantial changes in customers' demand; and
  - (d) substantial changes in the City Screen business' or Cineworld business' contractual arrangements or relationships with key suppliers.
6. Cineworld shall comply with such written directions as the OFT may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

## Interpretation

7. The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.

8. For the purposes of these undertakings:

**'the Act'** means the Enterprise Act 2002;

**'an affiliate'** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under the common control for the purposes of section 26 of the Act;

**'business'** has the meaning given by section 129(1) and (3) of the Act;

**'the CC'** means the Competition Commission;

**'Cineworld'** means Cineworld Group Plc;

**'the Cineworld business'** means the business of Cineworld and its subsidiaries carried on as from 6 December 2012;

**'City Screen'** means City Screen Limited;

**'the City Screen business'** means the business of City Screen and its subsidiaries carried on as from 6 December 2012;

**'control'** shall be construed in accordance with section 26 of the Act and in the case of a body corporate, a person shall be deemed to control it if he holds, or has an interest in, shares of that body corporate which amount to 10 per cent or more of its issued share capital or which carry an entitlement to vote at meetings of that body

corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

**'the decisions'** means the decisions of the CC on the questions which it is required to answer by virtue of section 35 of the Act;

**'key staff'** means staff in positions of executive or managerial responsibility and/or whose performance could materially affect the viability of the business;

**'the merger'** means the creation of the relevant merger situation between the Cineworld business and the City Screen business;

**'the OFT'** means the Office of Fair Trading, provided that, should the CC adopt these undertakings pursuant to section 80(3) of the Act, references to 'the OFT' in paragraphs 1 and 2 of these undertakings shall be taken as references to the CC, and references to 'the OFT' in paragraphs 4, 5 and 6 of these undertakings shall be taken to include both the Office of Fair Trading and the CC;

**'the ordinary course of business'** means matters connected to the day to day supply of goods and/or services by City Screen or Cineworld and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of City Screen or Cineworld;

**'the specified period'** means the period beginning on the date of these undertakings and terminating either at the end of the period specified in section 71(5) or (6) of the Act or, should the CC adopt these undertakings pursuant to section 80(3) of the Act, the end of the period specified in section 80(7) or (8) of the Act;

**'subsidiary'**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**'working day'** means any day of the week other than a Saturday, Sunday or any other day that is a public holiday in England;

In these undertakings unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF CINEWORLD

.....	Signature	.....	Signature
.....	Name	.....	Name
.....	Title	.....	Title
.....	Date	.....	Date
(Director)		(Director/Company Secretary)	

## **Purchaser Approval Criteria**

### **1. Independence**

The proposed purchaser is independent of and unconnected to Cineworld and City Screen and the Group of Interconnected Bodies Corporate to which Cineworld and City Screen belong and any Associated Person or Affiliate of Cineworld or such Group of Interconnected Bodies Corporate.

### **2. Capability**

The proposed purchaser must have access to appropriate financial resources and expertise to operate the divested business and to be an effective competitor.

### **3. Commitment to the relevant market**

The proposed purchaser has the intention demonstrated by, inter alia, a suitable business plan (including managerial capability, operational capability and technical capability) to maintain and operate the divested business as a viable and active business in competition with Cineworld and other competitors in the relevant markets so as to remedy the SLC and any adverse effect.

### **4. Absence of competitive or regulatory concern**

The acquisition by the proposed purchaser does not create a realistic prospect of further competition or regulatory concerns within any market or markets in the UK.