

Completed acquisition by Vue Entertainment International Limited of Apollo Cinemas Limited

ME/5506/12

The OFT's decision on reference given on 25 January 2013. Full text of decision published 6 February 2013.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Vue Entertainment International Limited** (Vue) is the parent company of the business trading under the name Vue. Vue provides cinema film exhibition services. Vue's turnover in the financial year ended 24 November 2011 was £281.1 million, of which £259.9 million was attributable to the UK.
2. **Apollo Cinemas Limited** (Apollo) is the holding company of the cinema chain trading under the name Apollo. Apollo's turnover in the financial year ended 29 March 2012 was £19.4 million, all of which was attributable to the UK.

TRANSACTION

3. On 10 May 2012 Vue acquired, indirectly via Vue's wholly owned subsidiary Treganna Bidco Limited, sole control of Apollo (the Acquisition).

JURISDICTION

4. As a result of this Acquisition Vue and Apollo ceased to be distinct. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met as post-merger Vue will have a share of supply of cinema film exhibition services in a substantial part of the UK, namely Greater London, exceeding 25 per cent. The OFT believes that it is or may be the case that the Acquisition has resulted in the creation of a relevant merger situation.

BACKGROUND

5. In its decision of 24 August 2012 with regard to the Acquisition (the Decision), the OFT stated its belief that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition (SLC) in cinema film exhibition services in four local areas, namely Fareham, Port Talbot, Morecambe and Burnley. Accordingly, the OFT found itself under a duty to refer the Acquisition to the Competition Commission.
6. To address the OFT's competition concerns, Vue offered to divest its interest in the Apollo cinemas in the Fareham, Port Talbot, Burnley and Morecambe areas (the divestment cinemas).
7. The OFT found that such a remedy would, in principle, address all of the competition concerns identified in the Decision in a clear cut manner since it would remove any increment to Vue's local presence in all SLC areas. The OFT also considered that it was reasonable and proportionate, in seeking to ensure that the competition concerns were remedied in this case, to require an up-front buyer.
8. The OFT therefore suspended its duty to refer the completed acquisition by Vue Entertainment International Limited (Vue) of Apollo Cinemas Limited (Apollo) to the Competition Commission under section 22 of the Act because the OFT was considering whether to accept appropriate undertakings in lieu of reference under section 73 of the Act.
9. On 9 November 2012, Apollo entered into a sale and purchase agreement with Reel Cinemas Limited (Reel) to acquire the business and the assets of the divestment cinema, conditional only upon OFT acceptance of the undertakings in lieu (including formal OFT approval of the purchaser of the divestment cinemas) and the receipt by Apollo of formal written consent of each of the landlords of the divestment cinemas to assign the relevant leases to Reel.¹

CONSULTATION

10. On 20 December 2012, pursuant to paragraph 2(1) of Schedule 10 of the Act, the OFT published the proposed undertakings in lieu of a reference

¹ The OFT notes that at the date of consultation on the proposed undertakings in lieu landlord consent in relation to the relevant sites was expected to be received in due course.

that it was minded to accept, inviting interested parties to give their views in relation to the proposed undertakings, including Reel as purchaser of the divestment cinemas. The consultation text published on the OFT's website alongside the proposed undertakings is set out in the Annex to this decision.

11. For the reasons set out in the consultation text, the OFT considers, subject to the outcome of the consultation, that Reel is a suitable purchaser of the divestment cinemas and that the undertakings offered by Vue and the purchase of the divestment cinemas by Reel are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the Decision.
12. The OFT received no comments from third parties during the consultation period.
13. The OFT has received confirmation that Apollo has received formal written consent of each of the landlords of the divestment cinemas to assign the relevant leases to Reel.

DECISION

14. The OFT found in its Decision that the Acquisition would be referred to the Competition Commission if Vue failed to give suitable undertakings in lieu of reference pursuant to section 73 of the Act to address the competition concerns identified in the Decision.
15. The OFT considers that the undertakings provided by Vue are clear cut and appropriate to remedy, mitigate or prevent the substantial lessening of competition and any adverse effects resulting from it. The OFT has therefore decided to accept the undertakings offered by Vue, including Reel as the purchaser of the divestment cinemas.
16. The OFT has now decided that the Acquisition will therefore not be referred to the Competition Commission and the undertakings, which have been signed by Vue, will come into effect from the date of this decision.

Annex – consultation text issued on 20 December 2012

COMPLETED ACQUISITION BY VUE ENTERTAINMENT INTERNATIONAL LIMITED OF APOLLO CINEMAS LIMITED

Notice under Paragraph 2(1) Schedule 10 of the Enterprise Act 2002 of proposed undertakings in lieu of reference pursuant to section 73 of the Enterprise Act 2002

OFT's duty to refer

On 24 August 2012, the OFT announced its decision (the Decision) to suspend its duty to refer the completed acquisition by Vue Entertainment International Limited (Vue) of Apollo Cinemas Limited (Apollo) to the Competition Commission under section 22 of the Enterprise Act 2002 because the OFT was considering whether to accept appropriate undertakings in lieu of reference from Vue.

The OFT believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition in cinema film exhibition services in four local areas, namely Fareham, Port Talbot, Morecambe and Burnley. The text of the OFT's Decision, published on 3 October 2012, provides details on the OFT's findings.

Accordingly, the OFT found itself under a duty to refer the merger to the Competition Commission.

Divestment undertakings offered by Vue

To address the OFT's competition concerns, Vue offered to divest its interest in the Apollo cinemas in the Fareham, Port Talbot, Burnley and Morecambe areas (the divestment cinemas).

The OFT considered that there was some uncertainty in relation to both the remedy package offered and the actual number of suitable purchasers for the divestment cinemas. The OFT therefore considered that it was appropriate to suspend its duty to refer only on the basis that it would seek an upfront buyer for the divestment cinemas. The OFT believed that the requirement for an upfront buyer was both reasonable and proportionate in seeking to ensure that the competition concerns were remedied in this case.

Upfront buyer for the four divestment cinemas

The proposed purchaser for all four divestment cinemas is Reel Cinemas Limited (Reel).

Reel has entered into a sale and purchase agreement (SPA) with Apollo to acquire the business and the assets of the divestment cinemas. The sale agreement is conditional only upon OFT acceptance of the undertakings in lieu (including formal OFT approval of the purchaser of the divestment cinemas) and the receipt by Apollo of formal written consent of each of the landlords of the divestment cinemas to assign the relevant leases to Reel. The OFT understands that the latter condition has already been met or will be met at the end of the OFT consultation on undertakings in lieu.

Suitability of the proposed purchaser

In approving a purchaser, the OFT's position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The OFT therefore seeks to ensure that the proposed buyer is independent of the merged parties and has the necessary expertise, resources, incentives and intention to operate the divested business as an effective competitor in the marketplace.¹

Reel is a well established independent cinema operator which currently operates 12 cinemas in England and is independent of and unconnected to Vue and Apollo.

Reel has experience in the cinema film exhibition market, where it has been active since 2001 (originally as Curzon Leisure Group Limited). The OFT considers that Reel will have the financial resources, expertise, incentive and

¹ The approach and criteria followed by the OFT to approve a purchaser are set out in further detail in the OFT's *Mergers – exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT 1122, December 2010, in particular from paragraph 5.25).

intention to operate the divestments in competition with other cinema operators in the relevant markets. Reel has acquired a number of cinemas from third parties in the past, which it has successfully integrated into its business.

Reel has confirmed that it does not anticipate any difficulties in obtaining the necessary approvals, licences and consents relevant to the four divestment cinemas.

Reel does not currently operate in any of the four local areas where the divestments are. It is therefore not considered that the transaction will raise prima facie competition concerns.

Therefore, subject to the outcome of this consultation, the OFT considers Reel to be a suitable purchaser of the divestment cinemas.

Proposed decision and process going forward

The acceptance by the OFT of these proposed undertakings in lieu is dependent on this public consultation.

The OFT considers that the undertakings offered by Vue and the purchase of the divestment cinemas by Reel are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the Decision.

The OFT therefore gives notice that it proposes to accept undertakings in lieu in the form of the proposed undertakings.

Before reaching a decision as to whether to accept the proposed undertakings including Reel as purchaser of the divestment cinemas, interested parties are invited to make their views known.

Representations should be made in writing to:

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Deadline for comments: 5 pm on 18 January 2013