

Completed acquisition by Cineworld Group plc of five cinemas owned by Empire Cinemas Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6633/16

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 12 December 2016. Full text of the decision published on 4 January 2017.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

SUMMARY

1. On 12 August 2016 Cineworld Group plc (**Cineworld**) acquired five cinemas (the **Target Cinemas**) from Empire Cinemas Limited (**Empire**) (the **Merger**). Cineworld and Empire are together referred to as the **Parties**. The Target Cinemas are the Empire Basildon; the Empire Hemel Hempstead; the Empire Poole; the Empire Leicester Square; and the Empire Bromley.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties' enterprises have ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the supply of cinema exhibition services in the UK, and at a local level, in relation to three of the five Target Cinemas (the Empire Leicester Square, the Empire Bromley and the Empire Hemel Hempstead). Given that, post-Merger, there has been only a small increase in Cineworld's share of supply at the national level and that a number of strong national competitors will remain, the CMA does not believe that the Merger has given rise to any concerns in the supply of cinema exhibition services on a national basis. The CMA has therefore assessed the impact of the Merger on cinema exhibition services at a local level only, identifying which of the Parties'

cinemas overlapped and examining relevant catchment areas around each of these.

4. The CMA considered a range of evidence in its competitive assessment of each overlapping cinema, to determine the extent to which the Parties compete and the significance of the competitive constraints that Cineworld would face post-Merger. As applicable, this evidence included: (i) the extent of geographic overlap between the Parties based on their relative locations; (ii) the number and competitive strength of remaining competing fascia within the local area; (iii) evidence from a customer survey, which the CMA used to calculate diversion for customers of one of Cineworld's existing cinemas, Cineworld Luton.
5. On the basis of this evidence, for the local overlaps in relation to the Empire Leicester Square, the Empire Bromley and the Empire Hemel Hempstead, the CMA found that the Parties did not compete closely and that sufficient competitive constraints will remain post-Merger.
6. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
7. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

8. Cineworld is a cinema operator active in nine different countries including the UK, where it operates 112 cinemas (excluding those acquired from Empire as part of the Merger) with a total of 968 screens. Cineworld's cinemas operate under the Cineworld and Picturehouse brands. The turnover of Cineworld in the financial year ending December 2015¹ was around £705.8 million worldwide and around £465.9 million in the UK.
9. Empire is also a cinema operator, which is active solely in the UK and, pre-Merger, owned 18 cinemas. The combined turnover of the Target Cinemas in 2015 was around £[~~8~~] million in the UK.²

¹ From 2 January 2015 to 21 December 2015.

² From 9 January 2015 to 7 January 2016

Transaction

10. Cineworld acquired the Target Cinemas for a total consideration of £94 million. The Merger was completed on 12 August 2016.

Jurisdiction

11. As a result of the Merger, the enterprises of Cineworld and the Target Cinemas have ceased to be distinct.
12. The Parties overlap in the supply of cinema exhibition services, with a combined share of supply of [20–30]% (increment [0–5]%)³ in the UK, calculated on the basis of gross box office revenues (**GBOR**). The CMA therefore believes that the share of supply test in section 23 of the Act is met.
13. The Merger was completed on 12 August 2016 and was first made public on the same date. The four month deadline for a decision under section 24 of the Act is 28 December 2016, following extension under section 25(2) of the Act.
14. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
15. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 18 October 2016 and the statutory 40 working day deadline for a decision is therefore 12 December 2016. The Merger was considered at a Case Review Meeting.⁴

Counterfactual

16. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that in the absence of the merger the prospect of these conditions continuing is not realistic or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁵

³ According to Cineworld's submissions and based on data from International Box Office Essentials (**IBOE**).

⁴ See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, from paragraph 7.34.

⁵ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

17. In this case, Cineworld submitted that it is in the process of developing a new cinema in Watford town centre, with planning permission received and construction in progress, and that this is expected to open in 2017 or 2018. In addition, the CMA understands that [REDACTED].⁶ The CMA has considered these proposed new cinemas to be operational in the counterfactual against which it has assessed the impact of the Merger.

Frame of reference

18. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁷

Product scope

19. The Parties overlap in the supply of cinema exhibition services in the local areas of three of the five Target Cinemas: the Empire Bromley; the Empire Hemel Hempstead; and the Empire Leicester Square.
20. The CMA considered whether it is appropriate to segment the supply of cinema exhibition services to differentiate between different types of cinema for the purposes of the product frame of reference.
21. The Parties submitted that the relevant product frame of reference is the overall market for cinema exhibition services, with no differentiation between cinema type on the basis of the nature and format of showings (for example whether or not they exhibit films on a larger screen format such as IMAX) or cinema size. The Parties submitted that previous decisional practice supported this view, highlighting that the Office of Fair Trading (**OFT**) in its investigation of *Cineworld/City Screen*⁸ had noted that ‘multiplexes are free to screen any type of content on their screens’ and that art house cinemas ‘also exhibit mainstream or blockbuster films and some derive the majority of their revenue from such films’.

⁶ [REDACTED]

⁷ *Merger Assessment Guidelines*, paragraph 5.2.2.

⁸ [ME/5877/12 Completed acquisition by Cineworld Group plc of City Screen Limited, OFT, 30 April 2013, paragraphs 18 and 19.](#)

22. The CMA notes that previous Competition Commission (**CC**) and OFT merger investigations in the cinema sector considered the appropriate product frame of reference to be the supply of cinema exhibition services and did not consider it appropriate to segment the market by cinema type (eg multiplex,⁹ art-house or luxury). In its decision on *Cineworld/City Screen*, the OFT noted that: ‘while a smaller-sized cinema may provide a weaker competitive constraint than a larger-sized cinema on other large sized cinemas... this does not preclude a smaller-sized cinema from competing with a larger cinema.’¹⁰ However, in its investigation of *Cineworld/City Screen*,¹¹ the CC also recognised that cinemas are not homogeneous and that the competitive interaction between cinemas will vary depending on what type of cinema they are. The CC noted that ‘all other things being equal, the closest competitor to a large multiplex showing predominantly Hollywood films is likely to be other large multiplexes showing similar films.’¹²
23. In the present case, no third party suggested that the appropriate frame of reference was narrower than cinema exhibition services.
24. For these reasons, the CMA believes that the appropriate frame of reference for its assessment of the Merger is the overall supply of cinema exhibition services. However, the CMA has taken into account the differences between cinemas, including their relative sizes, in its competitive assessment.

Geographic scope

25. Given the importance of location on customer choice and therefore on a range of relevant competitive parameters, the CMA has considered the effects of the Merger on a local basis.¹³ The CMA’s reasons for not considering the impact of the Merger on a national basis are described in paragraphs 44 and 45.
26. In accordance with its usual practice, the CMA considers that drive time catchment areas around each of the Parties’ sites within which 80% of the customers of that site are located is an appropriate starting point for determining the geographic frame of reference. However, for the majority of

⁹ A multiplex cinema had previously been defined by the OFT as being a cinema with at least three screens and 700 seats (see for example: [ME/1858/05 – Completed acquisition by Vue Entertainment International Limited of Apollo Cinemas Limited](#), OFT, 24 August 2012, paragraph 41).

¹⁰ Ibid, paragraph 27.

¹¹ Ibid.

¹² Ibid, paragraph 5.6.

¹³ As recognised in the [CMA’s Commentary on Retail Mergers](#) (OFT1305/CC2 com 2) and previous decisional practice, the CMA notes that although competition may take place predominantly at a local level (reflecting the fact that price, content and facilities may be set by cinema managers at a local level, partly in response to local conditions), certain competitive parameters may also be determined at a national level (for example, negotiations with distributors for access to film content, screen advertising fees and branding).

the Parties' sites, the CMA did not have direct evidence regarding either customers' home locations or their preferred method of transport.

27. The CMA notes that in previous investigations in the cinema sector, the OFT and CC have both generally used 20-minute drive time isochrones centred on the acquired cinema as a starting point for the competitive assessment.¹⁴ In their previous decisions, the OFT and CC also verified the results of their assessment with sensitivity checks using 30-minute drive time isochrones and by re-centring the isochrones on the acquirer's existing cinemas.
28. Previous investigations have also considered whether the use of drive time isochrones is appropriate in identifying the relevant geographic frames of reference for cinemas located in large cities or population centres such as London. Given that two of the Target Cinemas are located within Greater London,¹⁵ in line with its usual practice, the CMA considered whether the use of drive time isochrones to establish the relevant geographic frame of reference would be appropriate for the assessment of these cinemas.

Cinemas located in Greater London

29. Cineworld submitted that drive time isochrones may be less likely to appropriately reflect the catchment areas of cinemas located in London, and that the CC had noted in its decision on *Cineworld/City Screen* that 'travel patterns in London may differ from those outside London as customers rely more on means of transport other than the car to go to the cinema'.¹⁶ Cineworld also noted that, in relation to Central London, the OFT's practice had been to use available evidence to determine the competitive constraints on a case-by-case basis.¹⁷ Furthermore, Cineworld submitted that London has a number of entertainment areas whose catchment area is not limited to its local population such as Leicester Square (the location of one of the Target Cinemas), which is known for hosting the premieres of new blockbuster films.
30. Cineworld also submitted that an alternative geographic frame of reference of the 'West End' could be defined as the area within easy (approximately ten minutes') walking distance of Leicester Square, and within easy walking

¹⁴ See for example: [ME/5877/12 Completed acquisition by Cineworld Group plc of City Screen Limited, OFT, 30 April 2013 and CC, 8 October 2013](#)

¹⁵ The CMA has defined Greater London as being the area covered by the 32 London Boroughs. On this basis, the Empire Leicester Square and the Empire Bromley are located within Greater London.

¹⁶ [ME/5877/12 Completed acquisition by Cineworld Group plc of City Screen Limited, CC, 8 October 2013, paragraph 5.17.](#)

¹⁷ [ME/5877/12 Completed acquisition by Cineworld Group plc of City Screen Limited, OFT, 30 April 2013, paragraph 33.](#)

distance of the nearby underground stations (Leicester Square, Covent Garden, Tottenham Court Road, Charing Cross and Piccadilly Circus).

31. Third party responses to the CMA's investigation supported the view that the use of drive time isochrones to identify the appropriate geographic frame of reference, based on assumptions of customers' home locations, would not be appropriate to assess the Parties' overlaps in Central London. These third parties also observed that Leicester Square is a key destination for cinemagoers and that customers' travel habits for visiting cinemas in Central London differed from cinemas located in other areas. Some third party responses also put forward a geographic frame of reference of the 'West End'. They described this as being the area of Central London comprising both Leicester Square and the surrounding streets where cinemas which customers consider to be good alternatives to Leicester Square cinemas are located.
32. The CMA notes that if the size of the geographic frame of reference was to be defined more narrowly as Leicester Square alone rather than the West End, the Merger would result in no change to the pre-Merger conditions of competition as Cineworld did not operate a cinema in Leicester Square pre-Merger.
33. The CMA therefore believes that, on a cautious basis, it is appropriate to assess the Parties' overlaps in relation to the Empire Leicester Square using a narrower geographic frame of reference of the West End.¹⁸
34. With regards to the Empire Bromley, also located within Greater London, Cineworld submitted that the use of 20-minute drive time isochrones was an appropriate starting point for the CMA's assessment.
35. The CMA did not receive any evidence from third parties regarding the appropriate geographic frame of reference for its assessment of the Empire Bromley. However, the CMA noted that this cinema does not have parking facilities¹⁹ and considered whether a geographic market based on drive times was appropriate, given that a significant proportion of customers may be more likely to travel by public transport than by car in Greater London. For this cinema, the CMA therefore used drive time isochrones as a starting point for its assessment but also examined travel times via public transport.

¹⁸ The CMA considers Cineworld's definition of the West End to be appropriate, given that the evidence provided by third parties was consistent with this.

¹⁹ However, the CMA notes that a large, independently operated car park is located approximately 100 metres from the Empire Bromley.

Cinemas located outside London

36. Cineworld submitted that the appropriate geographic frame of reference for assessing the effects of the Merger is local and stated that the use of 20-minute drive time isochrones around the relevant acquired cinemas was a reasonable starting point for the CMA's investigation for the Target Cinemas located outside Central London.²⁰ Cineworld also recognised the usefulness of 30-minute drive time isochrones being used as a sensitivity check. Cineworld noted that both practices have formed the starting point for the competitive assessment of previous mergers in the UK cinema sector.
37. Third party responses to the CMA supported the use of 20 and 30-minute drive time isochrones to identify the appropriate geographic frame of reference for cinemas located outside London. The majority of competitors told the CMA that they used either 20 and/or 30-minutes' drive times to identify catchment areas for their cinemas. One competitor stated that such an approach was in line with the general industry consensus.
38. On the basis of the above, the CMA therefore used 20-minute drive time isochrones verified with sensitivity checks using 30-minute drive time isochrones, to identify the appropriate geographic frame of reference for cinemas located outside London for its assessment.

Conclusion on the geographic scope

39. For its assessment of the Empire Leicester Square, the CMA considered the appropriate geographic frame of reference to be the West End.²¹
40. For its assessment of the remaining Target Cinemas, the CMA used 20 and 30-minute drive time isochrones to determine the geographic boundaries which provided the starting point for its assessment.
41. The CMA did not however conclude on the precise boundaries of the local frames of reference and notes that, taking into account all identifiable competitive constraints on the Parties' cinemas, no realistic prospect of an SLC has been found on any basis.

²⁰ ie the Target Cinemas other than the Empire Leicester Square.

²¹ The area within approximately ten minutes' walking distance of Leicester Square, and within approximately ten minutes' walking distance of the nearby London Underground stations: Leicester Square; Covent Garden; Tottenham Court Road; Charing Cross; and Piccadilly Circus.

Conclusion on frame of reference

42. The CMA has considered the impact of the Merger in the supply of cinema exhibition services at a local level, as described in paragraphs 39 and 40 above.

Competitive assessment

Horizontal unilateral effects

43. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.²² Horizontal unilateral effects are more likely when the merger parties are close competitors.

National competitive assessment

44. The Parties submitted that their combined market share would be [20–30]% with an increment of [0–5]% arising from the Merger, when calculated on the basis of GBOR. These figures were broadly consistent with third party submissions.
45. Given that, post-merger, there has been only a small increase in Cineworld's share of supply at the national level and that a number of strong national competitors will remain, the CMA does not believe that the Merger has given rise to any concerns in the supply of cinema exhibition services on a national basis.

Local competitive assessment

46. The CMA has assessed the extent to which the Merger may result in Cineworld deteriorating its competitive offering either at cinemas it owned prior to the Merger and/or at the Target Cinemas.
47. Further to its assessment of geographic frames of reference, set out in paragraphs 39 and 40 above, the CMA first identified the following relevant overlaps between the Parties' cinemas:
- (i) Cinemas in the West End of London: the Empire Leicester Square; Picturehouse Central; Cineworld Haymarket;

²² [Merger Assessment Guidelines](#), from paragraph 5.4.1.

- (ii) Cinemas in the Bromley, East Dulwich and Greenwich areas: the Empire Bromley; Picturehouse East Dulwich; Picturehouse Greenwich;
- (iii) Cinemas in the Hemel Hempstead, Luton and Watford areas: the Empire Hemel Hempstead; Cineworld Luton; planned Cineworld Watford.

48. In order to assess both the closeness of competition between the Parties and the strength of remaining competitive constraint on each of the Parties' cinemas in each of the local overlap areas identified in paragraph 47, the CMA considered a range of evidence. This included the following:

- (i) The number of remaining competing fascia within the 20-minute and 30-minute drive time isochrones around each of the Parties' cinemas in the relevant local area.
- (ii) A closer examination of the extent to which the Parties' were competing and the remaining constraint from third party cinemas in the relevant local areas based on a consideration of:
 1. The location of the Parties' and third parties' cinemas, as the CMA would generally expect that geographically closer cinemas would impose a stronger competitive constraint on the Parties' cinemas;
 2. The nature of the offering of the Parties' and third parties' cinemas, including the size of the cinema (in terms of number of seats) and the types of films shown;
 3. Evidence of competitive interaction from the Parties' internal documents; and
 4. Evidence from third parties on the constraint the Parties' and third parties' cinemas exert on each other;
 5. A survey of Cineworld customers (the **Survey**), carried out by the CMA in relation to one local area.

Assessment of local overlaps

Leicester Square and the West End of London

49. The Empire Leicester Square is an eight-screen multiplex located in Leicester Square, London. Its turnover in the financial year to January 2016 was £[✂] million.
50. As noted in paragraph 33 the CMA believes that London's West End, on a cautious basis, constitutes the narrowest relevant geographic market for the Empire Leicester Square. Within this area, in addition to the Empire Leicester Square, there are:
- (i) Four Odeon cinemas (with six, four, four and three screens);²³
 - (ii) Two Vue cinemas (with nine and five screens);
 - (iii) One Curzon cinema (three screens);
 - (iv) One Cineworld (three screens) and one Picturehouse (seven screens) cinemas;
 - (v) Two independent cinemas (the Prince Charles and the Institute of Contemporary Arts, both with two screens).
51. The CMA believes that, as at least four²⁴ different competing fascia of similar size and offering will remain in this local area post-Merger, there will be sufficient competitive constraint remaining such that no realistic prospect of an SLC arises as a result of the Merger.

Bromley

52. The Parties' following cinemas overlap in this area: the Empire Bromley; Picturehouse East Dulwich; and Picturehouse Greenwich. The CMA has considered the impact of the Merger on each.

Empire Bromley

53. The Empire Bromley is a four-screen multiplex located on High Street, Bromley and is the smallest of the five Target Cinemas.

²³ [✂]

²⁴ Excluding independent cinema operators.

54. Table 1 shows the cinemas located within a 30-minute drive time from the Empire Bromley, along with some additional information regarding these cinemas. As the CMA considered drive times may not be the most appropriate measure of geographic closeness for its assessment of the Empire Bromley, it also estimated travel times by public transport for each cinema, also shown in Table 1.²⁵

Table 1: Cinemas within a 30-minute drive time from the Empire Cinema Bromley

<i>Operator</i>	<i>Drive distance from Empire Bromley (Km)</i>	<i>Drive time from Empire Bromley (minutes)</i>	<i>Public transport time from Empire Bromley (minutes)</i>	<i>Number of screens</i>	<i>Number of seats</i>
Odeon (Beckenham)	3.2	8	14	6	932
Odeon (Orpington)	9.7	22	44	7	967
Picturehouse (East Dulwich)	9.9	24	53	3	245
Picturehouse (Greenwich)	9.1	25	52	5	550
Vue (Croydon)	11.2	28	49	10	1,778
[X]	[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]	[X]

Source: The Parties, third parties and CMA calculations.

55. Cineworld’s two existing cinemas in this local area pre-Merger, the Picturehouse cinemas in East Dulwich and Greenwich, are respectively 24 and 25 minutes’ drive times away from the Empire Bromley. This means that the Merger had no impact on the fascia count in a 20-minute drive time catchment area centred on the Empire Bromley. In a 30-minute drive time catchment area, however, the transaction reduced the number of competing fascia from four to three (Cineworld, Odeon and Vue).
56. The CMA considered the extent to which the Parties are competing closely and that these remaining competing fascia will constrain the Empire Bromley post-Merger.
57. The CMA notes that the competitor currently geographically closest to the Empire Bromley is the Odeon multiplex in Beckenham, with all other cinemas significantly farther away, in terms of both distance and journey times (particularly if using public transport). The CMA therefore believes that a large proportion of customers would consider the Odeon Beckenham as the closest alternative to the Empire Bromley. Furthermore, among the cinemas located between 20 and 30-minutes’ drive time from the Empire Bromley, those

²⁵ The CMA notes that the estimates for travel times using public transport should be seen as indicative only, as the algorithm used provides estimates that depend on the time the query is made. While the exact estimates are therefore imprecise, the difference between times for different cinemas is still indicative of the relative ease with which they can be reached by public transport.

operated by Cineworld (under the Picturehouse brand) are the smallest by number of screens and seats and therefore may impose a lesser competitive constraint on the Empire Bromley.

58. In addition, the CMA understands that [REDACTED]:

(i) [REDACTED];²⁶

(ii) [REDACTED].²⁷

Picturehouse East Dulwich and Greenwich

59. The CMA also examined the competitive constraint that would remain post-Merger on the two Picturehouse cinemas. For both cinemas, there remain at least four competing fascia in a 30-minute drive time catchment area, and there are a number of third party operated cinemas which are closer (in terms of drive time and travel time by public transport) to each cinema and have a larger number of screens than the Empire Bromley.

60. For these reasons the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the Bromley area.

Hemel Hempstead, Watford and Luton

61. Pre-merger, Cineworld did not operate any other cinema within a 20-minute drive time from the Empire Hemel Hempstead. However:

(i) the 11-screen Cineworld multiplex in Luton is 24-minutes' drive time from the Empire Hemel Hempstead; and

(ii) Cineworld is planning to open a new nine-screen multiplex in Watford. This cinema would be located approximately 19 minutes' drive time from the Empire Hemel Hempstead.²⁸

62. As noted above with regard to the counterfactual, the CMA considered the proposed Cineworld in Watford to be already in operation for the purpose of its assessment. The CMA therefore considered the impact of the Merger on competition in relation to the Empire Hemel Hempstead, Cineworld Luton and the planned Cineworld Watford.

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ In its analysis, the CMA has used WD17 2UB as the postcode for the planned Cineworld cinema in Watford.

The Empire Hemel Hempstead

63. The Empire Hemel Hempstead is a 16-screen multiplex (with work currently in progress to add a further screen). Its turnover in the financial year to January 2016 was £[✂] million.
64. Using a 20-minutes' drive time isochrone centred on the Empire Hemel Hempstead, the CMA found that the Merger has led to a reduction in competing fascia from three to two (Cineworld and Vue), or four to three if the Odeon in Hatfield, which is on the edge of this catchment area, is included, as shown in Table 2. Using a 30-minutes' drive time isochrone, the CMA notes that the Merger has led to a reduction in fascia from seven to six. This includes three smaller competitors (Everyman, Welwyn Garden City Cinema and Reel), which are located towards the edge of this catchment area.

Table 2: Cinemas within a 30-minute drive time from the Empire Hemel Hempstead

<i>Operator</i>	<i>Drive distance from former Empire Hemel Hempstead (Km)</i>	<i>Drive time from former Empire Hemel Hempstead (minutes)</i>	<i>Number of screens</i>	<i>Number of seats</i>
<i>Cineworld (Luton)</i>	21.0	24	11	-
<i>Cineworld (Watford; planned)</i>	19.8	19	9	1,500 ²⁹
<i>Everyman (Gerrard Cross)</i>	33.4	29	2	204
<i>Welwyn Garden City Cinema</i>	27.0	28	3	485
<i>Odeon (Hatfield)</i>	21.4	22	9	1,826
<i>Odeon (Uxbridge)</i>	32.0	26	9	1,882
<i>Odeon (Aylesbury)</i>	30.3	27	6	1,551
<i>Reel (Borehamwood)</i>	24.1	28	4	-
<i>Vue (Watford)</i>	12.3	14	11	1,858

Source: The Parties, third parties and CMA calculations.

65. The CMA considered the extent to which the Parties are competing closely and that these remaining competing fascia will constrain the Empire Hemel Hempstead post-Merger. In this context, the CMA notes that the Vue Watford is the closest to the Empire Hemel Hempstead and is easy to reach for customers coming from Hemel Hempstead by car, either via the M1 or A41. The proposed Cineworld in Watford in contrast, will be located in Watford town centre, further south from Hemel Hempstead.
66. While, after the opening of the Cineworld in Watford, there will be two large and relatively close Cineworld cinemas whose catchment areas overlap with the Empire Hemel Hempstead, the CMA believes that the Vue Watford is likely to continue to impose the strongest competitive constraint on the Empire Hemel Hempstead. The CMA believes that the Odeon Hatfield will also

²⁹ From: <http://intu.co.uk/watford/news/cineworld-cinema-coming-to-intu-watford>

continue to impose a significant constraint, given that it has good road links to Hemel Hempstead, and is located only 22 minutes' drive time away. The CMA received evidence from Empire indicating that prior to the Merger it considered these two cinemas to be among its major local competitors, which further supports this view.

67. The CMA therefore believes that, post-Merger, the Empire Hemel Hempstead is likely to face sufficient competitive constraints such that there is no realistic prospect of an SLC arising as a result of the Merger.

Cineworld Watford

68. Using a 20-minutes' drive time isochrone centred on the planned Cineworld cinema in Watford, the Merger results in a reduction in competing fascia from three to two³⁰ (or four to three if the Reel cinema in Borehamwood, on the edge of this catchment area, is included). Using a 30-minutes' drive time isochrone, the CMA notes that the Merger has led to a reduction from six to five competing fascia.
69. The CMA considered the extent to which the Parties are competing closely and that these remaining competing fascia will constrain the Cineworld in Watford post-Merger.

Table 3: Cinemas within a 30-minute drive time from the planned Cineworld in Watford

<i>Operator</i>	<i>Drive distance from planned Cineworld Watford (Km)</i>	<i>Drive time from planned Cineworld Watford (minutes)</i>	<i>Number of screens</i>	<i>Number of seats</i>
<i>Empire (Hemel Hempstead)</i>	17.9	19	16	1,904
Everyman (Barnet)	21.8	29	5	429
Everyman (Gerrard Cross)	29.8	30	2	204
Odeon (Hatfield)	22.3	26	9	1,826
Odeon (Uxbridge)	28.3	27	9	1,882
Reel (Borehamwood)	13.6	23	4	-
Vue (Watford)	6.9	14	11	1,858
Vue (Harrow)	10.0	20	12	1,704
Vue (North Finchley)	23.9	25	10	1,898

Source: The Parties, third parties and CMA calculations.

70. Cineworld submitted some internal analysis to the CMA, conducted when assessing the opportunity to open the planned cinema in Watford. This identified four cinemas within 20-minutes' drive time of the planned Cineworld in Watford: the Vue cinemas in Watford and Harrow; the Reel Borehamwood; and the Empire Hemel Hempstead. This supports the CMA's view that the

³⁰ Cineworld and Vue.

planned Cineworld Watford will face additional competitive constraints from alternative cinema operators post-Merger.

71. The CMA believes that the Vue Watford will impose the strongest competitive constraint on the planned Cineworld in Watford because it will be the closest cinema geographically and will have a similar offering. The CMA believes that the Vue Harrow may also impose a significant constraint, being relatively close and located within a large shopping centre which is also likely to be an attraction for customers.
72. There will therefore be a minimum of two cinemas operated by each of the two other major cinema operators within 30-minutes' drive time of Cineworld Watford, and there will be a number of smaller competitors also located within 30-minutes' drive time. The CMA therefore believes that Cineworld Watford will face sufficient competitive constraints such that there is no realistic prospect of an SLC arising as a result of the Merger.

Cineworld Luton

73. Using a 20-minutes' drive time isochrone centred on Cineworld Luton, the CMA found that there is no other multiplex cinema. Using a 30-minutes' drive time isochrone, the CMA found that, in addition to the Empire Hemel Hempstead, pre-Merger there were two other competing multiplexes (the Vue Watford and Odeon Hatfield) and two competing smaller cinemas. Table 4 shows all of the cinemas located within 30-minutes' drive time of Cineworld Luton.
74. The CMA considered the extent to which the Parties are competing closely and that these remaining competing fascia will constrain the Cineworld Luton post-Merger.

Table 4: Cinemas within a 30-minute drive time from Cineworld Luton

<i>Operator</i>	<i>Drive distance from Cineworld Luton (Km)</i>	<i>Drive time from Cineworld Luton (minutes)</i>	<i>Number of screens</i>	<i>Number of seats</i>
Cineworld (Stevenage)	23.2	29	16	3,013
Cineworld (Watford; planned)	29.3	27	9	1,500 ³¹
<i>Empire (Hemel Hempstead)</i>	19.2	21	16	1,904
Independent (Garden City)	21.4	28	3	485
Independent (Letchworth)	19.5	28	2	809
Odeon (Hatfield)	30.8	30	9	1,826
Vue (Watford)	25.0	24	11	1,858

Source: The Parties, third parties and CMA calculations.

75. The CMA carried out a detailed assessment of the effect of the Merger relying on a range of evidence, including internal documents, the nature of the offering at Cineworld Luton, and a survey of Cineworld customers (the Survey). The CMA's analysis involved the calculation of diversion ratios based on the findings from the Survey.

Internal documents

76. Internal documents submitted by Cineworld to the CMA included the results of a revenue comparison exercise conducted by Cineworld in relation to the performance of Cineworld Luton during 2015.³² Cineworld submitted that following refurbishment and expansion works undertaken by Empire at the Empire Hemel Hempstead in 2015, it undertook this exercise. Cineworld compared box office revenues at Cineworld Luton, the Empire Hemel Hempstead, and Odeon Hatfield to identify any potential impact of the improvements carried out at the Empire Hemel Hempstead on the three cinemas' relative performance.
77. Cineworld submitted that whilst this exercise showed a significant revenue increase at the Empire Hemel Hempstead following its refurbishment in October 2015, there was no concurrent decline in revenues at Cineworld Luton and made a further submission to support this. Cineworld submitted that as a result, it did not make any changes to its prices at Cineworld Luton in response to the Empire Hemel Hempstead's improved performance.³³

³¹ From: <http://intu.co.uk/watford/news/cineworld-cinema-coming-to-intu-watford>

³² Cineworld submitted that this was not a sophisticated exercise, but consisted only of comparing revenue data for these cinemas which is widely available from IBOE (From Cineworld's Response to the CMA's Issues Letter, paragraph 8.1.1.)

³³ From Cineworld's Response to the CMA's Issues Letter, paragraph 8.1.7.

78. Cineworld further submitted that in setting prices for a particular location, it takes into consideration the demographic and economic situation of its target audience and that [✂].³⁴
79. The CMA notes that during the relevant time period, according to Cineworld's submissions, it did not reduce its prices in Luton. However, the CMA notes that Cineworld did increase prices in line with periodic reviews across its portfolio during the relevant time period. The CMA further notes that the absence of any competing cinemas within 20-minutes' drive time of Cineworld Luton supports Cineworld's submissions regarding its approach to setting prices here in line with its audience's demographic and economic situation.
80. While the CMA believes that the exercise indicates that Cineworld did consider the Empire Hemel Hempstead to be an alternative for some of its customers at Cineworld Luton, it does not, in consideration with the other evidence described in paragraph 79 above, indicate that the Empire Hemel Hempstead provides a strong competitive constraint on Cineworld Luton.

Nature of the offering at Cineworld Luton

81. Cineworld submitted that approximately [20–30]% of its revenues at Cineworld Luton are derived from tickets to 'Bollywood' films and that these are not regularly screened in any of the other multiplexes in the local area. The CMA believes this may indicate that Cineworld Luton's offering is differentiated from that of other cinemas in the local area.

The Survey

82. This section starts with some preliminary comments on the Survey methodology and the extent to which the CMA has relied on evidence drawn from it in its assessment, below, before proceeding to discuss the findings from the Survey in more detail.

Sampling methodology and questionnaire design

83. The Survey was targeted at customers who had visited Cineworld Luton in the last six months.³⁵

³⁴ From Cineworld's Response to the CMA's Issues Letter, paragraph 8.3.4.

³⁵ The Parties emailed a link to the Survey to certain relevant customers for whom they held email addresses. These were customers who were either a member of Cineworld's 'Unlimited' membership scheme, or customers who had a 'My Cineworld' online account and a home address in one of the following post code areas: LU; HP; AL; MK; SG. Customers with an 'Unlimited' membership are able to visit any film screening at any Cineworld cinema, whilst those with a 'My Cineworld' account pay for each film screening at a Cineworld cinema separately.

84. In total, the CMA received over 550 eligible³⁶ responses, which represented a response rate of 2.5%.
85. For the purposes of gathering evidence on alternative choices, the Survey asked customers what they would have done if, hypothetically, Cineworld Luton had been closed for refurbishment for a period of one year, the last time they visited it (ie a 'forced diversion' question). Customers were given three options: 'chosen not to go to the cinema'; 'gone to another cinema'; or 'don't know'. Customers who responded that they would have visited a different cinema were then asked which other cinema they would have visited. All of these customers were also asked how many visits they had made to Cineworld Luton.
86. Customers were also asked to provide some background on their last visit including: (i) how long it had taken them to travel to the cinema; and (ii) the transport method they had used.

Assessment of the Survey evidence

87. It is usual in local retail mergers for evidence to be gathered on alternative choices using a 'forced diversion' question.³⁷ Nevertheless, there are two points relating to the interpretation of this question that need to be taken into account in assessing the extent to which its results can be relied upon for the purposes of determining diversion. First, the questions are hypothetical and customers may have responded differently from what their actual behaviours would have been in practice. Second, the 'forced diversion' question asks about closure of the relevant cinema rather than a small but significant price increase (**SSNIP**).
88. The CMA believes, that the first point above can be regarded as a limitation inherent with any survey of this nature. Regarding the second point, the CMA believes that in principle, responses to the two types of question (a SSNIP or a forced diversion question) could be different. However, as noted in its Survey Design Guidelines,³⁸ the CMA does not generally expect this to be the case. Finally, in *Cineworld/City Screen* the CC found that diversion ratios derived from forced diversion questions were similar to those derived from SSNIP questions.³⁹ As such, the CMA believes that responses to this

³⁶ For the purpose of its analysis, the CMA used only the responses of those customers who had paid for their ticket on their last visit to Cineworld Luton.

³⁷ See: [Good practice in the design and presentation of consumer survey evidence in merger inquiries](#), CC2com1 / OFT1230, 1 March 2011, Adopted by the CMA board April 2014 (**Survey Design Guidelines**).

³⁸ *Ibid*, from paragraph 3.42.

³⁹ [ME/5877/12 Completed acquisition by Cineworld Group plc of City Screen Limited](#), OFT, 30 April 2013, Appendix D, paragraph 8.

diversion question can provide a meaningful basis on which to assess diversion.

89. Given the high proportion of respondents indicating that they would not have done anything else in the event of closure, the CMA considered whether there was any evidence to indicate that the responses could have been different in this case. However, the CMA did not find any such evidence.
90. Although the Survey received a high number of actual responses, the CMA noted that response rates were low,⁴⁰ which could mean that the results are not representative of the overall customer population. In addition the CMA notes that the Survey was only sent to Cineworld customers who had either an 'Unlimited' membership or a 'My Cineworld' online account, and that these customers may not be representative of all customers. For these reasons, the CMA has treated the evidence gathered by the Survey with caution. The CMA believes that the Survey evidence overall, particularly when considered in conjunction with the other available evidence, including from the Parties' internal documents, responses from third parties and that found on remaining competitive constraints in Luton, provides useful information for its competitive assessment.

Diversion ratios

91. Diversion ratios estimate the degree of substitution between one provider of a product or service and a potential substitute.⁴¹ The CMA used evidence from the survey, in particular the responses of relevant customers (ie customers who had paid for a ticket on their last visit) to the 'forced diversion' question, in order to calculate diversion ratios for Cineworld Luton.⁴²
92. Table 5 shows the CMA's estimated diversion ratios for Cineworld Luton.

⁴⁰ 2.5% of Cineworld customers to whom an email was sent responded to the Survey.

⁴¹ [Merger Assessment Guidelines](#), from paragraph 5.2.15.

⁴² In calculating these diversion ratios, the CMA has: (i) weighted the response to the forced diversion question by the number of times that respondent had visited Cineworld Luton in the last six months; (ii) allocated responses from customers who indicated that they would have gone to the cinema somewhere else in response to the forced diversion question but had answered 'don't know' regarding which cinema they would have visited, in proportion to the rest of the responses to this follow-up to the forced diversion question; (iii) in line with its usual cautious approach in phase one inquiries, excluded own party diversion from this analysis (that is, diversion ratios for Cineworld Luton were calculated excluding diversion to other Cineworld cinemas).

Table 5: Diversion from Cineworld Luton⁴³

	<i>Total diversion from Cineworld Luton</i>
Odeon Milton Keynes	[10–20]%
<i>Empire Hemel Hempstead</i>	<i>[10–20]%</i>
Vue Watford	[0–5]%
Odeon Hatfield	[0–5]%
Broadway Cinema Letchworth Garden City	[0–5]%
Other third parties	[0–5]%
The Odyssey St. Albans	[0–5]%
Welwyn Garden City Cinema	[0–5]%
<i>Not gone to the cinema</i>	[50–60]%

Source: CMA’s calculations based on the Survey results.

93. On the basis of its calculations, the CMA noted that the Odeon Milton Keynes, despite being located further from Cineworld Luton than the Empire Hemel Hempstead, had the highest diversion ratio of [10–20]% compared with [10–20]% for the Empire Hemel Hempstead.
94. The CMA noted that overall, the diversion ratios for all the alternative cinemas that respondents said they would visit in response to the forced diversion question were low. This was because a large proportion of respondents stated they would not have gone to the cinema had Cineworld Luton been closed for refurbishment for one year.⁴⁴

⁴³ The CMA believes the diversion ratios derived from the answers of customers who had paid for their ticket on their last visit to represent the most relevant measures of expected diversion from Cineworld Luton as: (i) ‘Unlimited’ members can reasonably be expected to be more likely to visit another Cineworld cinema in the event of not having access to Cineworld Luton, given there would be no additional costs payable by them for cinema tickets at another Cineworld cinema; (ii) Cineworld told the CMA that Unlimited members constitute approximately [10–20]% of visits in Luton in 2016 (as at 2 October 2016); (iii) Cineworld has the ability to price discriminate between the two types of customers. Therefore, a loss of competitive constraint only in relation to customers without Unlimited membership may still lead to a ticket price increase, while the price of a membership may be left unchanged.

⁴⁴ The CMA notes that this proportion is much higher than that observed in the CC’s *Cineworld/City Screen* investigation, where on average around [5–10]% of all Cineworld customers surveyed chose this option. The results may be due to the significant distance between Cineworld Luton and any other multiplex cinema. In

95. The CMA notes that the diversion ratios indicate that the Empire Hemel Hempstead may be an alternative for some customers who responded to the Survey. However, the CMA believes that, overall, the diversion ratios are consistent with the other evidence received in indicating that Cineworld Luton and the Empire Hemel Hempstead do not compete closely. The CMA also notes that the diversion ratios indicate a stronger competitive constraint is imposed on Cineworld Luton by Odeon (both on an individual cinema basis by the Odeon Milton Keynes, and cumulatively by the presence of two of its cinemas in the local area).
96. Given the low response rate to the Survey, the CMA has placed limited evidential weight on the diversion ratios however.⁴⁵

Conclusion on the Luton area

97. The CMA believes that the evidence set out in paragraphs 73 to 81 above shows that: Cineworld Luton is located a significant distance from any other cinema; Cineworld Luton appears to have a partially different audience to other cinemas in the area; and that Cineworld did not change its offering at Cineworld Luton in response to the refurbishment of the Empire Hemel Hempstead when this resulted in increased sales for Empire. The CMA believes that the evidence from the Survey and analysis that the CMA has derived from it are consistent with these findings.
98. For these reasons, the CMA believes that Cineworld Luton did not compete closely with the Empire Hemel Hempstead pre-Merger and that there are sufficient competitive constraints remaining such that there is no realistic prospect of an SLC arising as a result of the Merger in the Luton area.

Conclusion on horizontal unilateral effects

99. As set out above, the CMA believes that the Parties did not compete closely in the relevant local overlap areas identified, and that sufficient competitive constraints will remain post-Merger. Accordingly, the CMA found that the

addition, a significant proportion (around [20–30]%) of revenues at Cineworld Luton come from Bollywood movies, which Cineworld submitted are not screened in any other cinema in the local area.

⁴⁵ In order to assess the extent of lost competitive rivalry likely to result post-Merger, the CMA may, when available, estimate a gross upward pricing pressure index (GUPPI) based on the value of diverted sales that the merging parties would likely lose to each other following a price rise. This can illustrate the Parties' incentive to increase prices following the Merger as a result of the internalisation of 'lost' profit. In this case, the CMA did not have accurate information on the Parties' profit margins but calculated an 'illustrative' GUPPI calculation based on its estimates of these and the calculated diversion ratios. The results of these calculations were not indicative of Cineworld having a significant incentive to raise prices in the context of the other evidence considered. However, given the limited evidential weight placed on the diversion ratios and the unavailability of accurate information on the Parties' profits margins, these calculations have not been used to inform the CMA's competitive assessment.

Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of cinema exhibition services in the local overlap areas identified.

Barriers to entry and expansion

100. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁴⁶
101. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

102. The CMA contacted competitors of the Parties and customers of Cineworld via the Survey, as described in paragraphs 82 to 86 above.
103. Three detailed responses to the CMA's Invitation to Comment were received from cinema customers. These customers commented that in general they viewed consolidation of ownership in the cinema sector negatively as it may reduce choice in terms of film screenings and price competition. One of these customers made specific comments with regards to the Empire Hemel Hempstead, commenting that it had the most competitive prices locally and that it had previously displayed the prices of other nearby cinemas, including Cineworld Luton and Odeon Hatfield, to indicate this to customers.
104. One competitor expressed a concern that the Merger could allow Cineworld to obtain exclusivity arrangements from film distributors in relation to Leicester Square. The CMA considered this competitor's concern, however the CMA did not believe that a merger specific effect is realistic given that the Parties did not overlap in the supply of cinema exhibition services in Leicester Square pre-Merger. In addition, the CMA notes that the three cinema operators active in Leicester Square post-Merger each have a similar share of the national supply of cinema exhibition services of between 20 and 30%.⁴⁷
105. One other competitor expressed a concern regarding the concentration of Cineworld cinemas that would exist post-Merger in the wider Luton area (taking into account the planned Cineworld Watford). This competitor noted

⁴⁶ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

⁴⁷ Based on IBOE data on cinema operators' gross box office revenues for 2015

that the concentration of three Cineworld cinemas in Luton, Hemel Hempstead and Watford could make Cineworld's Unlimited scheme particularly attractive to local cinemagoers who value the opportunity to use their membership across different locations, with the result that other cinema operators would be less able to compete effectively for the majority of regular cinemagoers.

106. The CMA notes that customers with an 'Unlimited' membership represent a low proportion of Cineworld Luton's customers ([10–20]% of visits according to Cineworld's submissions). The CMA believes that while the Merger (and the opening of the proposed Cineworld Watford) may increase this proportion, this is likely to remain relatively low and that the low diversion ratios between Cineworld Luton and the Empire Hemel Hempstead (and expected low diversion between Cineworld Luton and the proposed Cineworld Watford) indicated by the Survey support this view.
107. The CMA has carefully considered the relevant third party comments and taken them into account where appropriate in the competitive assessment above.

Decision

108. Consequently, the CMA does not believe 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 within a market or markets in the United Kingdom.
109. The Merger will therefore **not be referred** under section 22(1) of the Act.

Sheldon Mills
Senior Director, Mergers
Competition and Markets Authority
12 December 2016