

Completed acquisition by AMC (UK) Acquisition Limited of Odeon and UCI Cinemas Holdings Limited

Decision that undertakings might be accepted

ME/6644/16

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 22 December 2016. Full text of the decision published on 31 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.

Introduction

1. On 30 November 2016, AMC (UK) Acquisition Limited, a wholly owned subsidiary of AMC Entertainment Holdings, Inc (together **AMC**) acquired the entire issued share capital of Odeon and UCI Cinemas Holdings Limited (**Odeon**) (the **Merger**). AMC is a wholly-owned subsidiary of the Dalian Wanda Group Co. Ltd (**Dalian Wanda**). AMC and Odeon are together referred to as the **Parties**.
2. On 8 December 2016, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to AMC of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 22(3)(b) on the date of the SLC Decision in order to allow AMC the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.

4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 9 December 2016, AMC offered undertakings to the CMA for the purposes of section 73(2) of the Act¹.
5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to AMC that it considers that there are reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it is considering the offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of cinema exhibition services in Manchester. The CMA found that the AMC Great Northern and the Odeon Printworks are each other's closest competitor in the supply of cinema exhibition services in Manchester, with other providers of cinema exhibition services imposing a limited competitive constraint on them.
8. To address this SLC, AMC has offered to give undertakings to divest either the AMC Great Northern or the Odeon Printworks, together with the relevant leases, licences, assets and employees as permitted by law (the **Proposed Undertakings**). The Proposed Undertakings envisage that the buyer of the divested cinema would have the ability and incentive to maintain and operate the cinema as a viable and active business in competition with AMC and other competitors. Under the Proposed Undertakings, AMC has offered to enter into a purchase agreement with a buyer approved by the CMA before the CMA finally accepts the Proposed Undertakings (**Upfront Buyer Condition**).

¹ These undertakings were subsequently modified by AMC on 19 December 2016.

The CMA's provisional views

9. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the level that would have prevailed absent the merger.²
10. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLC identified by the CMA, given that this would enable a third party cinema operator to purchase one of the AMC Great Northern or the Odeon Printworks and compete in the affected area. The Proposed Undertakings could thereby result in replacing the competitive constraint that would otherwise be lost following the Merger.
11. The CMA currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns. The CMA also currently believes that the Proposed Undertakings may be capable of ready implementation, in particular as the AMC Great Northern and the Odeon Printworks are stand-alone businesses.
12. The Upfront Buyer Condition means that the CMA will only accept the Proposed Undertakings after AMC has entered into an agreement with a nominated buyer that the CMA considers to be suitable. It also means that, before acceptance, the CMA will consult publicly on the suitability of the nominated buyer, as well as other aspects of the Proposed Undertakings. The CMA considers that an Upfront Buyer Condition is necessary because there are only a small number of suitable candidate purchasers.³
13. For these reasons, the CMA currently believes that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.
14. The CMA's decision on whether ultimately to accept the Proposed Undertakings or to refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA. In particular, before ultimately accepting the Proposed Undertakings, the CMA must be confident that the nominated buyer is

² *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

³ See *OFT1122*, paragraphs 5.31–5.37, and *CMA2*, paragraph 8.34.

effective and credible such that the competitive constraint lost as a result of the Merger is restored to a sufficient extent.

Consultation process

15. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings as required by Schedule 10 of the Act.⁴

Decision

16. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by AMC, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now has until 21 February 2017 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings, with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 20 April 2017 if it considers that there are special reasons for doing so. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Sheldon Mills
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Competition and Markets Authority
22 December 2016

⁴ [CMA2](#), paragraph 8.29.