

Notice of acceptance of undertakings

The acquisition by Vue Entertainment Holdings (UK) Ltd of A3 Cinema Limited

Competition Commission Acceptance of Final Undertakings pursuant to section 82 of and Schedule 10 to the Enterprise Act 2002

Whereas on 24 February 2006 the Commission published its report on the acquisition by Vue Entertainment Holdings (UK) Ltd (Vue) of A3 Cinema Limited which contained the decisions (i) that there was an anti-competitive outcome from the acquisition (as defined in section 35(2) of the Act) and (ii) for the purposes of remedying, mitigating or preventing the anti-competitive outcome, Vue should divest a cinema in Basingstoke;

And whereas on 10 April 2006 the Commission gave notice of the proposed undertakings in accordance with Schedule 10 of the Act and has not received any representations;

And whereas Vue has given undertakings to the Commission for the purpose of remedying, mitigating or preventing the anti-competitive outcome identified;

Now the Commission pursuant to section 82 of the Act accepts the undertakings, a copy of which is set out in the attached Annex below, and accordingly the reference is finally determined and the undertakings come into force in accordance with section 82 of the Act.

Signed by authority of the Group

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Barbara Mills
Group Chair
18 May 2006

Note:

The Commission has excluded from the undertakings information which it considers should be excluded having regard to the three considerations set out in section 244 of the Act. The omission is indicated by [⌘].

Undertakings given to the Competition Commission by Vue Entertainment Holdings (UK) Ltd

Whereas on 23 September 2005 the Office of Fair Trading ('the OFT') referred the acquisition by Vue Entertainment Holdings (UK) Ltd of all the issued share capital of A3 Cinema Limited to the Competition Commission for investigation and report under section 22 of the Enterprise Act 2002 ('the Act')

And whereas the Competition Commission published a report entitled 'Vue Entertainment Holdings (UK) Ltd and A3 Cinema Limited A report on the completed acquisition by Vue Entertainment Holdings (UK) Ltd of A3 Cinema Limited' on 24 February 2006 ('the Report')

And whereas the Report concluded that

- (a) the acquisition by Vue Entertainment Holdings (UK) Ltd of all the issued share capital of A3 Cinema Limited was the creation of a relevant merger situation
- (b) the creation of that situation has resulted in a significant lessening of competition within the market for the supply of cinema exhibition services in Basingstoke ('the SLC') with adverse effects in higher prices for cinema tickets, a reduced incentive to maintain quality and a reduction in choice for consumers in that market
- (c) the Competition Commission should take action to remedy the SLC and the adverse effects flowing from it and
- (d) to that end undertakings should be given by Vue Entertainment Holdings Ltd on behalf of itself and of its subsidiaries to give effect to the remedies identified by the Competition Commission at paragraphs 7.71 of the Report

now therefore Vue Entertainment Holdings Ltd gives to the Competition Commission the following undertakings under section 82 of the Enterprise Act 2002 for the purpose of remedying the SLC and the adverse effects resulting from it.

1. Interpretation

- 1.1. Words and expressions defined in the recitals to these Undertakings shall have the same meaning in these Undertakings.
- 1.2. 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 shall be construed accordingly.
- 1.3. The headings used in these Undertakings are for convenience and shall have no legal effect.
- 1.4. Expressions in the singular include the plural and vice versa, and references to persons include corporations.
- 1.5. 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.
- 1.6. References to recitals, paragraphs, sub-paragraphs and the annex are references to recitals, paragraphs and sub-paragraphs of, and the annex to, these Undertakings.
- 1.7. The annex to these Undertakings forms part of these Undertakings.
- 1.8. The purpose of the obligations in these Undertakings is to remedy, mitigate or prevent the SLC and the adverse effects that may be expected to result from that SLC and these Undertakings are to be interpreted so as to give effect to that purpose in accordance with part 7 of the Report.
- 1.9. References in these Undertakings to the duty of the Divestiture Trustee are references to the Trustee Obligation.
- 1.10. Where in these Undertakings a proposition or series of propositions is introduced by the words 'Vue recognises' that denotes that Vue accepts the proposition or propositions in question and has entered into these Undertakings on, *inter alia*, the basis of that proposition or those propositions.
- 1.11. For the purposes of paragraph 10.1 a person has a real interest in the acquisition of a Nominated Cinema if that person is a new or existing cinema operator who has demonstrated both a real interest in acquiring the Nominated Cinema and who has, or is likely to have, the resources to make such an acquisition within the Completion Period.
- 1.12. References in these Undertakings to 'the relevant part' of a cinema business are references to that part of a relevant cinema business the disposal of which will, taken with the disposal of the relevant cinema and taking account of all the circumstances, remedy the SLC; and 'the relevant part' of a cinema business shall be taken to be the whole of the relevant cinema business unless the prior written consent of the Competition Commission is obtained to the sale of part only of that cinema business.
- 1.13. References in these Undertakings to 'completion' are references to such legally recognised transfer, assignment, delivery or other disposal or assumption of property, rights, assets, liabilities and other obligations as the context requires.
- 1.14. For the purposes of these Undertakings and the annexes the following terms shall have the meaning ascribed to them below:

Approved Agreement	means a binding agreement approved by the Competition Commission and Vue recognises that in considering whether to approve the agreement the Competition Commission shall consider whether (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 real risk that the disposal of the Nominated Cinema and the Nominated Cinema Business will not remedy the SLC (including any risk as to the purchaser's ability to compete in the supply of cinema exhibition services in Basingstoke through unreasonably high costs, unreasonable interference with efficiency or otherwise) and (2) the binding agreement includes a warranty, breach of which is actionable in damages or other compensation at the suit of the purchaser, that each requirement of paragraph 7 of these Undertakings has been complied with;
Approved Purchaser	means a new or existing cinema operator whom the Competition Commission is satisfied (a) is independent of, and unconnected to, any member of the Vue Group (b) has the incentive, the financial resources and the expertise to operate the Nominated Cinema and the Nominated Cinema Business as a viable and active business in competition with the Vue Group in the supply of mainstream cinema exhibition services in Basingstoke so as to remedy the SLC and (c) will obtain all necessary approvals and consents, including the consent of any regulatory or competition authority, for the acquisition of the Nominated Cinema and the Nominated Cinema Business; and Vue recognises that the Competition Commission may require any such cinema operator to provide it with such documents (including business plans relating to the acquired business and information regarding the financing of the acquisition and the financing of the purchaser's existing business) and other material or information as the Competition Commission may require so as to be satisfied on the matters set out above;
Commencement Date	means the date on which these Undertakings are accepted by the Competition Commission;
Completion Period	means the period ending [30] from the Commencement Date;
Contract Period	means the period ending [30] from the Commencement Date;
day	means a day and save where the context otherwise requires a period of time (1) expressed in days from or after an event begins on the day after that event and (2) that expires on a Saturday, Sunday or public holiday in England shall be deemed to expire on the first day after the expiry of the period that is not a Saturday, Sunday or public holiday in England;

Divestiture Period	means the Completion Period and any Trustee Divestiture Period;
Divestiture Trustee	means any person appointed in accordance with paragraph 12;
Effective Disposal	means completion of the disposal of either cinema and of the relevant part of either cinema business, as the context may require;
either cinema	means the Festival Place Cinema or the Leisure Park Cinema and cognate expressions shall be construed accordingly;
either cinema business	means the Festival Place Cinema Business or the Leisure Park Cinema Business and cognate expressions shall be construed accordingly;
[✂]	[✂]
Festival Place Cinema	means all that leasehold property being known as the Multiplex cinema, Festival Place, Basingstoke registered at HM Land Registry with title number HP639899 together with all the property and buildings situated there;
Festival Place Cinema Business	<p>means the business of providing cinema exhibition services at the Festival Place Cinema being the rights, interests assets and obligations of that business and includes</p> <p>(1) all the tangible assets involved in the supply of cinema exhibition services and other supplies of goods or services ancillary or connected thereto at the Festival Place Cinema including all equipment, fixed assets and fixtures, stock, office furniture, materials, supplies, and other tangible property used in connection with those assets; and all contracts, agreements, leases, commitments, certificates and understandings relating to those assets including supply agreements; and all accounts; and all records relating to the assets set out in this paragraph 1; and</p> <p>(2) all the intangible assets involved in the supply of cinema exhibition services and other supplies of goods or services ancillary or connected thereto at the Festival Place Cinema including all licences and sub-licences, intellectual property, technical information, computer software (other than proprietary software of members of the Vue Group) and related documentation, know-how, drawings, designs specifications for materials, parts and devices, quality assurance and control procedures; provided always that the Festival Place Cinema Business does not include any right to use or interest in any copyright, trademark or trade name of any member of the Vue Group or any asset that is not owned by a member of</p>

	the Vue Group or that may not be transferred by any member of the Vue Group;
Heads of Terms	means an agreement in principle, reduced to writing, and 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;
Heads of Terms Notice	means a Notice (1) stating either that Heads of Terms have been agreed or have not been agreed and (2) in the former case, attaching the Heads of Terms to the notice;
Indemnified Person	means the Divestiture Trustee and its employees and agents;
Independent Legal Adviser	means a solicitor or barrister appointed by Vue at the request of the Competition Commission to assist the Competition Commission;
Independent Surveyor	means a member of the Royal Institute of Chartered Surveyors appointed by Vue at the request of the Competition Commission to assist the Competition Commission;
Leisure Park Cinema	means all that leasehold property being land at West Ham Park, Basingstoke registered at HM Land Registry with title number HP413802 together with all the property and buildings situated there;
Leisure Park Cinema Business	<p>means the business of providing cinema exhibition services at the Leisure Park Cinema being the rights, interests assets and obligations of that business and includes</p> <p>(1) all the tangible assets involved in the supply of cinema exhibition services and other supplies of goods or services ancillary or connected thereto at the Leisure Park Cinema including all equipment, fixed assets and fixtures, stock, office furniture, materials, supplies, and other tangible property used in connection with those assets; and all contracts, agreements, leases, commitments, certificates and understandings relating to those assets including supply agreements; and all accounts; and all records relating to the assets set out in this paragraph 1; and</p> <p>(2) all the intangible assets involved in the supply of cinema exhibition services and other supplies of goods or services ancillary or connected thereto at the Leisure Park Cinema including all licences and sub-licences, intellectual property, technical information, computer software (other than proprietary software of members of the Vue Group) and related documentation, know-how, drawings, designs specifications for materials, parts and devices, quality</p>

	assurance and control procedures; provided always that the Leisure Park Cinema Business does not include any right to use or interest in any copyright, trademark or trade name of any member of the Vue Group or any asset that is not owned by a member of the Vue Group or that may not be transferred by any member of the Vue Group;
Nominated Cinema	means the cinema nominated in the Nomination Notice;
Nominated Cinema Business	means the Leisure Park Cinema Business or the Festival Place Cinema Business as the case may be;
Nomination Notice	means a Notice nominating either the Leisure Park Cinema or the Festival Place Cinema for disposal and if more than one such notice is served on the Competition Commission the latest of them;
Notice	means a written communication from Vue to the Competition Commission sent by post, fax, personal delivery or, with the prior consent of the Competition Commission, email;
Outright Disposal	means a disposal of the Nominated Cinema and the Nominated Cinema Business without a prior Sale and Leaseback Transaction;
Preliminary Period	means the period of [] from the Commencement Date;
Purchaser Complaint	means a genuine complaint that the terms or subject matter of the disposal of the relevant cinema and relevant cinema business, and all matters ancillary or connected to it, proposed by Vue (or the relevant member of the Vue Group) are insufficient to enable the operation of the relevant cinema and relevant cinema business on a viable basis such that it may not remedy the SLC;
Sale and Leaseback Transaction	means (1) the assignment by Vue Properties Ltd of the unexpired residue of the term granted by the lease dated 19 September 1990 and made between the Borough Council of Basingstoke and Deane AND Warner Bros. Theatres (UK) Ltd of the Leisure Park Cinema ('the Lease') and (2) either (a) the grant by the assignee of the Lease of the Sub-Lease to a member of the Vue Group and the assignment of the Sub-Lease to an Approved Purchaser or (b) the grant by the assignee of the Lease of the Sub-Lease to an Approved Purchaser;
Second Commencement Date	means the day falling 60 days from the day on which the automatic reversion identified in paragraph 11.4 of these Undertakings arises;
Sub-Lease	means the sub-lease of the Leisure Park Cinema being not less than 20 years duration;

Subsidiary	has the meaning given to it in section 736 of the Companies Act 1985 as amended;
Trustee Divestiture Period	means the period of [X] or such other period as the Competition Commission may allow from (1) the end of the Completion Period or (2) in the event that a Divestiture Trustee is appointed by reason of a breach of the obligations contained in these Undertakings occurring before the end of the Completion Period from the day on which the breach occurred;
Trustee Obligation	means completion of the disposal of either cinema and of the relevant parts of either cinema business at no minimum price to an Approved Purchaser and the performance of all ancillary tasks as are necessary or desirable for the purposes of that disposal, promptly and in any event within the Trustee Divestiture Period;
Undertakings	means these undertakings given by Vue for the purpose of remedying the SLC and the adverse effects;
Vue	means Vue Entertainment Holdings (UK) Ltd a company registered in England and Wales with number 03812508 whose registered office is at 10 Chiswick Park, 566 Chiswick High Road, London W4 5XS; and
Vue Group	means Vue, its subsidiaries from time to time, any company of which Vue becomes a Subsidiary, and includes any person not in existence at the Commencement Date.

2. Commencement

- 2.1. The obligations in these Undertakings shall come into effect on the Commencement Date.

3. Vue's principal undertakings

- 3.1 Vue undertakes that it shall use its best efforts to make an Effective Disposal, or to ensure that the relevant member or members of the Vue Group shall make an Effective Disposal, within the Completion Period.
- 3.2 Vue undertakes to make an Effective Disposal, or to procure that an Effective Disposal shall be made, in accordance with the provisions of this paragraph 3 and of paragraphs 4, 5 and 6 of these Undertakings.
- 3.3 Vue undertakes that within the period of 5 days from the Commencement Date it shall serve a Nomination Notice on the Competition Commission.
- 3.4 Vue undertakes that if the Leisure Park Cinema is the Nominated Cinema Vue shall in the Nomination Notice elect whether or not it wishes to carry out a Sale and Leaseback Transaction prior to Effective Disposal.
- 3.5 Vue undertakes that having served a Nomination Notice, and save as directed by the Divestiture Trustee, it shall not take any steps towards the disposal of either cinema or of either cinema business, and shall procure that no member of the Vue Group shall take any such steps, other than the Nominated Cinema and the Nominated Cinema Business until either Effective Disposal of the Nominated Cinema and the Nominated Cinema Business has taken place or the Divestiture Trustee has fulfilled the Trustee Obligation.
- 3.6 Vue undertakes that in the event that it wishes to change the Nominated Cinema it will request the consent of the Competition Commission to serve a further Nomination Notice. Vue recognises that in considering whether to grant consent the Competition Commission may take account of whether, *inter alia*, a change in the Nominated Cinema would give rise to a real risk that an Effective Disposal would not be effected within the Completion Period.

4. Disposal of either cinema without a Sale and Leaseback Transaction

- 4.1 In the event that Vue does not by the service of a valid Nomination Notice elect to carry out a disposal pursuant to a Sale and Leaseback Transaction Vue undertakes to make an Effective Disposal or to procure that an Effective Disposal is made in accordance with the provisions of paragraph 4.2.
- 4.2 The provisions referred to in paragraph 4.1 are that Vue shall or shall procure that the relevant member of the Vue Group shall
 - 4.2.1 within the Contract Period enter into such binding agreement or agreements with an Approved Purchaser for the Outright Disposal of the Nominated Cinema and for the disposal of the relevant part of the Nominated Cinema Business as are necessary to enable an Effective Disposal; and
 - 4.2.2 bring about that Effective Disposal to that Approved Purchaser by completion of the obligations in the agreement or agreements described in sub-paragraph 4.2.1, and all matters ancillary to them, within the Completion Period.
- 4.3 In the event that Vue or the relevant member of the Vue Group satisfies the requirements of sub-paragraph 4.2.1 Vue shall submit a Notice of the satisfaction of those requirements on the day following the day on which those requirements are satisfied.
- 4.4 In the event that Vue or the relevant member of the Vue Group satisfies the requirements of sub-paragraph 4.2.2 Vue shall submit a Notice of the satisfaction of those requirements on the day following the day on which those requirements are satisfied.
- 4.5 In the event that Vue or the relevant member of the Vue Group does not satisfy the requirements of sub-paragraph 4.2.1 Vue undertakes to submit a Notice that those requirements have not been satisfied by midday on the day following the last day of the Contract Period.
- 4.6 In the event that Vue or the relevant member of the Vue Group does not satisfy the requirements of sub-paragraph 4.2.2 Vue undertakes to submit a Notice that those requirements have not been satisfied by midday on the day following the last day of the Completion Period.

5. Disposal of the Leisure Park cinema with a Sale and Leaseback Transaction

5.1 Paragraphs 5.2 to 5.13 shall apply where the Leisure Park Cinema is the Nominated Cinema and where Vue elects in the Nomination Notice to carry out a Sale and Leaseback Transaction.

5.2 Vue undertakes that it will or will procure that the relevant member of the Vue Group shall use its best efforts to agree Heads of Terms for

(a) Effective Disposal of the Nominated Cinema and the relevant parts of the Nominated Cinema Business to an Approved Purchaser by Outright Disposal;

(b) Effective Disposal of the Nominated Cinema and the relevant parts of the Nominated Cinema Business to an Approved Purchaser pursuant to a Sale and Leaseback Transaction; and

(c) all the agreements and arrangements necessary to carry out a Sale and Leaseback Transaction

within the Preliminary Period.

5.3 Vue undertakes that it will provide the Competition Commission with a Heads of Terms Notice in respect of each of the matters set out in paragraph 5.2 on the first day after the end of the Preliminary Period.

5.4 If Vue or the relevant member of the Vue Group has agreed Heads of Terms on each of the matters set out in paragraph 5.2 within the Preliminary Period Vue undertakes to elect by Notice within 5 days from the end of the Preliminary Period whether it will pursue an Outright Disposal of the Leisure Park cinema or a disposal pursuant to a Sale and Leaseback Transaction.

5.5 If pursuant to paragraph 5.4 Vue elects to make an Outright Disposal, or if it fails to serve a valid notice under paragraph 5.4, Vue undertakes that the provisions of paragraph 4.2 shall apply in respect of the Nominated Cinema.

5.6 If Vue elects to make a disposal pursuant to a Sale and Leaseback Transaction the provisions of paragraph 5.7 shall apply.

5.7 Where the provisions of this paragraph apply Vue shall or shall procure that the relevant member of the Vue Group shall

(a) enter into an Approved Agreement with an Approved Purchaser for Effective Disposal of the Nominated Cinema and the relevant parts of the Nominated Cinema Business; and

(b) enter into binding agreements in respect of all aspects of the Sale and Leaseback Transaction

within the Contract Period and shall

(c) carry out all the steps comprising the Sale and Leaseback Transaction and

(d) bring about an Effective Disposal by completion of the obligations in the agreement or agreements described in sub-paragraph 5.7 (a) and all matters ancillary to them

within the Completion Period.

- 5.8 In the event that Vue satisfies the requirements of sub-paragraph 5.7(a) and (b) Vue shall submit a Notice of the satisfaction of those requirements on the day following the day on which those requirements are satisfied.
- 5.9 In the event that Vue or the relevant member of the Vue Group satisfies the requirements of sub-paragraph 5.7(c) and (d) Vue shall submit a Notice of the satisfaction of those requirements on the day following the day on which those requirements are satisfied.
- 5.10 In the event that Vue or the relevant member of the Vue Group does not satisfy the requirements of sub-paragraph 5.7 (a) and (b) Vue undertakes to submit a Notice that those requirements have not been satisfied by midday on the day following the last day of the Contract Period.
- 5.11 In the event that Vue or the relevant member of the Vue Group does not satisfy the requirements of sub-paragraph 5.7 (c) and (d) Vue undertakes to submit a Notice that those requirements have not been satisfied by midday on the day following the last day of the Completion Period.
- 5.12 In the event that Vue will be unable to satisfy any of the requirements of paragraph 5.7 within the relevant time period, Vue undertakes to submit a Notice of that fact in writing within two days from the day on which it becomes reasonably certain to Vue that it will not be able to satisfy the requirement or requirements in question.
- 5.13 If Vue elects under paragraph 5.6 to pursue a disposal pursuant to a Sale and Leaseback Transaction, and save as directed by any Divestiture Trustee, Vue undertakes that it will not, and that it will procure that no member of the Vue Group will, enter into any binding agreement for disposal of the Leisure Park cinema unless that agreement has been approved by the Competition Commission.
- 5.14 In relation to paragraphs 5.2(b) and 5.2(c) the assignment by Vue Properties Ltd of the Lease is not an agreement that needs to be an Approved Agreement and the assignee of the Lease is not a purchaser who needs to be an Approved Purchaser.

6. Matters ancillary to the principal undertakings

- 6.1 Vue undertakes that where it or any member of the Vue Group requires the consent or approval of the Competition Commission (however that requirement is expressed in these Undertakings) it will seek the consent or approval by the service of a Notice.
- 6.2 Vue undertakes that any application by it or by any member of the Vue Group for the Competition Commission's consent or approval shall make full disclosure of every fact and matter that is relevant to the Competition Commission's decision.
- 6.3 Vue recognises that a consent or approval granted by the Competition Commission in default of full disclosure by Vue or any member of the Vue Group is voidable at the election of the Competition Commission.
- 6.4 In the event that Vue discovers that an application for consent or approval has been made without full disclosure and is therefore incomplete Vue undertakes
- (a) to so inform the Competition Commission by submission of a Notice identifying the particulars in which the application for consent is incomplete within seven days; and
 - (b) at the same time or as soon as possible thereafter to provide to the Competition Commission an application that is complete.
- 6.5 Vue undertakes to make each application or to procure that each application for consent or approval is made so that it is received by the Competition Commission at least 10 days, or such lesser period as the Competition Commission may allow, before the day on which the Competition Commission's consent or approval is necessary to avoid a breach of these Undertakings and Vue recognises that the Competition Commission shall only be obliged to consider any application for consent or approval that is received at least 10 days, or within such other period as the Competition Commission may have allowed, before such day.
- 6.6 Vue recognises that the Competition Commission shall not be required to use more than its reasonable endeavours to grant or refuse consent or approval within the 10 day period.
- 6.7 Where in Vue's reasonable opinion it has identified a candidate purchaser with a real interest in the acquisition of the Nominated Cinema, Vue may apply to the Competition Commission for a decision on whether or not the candidate purchaser is an Approved Purchaser.

7. Vue's secondary obligations

- 7.1 Vue undertakes that during the Divestiture Period it will or will procure that the relevant members of the Vue Group will
 - 7.1.1 maintain the Leisure Park Cinema Business and the Festival Place Cinema Business as separate going concerns;
 - 7.1.2 operate the Leisure Park Cinema Business and the Festival Place Cinema Business in the ordinary course of business and in accordance with past practice including using all reasonable efforts to maintain the sales and revenues of both cinemas;
 - 7.1.3 make no increase in prices, nor any alteration to the structure of ticket prices, at either cinema;
 - 7.1.4 take no action that might impair the ability of the Leisure Park Cinema Business or the Festival Place Cinema Business to compete with each other including taking no action to impair the nature, range and standard of goods and services provided at either cinema;
 - 7.1.5 [~~✕~~] make no change to the ownership of either cinema, either cinema business, or to any company that is the owner of either cinema or either cinema business, save as contemplated by these Undertakings;
 - 7.1.6 preserve the assets employed in the Leisure Park Cinema Business and the Festival Place Cinema Business for the purpose of the supply of cinema exhibition services and all supplies of goods or services ancillary or connected thereto;
 - 7.1.7 take no steps that would impair the marketability, or that would jeopardise, delay or impede the sale of either the Leisure Park Cinema or the Festival Place Cinema or the Leisure Park Cinema Business or the Festival Place Cinema Business;
 - 7.1.8 preserve relationships with suppliers, customers, employees (subject to Vue's ordinary course employment disciplinary or dismissal practices and procedures) and any other person or persons having business relations with the Leisure Park Cinema Business or the Festival Place Cinema Business.

8. Conditions for the appointment of a Divestiture Trustee

- 8.1 In the event that the Competition Commission considers that Vue or any relevant member of the Vue Group is in breach of any of the obligations identified in paragraph 8.3 below, or in the event that Vue serves written notice on the Competition Commission under paragraph 5.10, 5.11 or 5.12, Vue undertakes that it shall at the written direction of the Competition Commission appoint a Divestiture Trustee to give effect to the duty set out in paragraph 8.2.
- 8.2 The duty of the Divestiture Trustee will be to give effect to the Trustee Obligation.
- 8.3 The obligations identified in this paragraph are those found in paragraphs 3.1, 3.3, 3.4, 3.5 and where applicable those in 4.2.1, 4.2.2, 4.3, 4.4, 4.5, 4.6, 5.2, 5.3, 5.4, 5.7, 5.8, 5.9, 5.10, 5.11, 5.12, each obligation in paragraph 7 and paragraph 10.2.

9. Reporting Obligations

9.1 Vue undertakes that

9.1.1 within the period of 15 days from the Commencement Date it will provide a written report to the Competition Commission explaining the timetable that it has adopted for Effective Disposal, outlining the progress that it has made towards Effective Disposal, and the steps that it has otherwise taken to comply with the Principal and Secondary obligations and

9.1.2 thereafter it will provide similar written reports to the Competition Commission every 15 days for the duration of the Divestiture Period.

9.2 Vue undertakes that in its reports to the Competition Commission Vue shall *inter alia* provide to the Competition Commission

9.2.1 the name, address, email address, contact point and telephone number of each person who has expressed a real interest in the acquisition of either cinema or either cinema business since the publication of the Competition Commission's provisional findings;

9.2.2 details of the efforts taken by Vue and each member of the Vue Group to solicit purchases for each cinema;

9.2.3 details of all the steps taken by Vue to comply with the obligations in paragraph 7 of these Undertakings.

10. Purchaser Complaints

10.1 Vue undertakes that the provisions of paragraph 10.2 shall apply where any person with a real interest in the acquisition of the Nominated Cinema makes a Purchaser Complaint to the Competition Commission.

10.2 The provisions of this paragraph are that

10.2.1 the Competition Commission shall consult Vue as to whether the Purchaser Complaint is justified and Vue shall provide to the Competition Commission such assistance as the Competition Commission shall require (including by the disclosure to the Competition Commission of commercially sensitive material) to consider whether the Purchaser Complaint is justified and

10.2.2 in the event that the Competition Commission considers that the Purchaser Complaint is justified Vue shall take such steps as the Competition Commission shall consider necessary to remedy the Purchaser Complaint.

11. Miscellaneous undertakings

- 11.1 Vue undertakes to remunerate in full, and to pay all the reasonable costs and expenses of, any Independent Surveyor and any Independent Legal Adviser whose assistance the Competition Commission may require in connection with any of the matters in paragraph 11.2 provided always that where Vue considers that the costs and expenses claimed are or are likely to be excessive Vue may ask the Commission to consider the use of an alternative Independent Surveyor or Independent Legal Adviser.
- 11.2 The matters in this paragraph are:
- (a) the determination of a purchaser as an Approved Purchaser;
 - (b) the determination of an agreement as an Approved Agreement;
 - (c) the consideration of any Purchaser Complaint; and
 - (d) any other matter on which the Competition Commission may reasonably require the assistance of an Independent Surveyor or Independent Legal Adviser in connection with these Undertakings.
- 11.3 Vue undertakes that neither it nor any other member of the Vue Group will acquire any interest in either cinema, or in the relevant part of either cinema business, where such business or cinema business is disposed of pursuant to these Undertakings, without the prior written consent of the Competition Commission.
- 11.4 Where a member of the Vue Group guarantees payment of the rent payable by the Approved Purchaser under the Sub-Lease and, or alternatively, performance by the Approved Purchaser of the tenant's covenants under the Sub-Lease and the Approved Purchaser is in default in payment of that rent or observance or performance of those any of those covenants; and either (1) in accordance with the terms of an agreement between a member of the Vue Group and the assignee of the Lease, the relevant member of the Vue Group is required to take either an assignment of the Sub-Lease, a new lease of the relevant cinema (following forfeiture of the tenant's Sub-Lease) or the assignee of the Lease grants an overriding lease of the relevant cinema to a member of the Vue Group, or (2) the Sub-Lease is disclaimed during the period in which the Approved Purchaser is liable for payment of rent and observance and, or alternatively, performance of the tenant's covenants under the Sub-Lease and the assignee of the Lease by notice requires the relevant member of the Vue Group to take a lease of the relevant premises for the residue of the contractual term of the Sub-Lease, the assignment of the Sub-Lease or the grant of a new lease or an overriding lease (referred to under point 1 above) or the taking of a new lease (referred to under point 2 above) shall not constitute a breach of paragraph 11.3; and the event giving rise to the assignment of the Sub-Lease or the grant of a new lease or an overriding lease (referred to under point 1 above) or the taking of a new lease (referred to under point 2 above) shall be referred to in these Undertakings as the "automatic reversion".
- 11.5 If the Competition Commission has reason to believe that Vue is not complying with its obligations under paragraph 3.1 and or alternatively paragraph 7 of these Undertakings Vue undertakes that it shall at the direction of the Competition Commission appoint a monitoring trustee for the purpose set out in paragraph 11.5.

- 11.6 The purpose set out in this paragraph is that of ensuring the compliance of Vue with its obligations under paragraph 3.1 and or alternatively paragraph 7 of these Undertakings.
- 11.7 The provisions of paragraphs 12, 13.3, 14.1, 14.2, 14.3, 14.4 and 15 of these Undertakings shall apply *mutatis mutandis* to the appointment of the monitoring trustee.

12. Divestiture trustee—appointment procedure

- 12.1 Vue undertakes that within the period of five days from the day on which a direction is made by the Competition Commission pursuant to paragraph 8.1, Vue shall submit a list of two or more persons whom Vue proposes to appoint as Divestiture Trustee to the Competition Commission for approval. The proposal shall contain sufficient information for the Competition Commission to verify that each proposed Divestiture Trustee fulfils the requirements set out in paragraph 12.2 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestiture Trustee to fulfil its duties; and
 - (b) a schedule of the steps to be taken to give effect to the mandate.
- 12.2 Each person on the list shall be independent of any member of the Vue Group, possess the qualifications necessary for the performance of its 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 on which it is remunerated.
- 12.3 The Competition Commission may approve or reject any or all of the proposed Divestiture Trustees and may approve the proposed mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil its duties. If only one name is approved, Vue shall use its 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 Competition Commission. If more than one name is approved, Vue shall be free to choose the Divestiture Trustee to be appointed from among the names approved. Vue undertakes to appoint the Divestiture Trustee within five days from the Competition Commission's approval and in the terms of the mandate approved by the Competition Commission.
- 12.4 If all the proposed Divestiture Trustees are rejected, Vue shall submit the names of at least two further persons within five days from being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 12.1 to 12.3.
- 12.5 The provisions of paragraph 12.6 shall apply if
- 12.5.1 Vue fails to nominate further persons in accordance with paragraph 12.4, or
 - 12.5.2 those further persons are rejected by the Competition Commission, or
 - 12.5.3 Vue is unable for any reason to conclude the appointment within the specified time-limit.
- 12.6 The Competition Commission shall nominate one or more persons to act as Divestiture Trustee, and Vue shall appoint, or cause to be appointed such Divestiture Trustee within two days from such nomination under the terms of a Divestiture Trustee mandate approved by the Competition Commission.

13. Functions of the Divestiture Trustee

- 13.1 Vue recognises that the duty of the Divestiture Trustee is to give effect to the Trustee Obligation, in accordance with paragraphs 13.2 to 13.4 and Vue undertakes to enable the Divestiture Trustee to give effect to the Trustee Obligation.
- 13.2 Vue recognises that
 - 13.2.1 the Competition Commission may, on its own initiative or at the request of the Divestiture Trustee or Vue, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of its duty;
 - 13.2.2 the Divestiture Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of its duty such terms and conditions as it considers appropriate;
 - 13.2.3 the Divestiture Trustee shall protect the legitimate financial interests of Vue subject to the Divestiture Trustee's overriding obligation to give effect to the Trustee Obligation.
- 13.3 The Divestiture Trustee shall take such steps and measures as it considers necessary to discharge its duty and to that end the Divestiture Trustee may give written directions to Vue, and Vue undertakes to comply with such directions, to take such steps within its competence as the Divestiture Trustee may specify.
- 13.4 Vue recognises that in the performance of its duties, the Divestiture Trustee shall act solely on the instructions of the Competition Commission and shall not be bound by any instruction of Vue and Vue undertakes that it shall not seek to create or vary the obligations and duties of the Divestiture Trustee, except with the Competition Commission's prior written consent.

14. Duties and obligations of Vue

- 14.1 Vue undertakes to provide and shall cause each member of the Vue Group and their advisers 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 relevant to either cinema or either cinema business, but excluding any matter properly the subject of client/solicitor privilege) as the Divestiture Trustee may reasonably require in the discharge of its duty. Vue recognises that the Divestiture Trustee shall be entitled, subject to a duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information of any member of the Vue Group necessary for the fulfilment of its duties and Vue undertakes that it shall, and that it shall procure that each member of the Vue Group shall, provide the Divestiture Trustee upon request with copies of any such document. Vue undertakes to make available, and shall procure that each member of the Vue Group makes available, as necessary, to the Divestiture Trustee one or more offices on their premises and shall be available, and shall procure that personnel of each member of the Vue Group shall be available, for meetings in order to provide the Divestiture Trustee with all information necessary for the performance of its duties.
- 14.2 Vue undertakes that each member of the Vue Group shall grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to enable it to discharge its duty including the appointment of advisers to assist with the divestiture process. Vue undertakes that upon the request of the Divestiture Trustee, Vue shall execute the documents required to give effect to the Trustee Obligation.
- 14.3 Vue undertakes to hold each Indemnified Person harmless against any liabilities arising out of the proper performance of the Divestiture Trustee's duty, and Vue recognises that an Indemnified Person shall have no liability to Vue for any liabilities arising out of the proper performance of the Divestiture Trustee's duty under these Undertakings, except to the extent that such liabilities result from actions or omissions that are contrary to law or from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
- 14.4 Vue undertakes that at its expense the Divestiture Trustee may appoint advisers (in particular for corporate finance or legal advice) subject to Vue's approval (this approval not to be unreasonably withheld or delayed) if the Divestiture Trustee considers the appointment of such advisers reasonably necessary or appropriate in the discharge of its duty, provided that any fees and other expenses incurred by the Divestiture Trustee are reasonably incurred. Vue and the Competition Commission shall discuss and seek to agree when ever any such costs and expenses are, in Vue's opinion, not reasonable. Should Vue refuse to approve the advisers proposed by the Divestiture Trustee the Competition Commission may, after consulting Vue, approve the appointment of such advisers. Vue recognises that it shall not be entitled to issue instructions to these advisers and paragraph 14.3 shall also apply to the Divestiture Trustee's advisers. The Divestiture Trustee may use advisers who served Vue during the Divestiture Period if the Divestiture Trustee considers this to be in the best interest of a prompt sale.
- 14.5 Vue undertakes to make no objection to the disposal of either cinema, or either cinema business in whole or part, save on the grounds of bad faith by the Divestiture Trustee or the failure of the Divestiture Trustee to protect the legitimate financial interests of Vue, subject to the Trustee Obligation, and where Vue wishes to make an objection on the grounds of bad faith it shall submit a Notice setting out its

objection within seven days from the day on which it first became aware of the fact or facts giving rise to its objection.

15. Replacement, discharge and reappointment of the Divestiture Trustee

- 15.1 Vue undertakes that if the Divestiture Trustee ceases to perform its functions under these Undertakings or for any other good cause, including the exposure of the Divestiture Trustee to a conflict of interest
- (a) the Competition Commission may, after consulting the Divestiture Trustee, require Vue to replace the Divestiture Trustee or
 - (b) Vue, with the prior written approval of the Competition Commission, may replace the Divestiture Trustee.
- 15.2 If the Divestiture Trustee is removed according to paragraph 10.1, the Divestiture Trustee may be required to continue in its function until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full hand over of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure referred to in paragraph 12.
- 15.3 Vue recognises that other than in accordance with paragraph 10.1, the Divestiture Trustee shall cease to act as Divestiture Trustee only after the Competition Commission has discharged it from its duties after all the obligations with which the Divestiture trustee has been entrusted have been implemented.

16. Effect of invalidity

- 16.1 Vue undertakes that should any provision of these Undertakings be contrary to law or invalid for any reason Vue and each member of the Vue Group shall continue to observe the remaining provisions.
- 16.2 Vue undertakes that no member of the Vue Group shall rely on any default or want of authority on the part of any member of the Vue Group or of any officer or employee thereof in the execution of these Undertakings unless directed so to do by the Competition Commission.

17. Provision of information to the Competition Commission and the OFT

- 17.1 Vue undertakes that it shall and will procure that each member of the Vue Group shall promptly provide to the Competition Commission such information as the Competition Commission 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.
- 17.2 Vue undertakes that it shall and will procure that each member of the Vue Group shall 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.
- 17.3 Vue undertakes that should it at any time be in breach of any provision of these Undertakings it will write to the Competition Commission to advise the Competition Commission;
- (a) that it is in breach, and
- (b) of all the circumstances,
- within five days from the time that Vue might reasonably have been expected to have become aware of the breach.
- 17.4 In the event that the circumstances identified in paragraph 11.4 arise Vue or the relevant member of the Vue Group shall serve Notice on the Commission within five days, and
- 17.4.1 in the event that the automatic reversion identified in paragraph 11.4 arises within the period of 10 years from the Commencement Date the provisions of these Undertakings shall apply *mutatis mutandis* (save that the defined term "Commencement Date" shall be replaced by the defined term "Second Commencement Date") to the disposal of the interests acquired by the relevant member of the Vue Group;
- 17.4.2 in the event that the automatic reversion identified in paragraph 11.4 arises outside the period of 10 years from the Commencement Date the provisions of these Undertakings shall on the written direction of the Commission apply *mutatis mutandis* (save that the defined term "Commencement Date" shall be replaced by the defined term "Second Commencement Date") to the disposal of the interests acquired by the relevant member of the Vue Group;
- 17.4.3 between the day on which notice is served on the Commission and the Second Commencement Date, Vue or the relevant member of the Vue Group may make submissions to the Commission as to why the provisions of this paragraph 17.4, or any other paragraph of these Undertakings, should be varied in respect of the interests acquired on the automatic reversion.

18. Service

- 18.1 Vue hereby authorises Mayer Brown Rowe & Maw LLP to accept on behalf of Vue service of all documents (including any document of any kind which falls to be served on or sent to Vue in connection with any proceedings in Courts in the United Kingdom) orders, requests, notifications or other communications connected with these undertakings.
- 18.2 Any document, order, request, notification or other communication shall be validly served on Vue if it is served on Mayer Brown Rowe & Maw LLP or such other person as Vue may nominate to the Competition Commission in writing; and service shall be deemed to have been acknowledged by Vue if it is acknowledged by Mayer Brown Rowe & Maw LLP or such other nominee.
- 18.3 Paragraph 18 has effect irrespective of whether, as between Vue and Mayer Brown Rowe & Maw LLP or other nominee, Mayer Brown Rowe & Maw LLP or that other nominee has or continues to have any authority to accept and acknowledge service on Vue's behalf; and no failure or mistake by Mayer Brown Rowe & Maw LLP or that other nominee (including a failure to notify Vue of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Undertakings including any proceeding or judgment.
- 18.4 Any communication between any member of the Vue Group and the Competition Commission under these Undertakings shall be addressed to The Secretary to the Remedies Standing Group, Competition Commission, Victoria House, Southampton Row, London WC1B 4AD or such other address as the Competition Commission may direct in writing.
- 18.5 Any communication between any member of the Vue Group and 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.

19. Compliance

- 19.1 Vue undertakes to comply with such written directions as the Competition Commission or the OFT may from time to time give to take such steps within their competence for the purpose of carrying out or securing compliance with these Undertakings.

20. Subsidiaries

- 20.1 Vue undertakes to procure that its Subsidiaries comply with these Undertakings as if they had been given by those Subsidiaries.

21. Governing Law

- 21.1 Vue recognises that these Undertakings shall be governed and construed in all respects in accordance with English law.
- 21.2 In the event that a dispute arises concerning these Undertakings, Vue undertakes to submit that dispute to the courts of England and Wales.

22. Termination

- 22.1 Vue recognises that these Undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 22.2 Vue recognises 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.

Mandate of the Divestiture Trustee

1. The Divestiture Trustee will be required to give effect to the Trustee Obligation, but subject to this overriding obligation shall protect the legitimate financial interests of Vue.
2. The Divestiture Trustee will have the sole right to sell either cinema or either cinema business during the Trustee Divestiture Period.
3. Neither Vue nor any member of the Vue Group will take any steps towards the sale of either cinema or of either cinema business once the Divestiture Trustee has been appointed, save at the direction of the Divestiture Trustee.
4. The Divestiture Trustee shall account for sale monies and for all costs and expenses incurred in connection with the sale to Vue and after the deduction of all the sums properly payable to the Trustee or to any other person out of the sale proceed shall pay the balance to Vue.
5. The terms of the remuneration of the Divestiture Trustee may provide the Trustee with an incentive provided that such incentive does not give rise to any conflict of interest and does not create any impediment to a prompt sale to remedy the SLC.
6. Vue shall assist the Divestiture Trustee to give effect to the Trustee Obligation in accordance with the terms of these Undertakings.
7. The Divestiture Trustee shall provide the Competition Commission with such information and reports as the Competition Commission may require to ascertain whether Vue and, or alternatively, the Divestiture Trustee, are complying with their obligations under and in relation to these Undertakings and shall promptly report to the Competition Commission if it concludes that Vue is failing to comply with any of its obligations under this paragraph.

Signed by duly authorised signatories for and on behalf of Vue Entertainment Holdings UK Limited

_____ (signature)

_____ (name)

_____ (office or title)

_____ (date)

_____ (signature)

_____ (name)

_____ (office or title)

_____ (date)