

Completed acquisition by Cineworld Group plc of the cinema business operating at the O2, London

**ME/4650/10**

The OFT's decision on reference under section 22(1) given on 20 October 2010. Full text of decision published 9 November 2010.

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

## **PARTIES**

1. **Cineworld Group plc** ('Cineworld') operates cinemas in the UK and Ireland for the exhibition of films and related retail activity. Cineworld operates 78 cinema sites with a total of 773 screens, including, post merger, the 11-screen cinema at the O2 in London.
2. **Ansko Cinema Ltd** ('Ansko') is a subsidiary of Anschutz Entertainment Group ('AEG'), the operator and leaseholder of premises at the O2 site. AEG is a global provider of sports and entertainment, owning a number of sporting arenas, theatres, sports franchises, and other entertainment companies. AEG controls a partnership, the Waterfront Limited Partnership, which leases the cinema premises at the O2 to Ansko.
3. **Vue Entertainment** ('Vue') operates cinemas for the exhibition of films, with around 80 sites and over 650 screens. All of the cinemas are in the UK and Ireland except two (in Portugal and Taiwan). Vue operated the cinema business at the O2 under a three-year management agreement with Ansko until 23 June 2010.

## **TRANSACTION**

4. Between November 2009 and January 2010 AEG invited bids for the operation of the cinema premises at the O2 under either a 25-year lease or a three- to five-year management contract. AEG made approaches to 17 parties initially (and had discussion with more subsequently), including Cineworld and Vue, and received formal offers from five.
5. On 24 June 2010 Ansko entered into a licence to sub-lease the cinema premises to Cine-UK Limited ('Cine-UK'), a subsidiary of Cineworld for a 25-year term. Cineworld paid Ansko [ ] for the lease, including fixtures and fittings, as well as annual rent of over [ ], a service charge and committed marketing expenditure, as well as [ ] for spare parts and retail stock. In addition, the employees at the O2 cinema business transferred from Vue to Cineworld under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE').
6. The OFT sent an enquiry letter to Cineworld on 29 July 2010. The OFT's statutory deadline for deciding whether to refer the merger to the Competition Commission ('CC') is 24 October 2010.

## **JURISDICTION**

7. A relevant merger situation arises where as a result of arrangements or transactions, two or more enterprises cease to be distinct enterprises and either the UK turnover test or share of supply test set out in section 23 of the Enterprise Act 2002 (the Act) is met. The requisite test for the OFT is that it has to reach a belief that it is or may be the case that a relevant merger situation has been created (section 22(1)(a) of the Act).

### **Enterprises ceasing to be distinct**

8. Cineworld has argued that no enterprises have ceased to be distinct since:
  - Cineworld and Vue have not themselves entered into any agreement or arrangement in relation to the O2 cinema business. No assets or liabilities were passed to Cineworld from Vue. Ansko owned all the equipment necessary to operate a cinema business at the premises (that is, the fixtures and fittings) and Cineworld acquired the assets

from Ansko. Additional spare parts and some concession stock were also acquired by Cineworld from Ansko, not from Vue. This has been confirmed by Ansko, who also submitted that none of the assets transferred were previously owned by Vue.

- No contracts or goodwill were passed from either Vue or Ansko to Cineworld.
- No warranties as to the O2 business were sought or received by Cineworld. Cineworld received warranties only in relation to the assets purchased from Ansko. Ansko confirmed the former proposition and with regard to the latter stated that no assurances were given in relation to the assets required to operate the business.
- On the basis of the above, they argued that no business has been transferred by Ansko to Cineworld either.

9. The OFT's guidance discusses the concept of an 'enterprise' and states that: 'in making a judgment as to whether or not the activities of a business, or part of a business, constitute an enterprise under the Act, the OFT will have regard to the substance of the arrangement under consideration, rather than merely its legal form. As a result, it may not be the case that one single factor will prove determinative in reaching a conclusion. Rather, the OFT will make an assessment based on the totality of all relevant considerations.'<sup>1</sup>
10. In considering the multiple factors that may be relevant in a particular case, the OFT has previously stated that 'the fact that different components that may collectively constitute an enterprise (property, stock, fixtures and fittings, goodwill, employees) are acquired from different parties does not negate the conclusion [that an enterprise may have been transferred]'.<sup>2</sup>
11. The OFT has considered carefully all the points raised by Cineworld as to why the transaction does not give rise to two or more enterprises ceasing to be distinct. In this respect, it is mindful that internal documents received from [ ] present the transaction as if a new business was being created, rather than as the sale or acquisition of an existing business.
12. However, the OFT believes that there are a number of features that point towards the existence of two enterprises ceasing to be distinct, namely:

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<sup>1</sup> OFT *Mergers - jurisdictional and procedural guidance* (OFT527) paragraph 3.9.

<sup>2</sup> See OFT Anticipated acquisition by HMV of 15 Zavvi stores 28 April 2009, paragraph 17.

- Cineworld has acquired some key components of an enterprise, namely a lease of the premises from Ansko, the acquisition of fixtures and fittings from Ansko, the acquisition from the lessor of spare parts and retail stock remaining in the premises, and the employees from Vue.<sup>3</sup>
- In line with the OFT's approach in the HMV/Zavvi case, cited above, the fact that the different components discussed above come both from Ansko, as the cinema owner, and Vue, as the designated management operator, does not negate the significance of these factors. There is no reason why all of these components should be obtained exclusively from Vue in order for an enterprise to be transferred (particularly given that Vue was the contract operator for Ansko, rather than the outright owner of the business, and therefore a rigid and artificial distinction between Vue and Ansko would be inappropriate in these circumstances).
- As stated in its guidance, the OFT considers the substance of a transaction over its form, that is the legal form of the arrangements is not determinative. In this case the arrangements resulting in Cineworld acquiring the lease and operating assets of the O2 cinema business from Ansko, taken together with the transfer of staff from Vue to Cineworld, have the same practical effect as would a direct assignment or transfer of the O2 cinema business from Vue to Cineworld.
- The management agreement under which Vue operated the cinema premises terminated on 23 June 2010, while Cineworld began operating the cinema from 25 June 2010. There was therefore only a single day's gap in trading between the Vue cinema and Cineworld cinema and thus a potential transfer of goodwill that had been built up by Vue in operating the O2 cinema business for the previous three years. In this respect, it is notable that customers' perceptions would be that the O2 cinema business, previously operated by Vue, had been taken over by Cineworld.

13. The test for the OFT under the Act is whether it is or may be the case that enterprises have ceased to be distinct. The OFT believes that the test is met in this case on the 'may be the case' standard. In the event of doubts

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<sup>3</sup> The purchase agreement Cineworld made with Ansko provided that the employment contracts between the employees working at the cinema premises and Vue would have the same effect following the transaction as if originally made between Cineworld and those employees. The OFT Mergers' *jurisdictional and procedural guidance* specifically highlights the application of the TUPE regulations to be a strong factor in finding that the business transferred constitutes an enterprise, and implicitly, that a business was transferred at all (paragraph 3.10).

as to whether the transaction constitutes a relevant merger situation, it is then appropriate that these should be determined by the Competition Commission at second phase - should the OFT reach a view that the relevant merger situation creates a realistic prospect of a substantial lessening of competition.

### **Share of supply in a substantial part of the UK**

14. Given that the turnover of the cinema business at the O2 in its last financial year was approximately [ ], the turnover test in section 23(1)(b) of the Act is not met.
15. The parties overlap in the supply of film exhibition services in the UK. The share of supply test in section 23 of the Act is met in respect of the supply of film exhibition services in the London Boroughs of Greenwich and Tower Hamlets, which are considered by the OFT to be a substantial part of the UK.<sup>4</sup>
16. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

### **MARKET DEFINITION**

17. The parties overlap in the supply of 2D and 3D film exhibition services.

### **PRODUCT SCOPE**

#### **Film Exhibition Services**

18. In previous CC and OFT decisions, it has been found that film exhibition was in a separate market from film distribution.<sup>5</sup> It was also noted that film

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<sup>4</sup> In its Tesco/Co-op Slough report 28 November 2007, the Competition Commission decided that the Borough of Slough is a substantial part of the UK. In Anticipated acquisition by Cineworld Group plc, through its subsidiary Cine-UK Limited, of the cinema business operating at the Hollywood Green Leisure Park, Wood Green 17 March 2008, the OFT decided that the Borough of Haringey is a substantial part of the UK, paragraph 12.

<sup>5</sup> The Competition Commission's report on the completed acquisition by Vue Entertainment Holdings (UK) Ltd of A3 Cinema Limited, 24 February 2006. OFT decision on the anticipated acquisition by Cineworld Group plc, through its subsidiary Cine-UK Limited, of the cinema business operating at the Hollywood Green Leisure Park, Wood Green (Cineworld/Hollywood Green Leisure Park), 17 March 2008, ME/3390/07.

exhibition was not found to be part of a wider market for the supply of leisure activity services and that visiting a cinema is not part of a wider market including viewing films on television screens, either from a video cassette or DVD or from free-to-view or pay television.

19. The parties agree that the supply of film exhibition services may be treated as a separate frame of reference in this case, in line with past cases. However, they also note that Cineworld is increasingly competing with other leisure activities. In particular, Cineworld sets admission prices taking into consideration the price of purchased or hired DVDs and real-time downloading (pay-per-view and on-demand services).
20. Based on previous decisions and on the fact that no evidence from third parties suggested departing from the previous conclusions adopted by the CC and the OFT, the OFT concludes that for the purposes of this case the product market is taken as the supply of film exhibition services.

#### **Multiplex versus one-screen cinema**

21. In previous cases, the exact definition of a multiplex cinema has pointed specifically to cinemas with at least three screens and around 700 seats.<sup>6</sup> The size of the cinema has been considered as a key determinant of its effectiveness as a competitive constraint. The closest constraint on a multiplex cinema is considered to be another multiplex cinema. A smaller cinema would provide a more limited competitive constraint on a multiplex given the limitations in number of films, show times, and choice more generally.
22. In addition, the OFT noted that not all cinemas, irrespective of number of screens, will show the same mix of films. Cinemas will focus to varying degrees on mainstream films, foreign-language films, low budget or independent films, Bollywood films, or older classic films, which can depend, amongst other things, on the customer groups around the cinema.
23. For the purposes of this case involving a single cinema, the OFT has been able to consider the competitiveness of the other cinemas on a case-by-

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<sup>6</sup> OFT decision on the anticipated acquisition by Cineworld Group plc, through its subsidiary Cine-UK Limited, of the cinema business operating at the Hollywood Green Leisure Park, Wood Green (Cineworld/Hollywood Green Leisure Park), 17 March 2008, ME/3390/07.

case basis as part of the competitive assessment, irrespective of their size and the film types shown.

## **2D versus 3D film exhibition**

24. The OFT received evidence indicating that cinema operators have begun to invest in digital and 3D technical capacity. An increasing proportion of new films are released in enhanced 3D format. 3D and 2D films are generally exhibited simultaneously at most cinemas, although less so over time. The parties submit that 2D films are still distributed for the increasingly smaller number of cinemas without 3D facilities and for family films. A small number of films are produced solely for 3D format.
25. Furthermore, the OFT notes that there is a significant admission ticket price difference between 2D and 3D films, of around 19 to 35 per cent.<sup>7</sup> The parties submit that this is driven by costs, with exhibitors requiring specialist equipment, a 3D equipment licence, which exhibitors must purchase, and a per admission licence fee for the equipment to screen the enhanced format.
26. On the demand-side, the parties submit that any price change that leads to a reduction in the price differential (reducing the 3D price or increasing the 2D price) would result in an even larger proportion of customers choosing 3D, and vice versa. However, parties and third parties were in broad agreement that customers will readily switch between 3D and 2D based on film showing time if they are unable to obtain a ticket to their first choice (2D or 3D). Third parties, while agreeing that costs drive the price differential between 2D and 3D, also suggest that consumers perceive 3D to be a higher quality product and are willing to pay more as a result.
27. On the supply-side, initial switching of capacity from standard exhibition (35mm projectors) to 3D exhibition (generally requiring digital projectors) involves some costs<sup>8</sup> and according to the parties there is up to a six-month delay on available equipment and a shortage of supply for silver screens. However, despite these initial switching costs, the parties

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<sup>7</sup> Of the competitors in the local area, this ranges from an additional £2 on a £5.65 child ticket (35 per cent) to an additional £1.75 on a £9.40 (19 per cent) adult ticket.

<sup>8</sup> Conversion to a digital projector was estimated to cost between £30,000 and £55,000, depending on the size of the auditorium. Digital projection requires a special silver screen which can cost in the region of £4,000 to £10,000 on average.

submitted that there are options for lower-cost 3D conversion. Competitors have broadly supported the parties' views on the costs of initial switching, indicating that although costs are substantial they are not prohibitive.

28. The OFT notes that significant investment in 3D capacity is occurring across all cinema exhibitors. In particular, in the six-month period from when the parties sourced information and when the OFT verified screen capacity as part of this market investigation, there has been significant capacity development.
29. The OFT's market investigation indicated that once initial conversion has occurred, the programme can be easily switched between 3D and 2D presentations.
30. Therefore, the OFT recognises that there are factors supporting both demand- and supply-side substitution between traditional 2D exhibition and enhanced 3D exhibition. In particular, it appears that conversion to 3D capacity, rather than being a prohibitive cost, is being considered a necessary and beneficial investment in the industry, demonstrated by the number of cinemas converting and the speed with which conversion is taking place. However, in the absence of any competition concerns, the OFT did not consider it necessary to conclude on the precise market definition, and on a conservative approach considered the impact of the merger on the supply of 2D and 3D film exhibition services separately.

## **GEOGRAPHIC SCOPE**

31. Previous cinema merger decisions have considered competition in both national and local markets. This is because competition takes place predominantly at the local level through price, content and facilities varying to meet local conditions, but certain parameters of competition for national chains (for example, negotiations with distributors for access to film content and for screen advertising fees and branding) are determined at a national level.

### **National level**

32. In this case, the merger represents a single cinema. At a national level, the increment in share of supply is only [0-10] per cent (based on screens and seats), giving a post-merger UK share of supply for Cineworld of around

[15-25] per cent (based on screens and seats). Given the minimal increment at a national level, the OFT did not consider it necessary to analyse any further the impact of the merger at a national level and instead it focussed on local issues only.

### **Local Level**

33. In relation to local issues, a 20-minute drive-time isochrone around the acquired cinema has formed the basis for the competitive assessment in previous cases. This approach has been verified with a sensitivity analysis using a 30-minute drive-time isochrone and considering the closeness of competition between the parties. There has also been a focus on population overlaps - the proportion of people within a 20-minute drive-time - based on customers tending to visit their local cinema.
34. In addition, in previous cases the OFT has also noted that the prevalence of modes of transport other than driving and the more diverse nature of West End audiences make isochrone analysis a less reliable proxy in relation to Central London.
35. In this case, the O2 is served by North Greenwich tube station on the Jubilee Line and various bus routes. Thames Clippers, also owned by AEG, operate a river boat service on the Thames, which berths at the O2 and offers an express service from Central London, in addition to the standard commuter service. The Thames lies between the two Cineworld cinemas with the Blackwall tunnel and Jubilee line both spanning very close to the O2 arena. AEG's initial marketing documents for the lease note that 70 per cent of visitors to the O2 (the whole O2 not just the cinema) travel by underground, five to eight per cent by bus, and three to five per cent by boat.
36. The parties agree with the use of a 20-minute drive-time isochrone around the acquired cinema in this case with a 30-minute sensitivity analysis and they have made no submissions regarding the different nature of London audiences. In particular, the parties made no submission regarding a possible constraint from cinemas in the West End (that is, around Leicester Square in central London), although the OFT notes that the West End is

just outside the 30-minute secondary isochrone and has at least 12 cinemas and seven fascia.<sup>9</sup>

37. To support this, the parties were asked to submit data on Cineworld Unlimited card customers around the O2 cinema. Regardless of some limitations<sup>10</sup> and data issues,<sup>11</sup> the OFT considers the information to provide a useful guide as to the customer catchment area around the O2 cinema and the distance with which customers travel locally to the cinema.
38. The information provided by the parties on the location of the customer base is broadly consistent with the 20-minute drive-time proposition, with around [50-60] per cent of customers within 20 minutes', a further [10-20] per cent between 20 and 30 minutes' and [20-30] per cent more than 30 minutes' drive-time from the cinema.
39. One competitor suggested the geography of the O2 meant that they did not compete with the cinema, despite being within 20 minutes.
40. No evidence has been submitted suggesting the customer catchment area surrounding cinemas is different between 2D and 3D films.
41. Based on the evidence before it, the OFT considers the 20-minute drive-time isochrone to be a good starting point for the analysis. However, as the merger involves a single cinema, the OFT has also been able to consider the competitiveness of the other cinemas on a case-by-case basis as part of the competitive assessment, irrespective of the actual drive-time distance from the O2 and, in particular, taking account of other travel journey times.

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<sup>9</sup> Odeon (Leicester Square (2), Panteon Street, Shaftesbury Avenue (Tottenham Court Road), Cineworld (Haymarket, Shaftesbury Avenue), Vue West End, Empire West End, Apollo West End, Curzon Soho, Prince Charles Cinema.

<sup>10</sup> The Cineworld Unlimited card is a monthly or annual subscription membership card that allows unlimited access to Cineworld films. Admissions using an Unlimited card amount to only around [ ] per cent of total admissions at the O2 cinema and nationally. It therefore reflects only a minority of customers and only those that would likely choose Cineworld anyway, as they can use the card to obtain free admission.

<sup>11</sup> [ ].

## HORIZONTAL ISSUES

42. The parties overlap in the supply of 2D and 3D film exhibition services. The OFT has examined the possibility that the merged entity could unilaterally deteriorate any aspect of their competitive offering (prices, film range, film times, quality, or service level) as a result of the merger.

### 2D FILM EXHIBITION

43. According to the parties, in the 20-minute drive-time around the O2 cinema, there are eight cinemas belonging to six companies - Cineworld (West India Quay), Odeon (two cinemas), Picturehouse (two cinemas), Genesis, Showcase and Boleyn. Therefore, the merger would result in a reduction in fascia from seven to six.
44. The parties have also submitted information indicating that they monitor the competitive offering of other local cinema operators. In particular, evidence provided by the parties indicated a detailed price comparison of the O2 cinema with the Odeon Greenwich, Odeon Surrey Quays, Vue Dagenham (outside the 20-minute drive-time isochrone but within 30 minutes) and Showcase Newham, as well as the other Cineworld at West India Quay. However, the parties stated that there was no monitoring undertaken for Greenwich Picturehouse, Genesis or Boleyn as the information was less readily available.
45. The OFT considered whether the Boleyn and Genesis cinemas should be considered effective competitors to the O2 cinema. The OFT received no response from either cinema as part of its market investigation and therefore it was difficult to assess the degree of competitive constraint exerted on the O2 cinema. However, the OFT's market investigation showed that the Boleyn Cinema is a specialist cinema showing only 'Bollywood' and other Asian foreign language<sup>12</sup> films and no mainstream films are shown at the cinema. As a result, the OFT considered that Boleyn did not provide an effective constraint on the O2 cinema.
46. However, in verifying this isochrone analysis, the OFT identified one further cinema within around 20-minute drive-time of the O2, the Peckham Multiplex. The OFT received no response from Peckham Multiplex.

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<sup>12</sup> The cinema lists films shown in Hindi, Malayam, Punjabi, Telugu, and Tamil.

However, the OFT noted that the cinema, with six screens, focused on mainstream films, which overlap with those shown by the O2 and also considered that, although just within 20 minutes' drive-time, there will be some degree of population overlap, particularly for those living between each cinema in Greenwich.

47. On this basis, by excluding Boleyn cinema and adding the Peckham Multiplex in the number of fascia, the merger results in a fascia reduction from seven to six with Cineworld having a share of supply around [20-30] per cent with an increment of around [10-20] per cent based on number of screens.<sup>13</sup> If excluding the Newham Showcase, [ ], the merger would result in a fascia reduction from six to five with Cineworld having a share of supply of around [30-40] per cent with an increment around [15-25] per cent.<sup>14</sup> However, the OFT also recognises that, based on a number of factors, including location and population overlaps, these fascias will constrain Cineworld to varying degrees. The OFT therefore considered below the closeness of competition between the O2 cinema and other cinemas in the local area.
48. For completeness, the OFT conducted a 30-minute drive-time sensitivity check on the 20-minute drive-time isochrone. This highlighted 10 additional cinemas, some of whom are closer by public transport than those cinemas within the 20-minute isochrone. However, considering the specific local circumstances, the travelling distance between the relevant cinemas and the O2 cinema and the number of screens in each cinema, the OFT considered it unlikely that any of the additional cinemas individually provide a significant competitive constraint to the O2 cinema post-merger.

### **3D FILM EXHIBITION**

49. In 3D capacity, within a 20-minute drive-time the merger represents a reduction in fascia from six to five with Cineworld having a share of supply of [20-30] per cent and Odeon of [50-60] per cent, based on screens. The OFT received limited information on 3D capacity disaggregated by seats. By excluding the Showcase cinema in Newham, the remaining fascias, both

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<sup>13</sup> Based on the number of seats, post-merger Cineworld have a share of supply around [25-35] per cent with an increment of [10-20] per cent.

<sup>14</sup> Regarding Genesis cinema, the OFT received no evidence on the cinema's film range. However, even if Genesis cinema were not considered a competitive constraint to the O2 cinema, the merger would result in a fascia reduction from five to four and therefore such reduction would not alter the OFT's conclusion in the competitive assessment of the merger. .

pre- and post-merger, are reduced by one but this makes no significant difference to shares of supply. Odeon's share of supply increases to 59 per cent and Cineworld's to [25-35] per cent.

50. Extending the drive-time to 30 minutes highlighted five additional cinemas with 3D capacity, although only one additional fascia, Vue Dagenham. The OFT considered that the analysis with respect to 2D film exhibition applied equally to these additional cinemas and did not consider it likely that any of the additional cinemas individually provide a significant competitive constraint to Cineworld at the O2 post-merger.

## **CLOSENESS OF COMPETITION**

51. As discussed above, previous cases have highlighted that the closer two cinemas are together, the more strongly they are likely to compete.<sup>15</sup> Not all film exhibitors are likely to impose the same degree of competitive constraint on one another, for a number of reasons, including, in particular, location and thus differing population overlaps. The incentive of the merged parties to raise price occurs where the merger results in the reduction of close choices for a substantial proportion of consumers and the remaining constraints are insufficient to mitigate the loss of competition. Therefore, the OFT considered it appropriate to examine the closeness of competition with respect to the Cineworld O2 and Cineworld West India Quay cinemas.
52. The parties submitted that there has been no significant change in pricing, ticket sales or turnover at the Cineworld in West India Quay since the Cineworld opened at the O2. However, the OFT considered the evidence submitted by the parties in this regard to be inconclusive.
53. The parties have also submitted evidence indicating that the main competitors to the O2 cinema are the two Odeon cinemas in Greenwich and Surrey Quays and the Greenwich Picturehouse.
54. The OFT noted that based on drive-time and distance, the cinemas with likely the most similar population overlaps and catchment areas as the O2 are Odeon Greenwich and Greenwich Picturehouse, both of whom have 3D capacity, are south of the river, and are considerably closer to the O2 than

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<sup>15</sup> The Competition Commission report on the completed acquisition by Vue Entertainment Holdings (UK) Ltd of A3 Cinema Limited, 2006 (Vue/A3).

the Cineworld West India Quay. In the case of Odeon Greenwich, the overlap and catchment is likely to be virtually identical.

55. Furthermore, the Odeon Surrey Quays is only four minutes' drive-time and two minutes further by public transport from the O2 than Cineworld West India Quay. Given this short distance and the film range of Cineworld and Odeon, Odeon would most likely have exerted an equally strong competitive constraint on the O2 cinema pre-merger as the Cineworld West India Quay.
56. Odeon considered that the two cinemas within 20 minutes' drive-time, at Greenwich and Surrey Quays, competed directly with Cineworld at the O2 and West India Quay. Odeon indicated that they monitor the performance of both Odeon cinemas at Greenwich and Surrey Quays against the two Cineworld cinemas and had introduced a new digital IMAX screen in 2008 at the Odeon Greenwich specifically to compete with the O2 cinema. Odeon submitted there was evidence to support the view that customers made choices between films based on film times and price offers at each of the four cinemas.
57. In addition, Picturehouse also submitted that they compete with both Cineworld O2 and Cineworld West India Quays cinemas. However, no information on monitoring or responsive actions was provided.
58. Therefore, based on the evidence before it, the OFT concluded that there are at least two to three cinemas that appear equally close, or closer, competitors to Cineworld as the West India Quay and O2 cinema are to each other. The OFT has also considered, and concluded this to be the case, on any narrower more conservative basis than the 20-minute drive-time starting point.
59. The incentive of the merged parties to deteriorate their competitive offer as a result of the merger is therefore likely to be limited by sufficiently close competitors.

## **CONCLUSION**

60. Based on the evidence before it, the OFT considers that post-merger there remains sufficient film exhibitors, which provide a competitive constraint to the parties, in both 2D and 3D exhibition. In addition, the OFT concludes

that it is clear that there are two to three cinemas that appear equally close, or closer, competitors to Cineworld as the West India Quay and O2 cinema are to each other. Therefore, the OFT does not believe that there is a reasonable prospect that the merger will result in a substantial lessening of competition in the supply of 2D and 3D film exhibition services in the area around the O2 cinema.

### **THIRD PARTY VIEWS**

61. The OFT received comments from a number of third party cinema operators, none of which raised any competition concerns in relation to the merger. No concerns were raised either by film distributors.

### **ASSESSMENT**

62. On a careful consideration the OFT believes that it is or may be the case that a relevant merger situation has been created.

63. The parties overlap in the supply of 2D and 3D film exhibition services.

64. The OFT's approach on geographic market definition follows previous cinema merger cases considered by the OFT and the CC. At a local level, the area covered by a 20-minute drive-time isochrone around the target cinema (the O2), with a 30-minute drive-time sensitivity check, is the best-available proxy for the assessment of the particular merger.

65. On a conservative basis, in the 20-minute primary isochrone, the merger would reduce the number of cinema fascia from six to five for 2D and 3D film exhibition services. Post-merger, Cineworld would have a share of supply around [30-40] per cent with an increment around [15-25] per cent. For completeness, in a 30-minute secondary isochrone the OFT identified 10 further cinemas. Therefore, the OFT considers that post-merger there remains sufficient film exhibitors, which provide a competitive constraint to the parties, in both 2D and 3D exhibition.

66. In addition, the OFT examined the closeness of competition with respect to the Cineworld O2 and Cineworld West India Quay cinemas. In particular, the OFT considered whether the merger results in the reduction of close choices for a substantial proportion of consumers and the remaining

constraints sufficient to mitigate the loss of competition. Based on the evidence before it, the OFT concluded that it is clear that there are at least two to three cinemas that appear equally close, or closer, competitors to Cineworld as the West India Quay and O2 cinema are to each other in both 2D and 3D exhibition.

67. No third parties raised any competition concerns in relation to the merger.
68. Consequently, the OFT 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.

## **DECISION**

69. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.

## **ENDNOTES**

1. In relation to paragraph 1, the parties clarified that Cineworld operates 78 cinema sites with a total of 801 screens including post-merger, the 11-screen cinema at the O2 in London
2. In relation to paragraph 2, AEG is not the operator of the O2 site. AEG is the parent company of the UK companies which operate the O2.
3. In relation to paragraph 3, Vue clarified that it operates 67 cinemas in the UK with 643 screens. It also has one site in Ireland with 14 screens, one in Portugal with nine screens and one in Taiwan with 13 screens.