# Anticipated acquisition by Panavision Europe Limited of AFM Group Limited

The OFT's decision on reference under section 33(1) given on 1 February 2007. Full text of decision published 12 February 2007.

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

## PARTIES

1. **Panavision Europe Limited** (Panavision), a UK company, is a wholly owned subsidiary of the US movie camera manufacturer, Panavision Inc. Panavision supplies equipment for hire for use in television and film productions including cameras and related equipment and lighting and related equipment through its subsidiary Lee Lighting Limited (Lee Lighting). It also provides studio space in Greenford, Middlesex.

2. **AFM Group Limited** (AFM) is a UK company that supplies equipment via its subsidiary companies for hire for use in television and film productions including lighting and related equipment (through AFM Lighting Limited), cameras and related equipment (via One 8 Six Limited), stills photographic equipment (via Kinetic Facilities Limited) and studio space from two studios in central London (Black Island Studios and Dukes Island Studios, both via Black Island Studios Limited).

## TRANSACTION

3. Panavision intends to acquire the entire issued share capital of AFM.

4. Panavision submitted a statutory Merger Notice to the Office of Fair Trading (OFT) on 7 November 2006 but withdrew it on 23 November

2006, thereby transferring the OFT's investigation onto its administrative timetable. The OFT's administrative target for announcement of a decision was 5 January 2007.

## JURISDICTION

5. As a result of this transaction Panavision and AFM will cease to be distinct. The parties' combined share of the rental of camera grip equipment in the UK exceeds 25 per cent. Therefore, the share of supply test in section 23 of the Enterprise Act 2002 (the Act) has been met.

6. The OFT therefore believes that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## FRAME OF REFERENCE

7. The parties overlap in the rental of lighting and related equipment, cameras, camera grips and studios.

### Lighting equipment rental

#### Product scope

8. Lights can be supplied with additional equipment (for example, lighting grips, power generators, power distribution units and accessories such as lighting control units). The parties asserted that these are generally rented together and as third parties did not disagree, lighting and related equipment have been considered together by the OFT.[1]

9. Lighting can also be segmented from the demand side into broad categories of lighting technology.[2] However, the parties and third parties agree that as suppliers will need to provide the full range required by a particular customer group it is not necessary to consider these separately.

[1] Together in this decision called lighting equipment.
[2] The four categories are: incandescent; halide mercury iodine and medium source rare discharge; fluorescent/LED; and specialist lighting (which includes underwater lights, specialist effects lights and automated lights).

10. The parties supply lighting to producers of broadcast events (that is, within the film, television and television commercials production industries). Non-broadcast events (in which there is no overlap between the parties) include theatre performances and concerts.

11. The parties argued that broadcast and non-broadcast events use similar lighting equipment and logistics and that those suppliers active in non-broadcast segment do supply broadcast segment customers. For example, the parties submitted that AFM supplies lighting equipment to non-broadcast events using broadly the same equipment as for broadcast events.

12. Third party suppliers disagreed. The OFT was told that there is little crossover from theatre lighting to broadcast event lighting, and concert lighting is generally not the same as lighting used in film or television.

13. In the absence of persuasive evidence to contradict this, the OFT has adopted a cautious approach and has therefore not considered the supply of lighting equipment to non-broadcast events to be included in the product frame of reference. However, any competitive constraint placed by suppliers to the non-broadcast segments has been considered by the OFT in its competitive assessment.

14. Within the broadcast segment the industry tends to refer to film, television or television commercials as distinct customer groups. Suppliers will often target their marketing at one or more of these. Nonetheless, the parties contended that all three customer groups use the same lights and distribution channels.

15. From the supply side, a supplier can supply to all three customer groups if it has sufficient inventory and the requisite logistical skills to do so. If a supplier does not have sufficient inventory, the parties submitted that equipment shortfalls can be sub-rented from other suppliers (which is common within the industry). Therefore, the parties considered that it was not appropriate to further segment the rental of lighting to broadcast events by customer groups.

16. Third party suppliers told the OFT that although the lighting equipment might be the same between broadcast customer groups, meeting end-user requirements is dependent on scale. Therefore, whereas larger rental

companies are likely to constrain suppliers operating within the television and commercials segments, which contain a number of smaller suppliers, these smaller suppliers are not sufficiently large to bid for the film contracts (especially large scale films), which require significantly more equipment.

17. The parties themselves are focused on different customer groups. Lee Lighting is considerably stronger in the supply of lighting equipment for use in films than it is in the supply to television commercials customers (and, to a lesser extent, television drama customers), whereas AFM, by contrast, has a far stronger position in the supply of lighting equipment to producers of commercials than to the other two customer groups.

18. It is not necessary for the OFT to conclude on the product scope in regard to lighting equipment as the outcome of the competition assessment is the same regardless of the product scope chosen. The OFT has analysed the proposed merger on the basis of all lighting equipment together (including accessories and type of technology) for use in broadcast events, both as a whole and segmented by customer group.

**Geographic scope**

19. The parties submitted that the appropriate geographic scope for lighting rental is at least EEA-wide, particularly in the film segment, as the equipment is highly mobile. Although the parties confirmed that customers prefer their equipment to be supplied locally, the parties submitted that when necessary the equipment will be shipped to or from abroad. The parties supplied examples of instances in which they have shipped lighting equipment from the UK to Hungary, the Czech Republic, Romania, north Africa and New Zealand. They estimated that at £3,500–4,000, typical transport costs are a small fraction of the total lighting budget of a major film.

20. Third parties tended to disagree. Other lighting suppliers considered that the appropriate geographic scope is the UK. Likewise, most customers considered the UK to be the appropriate frame of reference although two submitted to the OFT that they do transport equipment abroad (albeit with one saying that camera equipment was likely to be more mobile than other production equipment).

21. For television productions and commercials the parties considered that the situation is likely to be different to supply to the film segment, with the supply of lighting equipment to the production of television commercials in particular being most likely to take place locally. Responses among these customers indicated that competition occurs at a UK level.

22. The OFT has not found it necessary to conclude on the geographic scope for the rental of lighting equipment to the film segment. For the purpose of this analysis, both a UK and EEA-wide scope has been adopted in this segment. For the television and commercial segments a UK presence is vital due to the high transport costs relative to the overall project cost. For these segments, and broadcasting as a whole, the OFT has examined the proposed merger on a UK-wide frame of reference.[3]

## Camera and camera grip rental

### Product scope

23. Cameras and camera grips can be and are rented separately. The parties submitted that the rental of cameras should constitute a distinct product scope and third parties who responded to the OFT agreed.

24. By type of camera, the parties contended that cameras could be segmented in a number of ways, such as film and digital, sound or silent, and 35mm and Super 16mm. The parties submitted that major films will almost always be filmed on 35mm or 35mm HD cameras and television dramas in the UK typically use Super 16mm cameras. Independent films and television commercials producers use a range of cameras.

25. The OFT has not found it necessary to conclude on the product scope in regard to cameras and camera grips as the outcome of the competition assessment is the same regardless of the approach taken. In this case the OFT has analysed the proposed merger on the basis of the supply for hire of cameras and camera grips separately to broadcast customers as a whole as well as segmented by customer group.

[3] The parties note customers within Northern Ireland (NI) can be served from operations in Great Britain. Therefore, the analysis incorporates NI. Panavision has an office in Belfast. AFM does not but can serve NI customers from mainland Britain.

### Geographic scope

26. The issues and arguments relating to the geographic scope for the rental of cameras and camera grips are the same as for lighting equipment rental. The parties agreed. The OFT received comments from one customer that if it is not possible to source locally then it would transport a camera from the UK abroad. The OFT has not found it necessary to conclude on the geographic scope for cameras and camera grips as the outcome of the competition assessment is the same regardless of whether a UK scope or wider is chosen. The OFT has considered the proposed merger on the basis of the EEA and the UK for the rental of cameras to the film segment, and on the basis of the UK only for the rental of cameras and camera grips to the television and commercials segments as well as to broadcasting customers as a whole.

## Studio rental

### Product scope

27. The parties noted that the studio rental market is differentiated according to their size and the facilities offered (for example, make-up, wardrobe, catering). Studios can be classified as to whether they are used for major productions (feature films or large television productions) or second tier productions (some television programmes, television commercials or music videos). The parties overlap in the supply of studios for second tier productions.

28. The parties and some third parties noted that studios used for major productions will nonetheless compete for second tier customers in order to utilise any spare capacity that they may have (likewise, second tier studios may rent out space to film customers who may find the studio suitable for specific scenes). However, on the basis of the evidence before it, the OFT considers that large film or major television producers are unlikely to view smaller second tier studios as effective substitutes.

29. The OFT has not found it necessary to conclude on the product scope as the outcome of the competition assessment is the same regardless of the approach taken. The OFT has therefore adopted a cautious approach and considered second tier studios separately in this case.

### Geographic scope

30. In Teddington/ Pinewood the OFT noted factors such as staff travel costs and accommodation, as well as preference for London among key people point to difficulties in utilising a television studio outside the London area and suggest a regional rather than national scope.[4] The parties submitted that the appropriate geographic scope is at least UK-wide and probably worldwide for the very largest productions. In the current case the OFT considers that it is not necessary to conclude on the geographic scope as the outcome of the competition assessment is the same regardless of the approach taken. The OFT has adopted a cautious approach and examined the proposed merger on both a UK and regional (that is, the London area) basis.[5]

## HORIZONTAL ISSUES

## Lighting equipment rental

31. The parties estimated that the rental of lighting equipment to broadcast customers in the UK was worth around £50 million in 2005. The proposed merger brings together two of the three leading suppliers of lighting equipment for rental in the UK. The parties' estimated combined share of lighting equipment rental to broadcast customers is around [25–35] per cent (increment [10–20] per cent). By segment, their combined shares are around [45–55] per cent (increment [0–10] per cent) in television commercials, around [35–45] per cent (increment [5–15] per cent) in films and around [15–25] per cent (increment [0–10] per cent) in television. On an EEA-wide basis, their combined share in the supply of lighting equipment to film segment customers is around [10–20] per cent (increment [0–10] per cent). Concerned third parties also viewed the parties as having a stronger presence in the film and commercials segments than in television.

[4] Completed acquisition of Teddington Studios Limited by Pinewood Shepperton plc (26 August 2005).
[5] The OFT has considered the London area defined by the M25 motorway.

32. For the television and television commercials segments the increments to the share of supply arising from the merger are small with those for the film segment and for broadcast customers overall being more significant.

33. The parties pointed to a number of competitors that they felt would continue to constrain the merged entity. Arri GB Limited (Arri), with what the parties estimated to be an overall share to broadcast customers of a little under [5–15] per cent, will be the parties' strongest competitor after the merger. By customer segment, Arri has estimated shares of around [15–25] per cent in films in the UK (and around [5–15] per cent in the EEA), around [5–15] per cent in television commercials and around [0–10] per cent to television customers. Internal documents from both Panavision and AFM identified Arri as a significant and aggressive competitor. Other significant competitors include Web Lighting (in the film and commercials segments), Film & TV Services (television) and Stage Electrics (television), all with estimated shares around [5–15] per cent in those segments. Further, Transplaux competes for film customers in the EEA (where it has a share of supply of around [5–15] per cent).

34. The parties submitted that over the past six years Lee Lighting's rental prices for lighting equipment have declined in real terms indicating the strength of competition in the industry and the prevalence of countervailing buyer power (discussed below).

35. Despite the existence of these, albeit smaller, competitors, the OFT considers on the basis of the evidence before it that the parties are close competitors as they are two of the three largest suppliers overall, most notably in the supply of lighting equipment to the film segment. Bidding data supplied by the parties supported this. Therefore, in order to ascertain whether the merger is likely to lead to a substantial lessening of competition the OFT has examined barriers to entry and expansion and the existence of countervailing buyer power.

**Barriers to entry and expansion**

36. The parties also told the OFT that suppliers of lighting equipment to non-broadcast customers have entered in to the supply of lighting equipment to the broadcast segments. For example, Elstree Light & Power entered the television segment after supplying lighting equipment to non-broadcast customers. They estimated that around half of the type of lighting

equipment used in the non-broadcast segment can be used in broadcast segments, and provided examples to the OFT of this happening. The parties also considered that access to skilled labour and finance did not present a barrier to entry or expansion.

37. Third party responses were mixed. Some lighting equipment suppliers in the non-broadcast segment told the OFT that they do occasionally supply lighting equipment to broadcast segments but such supply tends to be on a small scale and quite infrequent. Some told the OFT that their equipment is not suitable for the broadcast segments.

38. The OFT therefore examined expansion and/or entry by existing broadcast suppliers from one segment to another, as well as new entry. The parties submitted that barriers to entry and expansion are low. According to the parties, lighting equipment is easily obtained. In addition to purchasing new equipment, second hand equipment is readily available and any shortfall in equipment can be made up by sub-renting equipment from another supplier. Indeed, the parties told the OFT that a sizeable proportion of their own lighting equipment inventory was acquired second hand.

39. The parties' estimated that a new entrant would require around £500,000 of lighting equipment in order to supply lighting equipment to a major film. For television or commercials work the parties estimated that an entrant would need around £25,000 worth of equipment. Panavision's internal financing documents show that forecasted payback periods on equipment used in lighting rental are low (around [ ] years and for some of the lights themselves, less than [ ]).

40. This evidence of sub-rental and a second hand supply, combined with a lack of contrary evidence from third parties regarding entry or expansion in the television and commercials segments, leads the OFT to conclude that barriers to entry and expansion are low for these two segments and that, in the event of price rises, entry could be expected to be likely, timely and sufficient to constrain the merged entity. However, given the greater scale of lighting requirements for the supply to films (which exceeded the requirements of a television drama production) the OFT considered the film segment further.

41. In order to point to the ease of entry in this segment the parties submitted that AFM's own entry into the supply of lighting equipment to major films

(Goldeneye) required a £[ ] investment in 1994. AFM told the OFT that it was able to use on this film some of its existing lighting equipment which at that point was primarily used for rental to the television commercials segment. It also acquired additional equipment only after it had been awarded the Goldeneye lighting equipment contract.

42. Two suppliers in other segments told the OFT that they would like to supply lighting equipment to the film segment but are currently finding access to finance difficult. A further company supplied to the OFT its business plan for entry into some lighting segments. This plan highlighted the difficulty (due to the volume of equipment required) of supplying lighting equipment to the film segment. Further, the OFT did identify two entrants to broadcast customers – one which was sold and another which failed. Notwithstanding the limited duration of the presence of these entrants, these examples do suggest that entry is feasible.

43. The type of responses that the OFT received strongly suggested that barriers to entry do increase with the scale of a project. Thus, on the basis of the evidence before it, the OFT considers that entry or expansion is easier in the supply of lighting equipment to the commercials and television segments than it is for the film segment where, in the event of price rises, entry could not be expected to be sufficient in a reasonable timeframe to constrain the merged entity.[6] When this was put to the parties they agreed. The OFT therefore considered whether any countervailing buyer power was present.

**Countervailing buyer power**

44. The parties submitted that producers of large scale films do possess buyer power in the rental of lighting equipment and provided the OFT with a number of examples to substantiate this. They told the OFT that buyer power could take various forms. For example, large buyers could threaten retaliation against Panavision Inc in other commercial areas or other countries as the top eight film studios account for around [ ] of Panavision Inc's total sales (in all products) as well as around [ ] of its lighting rental revenue. However, UK lighting sales only account for a small proportion (typically around [ ]) of its global sales to each large studio. If these buyers

[6] For a discussion on the OFT's approach to entry and expansion see 'Mergers: substantive assessment guidance', OFT516 (May 2003), paragraphs 4.17–4.26.

could retaliate in other commercial or geographic areas it is clear that Panavision would not have the incentive to increase lighting equipment rental prices to these customers in the UK.

45. The parties submitted that another way that large buyers could use their buying power is to threaten to self-supply their lighting equipment requirements (as the parties submitted happened in a recent film). Buyers could also sponsor entry of lighting equipment rivals by giving rivals enough rental orders to make entry worthwhile. This, the parties told the OFT, happened in Australia when AFM was invited to supply lighting equipment to a particular customer.

## Camera and camera grip rental

46. In the broadcast segments, the parties' combined share of supply of cameras in the UK is less than [0–10] per cent (increment less than [0–5] per cent) rising to around [15–25] per cent in each of the film and commercials segments. However, the increment is [0–10] per cent in the former and less than [0–10] per cent in the latter. On an EEA-wide basis, the parties supply around [10–20] per cent of cameras to the film segment and the increment is less than [0–5] per cent. The parties supply around [20–30] per cent of camera grips in the UK but the increment is around [0–5] per cent.

47. After the merger Arri will remain a considerable competitor with estimated shares of around [25–35] per cent in films ([10–20] per cent on an EEA-wide basis), around [10–20] per cent in commercials and around [10–20] per cent in camera grips. Other sizeable competitors include Gearhouse, Charter, Movietech and Alphagrip, all with shares of supply of [5–15] per cent or more in some segments.

## Studio rental

48. The parties supply around [10–20] per cent (increment around [0–5] per cent) of studio rental for second tier productions in the London area.

49. Some customers raised concerns about the proposed merger in regard to studio rental. Namely, they felt that there was a lack of choice in second tier studios, especially for those customers who are unable to provide a lot

of advance notice to the studio provider (usually those customers shooting television commercials or music videos). As a result, these customers considered that the merger would raise the price of studio rental for second tier productions. Some customers told the OFT that other studios available to second tier productions were too small for their needs.

50. The parties also provided some evidence that major studios do provide studio space for second tier productions as a way of fully utilising any spare capacity of their studios. This was confirmed to the OFT by one major studio, although it said that it only does so on a limited basis.

### Tying studio rental and lighting equipment rental

51. Some customers and competitors complained to the OFT that the merger would lead to a reduction in choice of lighting equipment as only the rental of the parties' lighting equipment would be available in their own studios. However, on the basis of the evidence before it the OFT considers that this is already the case, irrespective of the proposed merger.

52. Third parties also argued that the reduction in choice is exacerbated by the exclusive supply arrangements that the parties have for the supply of lighting equipment in other studios. The OFT was told by the parties that there are no exclusive lighting arrangements with other studios although Panavision does have warehousing facilities at both Pinewood and Shepperton studios which may reduce its costs of supply to customers using those studios. Furthermore, the parties submitted to the OFT that it is usual to bid for lighting contracts and studio contracts separately.

## VERTICAL ISSUES

53. Panavision Inc manufactures cameras and lenses. However, for rental in the UK these products are only available through Panavision and therefore vertical issues do not arise in regard to these products as a result of the proposed merger.

## THIRD PARTY VIEWS

54. The OFT received concerns about the proposed merger from several customers and competitors. Customer concerns were mostly in regard to

increased prices and reduced choice in the rental of lighting equipment across the broadcast segments in the UK. Some customers and competitors were concerned that the proposed merger would lead to a tying of lighting equipment to studios. These concerns have been discussed above.

## ASSESSMENT

55. The proposed merger brings together two of the three largest suppliers of lighting equipment for rental to broadcast customers in the UK. Customers, particularly smaller customers, are concerned about lighting equipment prices increasing as a result of the proposed merger. However, by customer group, the increment arising from the proposed merger in the share of supply of lighting equipment is small (less than [0–10] per cent) in the television commercials and television segments. After the merger, Arri will remain a strong competitor and a number of smaller but nonetheless significant other competitors will also remain to provide some competitive constraint. Furthermore, for these segments barriers to entry and expansion are low, especially (although not exclusively) for those suppliers operating in neighbouring segments (whether to supplying to broadcast or non-broadcast customers).

56. Lighting equipment requirements are generally greater for the film segment, particularly for large films which significantly exceed the equipment demands of television dramas. This raised concerns that smaller competitors would not constrain the merged entity without the ability to expand or enter other segments. The OFT considers on the basis of the evidence before it that the substantial increase in the scale required to supply large film customers does mean that the barriers to entry to this segment are higher than those to the other broadcasting segments. The parties and third parties agreed that currently only Panavision, AFM and Arri have the requisite scale to consistently supply these customers. However, on the basis of the evidence before it the OFT considers that there is strong countervailing buyer power present for a substantial proportion of lighting equipment rental to the film segment. Large film customers were not concerned about the merger.

57. In the rental of cameras, camera grips and studios in the London area, the increment arising from the proposed merger is small (less than [0–10] per

cent in all cases apart from the rental of cameras to commercials customers where the increment is less than [0–10] per cent). The OFT considers that sufficient competitors remain in all cases to constrain the merged entity.

58. Third party concerns were raised in relation to the tying of lighting equipment to studio hire. However, the parties do not have a strong position in the supply of studio space and do supply lighting equipment to customers using other studios. The proposed merger does not substantially increase the parties' ability or incentive to tie lighting (or other equipment) to the use of studio space beyond their own studio space (at which customers are already required to use the parties' equipment).

59. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## DECISION

60. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.