

Completed acquisition by Cineworld Group Plc of the Glasgow Science Centre IMAX

ME/6194/13

The OFT's decision on reference under section 22(1) given on 6 December 2013. Full text of decision published on 18 December 2013.

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**) is a listed cinema group with a circuit of 80 sites across the UK. In the UK in 2012, Cineworld accounted for 46 million admissions and generated total revenues of £359 million (excluding admissions and revenues relating to the Picturehouse chain). In Glasgow, Cineworld operates an 18 screen cinema (Cineworld Renfrew Street) and a 7 screen cinema (Cineworld Parkhead).
2. Glasgow Science Centre IMAX (**GSC IMAX**) is owned by the Glasgow Science Centre (**GSC**), a charity whose function is to operate the Glasgow Science Centre visitor attraction, which focuses on promoting science and technology. GSC IMAX has one screen. Its UK turnover in the year ending 31 March 2012 was £[].

TRANSACTION

3. Cineworld has entered into a management agreement with GSC to operate and manage the GSC IMAX for a period of [10 to 20] years, with a break clause [half way through the period]. Under the terms of the agreement Cineworld is responsible for managing and operating the business of a cinema at the property.
4. Cineworld's obligations under the agreement include installing a new digital projection system for the IMAX and to continue showing educational films at the price agreed with GSC. In return Cineworld has control over ticketing prices for mainstream films and which mainstream films are shown and will pay GSC rent at a commercial rate. Three GSC staff transferred to

Cineworld under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").

5. In November 2012 GSC conducted a tender process by invitation to select a contractor to operate the GSC IMAX. Cineworld was awarded the tender and completed the corresponding lease and contractual arrangements with GSC on 26 July 2013. Cineworld announced completion of the transaction on 28 August 2013.

JURISDICTION

6. 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

7. Cineworld has argued that no enterprises have ceased to be distinct because it has not acquired the activities of the business of GSC IMAX. Specifically it argues:
 - Staff have not transferred on a permanent basis to Cineworld. None of the staff employed by GSC in connection with the GSC IMAX are still working at the premises. Three staff did transfer to Cineworld under TUPE, but were immediately made redundant. Cineworld argues that this is similar to *Odeon/BFI IMAX*¹ where staff transferred to Odeon under TUPE but did not do so on a permanent basis.
 - Cineworld will be responsible for the operation and management of the GSC IMAX for a period of [10 to 20] years, with a break clause [half way through the period]. Cineworld argues that this is analogous to *Odeon/BFI IMAX*, where the OFT found that this type of agreement was not sufficiently long-lasting for a relevant merger situation to arise under the Act².
 - No rights to fixtures and fittings passed to Cineworld under the Transaction. Cineworld invested £[] in installing its own digital equipment. Cineworld argues that this is analogous to *Odeon/BFI IMAX* where all fixtures, fittings and equipment would remain the property of the British Film Institute ("BFI"), which would be a contributing factor to the finding of no relevant merger situation.

¹ OFT decision - Anticipated award to Odeon Cinema Holding Limited of a contract in relation to BFI IMAX Cinema ME/5483-12 (16 July 2012) ("*Odeon/BFI IMAX*").

² *Odeon/BFI IMAX*, paragraph 16.

- The transaction provides for a number of areas where GSC retains the ability to exercise a degree of control, including the delivery of science education films. Cineworld argues this is analogous to *Odeon/BFI IMAX*, where BFI retained some control over the film cinema exhibition programme.
 - Cineworld has made no payment to GSC, whether in respect of goodwill or equipment.
 - No contracts relating to the GSC IMAX have been assigned to Cineworld.
 - No customer records have transferred to Cineworld.
 - No liabilities of the GSC IMAX transferred to Cineworld.
 - On the basis of the above, Cineworld argued that it has not acquired the activities of the business of GSC IMAX.
8. The OFT has carefully considered all the points raised by Cineworld as to why the transaction does not give rise to two or more enterprises ceasing to be distinct. However, the OFT believes there are a number of features that point towards the existence of two enterprises ceasing to be distinct, as set out in the following paragraphs.
9. The OFT notes that the Act does not define the period of time that a merger situation should last in order to qualify as a relevant merger situation. The OFT is therefore of the view that any transaction, no matter how short in duration, could qualify as a relevant merger situation.³ However, there may be circumstances where the duration of the contract may affect the acquirer's ability to materially influence the strategic direction of the target enterprise and its ability to define and achieve its commercial objectives. In this case, the contract in question is for a significant duration – [10 to 20] years, with a break clause [half way through the period]. The OFT considers that this, coupled with the terms of the contract, is sufficient to confer material influence on the acquirer.
10. Under the terms of the management contract, Cineworld determines which mainstream films are to be shown in the IMAX, and sets the prices for tickets to these films. In determining whether the acquirer has the ability to exercise material influence, the OFT will focus on the acquirer's *"ability to materially influence the policy relevant to the behaviour of the target on the marketplace"*⁴. Policy is taken to mean *"the management of the business, in relation to its competitive conduct"*⁵. The management contract with Cineworld specifically states Cineworld's obligations as *"to be responsible (at its own cost and for its own benefit) for managing and operating the business of a cinema at the [p]roperty"*⁶. Further, given that the vast majority of the IMAX's revenue is generated by mainstream films, it can be concluded that management of this relates to the IMAX's competitive

³ OFT decision - SSP Health / Liverpool Primary Care Trust / NHS Sefton ME/5822/12 (8 August 2013), paragraph 19.

⁴ OFT Mergers - Jurisdictional and Procedural Guidance, paragraph 3.15.

⁵ Ibid.

⁶ Partnering Agreement, clause 4.1.

conduct. Whether or not GSC retains some rights over the delivery of science education films does not determine whether Cineworld may have material influence over the GSC IMAX.

11. The OFT is not convinced by the argument that employees of the GSC IMAX have not transferred permanently to Cineworld. GSC IMAX employed three permanent staff, []. These staff all transferred under TUPE. The fact that they were immediately made redundant by Cineworld does not negate the permanency of the transfer. The OFT considers the application of TUPE to be strong factor in finding that the business transferred constitutes an enterprise.⁷
12. Cineworld took over the premises of the IMAX, including some key components of a cinema, such as seating and sound system. In *Cineworld/Hollywood Green Leisure Park*⁸ the OFT previously found that there are benefits to the tenant in taking over a property already fitted out as a cinema and of having local customers therefore already associating the site with a cinema business.
13. The OFT does not consider that there need be symmetry between the purchased assets and the intended post-merger or development uses of the site in order for the purchased assets to constitute an 'enterprise'.⁹ The fact the Cineworld has replaced certain assets transferred by GSC, such as the projection system, does not prevent the transfer of such assets from constituting an "enterprise".
14. The management agreement was completed on 26 July 2013, and Cineworld began operating the cinema on the same day. There was therefore not any gap in trading between the GSC IMAX cinema and the Cineworld IMAX cinema, which is indicative of a potential transfer of the goodwill that had been built up by GSC in operating the IMAX. In this respect, it is notable that customers' perceptions would be that the GSC IMAX, previously operated by GSC, had been taken over by Cineworld.¹⁰

⁷ OFT Mergers - Jurisdictional and Procedural Guidance, paragraph 3.10.

⁸ OFT decision - 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 ME/3390/07 (17 March 2008), paragraph 7.

⁹ See OFT decision - Completed acquisition by Servisair UK Limited of the regional ground handling business of Aviance UK Limited ME/4429/10 (27 May 2010), paragraph 13. In that case, the OFT stated that the manner in which the ground handling equipment would be deployed within the acquirer's operations was irrelevant. The important consideration was that assets had been transferred. See also OFT decision - Completed acquisition by a consortium of Shell UK Limited, Greenergy International Limited and Vopak Holdings UK Limited of certain assets of former Petroplus Refining and Marketing Limited ME/5628/12 (24 May 2013), paragraph 20.

¹⁰ OFT decision - Completed acquisition by Cineworld Group plc of the cinema business operating at the O2, London ME/4650/10 (20 October 2010), paragraph 12, where the same was concluded on a one day trading gap.

15. The fact that no customer records have transferred does not detract from the finding of the transfer of the activities of business in this case. No records were available to transfer; GSC's customers were schools or individual consumers who bought cinema tickets on an ad hoc basis without inputting personal data.
16. The test for the OFT under the Act is whether it is or may be the case the enterprises have ceased to be distinct. The OFT believes that the test is met in this case.

Share of supply in a substantial part of the UK

17. The parties do not dispute that the share of supply test is met. The parties overlap in the supply of cinema exhibition services and based on the figures they provided, Cineworld has a share of supply (based on box office revenue) of 34 per cent in Glasgow and GSC IMAX has one per cent. The share of supply test in section 23 of the Act is therefore met in respect of the supply of film exhibition services in Glasgow, which is considered by the OFT to be a substantial part of the UK.

Time limit for an OFT decision

18. Although Cineworld completed the contractual arrangements with GSC on 26 July 2013 (paragraph 5), it did not announce the completion of the merger until 28 August 2013. Section 24 of the Act allows the OFT to make a decision on reference if that decision is not more than four months from when material facts about the transaction are made public. OFT guidance says that material facts include whether a transaction is anticipated or completed and that 'made public' means that the material facts could readily be ascertained by the OFT acting reasonably and diligently in accordance with its statutory functions (the OFT also notes that this is consistent with the Explanatory Notes of the Act).¹¹ That is, the assessment of 'made public' is from the perspective of the OFT.¹²
19. In this case the parties submitted that they made public the completion of the transaction on 28 August 2013. The extended statutory deadline in this case is 3 January 2014.
20. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

MARKET DEFINITION

21. The parties overlap in the provision of film exhibition services.

¹¹ OFT Mergers - Jurisdictional and Procedural Guidance, paragraph 3.45

¹² OFT decision - Completed acquisition by Genus plc of Local Breeders Limited, ME/3608/08, 14 May 2008.

22. The parties also overlap in the supply of event services. The GSC IMAX theatre was used by GSC to host a variety of corporate events. Cineworld also offers its cinemas for events and hosts several film festivals. GSC has retained its rights to continue to use the IMAX for corporate events, subject to Cineworld scheduling requirements. Given this, and the fact that no concerns were raised by any third parties in relation to this issue, the OFT does not believe that the merger will materially affect competition in this area and it is therefore not considered further.
23. Further, the parties overlap in the supply of screen advertising services. Cineworld operates Digital Cinema Media Limited, a screen advertising business formed in July 2008 which is a joint-venture with Odeon. GSC IMAX provides screen advertising services, which produce minimal revenues¹³ due to the limited number of screens and showings. Given the minimal share of GSC in the supply of screen advertising services, and the fact that no concerns were raised by any third parties on this issue, the OFT does not believe that the merger will materially affect competition in this area and it is therefore not considered further.

Product scope

Film exhibition services

24. Both Cineworld and GSC IMAX supply cinema exhibition services, creating an overlap in these services. The CC's report on the completed acquisition by Cineworld of City Screen¹⁴ states that a cinema exhibitor will face direct competition from other companies offering cinema exhibition services, so that the most direct demand-side competitive constraint on cinema exhibitors comes from other cinema exhibitors.
25. In previous CC and OFT decisions, it has been found that film exhibition was in a separate market from film distribution.¹⁵ It was also found that film exhibition was not part of a wider market to include other leisure activities.¹⁶

Number of screens

26. In the CC's report on the completed acquisition by Cineworld of City Screen¹⁷ the CC stated that competitive interaction between cinemas will vary depending on the types of cinema. For example, all other things being

¹³ GSC estimated revenues were in the region of £10,000-£13,000.

¹⁴ The Competition Commission's report on the completed acquisition by Cineworld Group plc of City Screen Limited, 8 October 2013.

¹⁵ The Competition Commission's report on the completed acquisition by Vue Entertainment Holdings (UK) Ltd of A3 Cinema Limited, 24 February 2006.

¹⁶ The Competition Commission's report on the completed acquisition by Cineworld Group plc of City Screen Limited, 8 October 2013.

¹⁷ The Competition Commission's report on the completed acquisition by Cineworld Group plc of City Screen Limited, 8 October 2013, paragraph 5.6

equal, the closest competitor to a large multiplex showing predominantly Hollywood films is likely to be other large multiplexes showing similar films. The size of the cinema has been considered a determinant of its effectiveness as a competitive constraint.¹⁸ 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.

27. A number of cinemas relevant to this case are single or two-screen cinemas, including the GSC IMAX. A single-screen cinema may be constrained by another small cinema since there are a similar number of films and showings, such that it should be considered as part of the same market. In this case the OFT has considered cinemas with one or two screens within the product frame of reference, but notes that exclusion of these cinemas does not have a material impact on market shares. The OFT has also considered the competitive constraint imposed by other cinemas directly as part of the competitive assessment.

Type of films screened

28. The OFT has also noted in previous cases that not all cinemas, irrespective of their number of screens, will show the same mix of films. Cinemas will focus to varying degrees on, for example, mainstream films, foreign-language films, low budget or independent films, Bollywood films, or older classic films, which can depend, amongst other things, on the customers and target audience around the cinema.¹⁹
29. In this case a substantial part of the GSC IMAX's screenings are educational films which are, according to one third party:
- primarily focused on teaching visitors about science rather than providing entertainment;
 - have children and schools as their primary target rather than the wider public;
 - have an average running time per film of approximately 45 minutes, which is markedly shorter than mainstream films; and
 - are priced below mainstream films.

¹⁸ OFT decision - Completed acquisition by Vue Entertainment International Limited of Apollo Cinemas Limited ME/5506/12, 24 August 2012, paragraph 41; OFT decision - Anticipated acquisition by Odeon Cinema Holdings Limited of assets of Reel Cinemas (UK) Limited ME/5141/11 (6 October 2011).

¹⁹ OFT decision - Completed acquisition by Vue Entertainment International Limited of Apollo Cinemas Limited, ME/5506/12, 24 August 2012, paragraphs 43-45.

30. Most third parties do not consider educational films and mainstream films as substitutes for customers. One third party submitted that all films compete in the marketplace for customers however they are classified.
31. The OFT notes that educational films have generated on average less than five per cent of GSC's total box office revenues over the last five years. Therefore, the OFT has not found it necessary to conclude on the extent to which educational films and mainstream films are substitutes as considering the two types of films separate or together has no material effect on the competitive assessment.

Exhibiting Film Format and Form of Projection

32. The OFT has not previously considered whether IMAX cinemas should be viewed as separate segment of the cinema exhibition market. IMAX is a specialised form of film projection that shows films in a different format. IMAX films can vary in terms of extended scenes, aspect ratio and, ultimately a different encoding that delivers higher quality picture and sound.
33. The GSC IMAX uses IMAX proprietary 15/70mm film prints whereas the Cineworld Renfrew Street and Cineworld Parkhead multiplex cinemas screen films in 2D and 3D formats using digital projection technology.
34. Third parties comments suggest that customers switch between formats depending on individual preferences. IMAX films provide a top-end film experience and are generally priced with a substantial premium on top of standard 2D films (in Glasgow this premium currently is in the range of 50 to 85 per cent). Third parties submit that customers would consider whether the film they want to see is worth the premium that is charged by IMAX and 3D over standard 2D screenings.
35. Several third parties submit that customers readily switch format if a particular format is not available. Cinema exhibitors usually reduce the number of formats after an initial period of time. One third party submits that when an IMAX format is withdrawn, attendance numbers for the same film in non-IMAX format typically increase (or reduce less quickly), despite a general decline in attendance numbers that would be expected in the weeks following the release of a new film.
36. However, given that Cineworld has no other IMAX capacity in the Glasgow area, and in the absence of any competition concerns, the OFT does not consider it necessary to conclude on whether IMAX films are part of the same relevant market as 2D and 3D films. On a cautious basis the OFT has considered IMAX and standard formats within the same product frame of reference.

Geographic scope

37. Previous CC and OFT cinema merger decisions have considered competition in both national and local markets on the basis that competition takes place predominantly at a local level, reflecting the fact that price, content and facilities may be set by cinema managers at a local level, partly in response to local conditions. However, certain competitive parameters may also be determined at a national level (for example, negotiations with distributors for access to film content, screen advertising fees and branding).²⁰
38. The parties considered local catchment areas to be around 20 minute drivetime from the cinema. This is consistent with previous CC and OFT cases²¹. However, in certain local areas, in particular in London, the appropriate catchment area may vary. Therefore drive time isochrones may be less likely to reflect appropriately catchment areas or local conditions of competition, as has also been noted in previous OFT decisions.²²
39. Most third parties agree with the 20 minute drive time approach. However, one competitor, while broadly agreeing with the 20 minute approach, noted that competition in Glasgow is focused on the city centre, with cinemas on the periphery of the city providing a more limited constraint to the cinemas located in city centre. It stated that students and city centre workers form a key part of the customer base at the city centre cinemas and both sets of customers are reluctant to visit cinemas outside the city centre. Moreover, the city centre cinemas are often visited by customers in conjunction with other leisure activities in central Glasgow and as such, out of town cinemas are not a close substitute.
40. One other competitor also submitted that cinemas outside central Glasgow provide less of a competitive constraint to the cinemas located in the city centre.
41. The OFT considers the previous approach based on 20 minute drive time isochrones as appropriate for this case since it is a common and generally accepted standard in the industry, which was confirmed by most third parties.

COUNTERFACTUAL

42. The OFT generally adopts the prevailing conditions of competition (or the pre-merger situation in the case of completed mergers) as the

²⁰ OFT decision - Anticipated acquisition by Odeon Cinema Holdings Limited of assets of Reel Cinemas (UK) Limited ME/5141/11 (6 October 2011).

²¹ See for example, the Competition Commission's report on the completed acquisition by Cineworld Group plc of City Screen Limited, 8 October 2013; and the OFT decision - Completed acquisition by Vue Entertainment International Limited of Apollo Cinemas Limited (2012)

²² OFT decision - Completed acquisition by Cineworld Group plc of the cinema business operating at the O2, London ME/4650/10 (20 October 2010).

counterfactual against which to assess the impact of the merger. However, the OFT will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that the prospect of prevailing conditions continuing is not realistic, for example because the OFT believes that one of the firms would inevitably have exited from the market.²³

43. GSC has argued that it would have exited the market of film exhibition services if it had not received successful tender bids. The OFT therefore examined whether the conditions for an exiting firm scenario are met.

Exiting firm scenario

Limb 1 – the firm would have exited (through failure or otherwise)

44. The OFT has to consider whether GSC would have exited the market of film exhibition services. GSC provided as evidence its invitation to tender (ITT), and internal documents from 2011, which showed that its IMAX cinema business had been loss making in all of the past five years, bar 2009. If revenues from snacks and car park are included, then it was loss making in two of the five last years. Internal documents and the ITT show that GSC viewed the bad performance of the GSC IMAX as mainly due to the substantial cost of print DMR films and the high minimum royalty guarantees, which made the majority of DMR films uneconomical for the GSC IMAX to show.
45. In 2011, GSC carried out a review of the operation of the GSC IMAX. It considered three options:
- To continue as print IMAX cinema. This was considered a high risk option given the substantial payment obligations and the decreasing availability of economical DMR-films. GSC considered it essential to mitigate some of the risks by seeking to renegotiate some of the terms of the IMAX contract.
 - To upgrade the IMAX with digital projection technology. There would be a significant cost to GSC in upgrading and a likely extension in the length of the IMAX contract. It would, however, increase the availability of films.
 - To cancel the IMAX contract and find an alternative use for the cinema facility. The cancellation of the IMAX contract was initially ruled out as too costly because GSC had a 20 year contract with IMAX with no break clause and eight years left to run.
46. In March 2012, Scottish Enterprise provided GSC with £535,000 to buy out its remaining term with IMAX. GSC entered into a new contract with

²³ Merger Assessment Guidelines, paragraph 4.3.5.

IMAX, which allowed GSC to operate IMAX in perpetuity but with an option to cancel it completely any time after April 2013.

47. Following this, GSC opted to search for a commercial partner for the cinema operations, so as to eliminate its losses and focus on educational activities. GSC issued the ITT on 26 November 2012. According to the terms of the tender the commercial partner would ideally invest in a new laser digital projection system and refurbish the existing cinema in return for a medium to long term lease of the property at commercial rents, with the partner retaining all associated revenues and meeting all related costs.
48. GSC submitted that if the tender process had been unsuccessful, the board would have had to reassess alternative options and the cinema operations would eventually have been shut down if no partner had been found.
49. Notwithstanding the above, as limb 2 is unlikely to be met in this case, the OFT does not consider it necessary to conclude on limb 1.

Limb 2 – would there have been an alternative purchaser for the firm or its assets to the acquirer under consideration?

50. GSC's ITT was by invitation only. Cineworld and Odeon were specifically invited due to their existing IMAX businesses. GSC also invited six property agents, with the intention that these agents would pass the tender on to their clients, thereby including other cinema operators and possible alternative uses of the theatre in the tender process.
51. Only two bids were received, one from Cineworld and one from Odeon. The OFT contacted the six property agents to determine whether the ITT had been passed on to clients and circulated in the cinema and leisure industry. None of the property agents had passed the tender documents to any client. The property agents' reasons for not passing on the ITT to clients were (i) the short time period of six weeks to prepare a proposal (including Christmas holidays); and (ii) the specific nature of the tender, being for the management of an IMAX cinema.
52. The OFT considers that the ITT was therefore not widely spread in the market. On this basis, it cannot be ruled out that there could have been an alternative, more competitive purchaser. Limb 2 is therefore not met.
53. As limb 2 is unlikely to be met, limb 3 is not considered.

More competitive counterfactual

54. The OFT assesses the merger against an alternative counterfactual where there is a realistic prospect of a counterfactual that is more competitive than prevailing conditions.²⁴ The OFT notes that GSC's current situation is not sustainable in the long-run since the print projection system suffers

²⁴ Merger Assessment Guidelines, paragraph 4.3.5.

from a reduced availability of DMR-films and is likely to become obsolete within the next few years. In this regard the OFT notes that the counterfactual relates to the strength of the competitive dynamic not the pre-merger method of competing.

55. The OFT considers it realistic that GSC could have found another partner (instead of Cineworld) to operate the cinema and invest in digital projection equipment – either with IMAX or non-IMAX technology. The OFT considers that the alternative counterfactual to Cineworld taking over the operations of GSC is realistic in this case. Nevertheless, since no competition concerns arise in this case on either the pre-merger level of competition or on an alternative counterfactual, the OFT has not found it necessary to conclude on this point. The OFT has assessed this merger on the basis of pre-merger levels of competition.

HORIZONTAL ISSUES

Market shares

56. The OFT analysed market shares based on 20 minute drive time isochrones around the GSC IMAX.
57. According to drive time data submitted by the parties the cinema Empire Clydebank is not included in the 20 minutes isochrone. However, based on a software package used by the OFT, the Empire Clydebank is located within a 20 minutes drive time isochrone. Therefore, the table for the 20 minutes drive time includes one column including the Empire Clydebank and one excluding it. Based on 20 minutes isochrone (values without Empire Clydebank in brackets) the parties will have a combined market share of 26 per cent (28.9 per cent) in terms of seats and 43.8 per cent (47.0 per cent) in terms of revenue.

Market shares for 20 minute drive time around GSC with/without Empire Clydebank						
Cinemas	No Screens	BOR in £m	with EC		without EC	
			% Screen	% BOR	% Screen	% BOR
Cineworld Renfrew St	18	11.6	18.0%	37.7%	20.0%	40.4%
Cineworld Parkhead	7	1.4	7.0%	4.5%	7.8%	4.9%
GSC IMAX	1	0.5	1.0%	1.6%	1.1%	1.7%
Combined	26	13.5	26.0%	43.8%	28.9%	47.0%
Odeon Glasgow Quay	12	3.6	12.0%	11.7%	13.3%	12.5%
Odeon Braehead	12	5.2	12.0%	16.9%	13.3%	18.1%
Vue Fort	8	n/a	8.0%	n/a	8.9%	n/a
Showcase Paisley	14	2.7	14.0%	8.8%	15.6%	9.4%
Showcase Coatbridge	14	3.7	14.0%	12.0%	15.6%	12.9%
Glasgow Film Theatre	2	n/a	2.0%	n/a	2.2%	n/a
Grosvenor	2	n/a	2.0%	n/a	2.2%	n/a
Empire Clydebank	10	2.1	10.0%	6.8%		
Total	100	30.8	100.0%	100.0%	100.0%	100.0%

Source: based on Rentrak data provided by Cineworld

58. The figures illustrate that Cineworld Renfrew Street is highly successful compared to other local cinemas with the revenue-based market share amounting to more than double that of the seat-based share. The OFT notes that the revenue-based market shares overstate the parties market position as the figures were not available for Vue Fort or the two independent cinemas within the 20 minute isochrones, the Grosvenor and the Glasgow Film Theatre.

Number of fascia

59. In its recent decision in *Cineworld/City Screen*, the Competition Commission applied a filtering process to rule out local areas where the merger was unlikely to raise competition concerns.²⁵ Areas unlikely to raise competition concerns would be where the merger would result in a reduction in the number of fascias from five to four or better, based on both 20 and 30 minutes isochrones. The Competition Commission excluded independent cinemas from the fascia count for the purposes of this filter.
60. Applying this filtering process would result in a reduction from five to four on a 20 minute basis (excluding, on a cautious basis, independent cinemas).
61. The OFT notes that if the Empire Clydebank is included in the 20 minutes drive time isochrone, the merger results in a fascia reduction from six to five, excluding independent cinemas. Including the independent cinemas results in a reduction from eight to seven. This result does not raise prima facie competition concerns.

Closeness of competition

62. Not all film exhibitors are likely to impose the same degree of competitive constraint on one another for a number of reasons, including location, film overlap, screening format and number of screens. 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.

Location

63. In previous cases, the OFT and the CC have considered that the geographically closer two cinemas are together, the more strongly those cinemas will likely compete.²⁶

²⁵ The Competition Commission's report on the completed acquisition by Cineworld Group plc of City Screen Limited, 8 October 2013, paragraph 6.48.

²⁶ OFT decision - Anticipated acquisition by Odeon Cinemas Limited and Cineworld Cinemas Limited of Carlton Screen Advertising Limited ME/3632/08 (1 July 2008) paragraph 27; and the

64. The GSC IMAX is located in the city centre. The geographically closest competitor to the GSC IMAX is the Odeon Quay at 1.2 miles and 4 minutes drive time. Slightly further away, but still centrally located in the city centre are the Cineworld Renfrew Street and the Glasgow Film Theatre, an independent cinema. At the edge of the city centre is the Grosvenor Cinema, another independent cinema.
65. The OFT therefore considers that the closest competitor in terms of location is the Odeon Quay, which is located between GSC IMAX and Cineworld Renfrew Street, and is therefore likely to exert a competitive constraint on both parties.

Format of films

66. The GSC IMAX screens films exclusively in the IMAX format, which is a top-end format. In considering the format of films, Odeon Braehead could be regarded as the closest competitor as it is the only cinema that also has an IMAX screen in Glasgow. Vue operates a premium large format screen under the brand name 'Xtreme' at the Vue Fort in Glasgow. The other cinemas in Glasgow offer screenings in 2D and 3D on standard size screens.
67. The OFT notes that Cineworld did not operate any IMAX screen in Glasgow prior to the transaction and so the parties are not close competitors in terms of format. The OFT considers that the closest competitor of the GSC IMAX in terms of format is the Odeon Braehead.

Overlap of film programming

68. The OFT considers that programming represents one of the key determinants of the degree of competition. The OFT has therefore examined the overlap of films shown at the GSC IMAX and Cineworld cinemas in terms of box office revenue. Overlap films are films that are shown in a specific year in the GSC IMAX and Cineworld Renfrew St or Cineworld Parkhead respectively, irrespective of day or time.
69. The overlap of GSC IMAX mainstream films with Cineworld Renfrew Street and Cineworld Parkhead is 100 per cent, meaning that all mainstream films screened at GSC IMAX were also screened at the Cineworld multiplex cinemas. It follows that the Cineworld cinemas may have had a considerable competitive constraint on GSC IMAX. However, all other multiplex cinemas in the relevant market also have a 100 per cent overlap with GSC IMAX.²⁷ Therefore, the OFT considers that all other multiplex cinemas in the relevant market are also close competitors to the GSC IMAX.

CC's report on the completed acquisition by Vue Entertainment Holdings (UK) Limited of A3 Cinema Limited, 24 February 2006, paragraph 5.34.

²⁷ This data is not available for the two independent cinemas.

70. On the other hand, the overlap of Cineworld films with GSC IMAX is low. In terms of box office revenue 2013, there was a 9.9 per cent overlap with Cineworld Renfrew Street, and an 8.4 per cent with Cineworld Parkhead.
71. Based on the limited overlap of GSC films with Cineworld and the fact that GSC IMAX has only one screen, the OFT does not consider the GSC IMAX to have been a significant competitive constraint on Cineworld multiplex cinemas.

Third party views

72. The parties submitted that the GSC IMAX was not considered by Cineworld to be a competitor cinema to its Glasgow operations as the overwhelming majority of its screenings related to GSC's educational functions with a very small number being mainstream feature films.
73. In relation to educational films, third parties do not perceive there to be a close competitor to the GSC IMAX. The Glasgow Film Theatre is mentioned by one third party as a potential competitor in this area.
74. However, in relation to GSC IMAX's mainstream film programme, third parties considered Cineworld Renfrew Street and GSC IMAX to be competitors. Odeon Braehead was also considered by some third parties to be a close competitor and some respondents also viewed Odeon Quay, Showcase Coatbridge and Vue Fort as close competitors to GSC IMAX. Other third parties mention that all cinemas operating in Glasgow exert a competitive constraint.

Price increases

75. On completion of the transaction, Cineworld implemented an immediate and significant price increase at the GSC IMAX. The price for an adult ticket under GSC management was £9.95. This was increased by Cineworld to £13.80 (an increase of 38.7 per cent).
76. Cineworld submitted that this price rise was not caused by a reduction in rivalry. Cineworld did not monitor the price of tickets at the GSC IMAX, and in any event GSC was pricing significantly below the market price. The new prices are competitive with ticket prices for IMAX screenings at the Odeon Braehead (currently listed on its website as £14.20) and comparable with prices at other IMAX cinemas throughout the UK, which are on average around £14.60²⁸. Furthermore, Cineworld has two discount schemes, myCineworld and Unlimited, through which customers can benefit from reductions on the headline ticket price. GSC stated that it was aware that it was pricing significantly below the market value, but was reluctant to raise prices due to the weak product it was offering: the high cost of DMR films and its lack of digital projection system meant it could

²⁸ Comparison is based on all IMAX cinemas in the UK operated by a commercial cinema operator.

only show 2 to 3 mainstream films a year; and the lack of seat booking system had been a key complaint of customers, resulting in lengthy queues or deterring them completely.

77. On completion of the transaction, Cineworld invested a total of nearly £[] in the GSC IMAX, which includes approximately £[] on new digital projection equipment and a further £[]. As a result the IMAX now shows a full range of mainstream films, expanding the market for top-end films screenings in Glasgow. Cineworld has also introduced an online booking system, which was perceived as a major improvement by GSC. On this basis, the parties submit that customers enjoy a significantly higher quality product than that previously offered by the GSC IMAX. The parties submitted that the increase in price was necessary to achieve Cineworld's targeted return on investment.
78. One third party considers that the new GSC IMAX has an improved product offering and that increased prices reflect the improved quality. Two third parties were concerned that price increases may be caused by the elimination of competitive constraints.
79. The OFT is conscious that its legal test is whether a merger raises a realistic prospect of a substantial lessening of competition. Competition is viewed by the OFT as a process of rivalry between firms seeking to win customer's business over time.²⁹ While a post-merger price increase can be probative of a reduction in competition it may not necessarily be the case (for example, it may be a result of a repositioning of the customer offer). In this case, viewing the price rise as a result of a loss of rivalry is inconsistent with the other evidence discussed in this decision. Taking the evidence as a whole the OFT does not consider that the merger raises a realistic prospect of a substantial lessening of competition.

New cinemas

80. In 2015 Cineworld plans to open a new 14 screen Cineworld cinema as part of the Silverburn development. The project is at an advanced stage as the planning permission has been granted for the Silverburn development and the site is currently being prepared for building work to commence. The location of the Silverburn development is south of the city centre, 10 minutes drive time (4.7 miles) from the GSC IMAX.
81. The OFT is not concerned about the plans to open an additional Cineworld cinema since the location of the new Cineworld cinema is outside the city centre and there remain seven fascia (including independent cinemas) operating in the Glasgow market.
82. Vue plans to open a cinema []. The project is still only a proposal and has not obtained final planning consent. The location is [] from the GSC IMAX.

²⁹ Merger Assessment Guidelines, paragraphs 4.1.2 and 4.1.3.

83. Since the opening of the new Vue cinema is not certain, the OFT has not taken it into consideration in this case.

THIRD PARTY VIEWS

84. The OFT has received responses from a number of competitors, film distributors and IMAX Corporation. Two competitors raised concerns that the GSC IMAX competed closely with the Cineworld Renfrew Street and that the transaction would result in increased ticket prices. No concerns were raised by distributors or IMAX Corporation. The OFT received no representations from end-consumers on this transaction.
85. Third party comments have been taken into account where appropriate in the competitive assessment above.

ASSESSMENT

86. On a careful consideration of the facts, the OFT believes that it is or may be the case that a relevant merger situation has been created.
87. The parties overlap in the supply of film exhibition services.
88. 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 (GSC IMAX), is the best available proxy for the assessment of the particular merger.
89. On the 20 minute isochrone the merger reduces the number of cinema fascia from eight to seven for film exhibition services. Post-merger Cineworld would have a market share, based on box office revenues, of 43.8 per cent, with an increment of 1.6 per cent. The OFT considers that post-merger there remain sufficient film exhibitors providing a competitive constraint on the parties.
90. The OFT recognises that there have been price increases at the GSC IMAX since the transaction completed. However, these are in line with average IMAX ticket prices across the UK, and reflect the differentiated product offering.
91. Regarding third parties' concerns the OFT focussed its analysis first on the city centre and then, in a second step, considered whether cinemas out of town also exert competitive pressure on the cinemas located in the city centre.
92. The OFT is of the view that Cineworld Renfrew Street has a strong market position, particularly in the city centre of Glasgow, and is one of the

closest competitors of the GSC IMAX. In the city centre the Odeon Quay presents a substantial competitive constraint both on the Cineworld Renfrew Street and the GSC IMAX because it is located directly in between them.

93. After the transaction, four fascia remain in the city centre and close surroundings, including the two independent cinemas, the Grosvenor and the Glasgow Film Theatre. In previous cases independent cinemas were excluded from the fascia count since smaller cinemas provide a more limited competitive constraint on a multiplex given the limitations in number of films.
94. In this case the target GSC IMAX has only one screen, and screens only a small number of mainstream films per day, due to educational programming, whereas the Grosvenor and the Glasgow Film Theatre both have two screens. The OFT therefore considers that both independent cinemas may constrain the GSC IMAX in terms of number of films and showings, but to a lesser extent to multiplex cinemas.
95. The OFT notes that after the transaction there remain two substantial market players in the city centre, Cineworld and Odeon, and additionally two independent cinemas.
96. It was argued by a third party that for some customers alternative cinemas outside the city centre might not be an attractive alternative. However, the OFT notes that not all customers need to consider cinemas outside the city centre to be an attractive alternative for them to present a substantial competitive constraint, but rather only a significant proportion of the marginal customers.
97. Switching is not difficult given there are several alternative cinemas a short drive time from the city centre. Based on a 20 minute isochrone around Cineworld Renfrew Street there remain seven fascia post-merger (three more than in the centre).
98. Furthermore, the OFT notes that the GSC IMAX has a differentiated product offering compared to the existing Cineworld cinemas in terms of format, sound and price. Generally, IMAX films are a top-end cinema experience with a substantially higher price than standard cinema tickets. Some customers who particularly value this high-quality screening might consider switching to the Odeon Braehead, or (to a lesser extent) the Vue Fort, if prices were increased at the GSC IMAX.
99. 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

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

OFFICE OF FAIR TRADING
6 December 2013