

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA, )  
STATE OF ILLINOIS, )  
STATE OF COLORADO, )  
and )  
STATE OF INDIANA ) Civil Action No. 1:10-cv-00846  
Plaintiffs, ) Judge: Kennedy, Henry, H.  
v. )  
AMC ENTERTAINMENT )  
HOLDINGS, INC. )  
and )  
KERASOTES SHOWPLACE )  
THEATRES, LLC, )  
Defendants. )

**PLAINTIFF'S CERTIFICATE OF COMPLIANCE WITH  
THE ANTITRUST PROCEDURES AND PENALTIES ACT**

The United States of America hereby certifies that it has complied with the provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), and states:

1. The Complaint, proposed Final Judgment (“PFJ”), and Hold Separate Stipulation

and Order (“Hold Separate Order”), by which the parties have agreed to the Court’s entry of the Final Judgment following compliance with the APPA, were filed on May 21, 2010. The United States also filed a Competitive Impact Statement on May 21, 2010;

2. Pursuant to 15 U.S.C. § 16(b), the PFJ, Hold Separate Order, and Competitive Impact Statement were published in the *Federal Register* on June 3, 2010, Volume 75, Number 106, beginning on page 31465 (a copy of which is attached as Exhibit 1);

3. Pursuant to 15 U.S.C. § 16(b), the United States has furnished copies of the Complaint, Hold Separate Order, PFJ, and Competitive Impact Statement to anyone who requested them;

4. Pursuant to 15 U.S.C. § 16(c), a summary of the terms of the PFJ, Hold Separate Stipulation and Order, and Competitive Impact Statement was published in *The Washington Post*, a newspaper of general circulation in the District of Columbia, during a seven-day period lasting from May 28, 2010, through June 3, 2010. A copy of the Proof of Publication from *The Washington Post* is attached hereto as Exhibit 2;

5. As required by 15 U.S.C. § 16(g), on July 13, 2010 the defendant filed with the Court a description of any written or oral communications made by or on behalf of the defendant, or any other person, with any officer or employee of the United States concerning the PFJ;

6. The 60-day comment period, specified in 15 U.S.C. § 16(b) commenced on June 3, 2010 and terminated on August 2, 2010. During that period, the United States did not receive any public comments on the PFJ.

7. With the United States having published its proposed settlement without receiving public comments and the defendants having certified their presettlement contacts with

government officials, the parties have fulfilled their obligations under the APPA. Pursuant to the Stipulation and Order filed and entered by the Court on May 21, 2010, and 15 U.S.C. § 16(e), the Court may now enter the Final Judgment, if the Court determines that the entry of the Final Judgment is in the public interest; and

8. Plaintiff requests that this Court enter the Final Judgment without further hearings; further, the plaintiff is authorized by the defendants' counsel for defendants to state that defendants join in this request.

Dated: August 5, 2010

Respectfully submitted,

/s/  
Gregg I. Malawer (DC Bar No. 481685)  
U.S. Department of Justice  
Antitrust Division, Litigation III Section  
Liberty Square Building  
450 5<sup>th</sup> Street, NW, Suite 4000  
Washington, DC 20530  
(202) 616-5943  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I, Gregg I. Malawer, hereby certify that on August 5, 2010, I caused copies of the foregoing Certificate of Compliance with the Antitrust Procedures and Penalties Act to be served in this matter in the manner set forth below:

By electronic mail:

Counsel of Record for Defendants

Marc E. Raven  
Sydney Austin LLP  
One South Dearborn  
Chicago, Illinois 60603  
Tel: 312-853-7162  
Fax: 312-853-7036  
mraven@sidley.com

Deborah Feinstein  
Michael B. Bernstein  
Arnold & Porter LLP  
555 Twelfth Street, NW  
Washington, DC 20004-1206  
Tel: 202-942-5015  
Fax: 202-942-5999  
deborah.feinstein@aporter.com

/s/

---

Gregg I. Malawer  
U.S. Department of Justice  
Antitrust Division, Litigation III Section  
Liberty Square Building  
450 5<sup>th</sup> Street, NW, Suite 4000  
Washington, DC 20001  
(202) 616-5943  
Attorney for Plaintiff

confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of 6.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**  
Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010-13278 Filed 6-2-10; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### **United States, State of Illinois, State of Colorado, and State of Indiana v. AMC Entertainment Holdings, Inc. and Kerasotes Showplace Theatres, LLC Proposed Final Judgment and Competitive Impact Statement**

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b)-(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America, State of Illinois, State of Colorado, and State of Indiana v. AMC Entertainment Holdings, Inc. and Kerasotes Showplace Theatres, LLC*, Civil Action No. 1:10-cv-00846. On May 21, 2010, the United States and co-plaintiffs filed a Complaint alleging that the proposed acquisition of most of the assets of Kerasotes Showplace Theatres, LLC by AMC Entertainment Holdings, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18 by lessening competition for theatrical exhibition of first-run films in the Chicago, Denver and Indianapolis metropolitan areas. The proposed Final Judgment, filed at the same time as the Complaint, requires AMC Entertainment Holdings, Inc. to divest first-run, commercial movie theatres, along with certain tangible and intangible assets, in those three cities in order to proceed with the proposed \$275 million transaction.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone 202-514-2481), on the Department of Justice's Web site at <http://www.usdoj.gov/atr>, and at the Office of the Clerk of the United States District

Court for the District of Columbia, Washington, DC. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John R. Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530 (telephone: 202-307-0468).

**Patricia A. Brink,**  
Deputy Director of Operations, Antitrust Division.

#### **UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA, U.S.  
Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530, STATE OF ILLINOIS, Office of the Attorney General, State of Illinois, 100 West Randolph Street, 13th Floor, Chicago, Illinois 60601, STATE OF COLORADO, Office of the Colorado Attorney General, 1525 Sherman St., Seventh Floor, Denver, Colorado 80203, and STATE OF INDIANA, Consumer Protection Division, Office of the Indiana Attorney General, Indiana Government Center South, 302 W. Washington, 5th Floor, Indianapolis, IN 46204, *Plaintiffs, v. AMC ENTERTAINMENT HOLDINGS, INC.*, 920 Main Street, Kansas City, Missouri 64105 and KERASOTES SHOWPLACE THEATRES, LLC, 224 North Des Plaines, Suite 200, Chicago, Illinois 60661, *Defendants*.  
Civil Action No: 1:10-cv-00846  
Judge: Kennedy, Henry H.  
Filed: 5/21/2010.

#### **Complaint**

The United States of America, acting under the direction of the Attorney General of the United States, and the States of Illinois, Colorado, and Indiana, acting through their Attorneys General, bring this civil antitrust action to prevent AMC Entertainment Holdings, Inc. ("AMC") from acquiring most of the assets of Kerasotes Showplace Theatres, LLC ("Kerasotes"). If the acquisition is permitted, it would combine under common ownership the two leading, and in some cases only, mainstream movie theatres showing first-run commercial movies in certain parts of the metropolitan areas of Chicago, Denver, and Indianapolis. The transaction would substantially lessen competition and tend to create a monopoly in mainstream theatres in these markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

#### **I. Jurisdiction and Venue**

1. This action is filed by the United States pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to obtain equitable relief and to prevent a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The States of Illinois, Colorado and Indiana bring this action under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

2. Defendants have consented to personal jurisdiction in this District. In addition, defendant AMC, through its subsidiary, AMC Entertainment, Inc., operates theatres in this District. The licensing and exhibition of first-run, commercial films is a commercial activity that substantially affects, and is in the flow of, interstate trade and commerce. Defendants' activities in purchasing equipment, services, and supplies as well as licensing films for their theatres substantially affect interstate commerce. The Court has jurisdiction over the subject matter of this action and jurisdiction over the parties pursuant to 15 U.S.C. 22, 25, and 26, and 28 U.S.C. 1331, 1337(a), and 1345.

3. Venue in this District is proper under 15 U.S.C. 22 and 28 U.S.C. 1391(c).

#### **II. Defendants and the Proposed Transaction**

4. Defendant AMC is a Delaware corporation with its headquarters in Kansas City, Missouri. It is the holding company of AMC Entertainment, Inc. AMC owns or operates 304 theatres containing 4,574 screens in locations throughout the United States and four foreign countries. Measured by number of screens, AMC is the second-largest theatre circuit in the United States.

5. Defendant Kerasotes is a Delaware corporation with its principal place of business in Chicago, Illinois. It owns or operates 96 theatres with 973 screens in various states. Kerasotes is the sixth-largest theatre circuit in the United States.

6. On January 19, 2010, AMC and Kerasotes signed a purchase and sale agreement, under which AMC acquired Kerasotes (with the exception of three theatres that will be retained by the Kerasotes family) for approximately \$275 million.

#### **III. Background of the Movie Industry**

7. Theatrical exhibition of feature length motion picture films ("movies") provides a major source of out-of-home entertainment in the United States.

8. Viewing movies in the theatre is a popular pastime. Over 1.4 billion movie tickets were sold in the United States in 2009, with total box office revenue exceeding \$10.6 billion.

9. Companies that operate movie theatres are called "exhibitors." Some exhibitors own a single theatre, whereas others own a circuit of theatres within one or more regions of the United States. Established exhibitors include Regal, Carmike, and Cinemark, as well as AMC and Kerasotes.

10. Exhibitors set ticket prices for each theatre based on a number of factors, including the presence and competitive decisions of nearby comparable theatres.

#### IV. Relevant Markets

##### A. Product Market

11. Movies are a unique form of entertainment. The experience of viewing a movie in a theatre differs from live entertainment (e.g., a stage production), a sporting event, or viewing a movie in the home (e.g., on a DVD or via pay-per view).

12. Home viewing of movies is not a reasonable substitute for viewing movies in a theatre. When consumers watch movies in their homes, they typically lose several advantages of the theatre experience, including the size of screen, the sophistication of sound systems, the opportunity to watch in 3-D, and the social experience of viewing a movie with other patrons. Additionally, the most popular, newly released or "first-run" movies are not available for home viewing.

13. Differences in the pricing of various forms of entertainment also reflect their lack of substitutability in the eyes of consumers. Ticket prices for movies are generally different from prices for other forms of entertainment. Tickets for most forms of live entertainment are typically significantly more expensive than movie tickets. Renting a DVD for home viewing is usually significantly less expensive than viewing a movie in a theatre.

14. AMC and Kerasotes operate movie theatres that exhibit first-run, commercial movies ("mainstream theatres"). Mainstream theatres typically are multi-plex movie theatres that show a wide variety of first-run, commercial movies in order to attract all ages of moviegoers, from children to seniors. Mainstream theatres typically offer basic concessions, such as popcorn, candy and soft drinks.

15. Mainstream theatres do not compete significantly with "sub-run" theatres specializing in exhibiting movies after the four-to-five-week first

run has ended, with theatres specializing in art movies or foreign language movies, or with "premiere" theatres which typically offer full-service dining, alcoholic beverages, an adults-only environment, and other luxury services and amenities not found in mainstream theatres.

16. Tickets at mainstream theatres usually cost significantly more than tickets at sub-run theatres. Movies exhibited at sub-run theatres are no longer new releases, and moviegoers generally do not regard sub-run movies as adequate substitutes for first-run movies.

17. Theatres that show art movies and foreign language movies are also not reasonable substitutes for mainstream theatres. Commercial movies typically appeal to different patrons than other types of movies, such as art movies or foreign language movies. For example, art movies tend to appeal more universally to mature audiences. Theatres that primarily exhibit art movies often contain auditoriums with fewer seats than mainstream theatres. Typically, art movies are released less widely than commercial movies.

18. Premiere theatres do not typically serve as a competitive constraint on mainstream theaters. Premiere theatres often show first-run, commercial movies, but typically have more restrictive admission policies (e.g., minors must be accompanied by adults for all movies), charge higher ticket prices (sometimes as much as double the admission charged by typical first-run theatres), serve alcoholic beverages, and often offer full-service restaurants or in-service dining. Premiere theatres also differ from mainstream theatres in the luxury items and amenities they offer to their guests. For instance, in addition to expanded food and beverage offerings, premiere theatres often feature reserved seating, leather and reclining seats, wait service, and complimentary refills of popcorn and sodas. Because of these differences, premiere theatres attract an audience that is distinct from the audience for mainstream theatres.

19. The relevant product market within which to assess the competitive effects of this transaction is the exhibition of first-run, commercial movies in mainstream theatres.

##### B. Geographic Markets

20. Moviegoers typically are not willing to travel very far from their homes to attend a movie. As a result, geographic markets for mainstream theatres are relatively local.

##### Chicago, Illinois Area

21. AMC and Kerasotes account for a substantial portion of the mainstream theatre screens and ticket sales in three areas of the Chicago metropolitan area—the North Suburban Chicago area, the Upper Southwest Suburban Chicago area, and the Lower Southwest Suburban Chicago area.

22. The North Suburban Chicago area, in and around the communities of Glenview and Skokie, encompasses AMC's Northbrook Court 14, Kerasotes' Glen 10, AMC's Gardens 13, Kerasotes' Village Crossing 18, and Kerasotes' Showplace 12 (Niles) theatres. There are no other mainstream theatres in this North Suburban Chicago area.

23. The Upper Southwest Suburban Chicago area, in and around the city of Naperville, encompasses AMC's Cantera 30 and Kerasotes' Showplace 16 (Naperville) theatres. There are no other mainstream theatres in this Upper Southwest Suburban Chicago area.

24. The Lower Southwest Suburban Chicago area, in and around the village of Bolingbrook, encompasses AMC's Woodridge 18 and Kerasotes' Showplace 12 (Bolingbrook) theatres. There is only one other non-party mainstream theatre in this Lower Southwest Suburban area—a 16-screen Cinemark.

25. Moviegoers who reside in these three suburban Chicago, Illinois areas are reluctant to travel significant distances out of each of these areas to attend a movie except in unusual circumstances. The relevant geographic markets in which to assess the competitive effects of this transaction are the North Suburban Chicago, Upper Southwest Suburban Chicago, and Lower Southwest Suburban Chicago areas.

##### Denver, Colorado Area

26. AMC and Kerasotes account for a substantial portion of the mainstream theatre screens and ticket sales in two areas of the Denver metropolitan area.

27. The Upper Northwest Denver area, in and around the cities of Louisville and Broomfield, encompasses Kerasotes' Colony Square 12 and AMC's Flatiron Crossing 14 theatres. There are no other mainstream theatres in this Upper Northwest Denver area.

28. The Lower Northwest Denver area, in and around the cities of Westminster and Arvada, encompasses AMC's Westminster Promenade 24 and Kerasotes' Olde Town 14 theatres. There are no other mainstream theatres in this Lower Northwest Denver area.

29. Moviegoers who reside in these two Denver, Colorado areas are reluctant

to travel significant distances out of each of these areas to attend a movie except in unusual circumstances. The relevant geographic markets in which to assess the competitive effects of this transaction are the Upper Northwest Denver and Lower Northwest Denver areas.

#### Indianapolis, Indiana Area

30. AMC and Kerasotes account for a substantial portion of the first-run movie screens and ticket sales in two areas of the Indianapolis metropolitan area.

31. The North Indianapolis area, in and around the community of Glendale, encompasses AMC's Castleton Square 14 and Kerasotes' Glendale Town 12 theatres. There is only one other non-party mainstream theatre in this North Indianapolis area—a Regal theatre with 14 screens.

32. The South Indianapolis area, in and around the city of Greenwood, encompasses AMC's Greenwood 14 and Kerasotes' Showplace 16 and IMAX. There are no other mainstream theatres in this South Indianapolis area.

33. Moviegoers who reside in these Indianapolis, Indiana areas are reluctant to travel significant distances out of each of these areas to attend a movie except in unusual circumstances. The relevant geographic market in which to assess the competitive effects of this transaction are the North Indianapolis and the South Indianapolis areas.

#### C. The Relevant Markets

34. A small but significant post-acquisition increase in movie ticket prices at mainstream theatres in the relevant geographic markets would not cause a sufficient number of customers to shift to other alternatives, including to other forms of entertainment, to non-mainstream theatres, or to mainstream theatres outside the relevant geographic markets described above in sufficient numbers to make such a price increase unprofitable for the newly combined entity. Therefore, the relevant markets in which to assess the competitive effects of this transaction are the mainstream theatres in the North Suburban Chicago, Upper Southwest Suburban Chicago, Lower Southwest Suburban Chicago, Upper Northwest Denver, Lower Northwest Denver, North Indianapolis, and South Indianapolis areas.

#### V. Competitive Effects

35. Exhibitors compete on multiple dimensions to attract moviegoers to their theatres over the theatres of their rivals. They compete over the quality of the viewing experience. They compete

to offer the most sophisticated sound and viewing systems, best picture clarity, nicest seats with best views, and cleanest floors and lobbies for moviegoers. Exhibitors also compete on price, knowing that if they charge too much (or do not offer sufficient discounted tickets for matinees, seniors, children, etc.), moviegoers might visit rival theatres.

36. In the geographic markets of the North Suburban Chicago area, the Upper Southwest Suburban Chicago area, the Lower Southwest Suburban Chicago area, the Upper Northwest Denver area, the Lower Northwest Denver area, the North Indianapolis area, and the South Indianapolis area, AMC and Kerasotes compete head-to-head for moviegoers. These geographic markets are concentrated, and in each market AMC and Kerasotes are the other's most significant competitor, given their proximity to one another and similarity in size and quality of viewing experience. Competition between AMC and Kerasotes spurs each to improve its quality and keeps prices in check.

#### Chicago, Illinois Area

37. In the North Suburban Chicago area, the proposed transaction would give the combined entity control of all five mainstream theatres in that area, with 83 out of 83 total screens and a 100% share of 2009 box office revenues, which totaled approximately \$24.9 million. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A, the transaction would yield a post-transaction HHI of approximately 10,000, representing an increase of 4,856.

38. In the Upper Southwest Suburban Chicago area, the proposed transaction would give the newly combined entity control of the only two mainstream theatres in that area, with 46 out of 46 total screens and a 100% share of 2009 box office revenues, which totaled approximately \$16.4 million. The transaction would yield a post-transaction HHI of approximately 10,000, representing an increase of 4,875.

39. In the Lower Southwest Suburban Chicago area, the proposed transaction would give the newly combined entity control of two of the three mainstream theatres in that area, with 30 out of 46 total screens and a 53.0% share of 2009 box office revenues, which totaled approximately \$12.3 million. The transaction would yield a post-transaction HHI of approximately 5,017, representing an increase of 1,221.

#### Denver, Colorado Area

40. In the Upper Northwest Denver area, the proposed transaction would give the newly combined entity control of the only two mainstream theatres in that area, with 26 out of 26 total screens and a 100% share of 2009 box office revenues, which totaled approximately \$5.3 million. The transaction would yield a post-transaction HHI of approximately 10,000, representing an increase of 4,356.

41. In the Lower Northwest Denver area, the proposed transaction would give the newly combined entity control of the only two mainstream theatres in that area, with 38 out of 38 total screens and a 100% share of 2009 box office revenues, which totaled approximately \$13.3 million. The transaction would yield a post-transaction HHI of approximately 10,000, representing an increase of 3,669.

#### Indianapolis, Indiana Area

42. In the North Indianapolis area, the proposed transaction would give the newly combined entity control of two of the three mainstream theatres in that area, with 26 out of 40 total screens and a 76.1% share of 2009 box office revenues, which totaled approximately \$9.3 million. The transaction would yield a post-transaction HHI of approximately 6,357, representing an increase of 2,689.

43. In the South Indianapolis area, the proposed transaction would give the newly combined entity control of the only two mainstream theatres in that area, with 30 out of 30 total screens and a 100% share of 2009 box office revenues, which totaled approximately \$10.1 million. The transaction would yield a post-transaction HHI of approximately 10,000, representing an increase of 4,838.

44. The proposed transaction would likely lessen competition significantly in the relevant markets. Today, if AMC or Kerasotes were to increase its prices at a theatre in one of the relevant markets, and the other did not follow, the theatre that increased its prices might lose business to the other. The proposed transaction would eliminate this pricing constraint and is therefore likely to lead to higher prices for moviegoers, which could take the form of a higher adult evening ticket price or reduced discounting, *e.g.*, for matinees, children, seniors, and students.

45. The proposed transaction would also eliminate competition between AMC and Kerasotes over the quality of the viewing experience in each of the geographic markets at issue. The combined entity would have reduced

incentives to maintain, upgrade, and renovate its theatres in the relevant markets, and to improve those theatres' amenities and services, thus reducing the quality of the viewing experience for a moviegoer.

46. The presence in some of the relevant geographic markets of other non-party mainstream theatres would be insufficient to replace the competition lost due to the transaction and thus render unprofitable post-transaction increases in ticket prices or decreases in quality by the newly combined entity.

## VI. Entry

47. Sufficient and timely entry that would deter or counteract the anticompetitive effects alleged above is unlikely. Exhibitors are reluctant to locate new mainstream theatres near existing theatres unless the population density, demographics, or the quality of existing theatres makes new entry viable. Those conditions do not exist in any of the relevant geographic markets.

## VII. Violation Alleged

48. The plaintiffs hereby reincorporate paragraphs 1 through 47.

49. The effect of the proposed transaction would be to lessen competition substantially in the relevant geographic markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

50. The transaction would likely have the following effects, among others: (a) Prices for first-run, commercial movie tickets in mainstream theatres would likely increase to levels above those that would prevail absent the transaction; and (b) the quality of mainstream theatres and the mainstream theatre viewing experience in the relevant geographic areas would likely decrease below levels that would prevail absent the transaction.

## VIII. Requested Relief

51. The plaintiffs request: (a) Adjudication that the proposed transaction would violate Section 7 of the Clayton Act; (b) permanent injunctive relief to prevent the consummation of the proposed transaction; (c) an award to each plaintiff of its costs in this action; and (d) such other relief as is proper.

Dated: May 21, 2010.

For Plaintiff United States of America

/s/

Christine A. Varney,  
Assistant Attorney General, Antitrust  
Division

/s/

Molly S. Boast,  
Deputy Assistant Attorney General

/s/

William F. Cavanaugh, Jr.,  
Deputy Assistant Attorney General

/s/

Patricia A. Brink,  
Deputy Director of Operations

/s/

John R. Read,  
Chief

David Kully,  
Assistant Chief  
Litigation III

/s/

Gregg I. Malawer, (DC Bar No. 481685)

Nina B. Hale

Bennett J. Matelson, (DC Bar No. 454551)

Creighton J. Macy,  
U.S. Department of Justice, Antitrust  
Division, 450 5th Street, NW, Suite 4000,  
Washington, DC 20530, Telephone: (202)  
616-5943, Fax: (202) 514-7308, E-mail:  
gregg.malawer@usdoj.gov, Attorneys for  
Plaintiff the United States

Dated: May 21, 2010.

For Plaintiff State of Illinois:  
Lisa Madigan,  
Attorney General

/s/

By: Robert Pratt, Chief, Antitrust Bureau,  
Office of the Attorney General, State of  
Illinois, 100 West Randolph Street, 13th  
Floor, Chicago, Illinois 60601, Telephone:  
(312) 814-3722, Fax: (312) 814-4209, E-mail:  
RPratt@atg.state.il.us

For Plaintiff State of Colorado:

John Suthers,  
Attorney General

/s/

By: Devin Laiho, Assistant Attorney General,  
Antitrust Enforcement, Office of the Colorado  
Attorney General, 1525 Sherman St., Seventh  
Floor, Denver, Colorado 80203, Telephone:  
(303) 866-5079, Fax: (303) 866-5691, E-mail:  
Devin.Laiho@state.co.us

For Plaintiff State of Indiana:

Greg Zoeller,  
Attorney General

/s/

By: Abigail Lawlis Kuzma, Director and Chief  
Counsel, Consumer Protection Division,  
Office of the Indiana Attorney General,  
Indiana Government Center South, 302 W.  
Washington, 5th Floor, Indianapolis, IN  
46204, Telephone: (317) 234-6843, Fax: (317)  
232-7979, E-mail: AKuzuma@atg.in.gov

## Appendix A

### Definition of HHI and Calculations for Market

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is  $2,600$  ( $30^2 + 30^2 + 20^2 + 20^2 = 2,600$ ). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the

disparity in size between those firms increases.

Markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1,800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. *See Merger Guidelines* 1.51.

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE  
OF ILLINOIS, STATE OF COLORADO and  
STATE OF INDIANA, *Plaintiffs*, v. AMC  
ENTERTAINMENT HOLDINGS, INC., and  
KERASOTES SHOWPLACE THEATRES,  
LLC, *Defendants*.

Civil Action No: 10-0846

Judge:

Filed: 5/21/2010.

## Final Judgment

Whereas, Plaintiffs, United States of America, State of Illinois, State of Colorado, and State of Indiana, filed their Complaint on May 21, 2010, the Plaintiffs and Defendants, AMC Entertainment Holdings, Inc. ("AMC") and Kerasotes Showplace Theatres, LLC ("Kerasotes"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

And Whereas, Plaintiffs require Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, Defendants have represented to the Plaintiffs that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged and decreed:

**I. Jurisdiction**

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

**II. Definitions**

As used in this Final Judgment:

A. "Acquirer" or "Acquirers" means the entity or entities to which AMC divests the Divestiture Assets.

B. "AMC" means defendant AMC Entertainment Holdings, Inc., a Delaware corporation with its principal place of business in Kansas City, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Kerasotes" means defendant Kerasotes Showplace Theatres, LLC, a Delaware corporation with its principal place of business in Chicago, Illinois, its successors and assigns, and its

subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Landlord Consent" means any contractual approval or consent that the landlord or owner of one or more of the Divestiture Assets, or of the property on which one or more of the Divestiture Assets is situated, must grant prior to the transfer of one of the Divestiture Assets to an Acquirer.

E. "Divestiture Assets" means the following theatre assets:

	Theatre	Address
1 .....	AMC Cantera 30 .....	28250 Diehl Road, Warrenville, IL 60555.
2 .....	Kerasotes Showplace 12 (Bolingbrook) .....	1221 West Boughton Road, Bolingbrook, IL 60440.
3 .....	Kerasotes Glen 10 .....	1850 Tower Drive, Glenview, IL 60026.
4 .....	AMC Gardens 13 .....	4999 Old Orchard Shopping Center, Skokie, IL 60077,
5 .....	Kerasotes Colony Square 12 .....	1164 West Dillon Road, Louisville, CO 80027.
6 .....	Kerasotes Olde Town 14 .....	5550 Wadsworth Boulevard, Arvada, CO 80002.
7 .....	Kerasotes Showplace 12 (Glendale 10) OR AMC Castleton Square 14.	6102 N. Rural Street, Indianapolis, IN 46220.
8 .....	AMC Greenwood 14 .....	6020 East 82nd Street, Indianapolis, IN 46250.
		461 South Greenwood Park Drive, Greenwood, IN 46142.

The term "Divestiture Assets" includes:

1. All tangible assets that comprise the business of operating mainstream theatres that exhibit first-run, commercial movies, including, but not limited to, real property and improvements, research and development activities, all equipment, fixed assets, and fixtures, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used in connection with the Divestiture Assets; all licenses, permits, and authorizations issued by any governmental organization relating to the Divestiture Assets; all contracts (including management contracts), teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Divestiture Assets, including supply agreements; all customer lists (including loyalty club data at the option of the Acquirer(s), copies of which may be retained by AMC at its option), contracts, accounts, and credit records; all repair and performance records and all other records relating to the Divestiture Assets;

2. All intangible assets used in the development, production, servicing, and sale of the Divestiture Assets, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software (except

Defendants' proprietary software) and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, all research data concerning historic and current research and development relating to Divestiture Assets, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to the Divestiture Assets; provided, however, that this term does not include assets that the Defendants do not own or that AMC is not legally able to transfer.

**III. Applicability**

A. This Final Judgment applies to AMC and Kerasotes, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need

not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

**IV. Divestitures**

A. AMC is ordered and directed, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to one or more Acquirer(s) acceptable to the United States in its sole discretion (after consultation with the State of Illinois, the State of Colorado, and the State of Indiana, as appropriate). The United States, in its sole discretion, may agree to one or more extensions of this time period, and shall notify the Court in such circumstances. AMC agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment, AMC promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. AMC shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. AMC shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all

information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. AMC shall make available such information to the Plaintiffs at the same time that such information is made available to any other person.

C. AMC shall provide the Acquirer(s) and the United States information relating to the personnel involved in the operation of the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ any Defendant employee whose primary responsibility is the operation of the Divestiture Assets.

D. AMC shall permit prospective Acquirer(s) of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. AMC shall warrant to Acquirer(s) of the Divestiture Assets that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestitures of the Divestiture Assets. At the option of the Acquirer(s), AMC shall enter into an agreement for products and services, such as computer support services, that are reasonably necessary for the Acquirer(s) to effectively operate the Divestiture Assets during a transition period. The terms and conditions of any contractual arrangements meant to satisfy this provision must be commercially reasonable for those products and services for which the agreement is entered and shall remain in effect for no more than three months, absent approval of the United States, in its sole discretion (after consultation with the State of Illinois, the State of Colorado, and the State of Indiana, as appropriate).

G. AMC shall warrant to the Acquirer(s) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset. Following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States (after consultation with the State of Illinois, the State of Colorado, and the State of Indiana, as appropriate) otherwise consents in writing, the divestitures made pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion (after consultation with the State of Illinois, the State of Colorado, and the State of Indiana, as appropriate) that the Divestiture Assets can and will be used by the Acquirer(s) as part of a viable, ongoing business of operating mainstream theatres that exhibit first-run, commercial movies. Divestitures of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States (after consultation with the State of Illinois, the State of Colorado, and the State of Indiana, as appropriate) that the Divestiture Assets will remain viable and the divestitures of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment.

(1) Shall be made to Acquirers that, in the United States' sole judgment (after consultation with the State of Illinois, the State of Colorado, and the State of Indiana, as appropriate) have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of mainstream theatres exhibiting first-run, commercial movies; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion (after consultation with the State of Illinois, the State of Colorado, and the State of Indiana, as appropriate) that none of the terms of any agreement between Acquirers and Defendants give the ability unreasonably to raise the Acquirers' costs, to lower the Acquirers' efficiency, or otherwise to interfere in the ability of the Acquirers to compete effectively.

#### V. Appointment of Trustee

A. If AMC has not divested the Divestiture Assets within the time period specified in Section IV(A), AMC shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestitures of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture

Assets. The trustee shall have the power and authority to accomplish the divestitures to Acquirer(s) acceptable to the United States (after consultation with the State of Illinois, the State of Colorado, and the State of Indiana, as appropriate) at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, VI, and VII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of AMC any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII.

D. The trustee shall serve at the cost and expense of AMC, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to AMC and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the

trustee's accomplishment of the divestitures.

F. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestitures ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

## VI. Landlord Consent

A. If AMC is unable to effect the divestitures required herein due to the inability to obtain the Landlord Consent for any of the Divestiture Assets, AMC shall divest alternative theatre assets that compete effectively with the theatres for which the Landlord Consent was not obtained. The United States shall, in its sole discretion (after consultation with the State of Illinois, the State of Colorado, and the State of Indiana, as appropriate) determine whether such theatre assets compete effectively with the theatres for which landlord consent was not obtained.

B. Within five (5) business days following a determination that Landlord Consent cannot be obtained for the Divestiture Assets, AMC shall notify the United States and propose an alternative divestiture pursuant to Section VI(A). The United States shall have then ten (10) business days in which to determine whether such theatre assets are a suitable alternative pursuant to Section VI(A). If AMC's selection is deemed not to be a suitable alternative, the United States shall in its sole discretion select the theatre assets to be divested (after consultation with the State of Illinois, the State of Colorado, and the State of Indiana, as appropriate).

C. If the trustee is responsible for effecting the divestitures, it shall notify both the United States and AMC within five (5) business days following a determination that Landlord Consent cannot be obtained for the Divestiture Assets. AMC shall thereafter have five (5) business days to propose an alternative divestiture pursuant to Section VI(A). The United States shall have then ten (10) business days in which to determine whether such theatre assets are suitable alternative pursuant to Section VI(A). If AMC's selection is deemed not to be a suitable competitive alternative, the United States shall in its sole discretion select the theatre assets to be divested (after consultation with the State of Illinois, the State of Colorado, and the State of Indiana, as appropriate).

## VII. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive divestiture agreement, AMC or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States (and, as appropriate, the State of Illinois, the State of Colorado, and the State of Indiana), of any proposed divestitures required by Sections IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestitures and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States (the State of Illinois, the State of Colorado, and the State of Indiana) of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the trustee, if applicable, additional information

concerning the proposed divestitures, the proposed Acquirer(s), and any other potential Acquirer(s). Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If the United States provides written notice that it does not object, the divestitures may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

## VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

## IX. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

## X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Sections IV or V, AMC shall deliver to the United States an affidavit as to the fact and manner of its compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an

inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts AMC has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by AMC, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, AMC shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. AMC shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in AMC's earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

## XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice Antitrust Division ("DOJ"), including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at plaintiffs' option, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present,

regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the plaintiffs shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

## XII. Notification

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), AMC, without providing advance notification to the DOJ, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, equity or management interest, in the business of theatres exhibiting first-run, commercial movies in Cook County, Illinois; DuPage County, Illinois; Adams County, Colorado; Boulder County, Colorado; Jefferson County, Colorado; Marion County, Indiana; and Johnson County, Indiana during a ten year period.

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), Kerasotes, without

providing advance notification to the DOJ, shall not directly or indirectly acquire any assets of or any interest, including any financial, security, loan, or equity interest, in the business of theatres exhibiting first-run, commercial movies in Cook County, Illinois during a ten year period. Notwithstanding the preceding sentence, in no event shall Kerasotes be required to provide advance notification under this provision of any of the following activities: (i) engaging in a sale/leaseback, developer-financed or similar transaction, or developing internally using its own or third-party financing, in each case with respect to a newly developed theatre; or (ii) making an acquisition of not more than two percent of the outstanding voting securities of a publicly-traded company with theatres exhibiting first-run, commercial movies where such investment is made "solely for the purpose of investment" as that term is construed under 15 U.S.C. 802.9.

Such notification shall be provided to the DOJ in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about mainstream theatres that exhibit first-run, commercial movies. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the DOJ make a written request for additional information, Defendants shall not consummate the proposed transaction or agreement until thirty (30) days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

## XIII. No Reacquisition

AMC may not reacquire any part of the Divestiture Assets divested under

this Final Judgment during the term of this Final Judgment.

#### XIV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

#### XV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

#### XVI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: \_\_\_\_\_  
Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

United States District Judge

#### UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE OF ILLINOIS, STATE OF COLORADO, and STATE OF INDIANA, *Plaintiffs*, v. AMC ENTERTAINMENT HOLDINGS, INC., and KERASOTES SHOWPLACE THEATRES, LLC, *Defendants*.

Civil Action No.: 1:10-cv-00846  
Judge Kennedy, Henry, H.  
Filed: 5/21/2010.

#### Competitive Impact Statement

Plaintiff, United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (“APPA” or “Tunney Act”), 15 U.S.C.16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

#### I. Nature and Purpose of the Proceeding

On January 19, 2010, Defendant AMC Entertainment Holdings, Inc. (“AMC”) agreed to acquire most of the assets of Defendant Kerasotes Showplace Theatres, LLC (“Kerasotes”). Plaintiffs

filed a civil antitrust complaint on May 21, 2010, seeking to enjoin the proposed acquisition and to obtain equitable relief. The Complaint alleges that the acquisition, if permitted to proceed, would combine under common ownership the two leading, and in some cases, only mainstream movie theatres exhibiting first-run, commercial movies in parts of the metropolitan areas of Chicago, Denver, and Indianapolis. The likely effect of this acquisition would be to lessen competition substantially for exhibition of first-run, commercial movies in mainstream theatres in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the Plaintiffs also filed a Hold Separate Stipulation and Order (“Hold Separate”) and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, AMC and Kerasotes are required to divest eight theatres located in the Chicago, Denver, and Indianapolis areas to acquirer(s) acceptable to the Plaintiffs.

Under the terms of the Hold Separate, Defendants will take certain steps to ensure that the eight theatres to be divested are operated as competitively independent, economically viable and ongoing business concerns, that they will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The Plaintiffs and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

#### II. Description of the Events Giving Rise to the Alleged Violation

##### A. The Defendants and the Proposed Transaction

AMC is a Delaware corporation with its headquarters in Kansas City, Missouri. It is the holding company of AMC Entertainment, Inc. AMC owns or operates 304 theatres containing 4,574 screens in locations throughout the United States and four foreign countries. Measured by number of screens, AMC is the second-largest theatre exhibitor in the United States and had revenues of approximately \$2.26 billion in 2009.

Kerasotes is a Delaware corporation with its principal place of business in Chicago, Illinois. It owns or operates 96 theatres with 973 screens in various states. Kerasotes is the sixth-largest theatre exhibitor in the United States and earned revenue of approximately \$327.7 million in 2009.

On January 19, 2010, AMC and Kerasotes signed a purchase and sale agreement under which AMC will acquire all the outstanding membership units of Kerasotes, with the exception of three theatres which will be retained by the Kerasotes family, for approximately \$275 million.

The proposed transaction, as initially agreed to by Defendants on January 19, 2010, would lessen competition substantially as a result of AMC’s acquisition of Kerasotes. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the Plaintiffs on May 21, 2010.

##### B. The Competitive Effects of the Transaction on the Exhibition of First-Run, Commercial Movies in Mainstream Theatres

The Complaint alleges that the exhibition of first-run, commercial movies in mainstream theatres in areas the Complaint defines as North Suburban Chicago, Upper Southwest Suburban Chicago, Lower Southwest Suburban Chicago, Upper Northwest Denver, Lower Northwest Denver, North Indianapolis, and South Indianapolis constitute lines of commerce and relevant markets for antitrust purposes.

##### 1. The Relevant Product and Geographic Markets

The exercise of defining a relevant market helps analyze the competitive effects of a horizontal transaction. Market definition identifies an area of competition and enables the identification of market participants and the measurement of market shares and concentration. This exercise is useful to the extent it illuminates the transaction’s likely competitive effects.

The Complaint alleges that the relevant product market within which to assess the competitive effects of this transaction is the exhibition of first-run, commercial movies in mainstream theatres. Mainstream theatres are movie theatres that exhibit a variety of first-run, commercial movies to attract moviegoers of all ages and offer basic concessions, such as popcorn, candy and soft drinks. According to the Complaint, the experience of viewing a film in a theatre is an inherently different experience from other forms of entertainment, such as a live show, a

sporting event, or viewing a movie in the home (e.g., on a DVD player or via pay-per-view). Reflecting the significant differences between viewing a movie in a theatre and other forms of entertainment, ticket prices for movies are generally very different from prices for other forms of entertainment. Live entertainment is typically significantly more expensive than a movie ticket, whereas renting a DVD for home viewing is usually significantly cheaper than viewing a movie in a theatre.

The Complaint alleges that moviegoers generally do not regard theatres showing "sub-run" movies, art movies, or foreign language movies as adequate substitutes for mainstream theatres showing first-run movies. The Complaint also alleges that "premiere" theaters do not typically serve as competitive constraints on mainstream theaters. Although premiere theatres show first-run, commercial movies, they typically have more restrictive admission policies (e.g., minors must be accompanied by adults for all movies), charge higher ticket prices, serve alcoholic beverages, and often have full-service restaurants or in-service dining.

The Complaint defines seven relevant geographic markets in the Chicago, Denver, and Indianapolis areas in which to measure the competitive effects of this transaction. Each geographic market contains a number of mainstream theatres—most of which are owned by the Defendants—at which consumers can view first-run, commercial movies. The Complaint identifies the relevant geographic markets as follows: North Suburban Chicago, Upper Southwest Suburban Chicago, Lower Southwest Suburban Chicago, Upper Northwest Denver, Lower Northwest Denver, North Indianapolis, and South Indianapolis.

#### Chicago, Illinois Area

According to the Complaint, the North Suburban Chicago area, in and around the communities of Glenview and Skokie, encompasses AMC's Northbrook Court 14, AMC's Gardens 13, Kerasotes' Glen 10, Kerasotes' Village Crossing 18, and Kerasotes' Showplace 12 (Niles) theatres. There are no other mainstream theatres in the North Suburban Chicago area.

The Upper Southwest Suburban Chicago area, in and around the city of Naperville, encompasses AMC's Cantera 30 and Kerasotes' Showplace Naperville 16 (Naperville) theatres. There are no other mainstream theatres in the Upper Southwest Suburban Chicago area.

The Lower Southwest Suburban Chicago area, in and around the village of Bolingbrook, encompasses AMC's Woodridge 18 and Kerasotes'

Showplace 12 (Bolingbrook) theatres. There is only one non-party mainstream theatre in the Lower Southwest Suburban Chicago area—a 16-screen theatre operated by Cinemark.

#### Denver, Colorado Area

The Upper Northwest Denver area, in and around the cities of Louisville and Broomfield, encompasses AMC's Flatiron Crossing 14 and Kerasotes' Colony Square 12 theatres. There are no other mainstream theatres in the Upper Northwest Denver area.

The Lower Northwest Denver area, in and around the cities of Westminster and Arvada, encompasses AMC's Westminster Promenade 24 and Kerasotes' Olde Town 14 theatres. There are no other mainstream theatres in the Lower Northwest Denver area.

#### Indianapolis, Indiana Area

The North Indianapolis area, in and around the community of Glendale, encompasses AMC's Castleton Square 14 and Kerasotes' Glendale Town 12 theatres. There is only one other non-party mainstream theatre in the North Indianapolis area—a Regal theatre with 14 screens.

The South Indianapolis area, in and around the city of Greenwood, encompasses AMC's Greenwood 14 and Kerasotes' Showplace 16 and IMAX. There are no other mainstream theatres in the South Indianapolis area.

According to the Complaint, the relevant markets in which to assess the competitive effects of this transaction are the mainstream theatres in the above-mentioned areas: North Suburban Chicago, Upper Southwest Suburban Chicago, Lower Southwest Suburban Chicago, Upper Northwest Denver, Lower Northwest Denver, North Indianapolis, and South Indianapolis areas. A small but significant post-acquisition increase in movie ticket prices by a hypothetical monopolist of mainstream theatres in those areas would not cause a sufficient number of customers to shift to other alternatives, including to other forms of entertainment, to non-mainstream theatres, or to mainstream theatres outside the relevant geographic markets described above to make such a price increase unprofitable.

#### 2. Competitive Effects in the Relevant Markets

The Complaint alleges that exhibitors that operate mainstream movie theatres compete on multiple dimensions. Exhibitors compete over the quality of the viewing experience. They compete to offer the most sophisticated sound and viewing systems, best picture

clarity, nicest seats with the best views, and cleanest floors and lobbies for moviegoers. Such exhibitors also compete on price, knowing that if they charge too much (or do not offer sufficiently discounted tickets for matinees, seniors, children, etc.), moviegoers will choose to view movies at rival theatres.

According to the Complaint, the proposed transaction is likely to eliminate these multiple dimensions of competition between AMC and Kerasotes. In each of the relevant markets, AMC and Kerasotes are each other's most significant competitor, given their close proximity to one another and to moviegoers, and the similarity in their theatres' size and quality of viewing experience. Their competition spurs each to keep its prices in check and improve its quality. For example, Kerasotes expanded its discounts on matinees at its Bolingbrook 12 theatre, in Lower Southwest Suburban Chicago, after AMC opened its Woodridge 18 theatre nearby. Kerasotes retrofitted its Bolingbrook 12 theatre, in Lower Southwest Suburban Chicago, in response to AMC's opening its Woodridge 18 theatre nearby.

As alleged in the Complaint, each of the relevant markets would see a significant increase in market concentration under a measure called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A of the Complaint. In the area with the least change in concentration—the Lower Southwest Suburban Chicago area—the proposed transaction would give the newly combined entity control of two of the only three mainstream theatres in that area. In that market the post-transaction HHI would rise to roughly 5,017, representing an increase of 1,221 points. In other markets, the proposed acquisition would place all of the mainstream theatres under AMC's control, creating a local monopoly and yielding a post-transaction HHI of 10,000—the maximum.

In the seven relevant markets today, were AMC or Kerasotes to increase ticket prices and the other were not to follow, the exhibitor that increased price would likely suffer financially, as a substantial number of its customers would patronize the other exhibitor's theatre. After the transaction, the newly combined entity would recapture such losses, making profitable price increases that would have been unprofitable before the transaction. Likewise, the proposed transaction would eliminate competition between AMC and Kerasotes over the quality of the viewing experience at their theatres in each of the geographic markets at issue.

After the transaction, the newly combined entity would have a reduced incentive to maintain, upgrade, and renovate its theatres in the relevant markets, and to improve its theatres' amenities and services, thus reducing the quality of the viewing experience.

The Complaint alleges that the presence of the other mainstream theatres in certain of the relevant geographic markets would be insufficient to replace the competition lost due to the transaction, and thus render unprofitable post-transaction increases in ticket prices or decreases in quality by the newly combined entity.

Finally, the Complaint alleges that the entry of a mainstream theatre that would deter or counteract an increase in movie ticket prices or a decline in theatre quality is unlikely in all of the relevant markets. Exhibitors are reluctant to locate new theatres near existing theatres unless the population density and demographics makes new entry viable or the existing theatres do not have stadium seating. Those conditions do not exist in any of the relevant markets. All of these markets currently have mainstream theatres with stadium seating. Given the number of existing comparable theatres, population density and demographics in the relevant markets, demand for additional mainstream theatres in the areas at issue is not likely to support entry of a new theatre.

For all of these reasons, the Plaintiffs have concluded that the proposed transaction would lessen competition substantially in the exhibition of first-run, commercial movies in mainstream theatres in the North Suburban Chicago area, Upper Southwest Suburban Chicago area, Lower Southwest Suburban Chicago area, Upper Northwest Denver area, Lower Northwest Denver area, North Indianapolis area, and the South Indianapolis area, eliminate actual and potential competition between AMC and Kerasotes, and likely result in increased ticket prices and lower quality theatres in those markets. The proposed transaction therefore violates Section 7 of the Clayton Act.

### III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisitions in each relevant geographic market, establishing new, independent, and economically viable competitors. The proposed Final Judgment requires AMC, within sixty (60) calendar days after the filing of the Complaint, or five (5) days after the notice of the entry of

the Final Judgment by the Court, whichever is later, to divest, as viable ongoing businesses, a total of eight theatres in the seven relevant geographic markets in the Chicago, Denver, and Indianapolis areas: Kerasotes Glen 10 and AMC Gardens 13 (North Suburban Chicago), AMC Cantera 30 (Upper Southwest Suburban Chicago), Kerasotes Showplace 12 (Bolingbrook) (Lower Southwest Suburban Chicago), Kerasotes Colony Square 12 (Upper Northwest Denver), Kerasotes Olde Town 14 (Lower Northwest Denver), Kerasotes Showplace 12 or AMC Castleton Square 12 (North Indianapolis), and AMC Greenwood 14 (South Indianapolis). The assets must be divested in such a way as to satisfy the Plaintiffs that the theatres can and will be operated by the purchaser as viable, ongoing businesses that can compete effectively in the relevant markets as mainstream theatres exhibiting first-run, commercial movies. AMC must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

Until the divestitures take place, AMC and Kerasotes must maintain the sales and marketing of the theatres, and maintain the theatres in operable condition at current capacity configurations. Until the divestitures take place, AMC and Kerasotes must not transfer or reassign to other areas within the company their employees with primary responsibility for the operation of the theatres, except for transfer bids initiated by employees pursuant to Defendants' regular, established job-posting policies.

In the event that AMC does not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that AMC will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the parties, setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestitures have not been accomplished, the trustee and the plaintiffs will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including

extending the trust or the term of the trustee's appointment.

If AMC is unable to effect the divestitures required herein due to their inability to obtain the landlords' consent, Section VI of the proposed Final Judgment requires AMC to divest alternative theatre assets that compete effectively with the theatres for which the landlord consent was not obtained. This provision will insure that any failure by AMC to obtain landlord consent does not thwart the relief obtained in the proposed Final Judgment.

The proposed Final Judgment also prohibits AMC from acquiring any other theatres in counties that correspond to the relevant geographic markets and Kerasotes from acquiring any other theatres in Cook County, Illinois, without providing at least thirty (30) days notice to the United States Department of Justice. Such acquisitions could raise competitive concerns but might be too small to be reported under the Hart-Scott-Rodino ("HSR") premerger notification statute.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of AMC's acquisition of Kerasotes.

### IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

### V. Procedures Available for Modification of the Proposed Final Judgment

The Plaintiffs and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the Plaintiffs have not withdrawn their consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written

comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: John R. Read, Chief, Litigation III, Antitrust Division, United States Department of Justice, 450 5th Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. Alternatives to the Proposed Final Judgment

The Plaintiffs considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The Plaintiffs could have continued the litigation and sought preliminary and permanent injunctions against AMC's acquisition of Kerasotes. The Plaintiffs are satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of exhibition of first-run, commercial movies in the relevant markets identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the Plaintiffs would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

## VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States v. SBC Commc'n's, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v. InBev N.V./S.A.*, 2009-2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, No. 08-1965 (JR), at \*3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.")<sup>1</sup>

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v.*

<sup>1</sup> The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'n's*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

*Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001). *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).<sup>2</sup> In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'n's*, 489 F. Supp. 2d at 17; *see also Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland*

<sup>2</sup> Cf. *BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

v. United States, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc’ns*, 489 F. Supp. 2d at 17.

Moreover, the court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; see also *InBev*, 2009 U.S. Dist. LEXIS 84787, at \*20 (“the ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged”). Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications*, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” *SBC Commc’ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply

proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11.<sup>3</sup>

### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: May 21, 2010.

Respectfully submitted,

/s/

Gregg I. Malawer (DC Bar No. 481685),  
Nina Hale,  
Bennett Matelson (DC Bar No. 454551),  
Creighton J. Macy,

*U.S. Department of Justice Antitrust Division  
450 5th Street, NW., Suite 4000,  
Washington, DC 20530, Telephone: (202)  
616-5943, Fax: (202) 514-7308, E-mail:  
gregg.malawer@usdoj.gov, Attorneys for  
Plaintiff the United States*

[FR Doc. 2010-13394 Filed 6-2-10; 8:45 am]

BILLING CODE 4410-11-P

VIII. Summary Report of the Corporate Administration Committee.

IX. Board Appointments.

X. Code of Conduct.

XI. Investment Policy.

XII. Strategic Planning Process Timeline.

XIII. Financial Report.

XIV. Corporate Scorecard.

XV. NHSA Update.

XVI. Chief Executive Officer’s Quarterly Management Report.

XVII. Adjournment

**Erica Hall,**

*Assistant Corporate Secretary.*

[FR Doc. 2010-12974 Filed 6-2-10; 8:45 am]

BILLING CODE 7570-02-M

## NEIGHBORHOOD REINVESTMENT CORPORATION

### NHSA Special Board of Directors Meeting; Sunshine Act

**TIME AND DATE:** 12:30 p.m., Tuesday, May 11, 2010.

**PLACE:** 1325 G Street, NW., Suite 800, Boardroom, Washington, DC 20005.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:**  
Erica Hall, Assistant Corporate Secretary, (202) 220-2376; *ehall@nw.org*.

### AGENDA:

- I. Call to Order.
- II. Discussion and Recommendation For Interim Funding.
- III. Adjournment.

**Erica Hall,**

*Assistant Corporate Secretary.*

[FR Doc. 2010-12975 Filed 6-2-10; 8:45 am]

BILLING CODE 7570-02-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 52-011; NRC-2008-0252]

### Southern Nuclear Operating Company, et al; Notice of Consideration of Issuance of Amendment to Early Site Permit, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of license amendment request, opportunity to comment, and opportunity to request a hearing.

**DATES:** Submit comments by July 6, 2010. Requests for a hearing or leave to intervene must be filed by August 2, 2010.

### FOR FURTHER INFORMATION CONTACT:

Chandu Patel, Project Manager, AP1000

<sup>3</sup> See *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D. DC 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); *United States v. Mid-Am. Dairymen, Inc.*, 1977-1 Trade Cas. (CCH) & 61,508, at 71,980 (W.D. Mo. 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”); S. Rep. No. 93-298, 93d Cong., 1st Sess., at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”)

Ad # 11103636 Name AMC THEATRES CORP ATTN: LEIGH SWIFT  
 Class 815 PO# KELLY SCHEMENAU Authorized by MICHAEL BERNSTEIN

Size 66 Lines

T0001

Account 1010087604

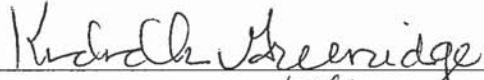
## PROOF OF PUBLICATION

District of Columbia, ss., Personally appeared before me, a Notary Public in and for the said District, Kadedhra Greenidge well known to me to be BILLING SUPERVISOR of The Washington Post, a daily newspaper published in the City of Washington, District of Columbia, and making oath in due form of law that an advertisement containing the language annexed hereto was published in said newspaper on the dates mentioned in the certificate herein.

I Hereby Certify that the attached advertisement was published in The Washington Post, a daily newspaper, upon the following date(s) at a cost of \$4,235.72 and was circulated in the Washington metropolitan area.

Published 7 time(s). Date(s): 28, 29, 30 and 31 of May 2010  
 01, 02 and 03 of June 2010

Account 1010087604



Witness my hand and official seal this 13th day of July 2010



My commission expires

Nicole Morton-McFadden  
 Notary Public District of Columbia  
 My Commission Expires 05-31-2011

Department of Justice Antitrust Division Take notice that a proposed Final Judgment has been filed in a civil antitrust case, United States of America, State of Illinois, State of Colorado, and State of Indiana v. AMC Entertainment Holdings, Inc. and Kerasotes Showplace Theatres, LLC, Civil Action No. 1:10-cv- 00846. On May 21, 2010, the United States filed a Complaint alleging that the proposed acquisition of most of the assets of Kerasotes Showplace Theatres, LLC by AMC Entertainment Holdings, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed the same time as the Complaint, requires AMC Entertainment Holdings, Inc. to divest first-run, commercial movie theatres, along with certain tangible and intangible assets, located in the Chicago, Denver and Indianapolis metropolitan areas. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street N.W., Suite 1010, Washington, DC 20530 (telephone: 202-514-2481), on the Department of Justice's Web site at <http://www.usdoj.gov/atr> and at the Office of the Clerk of the United States District Court for the District of Columbia, Washington, D.C. Interested persons may address comments to John R. Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 450 Fifth Street N.W., Suite 4000, Washington, DC 20530 (telephone: 202-307-0468), within 60 days of the date of this notice.