

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

UNITED STATES OF AMERICA)
 Antitrust Division)
 450 Fifth Street, N.W., Suite 4000)
 Washington, DC 20530)
)
 and)
)
 STATE OF TEXAS)
 Office of the Attorney General)
 State of Texas)
 300 W. 15th Street, 7th Floor)
 Austin, TX 78701)
)
) *Plaintiffs,*)
)
) v.)
)
 CINEMARK HOLDINGS, INC.)
 3900 Dallas Parkway, Suite 500)
 Plano, TX 75093)
)
 RAVE HOLDINGS, LLC)
 2101 Cedar Springs Road, Suite 800)
 Dallas, TX 75201)
)
 and)
)
 ALDER WOOD PARTNERS, L.P.)
 12400 Coit Road, Suite 800)
 Dallas, TX 75251)
)
) *Defendants.*)
)

Civil Action No.:

Judge:

Filed:

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Texas, acting through its Attorney General, bring this civil antitrust

action to prevent the proposed acquisition by Cinemark Holdings, Inc. (“Cinemark”) of thirty-two movie theatres owned and operated by Rave Holdings, LLC (“Rave Cinemas”).

Cinemark is a significant competitor to Rave Cinemas in the exhibition of first-run, commercial movies in the area in and around Voorhees and Somerdale in southern New Jersey, the eastern sector of Louisville, Kentucky, and the area in and around Denton, Texas. Another movie theatre company, Movie Tavern, Inc. (“Movie Tavern”), which is controlled by Cinemark’s founder and Chairman of the Board and majority owned by Defendant Alder Wood Partners, L.P. (“Alder Wood Partners”), is a significant competitor with Rave Cinemas in the exhibition of first-run, commercial movies in the western portion of Fort Worth, Texas. If Cinemark’s acquisition of Rave Cinemas is permitted to proceed, in these markets, it would either give Cinemark direct control of its most significant competitor or leave theatres controlled by Cinemark’s Chairman as the most significant competitor to the Cinemark-acquired theatre. The acquisition likely would substantially lessen competition in the exhibition of first-run, commercial movies in each of 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 State of Texas brings 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. The distribution and theatrical 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 exhibition 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 28 U.S.C. § 1391(c). Defendants have consented to venue and personal jurisdiction in this judicial district.

II. DEFENDANTS AND THE PROPOSED ACQUISITION

4. Defendant Rave Holdings, Inc. ("Rave Cinemas") is a Delaware limited liability company with its headquarters in Dallas, Texas. Rave Cinemas owns and operates 35 movie theatres with 518 screens in a dozen states. Rave Cinemas is the seventh-largest movie theatre exhibitor in the United States based on box office revenues.

5. Defendant Cinemark Holdings, Inc. ("Cinemark") is a Delaware corporation with its headquarters in Plano, Texas. Cinemark owns and operates 298 movie theatres with a total of 3,916 screens in thirty-nine states. Cinemark is the third-largest movie theatre exhibitor in the United States based on box office revenues. Lee Roy Mitchell is the founder, a significant shareholder, and Chairman of the Board of Directors of Cinemark.

6. Defendant Alder Wood Partners, L.P. ("Alder Wood Partners") is a Texas limited partnership with its headquarters in Dallas, Texas. Alder Wood Partners owns 100% of the voting shares of Movie Tavern, Inc. ("Movie Tavern"). Mr. Lee Roy Mitchell and his wife own 99% of Alder Wood Partners. Through Alder Wood Partners, they control Movie Tavern and receive approximately 92% of its profits. The other approximately 8% of Movie Tavern's profits are reserved for the benefit of its management. Movie Tavern is a Texas corporation with its

headquarters in Dallas, Texas. In addition to serving as Cinemark's Chairman, Mr. Mitchell serves as a Director of Movie Tavern. Movie Tavern owns and operates 16 movie theatres, with a total of 130 screens in seven states.

7. Cinemark and Movie Tavern are not independent competitors. Mr. Mitchell, as Cinemark's founder and Chairman of the Board, has influence over Cinemark's pricing and other strategic decisions, as well as access to competitively-sensitive information. He also has a significant holding of Cinemark shares. At the same time, Mr. Mitchell, as a Director of Movie Tavern who together with his wife owns nearly all of the voting shares and profits of Movie Tavern, has influence over Movie Tavern's pricing and other strategic decisions. Thus, Mr. Mitchell has an ability and financial incentive to encourage, facilitate, and enforce coordination between the companies. Because of Mr. Mitchell's substantial influence over pricing and strategic decisions at the two companies, Cinemark and Movie Tavern are unlikely to compete aggressively with each other. For example, were Cinemark to determine that it is in its unilateral interest to build a new theatre close to a Movie Tavern, Mr. Mitchell would be in a position to undermine that effort. Similarly, were Movie Tavern to consider an aggressive price cut to the detriment of Cinemark, Mr. Mitchell would be in a position to undermine that effort.

8. On November 16, 2012, Cinemark and Rave Cinemas executed a purchase and sale agreement. The acquisition is structured as an asset purchase for approximately \$220 million. Cinemark will acquire thirty-two of Rave Cinemas' thirty-five movie theatres and will manage the three theatres it is not acquiring until Rave Cinemas has sold them.

III. BACKGROUND OF THE MOVIE THEATRE INDUSTRY

9. Viewing movies in the theatre is a popular pastime. Over one billion movie tickets were sold in the United States in 2012, with total box office revenue reaching approximately \$9.7 billion.

10. 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. Cinemark, Rave Cinemas, and Movie Tavern are exhibitors in the United States, as are Regal Entertainment Group (“Regal”) and AMC Entertainment, Inc. (“AMC”).

11. Exhibitors set ticket prices for a theatre based on a number of factors, including the age and condition of the theatre, the number and type of amenities the theatre offers (such as the range of snacks, food and beverages offered, the size of its screens and quality of its sound systems, and stadium and/or reserved seating), the competitive situation facing the theatre (such as the price of tickets at nearby theatres, the age and condition of those theatres, and the number and type of amenities they offer), and the population demographics and density surrounding the theatre.

IV. RELEVANT MARKET

A. Product Market

12. Movies are a unique form of entertainment. The experience of viewing a movie in a theatre is an inherently different experience from live entertainment (*e.g.*, a stage production or attending a sporting event) or viewing a movie in the home (*e.g.*, through streaming video, on a DVD, or via pay-per-view).

13. Reflecting the significant differences of viewing a movie in a theatre, ticket prices

for movies are generally very different from prices for other forms of entertainment. For example, live entertainment is typically significantly more expensive than a movie ticket, whereas home viewing through streaming video, DVD rental, or pay-per-view is usually significantly less expensive than viewing a movie in a theatre.

14. Viewing a movie at home typically lacks several characteristics of viewing a movie in a theatre, including the size of screen, the sophistication of sound systems, and the social experience of viewing a movie with other patrons. In addition, the most popular, newly released or “first-run” movies are not available for home viewing at the time they come out in theatres.

15. Movies are considered to be in their “first-run” during the four to five weeks following initial release in a given locality. If successful, a movie may be exhibited at other theatres after the first-run as part of a second or subsequent run (often called a “sub-run” or “second-run”). Moviegoers generally do not regard sub-run movies as an adequate substitute for first-run movies. Reflecting the significant difference between viewing a newly-released, first-run movie and an older sub-run movie, tickets at theatres exhibiting first-run movies usually cost significantly more than tickets at sub-run theatres.

16. Art movies and foreign language movies are also not adequate substitutes for commercial, first-run movies. Art movies, which include documentaries, are sometimes referred to as independent films. Although art and foreign language movies appeal to some viewers of commercial movies, the potential audience for art movies is quite distinct as art movies tend to have more narrow appeal and typically attract an older audience. Exhibitors consider art theatre operations as distinct from the operations of theatres that exhibit commercial movies. Similarly, foreign-language movies do not widely appeal to U.S. audiences. As a result, most moviegoers

do not regard art movies or foreign-language movies as adequate substitutes for first-run, commercial movies.

17. The relevant product market within which to assess the competitive effects of this acquisition is the exhibition of first-run, commercial movies. A hypothetical monopolist controlling the exhibition of all first-run, commercial movies would profitably impose at least a small but significant and non-transitory increase in ticket prices.

B. Geographic Markets

18. Moviegoers typically are not willing to travel very far from their home to attend a movie. As a result, geographic markets for the exhibition of first-run, commercial movies are relatively local.

Area In and Around Voorhees and Somerdale in Southern New Jersey

19. Cinemark and Rave Cinemas account for the majority of the first-run, commercial movie tickets sold in and around Voorhees Township, New Jersey and the close-by town of Somerdale, New Jersey (“Voorhees-Somerdale”), an area which encompasses Rave Cinemas’ Ritz Center 16 and the Cinemark 16. These two theatres are located less than 3 miles apart. Two non-party theatres in this area also show first-run, commercial movies.

20. Moviegoers who reside in Voorhees-Somerdale are unlikely to travel significant distances out of that area to attend a first-run, commercial movie except in unusual circumstances. A small but significant post-acquisition increase in the price of first-run, commercial movie tickets in Voorhees-Somerdale would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. Voorhees-Somerdale constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

East Louisville, Kentucky Area

21. Rave Cinemas and Cinemark account for the vast majority of the first-run, commercial movie tickets sold in the eastern portion of Louisville, Kentucky (“East Louisville”), an area which encompasses Rave Cinemas’ Stonybrook 20 + IMAX, Cinemark’s Tinseltown USA and XD with 19 screens, and the future Cinemark Mall of St. Matthews 10, which will exhibit first-run, commercial movies and is projected to open in July 2013. One non-party theatre in this area shows a mix of first-run, commercial movies and foreign-language and art/independent films.

22. Moviegoers who reside in East Louisville are unlikely to travel significant distances out of that area to attend a first-run, commercial movie except in unusual circumstances. A small but significant post-acquisition increase in the price of first-run, commercial movie tickets in East Louisville would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. East Louisville constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Western Fort Worth, Texas Area

23. Rave Cinemas and Movie Tavern account for the majority of the first-run, commercial movie tickets sold in the western portion of Fort Worth, Texas (“Western Fort Worth”), an area which encompasses Rave Cinemas’ Ridgmar 13 + Xtreme and three Movie Tavern theatres: the Ridgmar with six screens, the West 7th Street with seven screens, and the Hulen with 13 screens. Three non-party theatres in this area show first-run, commercial movies.

24. Moviegoers who reside in Western Fort Worth are unlikely to travel significant distances out of that area to attend a first-run, commercial movie except in unusual circumstances.

A small but significant post-acquisition increase in the price of first-run, commercial movie tickets in Western Fort Worth would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. Western Fort Worth constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Greater Denton, Texas Area

25. Cinemark, Movie Tavern, and Rave Cinemas account for the majority of the first-run, commercial movie tickets sold in the area in and around Denton, Texas (“Greater Denton”), an area which encompasses the Cinemark 14 in Denton, the Denton Movie Tavern with 4 screens, and the Rave Cinemas’ Hickory Creek 16 in nearby Hickory Creek, Texas. One non-party theatre in this area shows first-run, commercial movies.

26. Moviegoers who reside in Greater Denton are unlikely to travel significant distances out of that area to attend a first-run, commercial movie except in unusual circumstances. A small but significant post-acquisition increase in the price of first-run, commercial movie tickets in Greater Denton would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. Greater Denton constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

V. COMPETITIVE EFFECTS

27. Exhibitors compete to attract moviegoers to their theatres over the theatres of their rivals. They do that by competing on price, knowing that if they charge too much (or do not offer sufficient discounted tickets for matinees, seniors, children, etc.) moviegoers will begin to frequent their rivals. Exhibitors also seek to license the first-run movies that are likely to attract the largest numbers of moviegoers. In addition, they compete over the quality of the viewing

experience by offering moviegoers the most sophisticated sound systems, largest screens, best picture clarity, best seating (including stadium and reserved seating), and the broadest range and highest quality snacks, food, and drinks at concession stands or cafes in the lobby or served to moviegoers at their seats.

28. Cinemark and/or Movie Tavern currently compete with Rave Cinemas for moviegoers in the relevant markets at issue. These markets are concentrated, and in each market, Cinemark and/or Movie Tavern and Rave Cinemas are the other's most significant competitor, given their close proximity to one another. Their rivalry spurs each to improve the quality of their theatres and keeps ticket prices in check. For various reasons, the other theatres in the relevant geographic markets offer less attractive options for the moviegoers that are served by the Cinemark and/or Movie Tavern and Rave theatres. For example, they are located farther away from these moviegoers, or they are a relatively smaller size or have fewer screens.

29. In the relevant markets at issue, the acquisition of Rave Cinemas likely will result in a substantial lessening of competition. In the Voorhees-Somerdale, East Louisville, and Greater Denton markets, the transaction will lead to significant increases in concentration and eliminate existing competition between Cinemark and Rave Cinemas. In the Western Fort Worth and Greater Denton markets, where Rave currently competes closely with Movie Tavern, Cinemark's acquisition of the Rave Cinemas theatres likely will also reduce competition because Cinemark will not have the same incentive that Rave Cinemas has to compete aggressively against Movie Tavern. In those markets, Mr. Mitchell, as both the Chairman of Cinemark and a Director of Movie Tavern, and, together with his wife, majority owner of Movie Tavern, will

have both the incentive and ability to dampen competition after Rave Cinemas is acquired by Cinemark.

30. In Voorhees-Somerdale, the proposed acquisition would give Cinemark control of two of the four first-run, commercial movie theatres in that area, with 32 out of 48 total screens and an approximately 71% share of 2012 box office revenues, which totaled about \$14.7 million. Using a measure of market concentration called the Herfindahl-Hirschman Index (“HHI”)¹, the acquisition would yield a post-acquisition HHI of approximately 5,861, representing an increase of roughly 2,416 points.

31. In East Louisville, after the completion of Cinemark’s Mall of St. Matthews 10 in July 2013, the proposed acquisition would give Cinemark control of three of the four theatres showing first-run, commercial movies, with 49 out of 53 total screens. As measured by total screens only (since Cinemark’s Mall of St. Matthews 10 does not yet have box office revenues), the acquisition would result in Cinemark having a market share of approximately 93% in East Louisville. The acquisition would yield a post-acquisition HHI of 8,604, representing an increase of roughly 4,130 points.

32. In Western Fort Worth, the proposed acquisition would give Cinemark/Movie Tavern control of four of the seven first-run, commercial movie theatres in that area, with 39 out of 71 total screens and approximately 60% of 2012 box office revenues, which totaled almost \$17

¹ See U.S. Dep’t of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.3 (2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>. The HHI 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 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

million. The acquisition would yield a post-acquisition HHI of approximately 4,828 representing an increase of roughly 1,736 points.

33. In Greater Denton, the proposed acquisition would give Cinemark/Movie Tavern control of three of the four first-run, commercial movie theatres, with 34 out of 46 total screens and approximately 62% of 2012 box office revenues, which totaled about \$11 million. The acquisition would yield a post-acquisition HHI of approximately 5,265, representing an increase of roughly 1,640 points.

34. Today, were one of Defendants' theatres to unilaterally increase ticket prices in a relevant market, the exhibitor that increased price would likely suffer financially as a substantial number of its patrons would patronize the other exhibitor. The acquisition would eliminate this pricing constraint. After the acquisition, Cinemark and/or Movie Tavern would re-capture a significant proportion of such losses, making price increases more profitable than they would be pre-acquisition. Thus, the acquisition is likely to lead to higher ticket 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.

35. The proposed acquisition likely would also reduce competition between Cinemark and/or Movie Tavern and Rave Cinemas over the quality of the viewing experience in the relevant markets at issue. If no longer motivated to compete, Cinemark and/or Movie Tavern and Rave Cinemas would have reduced incentives to maintain, upgrade, and renovate their theatres in the relevant markets, to improve those theatres' amenities and services, and to license the most popular movies, thus reducing the quality of the viewing experience for a moviegoer.

VI. ENTRY

36. Sufficient, timely entry that would deter or counteract the anticompetitive effects alleged above is unlikely. Exhibitors are reluctant to locate new first-run, commercial theatres near existing first-run, commercial theatres or near those already under construction unless the population density, demographics, or the quality of existing theatres makes new entry viable. Over the next two years, demand by moviegoers to see first-run, commercial movies in the geographic markets at issue will likely not be sufficient to support entry of new first-run, commercial movie theatres that are not already under construction.

VII. VIOLATION ALLEGED

37. Plaintiffs hereby reincorporate paragraphs 1 through 36.

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

39. The transaction would likely have the following effects, among others: (a) the prices of tickets at first-run, commercial movie theatres in the relevant markets would likely increase to levels above those that would prevail absent the acquisition; and (b) the quality of first-run, commercial theatres and the viewing experience at those theatres would likely decrease in the relevant markets below levels that would prevail absent the acquisition.

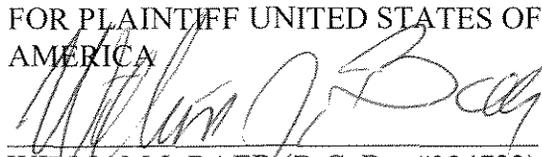
VIII. REQUESTED RELIEF

40. Plaintiffs request: (a) adjudication that the proposed acquisition would violate Section 7 of the Clayton Act; (b) permanent injunctive relief to prevent the consummation of the

proposed acquisition; (c) an award to each plaintiff of its costs in this action; and (d) such other relief as is proper.

DATED: May 20, 2013

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