UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *Plaintiff*, v. REGAL CINEMAS, INC., and CONSOLIDATED THEATRES HOLDINGS, GP, *Defendants*.	Case: 1:08-cv-00746 Assigned To : Leon, Richard J. Assign. Date : 4/29/2008 Description: Antitrust Filed:

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin the proposed merger of Regal Cinemas, Inc. and Consolidated Theatres, GP, and to obtain equitable relief. If the merger is permitted to proceed, it would combine the two leading, and in some cases only, operators of first-run, commercial movie theatres in parts of the metropolitan areas of Charlotte, Raleigh, and Asheville, North Carolina. The merger would substantially lessen competition and tend to create a monopoly in the theatrical exhibition of commercial, first-run movies in the above listed 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.

2. One defendant operates theatres in this District; the other attracts patrons from and advertises in this District. In addition, the distribution and exhibition of commercial, first-run films is a commercial activity that substantially affects, and is in the flow of, interstate trade and commerce. Defendant's activities in purchasing equipment, services, and supplies as well as licensing films for exhibitors 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). In addition, defendants have consented to venue and personal jurisdiction in this judicial district.

II. DEFENDANTS AND THE PROPOSED MERGER

4. Regal Cinemas, Inc. ("Regal") is a Tennessee corporation with its headquarters in Knoxville. Regal operates more than 6,400 screens at approximately 540 theatres in 39 states and the District of Columbia under the Regal, United Artists, Edwards, and Hoyts names.

5. Consolidated Theatres Holdings, GP, is a North Carolina partnership (hereinafter referred to as "Consolidated"). Consolidated operates 400 screens at 28 theatres in Georgia, Maryland, North Carolina, South Carolina, Tennessee, and Virginia, with additional theatres projected to open in the next few years, including the Biltmore Grande 15, which is scheduled to open in Asheville, North Carolina in August 2008.

6. On January 14, 2008, Regal and Consolidated signed a purchase and sale agreement. The deal is structured as an asset purchase, with Regal acquiring Consolidated for approximately $210 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. Although they vary, ticket prices for movies tend to be significantly less expensive than many other forms of out-of-home entertainment, particularly live entertainment such as sporting events and live theatre.

8. Viewing movies in the theatre is a very popular pastime. Over 1.4 billion movie tickets were sold in the United States in 2007, with total box office revenue exceeding $9.7 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 AMC, Carmike, and Cinemark, as well as Regal and Consolidated.

10. Exhibitors set ticket prices for each theatre based on a number of factors, including the competitive situation facing each theatre, the age of the theatres, the prices of nearby, comparable theatres, the population demographics and density surrounding the theatre, and the number and type of amenities each theatre offers, such as stadium seating.

IV. RELEVANT MARKET

A. Product Market

11. 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), a sporting event, or viewing a movie in the home (*e.g.*, on a DVD or via pay-per view).

12. Typically, viewing a movie at home 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. Additionally, the most popular, newly released or "first-run" movies are not available for home viewing. 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).

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: 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. Going to the movies is a different experience from other forms of entertainment, and a small but significant post-acquisition increase in ticket prices, or reduction in discounts, for first-run commercial movies would not cause a sufficient number of customers to shift to other forms of entertainment to make such a price increase unprofitable.

14. 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. Movies exhibited at sub-run theatres are no longer new releases, and moviegoers generally do not regard sub-run movies as an adequate substitute for first-run movies and a small but significant post-acquisition increase in ticket prices, or reduction in discounts, for first-run commercial movies would not cause a sufficient number of customers to switch to theatres exhibiting sub-run movies to make such a price increase unprofitable.

15. Art movies and foreign language movies are also not substitutes for commercial, first-run movies. Although art and foreign language movies appeal to some viewers of commercial movies, potential audience and demand conditions are quite distinct. For example, art movies tend to appeal more universally to mature audiences and art movie patrons tend to purchase fewer concessions. Exhibitors consider art theatre operations as distinct from the operations of theatres that exhibit commercial movies. Theatres that primarily exhibit art movies often contain auditoriums with fewer seats than theatres that primarily play commercial movies. Typically, art movies are released less widely than commercial movies. A small but significant post-acquisition increase in ticket prices, or reduction in discounts, for first-run commercial movies would not cause a sufficient number of customers to switch to theatres exhibiting art movies to make such a price increase unprofitable.

16. Similarly, foreign language movies do not widely appeal to U.S. audiences. As a result, moviegoers do not regard foreign language movies as adequate substitutes for first-run, commercial movies. A small but significant post-acquisition increase in ticket prices, or reduction in discounts, for first-run movies would not cause a sufficient number of customers to switch to theatres exhibiting foreign language movies to make such a price increase unprofitable.

17. The relevant product market within which to assess the competitive effects of this merger is the exhibition of first-run, commercial movies.

B. Geographic Markets

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

Charlotte, North Carolina Area

19. Regal and Consolidated account for the vast majority of first-run movie tickets sold in southern Charlotte, North Carolina ("Southern Charlotte"), an area which encompasses Consolidated's Philips 10 theatre, Consolidated's Arboretum 12, Regal's Crown Point 12 and Regal's Stonecrest 22 theatre. In this area, the only other theatres showing first-run, commercial movies are an independent five-plex stadium theatre and the AMC Carolina Pavilion 22, a stadium theatre.

20. Moviegoers who reside in Southern Charlotte are reluctant to travel significant distances out of that area to attend a movie except in unusual circumstances. A small but significant increase in the price of movie tickets in Southern Charlotte would not cause a sufficient number of moviegoers to travel out of Southern Charlotte to make the increase unprofitable. Southern Charlotte constitutes a relevant geographic market in which to assess the competitive effects of this merger.

Raleigh, North Carolina Area

21. Regal and Consolidated account for the vast majority of first-run movie tickets sold in Northern Raleigh, North Carolina ("Northern Raleigh"), which encompasses Regal's Brier Creek

14, Regal's North Hills 14, and Consolidated's Raleigh Grand. The only other theatres showing first-run, commercial movies in the Northern Raleigh area are the sloped-floor, six screen Six Forks and the 15-screen Carmike theatre with stadium seating.

22. Moviegoers who reside in Northern Raleigh are reluctant to travel significant distances out of their area to attend a movie except in unusual circumstances. A small but significant increase in the price of movie tickets in either Northern Raleigh would not cause sufficient number of moviegoers to travel out of Northern Raleigh to make the increase unprofitable. Northern Raleigh constitutes a relevant geographic market in which to assess the competitive effects of this merger.

23. Regal and Consolidated account for all of the first-run movie tickets sold in the suburb of Garner to the south of Raleigh, North Carolina ("Southern Raleigh"), which encompasses Regal's Garner Towne Square 10 and Consolidated's White Oak 14. There are no other theatres showing first-run, commercial movies in Southern Raleigh.

24. Moviegoers who reside in Southern Raleigh are reluctant to travel significant distances out of their area to attend a movie except in unusual circumstances. A small but significant increase in the price of movie tickets in either Southern Raleigh would not cause sufficient number of moviegoers to travel out of Southern Raleigh to make the increase unprofitable. Southern Raleigh constitutes a relevant geographic market in which to assess the competitive effects of this merger.

Asheville, North Carolina Area

25. After the completion of Consolidated's Biltmore Grande 15 around August 2008, Regal and Consolidated will likely account for the vast majority of first-run movie tickets sold in

Asheville, North Carolina area ("Asheville"), which encompasses the area around Regal's Hollywood 14 and the developing site of Consolidated's Biltmore Grande 15. There are only two other non-Regal theatres showing first-run, commercial movies in Asheville -- a Carmike theatre with 10 screens and a Fine Arts theatre with two screens.

26. Moviegoers in Asheville are reluctant to travel significant distances out of that area to attend a movie except in unusual circumstances. A small but significant increase in the price of movie tickets in Asheville would not cause a sufficient number of moviegoers to travel out of Asheville to make the increase unprofitable. Asheville constitutes a relevant geographic market in which to assess the competitive effects of this merger.

27. The exhibition of first-run, commercial movies in Southern Charlotte, Northern Raleigh, Southern Raleigh and Asheville each constitutes a relevant market (*i.e.*, a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18.

V. COMPETITIVE EFFECTS

28. 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 systems, best picture clarity, nicest seats with best views, and cleanest floors and lobbies for moviegoers. And, to gain market share, exhibitors seek to license the first-run movies that are likely to attract the largest numbers of 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 will begin to frequent their rivals.

29. In the geographic markets of Southern Charlotte, Northern and Southern Raleigh, and Asheville, Regal and Consolidated compete head-to-head for moviegoers. These geographic markets are very concentrated and in each market, Regal and Consolidated are the other's most significant competitor given their close proximity to one another and to local moviegoers, and from the perspective of such moviegoers, the relative inferiority in terms of location, size or quality of other theatres in the geographic markets. Their rivalry spurs each to improve the quality of the viewing experience and keeps prices in check.

30. In Southern Charlotte, the proposed merger would give the newly merged entity control of four of the six first-run, commercial theatres in that area, with 56 out of 83 total screens and a 75% share of 2007 box office revenues, which totaled approximately $17.1 million. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A, the merger would yield a post-merger HHI of approximately 6,058, representing an increase of roughly 2,535 points.

31. In Northern Raleigh, the proposed merger would give the newly merged entity control of three of the five first-run, commercial theatres in that area, with 44 of 65 total screens and 79% of 2007 box office revenues, which totaled approximately $11.6 million. The merger would yield a post-merger HHI of roughly 6,523, representing an increase of around 2,315 points.

32. In Southern Raleigh, the proposed merger would give the newly merged entity control of the only two theatres in this area. Therefore, the market share of the combined entity would be 100% of screens and 100% of 2007 box office revenues, which totaled $3.5 million. The merger would yield the highest post-merger HHI number possible – 10,000, representing an increase of 3,167 points.

33. In Asheville, after the completion of the Biltmore Grand 15, the proposed merger would give the newly merged entity control of four of the six first-run, commercial theatres with 41 of 53 total screens. As measured by total screens only (since Consolidated does not yet have box office revenues in Asheville), the combined entity would have a market share of approximately 77% in Asheville. The merger would yield a post-merger HHI of roughly 6,355, representing an increase of 2,777 points.

34. Today, were Regal or Consolidated to increase ticket prices in any of the four geographic markets at issue and the other were not to follow, the exhibitor that increased price would likely suffer financially as a substantial number of its patrons would patronize the other exhibitor. After the merger, the newly combined entity would re-capture such losses, making price increases profitable that would have been unprofitable pre-merger. Thus, the merger 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 merger would also eliminate competition between Regal and Consolidated over the quality of the viewing experience in each of the geographic markets at issue. If no longer required to compete, Regal and Consolidated 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 highest revenue movies, thus reducing the quality of the viewing experience for a moviegoer.

36. The presence of the other theatres offering first-run, commercial movies in certain of the relevant geographic markets would be insufficient to replace the competition lost due to the merger, and thus render unprofitable post-merger increases in ticket prices or decreases in quality

by the newly merged entity. For various reasons, the other theatres in the relevant geographic markets offer less attractive options for the moviegoers that are served by the Regal and Consolidated theatres. For example, they are located further away from these moviegoers than are the Regal and Consolidated theatres, they are a relatively smaller size or have fewer screens than the Regal and Consolidated theatres, or they offer a lower quality viewing experience than do the Regal and Consolidated theatres.

VI. ENTRY

37. The entry of a first run, commercial movie theatre 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. That is not the case here. Over the next two years, the demand for more movie theatres in the areas at issue is not likely to support entry of a new theatre. And all of these markets have or will soon have theatres with stadium seating. Thus, no new first-run, commercial theatres with the capability to reduce significantly the newly merged entity's market power are likely to open within the next two years in Southern Charlotte, Northern Raleigh, Southern Raleigh, or Asheville in response to an increase in movie ticket prices or a decline in theatre quality.

VII. VIOLATION ALLEGED

38. The United States hereby reincorporates paragraphs 1 through 37.

39. The effect of the proposed merger would be to lessen competition substantially in Southern Charlotte, Northern Raleigh, Southern Raleigh and Asheville in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

40. The transaction would likely have the following effects, among others: (a) prices

for first-run, commercial movie tickets would likely increase to levels above those that would prevail absent the merger, and (b) quality of theatres and the theatre viewing experience in the geographic area would likely decrease absent the merger.

VIII. REQUESTED RELIEF

41. The plaintiffs request: (a) adjudication that the proposed merger would violate Section 7 of the Clayton Act; (b) permanent injunctive relief to prevent the consummation of the proposed merger and to prevent the defendants from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of defendants; (c) an award of the plaintiff of its costs in this action; and (d) such other relief as is proper.

DATED: April 29, 2008

FOR PLAINTIFF UNITED STATES OF AMERICA

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EXHIBIT 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 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). 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 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 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.