UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA *Plaintiff*, v. AMC ENTERTAINMENT HOLDINGS, INC., and CARMIKE CINEMAS, INC., *Defendants*.	Civil Action No.: 1:16-cv-02475 Judge Randolph D. Moss

MOTION AND MEMORANDUM OF THE
UNITED STATES IN SUPPORT OF ENTRY OF FINAL JUDGMENT

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) ("APPA" or "Tunney Act"), Plaintiff United States of America ("United States") moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding on December 20, 2016 (a copy is attached as Exhibit A). The proposed Final Judgment may be entered at this time without further proceedings if the Court determines entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement (ECF Docket No. 3) filed in this matter on December 20, 2016, explains why entry of the proposed Final Judgment would be in the public interest. The United States is filing simultaneously with this Motion and Memorandum a Certificate of Compliance, setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying the sixty-day statutory public comment period has expired.

I. BACKGROUND

On December 20, 2016, the United States filed a civil antitrust Complaint, alleging the proposed acquisition by AMC Entertainment Holdings, Inc. ("AMC") of Carmike Cinemas, Inc. ("Carmike Cinemas") likely would substantially lessen competition in the exhibition of first-run, commercial movies in multiple areas around the United States (collectively, the "Local Markets") and in the markets for the sale of preshow services to exhibitors and the sale of cinema advertising to advertisers in the United States, in violation of Section 7 of the Clayton Act. 15 U.S.C. § 18. The Complaint alleges that AMC is the most significant competitor of Carmike Cinemas in the exhibition of first-run, commercial movies in the Local Markets. The Complaint also alleges that if AMC's proposed acquisition of Carmike Cinemas were to proceed, it would likely weaken competition between National CineMedia, LLC ("NCM"), the nation's largest provider of preshow services to exhibitors, and NCM's main competitor, Screenvision Exhibitions, Inc. ("Screenvision"). AMC is one of NCM's largest investors and exhibitors, and Carmike is the largest exhibitor in Screenvision's network.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment, a Hold Separate Stipulation and Order, and a Competitive Impact Statement. Defendant AMC was allowed to consummate its acquisition of the Carmike Cinemas theatres, but defendants were required to divest, as viable business operations, certain movie theatres (the "Initial Theatre Divestiture Assets") within sixty (60) calendar days after the filing of the Complaint, or five (5) calendar days after notice of entry of this Final Judgment by the Court, whichever is later. The proposed Final Judgment, which is designed to eliminate the anticompetitive effects of the acquisition, specifies the theatres to be divested and that AMC preserve, maintain, and continue to operate them in the ordinary course of business, including

exerting reasonable efforts to maintain and increase sales and revenues, until such theatres are divested. The Hold Separate Stipulation and Order, which was entered by the Court on December 20, 2016, provides the proposed Final Judgment may be entered by the Court after the completion of the procedures required by the APPA. The Competitive Impact Statement explains the basis for the Complaint and why the entry of the proposed Final Judgment would be in the public interest. Entry of the proposed Final Judgment would terminate this action, except the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The APPA requires a sixty-day period for the submission of written comments relating to the proposed Final Judgment, 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed a Competitive Impact Statement with the Court on December 20, 2016; published the proposed Final Judgment and Competitive Impact Statement in the *Federal Register* on December 30, 2016 (*see* 81 Fed. Reg. 96486); and ensured a summary of the terms of the proposed Final Judgment—with directions for the submission of written comments relating to the proposed Final Judgment and Competitive Impact Statement—were published in *The Washington Post* on seven (7) different days during the period of December 22–28, 2016. The sixty-day public comment period terminated on February 28, 2017, and the United States received no public comments.[1]

[1] The Division received correspondence from one private citizen directed to a company not subject to the settlement, the cable channel American Movie Company rather than American Multi-Cinema. In addition, the correspondence did not comment on the settlement. Accordingly, the Division did not file a response to the correspondence or publish the correspondence in the federal register.

The United States has filed a Certificate of Compliance simultaneously with this Motion and Memorandum that states all APPA requirements have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment is in the public interest. 15 U.S.C. § 16(e)(1). In making that determination, the Court is required to consider

> (A) the competitive impact of such judgment, including the termination of alleged violations, the provisions for enforcement and modification, the duration of relief sought, the anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment the Court deems necessary to determine whether the consent judgment is in the public interest; and
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> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally, and upon individuals alleging specific injury from the violations set forth in the complaint include 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 its Competitive Impact Statement filed with the Court on December 20, 2016, the United States explained the meaning and the proper application of the public interest standard under the APPA and now incorporates those portions of the Competitive Impact statement by reference.

IV. ENTRY OF THE PROPOSED FINAL JUDGMENT IS IN THE PUBLIC INTEREST

As described above, the United States alleged in its Complaint that the proposed acquisition of Carmike Cinemas by AMC likely would substantially lessen competition in the exhibition of first-run, commercial movies in the Local Markets and eliminate existing

competition between AMC and Carmike and would substantially lessen competition in the markets for the sale of preshow services to exhibitors and the sale of cinema advertising to advertisers in the United States. As explained in the Competitive Impact Statement, the proposed Final Judgment is designed to eliminate the likely anticompetitive effects of this acquisition in several ways. These include: (1) requiring the divestiture of the Initial Theatre Divestiture Assets to one or more acquisitions approved by the United States; (2) requiring AMC to sell down its NCM equity holdings to a level of no more than 4.99%; (3) requiring AMC to relinquish NCM board seats or otherwise exercising any governance rights in NCM; (4) agreeing to implement firewalls such that AMC cannot not use its position as an owner and major customer of NCM and Screenvision to obtain competitively sensitive information that could be used to facilitate improper coordination or otherwise cause competitive harm; and (5) requiring Defendants to transfer twenty-four (24) theatres identified in Appendix B of the proposed Final Judgment—comprising three hundred eighty-four (384) screens—to Screenvision for the term of the Final Judgment and to stop utilizing NCM preshow and theatre advertising services at these theatres.

The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law, and no comments have been submitted.[2] There has been no showing that the proposed settlement constitutes an abuse of the United States' discretion or that it is not within the zone of settlements consistent with public interest.

[2] *See id.*

V. CONCLUSION

For the reasons set forth in this Motion and Memorandum and in the Competitive Impact Statement, the Court should find the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further proceedings. Plaintiff United States respectfully requests the proposed Final Judgment be entered at this time.

Dated: March 1, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gregg I. Malawer, hereby certify that on March 1, 2017, I served copies of the foregoing Motion and Memorandum of the United States in Support of Entry of Final Judgment by electronic mail on counsel for the Defendants as follows:

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