

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

UNITED STATES OF AMERICA
Antitrust Division
450 Fifth Street, NW, Suite 4000
Washington, DC 20530,

Plaintiff,

v.

AMC ENTERTAINMENT HOLDINGS,
INC.,
One AMC Way
11500 Ash Street
Leawood, KS 64105,

and

CARMIKE CINEMAS, INC.,
1301 First Avenue
Columbus, GA 31901,

Defendants.

Civil Action No.:

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to prevent the proposed acquisition by Defendant AMC Entertainment Holdings, Inc. (“AMC”) of all of the outstanding voting securities of Defendant Carmike Cinemas, Inc. (“Carmike”).

I. NATURE OF ACTION

1. AMC is a significant competitor to Carmike in the exhibition of first-run commercial movies in multiple areas around the United States, including the areas in and around Montgomery, Alabama; Destin and Miramar Beach, Florida; Orange Park and Fleming Island, Florida; Cumming, Georgia; Lithonia and Conyers, Georgia; Crestwood and Lansing, Illinois;

Normal and Bloomington, Illinois; Pekin, Peoria, and Washington, Illinois; Inver Grove Heights and Oakdale, Minnesota; Coon Rapids and Mounds View, Minnesota; Rockaway and Sparta, New Jersey; Westfield and Cranford, New Jersey; Lawton, Oklahoma; Allentown and Center Valley, Pennsylvania; and Madison and Fitchburg, Wisconsin (collectively, the “Local Markets”). If AMC acquires Carmike, AMC would obtain direct control of one of its most significant competitors in the Local Markets, likely resulting in higher ticket prices and/or a lower quality viewing experience for moviegoers in these areas.

2. AMC is also a founding member of National CineMedia, LLC (“NCM”) – the nation’s largest provider of preshow services to exhibitors – and remains one of NCM’s largest investors and exhibitors. Carmike is the largest exhibitor in the network of NCM’s main competitor, Screenvision Exhibitions, Inc. (“Screenvision”), and is one of Screenvision’s largest investors. NCM and Screenvision are the country’s two leading preshow cinema advertising networks and together cover over 80% of movie theatre screens in the United States. If AMC’s proposed acquisition of Carmike were to proceed, it would likely weaken competition between NCM and Screenvision because they would have a significant common owner. In addition, the proposed merger would undermine Screenvision’s ability to compete for advertisers and exhibitors because, as explained below, Screenvision will no longer be able to rely on Carmike’s growth to expand its network. The loss of competition in the markets for preshow services and cinema advertising will likely result in lower preshow services revenues to exhibitors, higher prices to cinema advertisers, and lower quality preshow services and advertising.

3. Accordingly, AMC’s proposed acquisition of Carmike likely would substantially lessen competition in each of the Local Markets for the exhibition of first-run, commercial movies 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, and should be enjoined.

II. JURISDICTION AND VENUE

4. 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.

5. The distribution and theatrical exhibition of first-run, commercial films, the provision of preshow services to thousands of theatres across the United States, and the sale of cinema advertising to advertisers throughout the United States are commercial activities that substantially affect, and are in the flow of, interstate trade and commerce. Defendants' activities in purchasing preshow advertising and other content, equipment, services, and supplies, as well as licensing films for exhibition, substantially affect interstate commerce.

6. The Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 25 and 28 U.S.C. §§ 1331, 1337(a), and 1345.

7. Defendants consent to personal jurisdiction and venue in this district, and AMC operates theatres in this district. This Court has personal jurisdiction over each Defendant, and venue is proper under 15 U.S.C. § 22, and 28 U.S.C. § 1391(b) and (c).

III. DEFENDANTS AND THE PROPOSED ACQUISITION

8. Defendant AMC is a Delaware corporation with its headquarters in Leawood, Kansas. As of September 30, 2016, AMC operated approximately 388 theatres with a total of 5,295 screens located across 31 states and the District of Columbia. AMC reported approximately \$1.89 billion in U.S. box office revenues in 2015 and approximately \$1.46 billion

in U.S. box office revenues for the first nine months of 2016. Measured by number of theatres, screens, and box office revenue, AMC is the second-largest theatre circuit in the United States.

9. Defendant Carmike is a Delaware corporation with its headquarters in Columbus, Georgia. As of September 30, 2016, Carmike operated approximately 271 movie theatres with a total of 2,917 screens located across 41 states. Carmike reported approximately \$490.0 million in U.S. box office revenues in 2015, and approximately \$370.8 million in U.S. box office revenue for the first nine months of 2016. Measured by number of theatres, screens, and box office revenue, Carmike is the fourth-largest theatre circuit in the United States.

10. On March 3, 2016, AMC and Carmike executed an Agreement and Plan of Merger, under which AMC would acquire all outstanding voting securities of Carmike for approximately \$1.2 billion. If the parties consummate the merger, AMC will be the nation's largest theatre exhibitor.

IV. BACKGROUND

A. Movie Theatres

11. Viewing movies in a theatre is a popular pastime. Over 1.3 billion movie tickets were sold in the United States and Canada in 2015, with total box office revenues reaching approximately \$11.1 billion.

12. 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. AMC and Carmike are two of the largest exhibitors in the United States.

13. 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 whether it provides stadium and/or reserved seating), competitive pressures facing the theatre (such as the price of tickets at nearby theatres, the age and condition of those theatres, and the number and types of amenities they offer), and the population demographics and density surrounding the theatre.

B. Preshow Services and Cinema Advertising

14. On almost all movie screens, before the previews and feature film begin, the audience is presented with a preshow – a video program consisting of national, regional, and local advertisements; special content segments (*e.g.*, a “behind the scenes” look at a new TV show); and theatre announcements. The preshow is typically twenty to thirty minutes long and is designed to engage moviegoers as they wait for the feature film to start.

15. Cinema advertising networks act as intermediaries between exhibitors and advertisers. For advertisers, the preshow is a unique opportunity to reach an attentive audience using a large screen with the benefit of high-quality video and sound. For exhibitors, the preshow provides a lucrative way to supplement revenue earned through ticket sales and concessions at a time when its movie screens are otherwise unused.

16. To obtain preshow services, exhibitors typically enter into long-term, exclusive contracts with the cinema advertising networks. The contracts for the largest few exhibitors, including AMC and Carmike, tend to be longest – approximately 30 years – whereas the contracts for the smaller exhibitors tend to last five to ten years. Under the contracts, the networks commit to marketing the preshow screen time to advertisers and packaging the advertisements and other content into an entertaining video program. Exhibitors agree to display the preshow on their movie screens. The cinema advertising networks retain a negotiated portion

of the advertising proceeds for the services they provide, and the exhibitors retain the remaining portion of the advertising proceeds.

17. Cinema advertising networks sell advertising time in preshows to advertisers seeking to market their products on a local, regional, or national basis. Generally, national advertisers seek to purchase cinema advertising from firms that can provide access to a nationwide network of movie screens. Thus, the cinema advertising networks work hard to enter into contracts with exhibitors throughout the country and compete vigorously to woo exhibitors away from each other.

18. NCM and Screenvision are the dominant cinema advertising networks in the United States. They compete head-to-head to win exclusive contracts with exhibitors and to offer advertisers access to their exhibitors' movie audiences. Together, NCM and Screenvision serve over 80% of all movie screens in the country.

19. NCM has a national cinema advertising network that covers about 20,500 of the approximately 40,500 movie screens in the United States. In 2015, NCM earned approximately \$447 million in gross advertising revenue.

20. National CineMedia, Inc. is the managing member and owner of 43.6% of NCM. The remaining 56.4% is owned by the three largest exhibitors in the United States: AMC (17.4%), Regal Entertainment Group ("Regal") (19.8%), and Cinemark Holdings, Inc. ("Cinemark") (19.2%). Under NCM's governing documents, post-merger, AMC ownership would increase to approximately 26.5%.

21. Regal, Cinemark, and AMC (the so-called "Founding Members") exercise a significant degree of control and influence over NCM and account for approximately 83% of its screens. In addition to holding a majority of NCM's equity, they have representatives on NCM's

Board of Directors and enjoy substantial governance rights, including approval rights over certain NCM contracts with competing exhibitors. NCM management routinely consults with executives of the Founding Members in making business decisions. AMC can fill two seats on the NCM board.

22. Screenvision has a national cinema advertising network that covers 14,300 screens in more than 2,300 theatres. Carmike is by far the largest exhibitor in Screenvision's network, and, as of September 30, 2016, owned approximately 19% of Screenvision through SV Holdco, LLC, a holding company that owns and operates Screenvision. Carmike also holds a seat on Screenvision's board of directors and possesses certain governance rights. No other major theatre exhibitor holds significant equity interests in Screenvision. Following the merger, AMC plans to divest or convert Carmike's Screenvision shares such that AMC will hold no more than 10% of Screenvision's voting stock.

V. RELEVANT MARKETS

A. The Exhibition of First-Run, Commercial Movies in the Local Markets

23. The exhibition of first-run, commercial movies in the Local Markets are relevant markets under Section 7 of the Clayton Act, 15 U.S.C. 18.

The Exhibition of First-Run, Commercial Movies Product Market

24. 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).

25. Reflecting the significant differences of viewing a movie in a theatre, ticket prices for movies generally differ from prices for other forms of entertainment. For example, typically,

tickets for live entertainment are significantly more expensive than a movie ticket, whereas the costs of home viewing through streaming video, a DVD rental, or pay-per-view is usually significantly less expensive than viewing a movie in a theatre.

26. Viewing a movie at home differs from viewing a movie in a theatre in many ways. For example, the size of the screens differ, the sophistication of the sound systems differ, and, unlike at home, in the theatre, one has the social experience of viewing a movie with other patrons.

27. In addition, the most popular newly released or “first-run” movies are not available for home viewing at the time they are released in theatres. 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”).

28. 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.

29. Art movies and foreign-language movies are also not reasonable 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, art and foreign-language movies tend to have more narrow appeal and typically attract an older audience than commercial movies. Exhibitors consider the operation of theatres that predominantly exhibit art and foreign-language movies to be distinct from the operation of theatres that predominantly exhibit commercial movies.

30. A hypothetical monopolist controlling the exhibition of all first-run, commercial movies in a relevant geographic market would profitably impose at least a small but significant and non-transitory increase (SSNIP) in ticket prices. Thus, the exhibition of first-run, commercial movies is a relevant product market and line of commerce under Section 7 of the Clayton Act in which to assess the competitive effects of this acquisition.

Relevant Geographic Markets for the Exhibition of First-Run, Commercial Movies

31. 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. Each of the following areas is a relevant geographic market and section of the country for purposes of Section 7 of the Clayton Act.

Area In and Around Montgomery, Alabama

32. AMC and Carmike account for all of the first-run, commercial movie box office revenue in and around Montgomery, Alabama. The only theatres that predominantly show first-run commercial movies in this area are the Carmike Chantilly 13 BigD, the Carmike Promenade 12, and the AMC Festival Plaza 16. No other predominately first-run, commercial movie theatre is in the vicinity of the AMC and Carmike theatres.

33. Moviegoers who reside in and around Montgomery, Alabama are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Montgomery, Alabama constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Destin and Miramar Beach, Florida

34. AMC and Carmike account for all of the first-run, commercial movie box office revenue in and around Destin and Miramar Beach, Florida. The only theatres that predominantly show first-run commercial movies in this area are the AMC Destin Commons 14 and the Carmike Boulevard 10 BigD. No other predominantly first-run, commercial movie theatre is in the vicinity of the AMC and Carmike theatres.

35. Moviegoers who reside in and around Destin and Miramar Beach, Florida are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Destin and Miramar Beach, Florida constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Orange Park and Fleming Island, Florida

36. AMC and Carmike account for the majority of the first-run, commercial movie box office revenue in and around Orange Park and Fleming Island, Florida. The only theatres that predominantly show first-run commercial movies in this area are the Carmike Fleming Island 12, the AMC Orange Park 24, and the EPIC Theater at Oakleaf. Other than the EPIC Theater, no other first-run, commercial movie theatre is in the vicinity of the Carmike and AMC theatres.

37. Moviegoers who reside in and around Orange Park and Fleming Island, Florida are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of

first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Orange Park and Fleming Island, Florida constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Cumming, Georgia

38. AMC and Carmike account for the majority of the first-run, commercial movie box office revenue in and around Cumming, Georgia. The only theatres that predominantly show first-run commercial movies in this area are the Carmike Movies 400 12, the AMC Avenue Forsyth 12, and the Regal Avalon 12. Other than the Regal Avalon 12, no other predominantly first-run, commercial movie theatre is in the vicinity of the Carmike and AMC theatres.

39. Moviegoers who reside in and around Cumming, Georgia are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Cumming, Georgia constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Lithonia and Conyers, Georgia

40. AMC and Carmike account for all of the first-run, commercial movie box office revenue in and around Lithonia and Conyers, Georgia. The only theatres that predominantly show first-run commercial movies in this area are the Carmike Conyers Crossing 16 and the AMC Stonecrest Mall 16. No other predominately first-run, commercial movie theatre is in the vicinity of the AMC and Carmike theatres.

41. Moviegoers who reside in and around Lithonia and Conyers, Georgia are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Lithonia and Conyers, Georgia constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Crestwood and Lansing, Illinois

42. AMC and Carmike account for the majority of the first-run, commercial movie box office revenue in and around Crestwood and Lansing, Illinois. The only theatres that predominantly show first-run commercial movies in this area are the Carmike Digiplex Lansing 8, the AMC Crestwood 18, the AMC Schererville 12, the AMC Schererville 16, the Marcus Country Club Hills Cinema, the Marcus Chicago Heights Cinema, the Studio Movie Grill Chatham, and the Hoosier Theater. Other than the Marcus Country Club Hills Cinema, the Marcus Chicago Heights Cinema, the Studio Movie Grill Chatham, and the Hoosier Theater, no other predominantly first-run, commercial movie theatre is in the vicinity of the Carmike and AMC theatres.

43. Moviegoers who reside in and around Crestwood and Lansing, Illinois are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Crestwood

and Lansing, Illinois constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Normal and Bloomington, Illinois

44. AMC and Carmike account for the majority of the first-run, commercial movie box office revenue in and around Normal and Bloomington, Illinois. The only theatres that predominantly show first-run commercial movies in this area are the Carmike Ovation 10, the AMC Normal 14, and the Wehrenberg Bloomington Galaxy 14 Cinema. Other than the Wehrenberg Bloomington Galaxy 14 Cinema, no other predominantly first-run, commercial movie theatre is in the vicinity of the AMC and Carmike theatres.

45. Moviegoers who reside in and around Normal and Bloomington, Illinois are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Normal and Bloomington, Illinois constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Pekin, Peoria, and Washington, Illinois

46. AMC and Carmike account for the majority of the first-run, commercial movie box office revenue in and around Pekin, Peoria, and Washington, Illinois. The only theatres that predominantly show first-run commercial movies in this area are the Carmike Sunnyland 10, the Carmike Grand Prairie 18, the AMC Pekin 14, the Goodrich Willow Knolls 14, the Morton Cinema, and the Landmark Cinemas. Other than the Goodrich Willow Knolls, the Morton

Cinema, and the Landmark Cinemas, no predominantly first-run, commercial movie theatre is in the vicinity of the AMC and Carmike theatres.

47. Moviegoers who reside in and around Pekin, Peoria, and Washington, Illinois are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Pekin, Peoria, and Washington, Illinois constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Inver Grove Heights and Oakdale, Minnesota

48. AMC and Carmike account for nearly a majority of the first-run, commercial movie box office revenue in and around Inver Grove Heights and Oakdale, Minnesota. The only theatres that predominantly show first-run commercial movies in this area are the AMC Inver Grove 16, the Carmike Oakdale 20, the Woodbury 10, and the Marcus Oakdale 17. Other than the Woodbury 10 and the Marcus Oakdale 17, no other predominantly first-run, commercial movie theatre is in the vicinity of the Carmike and AMC theatres.

49. Moviegoers who reside in and around Inver Grove Heights and Oakdale, Minnesota are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Inver Grove Heights and Oakdale, Minnesota constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Coon Rapids and Mounds View, Minnesota

50. AMC and Carmike account for the majority of the first-run, commercial movie box office revenue in and around Coon Rapids and Mounds View, Minnesota. The only theatres that predominantly show first-run commercial movies in this area are the AMC Coon Rapids 16, the AMC Arbor Lakes, the Carmike Wynnsong 15, the Andover 10, the Regal Brooklyn Center 20, and the Mann Champlin. Other than the Andover 10, the Regal Brooklyn Center 20, and the Mann Champlin, no other predominantly first-run, commercial movie theatre is in the vicinity of the Carmike and AMC theatres.

51. Moviegoers who reside in and around Coon Rapids and Mounds View, Minnesota are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Coon Rapids and Mounds View, Minnesota constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Rockaway and Sparta, New Jersey

52. AMC and Carmike account for all of the first-run, commercial movie box office revenue in and around Rockaway and Sparta, New Jersey. The only theatres that predominantly show first-run commercial movies in this area are the Carmike Digiplex Sparta 3 and the AMC Rockaway 16. No other predominantly first-run, commercial movie theatre is in the vicinity of the Carmike and AMC theatres.

53. Moviegoers who reside in and around Rockaway and Sparta, New Jersey are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A

small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Rockaway and Sparta, New Jersey constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Westfield and Cranford, New Jersey

54. AMC and Carmike account for the majority of the first-run, commercial movie box office revenue in and around Westfield and Cranford, New Jersey. Carmike operates two first-run, commercial movie theatres in the area: the Digiplex Rialto Westfield and the Digiplex Cranford 5. AMC operates five theaters in the area: the Mountainside 10, the Aviation 12, the Jersey Gardens 20, the Menlo Park 12, and the Essex Green 9. While there are several other first-run, commercial movie theatres operating in the vicinity of the AMC and Carmike theatres in the area, AMC and Carmike are first and fourth, respectively, in term of the number of screens and box office revenue.

55. Moviegoers who reside in and around Westfield and Cranford, New Jersey are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Westfield and Cranford, New Jersey constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Lawton, Oklahoma

56. AMC and Carmike account for all of the first-run, commercial movie box office revenue in and around Lawton, Oklahoma. The only theatres that predominantly show first-run commercial movies in this area are the Carmike Patriot 13 and the AMC Lawton 12. No other predominately first-run, commercial movie theatre is in the vicinity of the Carmike and AMC theatres.

57. Moviegoers who reside in and around Lawton, Oklahoma are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Lawton, Oklahoma constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Allentown and Center Valley, Pennsylvania

58. AMC and Carmike account for all of the first-run, commercial movie box office revenue in and around Allentown and Center Valley, Pennsylvania. The only theatres that predominantly show first-run commercial movies in this area are the Carmike Promenade 16 IMAX, the Carmike Promenade 16, and the AMC Tilghman Square 8. No other predominately first-run, commercial movie theatre is in the vicinity of the Carmike and AMC theatres.

59. Moviegoers who reside in and around Allentown and Center Valley, Pennsylvania are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of

moviegoers to travel out of that area to make the increase unprofitable. The area in and around Allentown and Center Valley, Pennsylvania constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

Area In and Around Madison and Fitchburg, Wisconsin

60. AMC and Carmike account for the majority of the first-run, commercial movie box office revenue in and around Madison and Fitchburg, Wisconsin. The only theatres that predominantly show first-run commercial movies in this area are the Carmike Sundance Madison 6, the AMC Fitchburg 18, and the Marcus Point Cinema 15. Other than the Marcus Point Cinema 15, no predominately first-run, commercial movie theatre is in the vicinity of the AMC and Carmike theatres.

61. Moviegoers who reside in and around Madison and Fitchburg, Wisconsin are unlikely to travel significant distances out of that area to attend a first-run, commercial movie. A small but significant increase in the price of tickets by a hypothetical monopolist of first-run, commercial movie theatres in this area would likely not cause a sufficient number of moviegoers to travel out of that area to make the increase unprofitable. The area in and around Madison and Fitchburg, Wisconsin constitutes a relevant geographic market in which to assess the competitive effects of this acquisition.

B. Preshow Services and Cinema Advertising in the United States

62. Preshow services sold to exhibitors and cinema advertising sold to advertisers in the United States are relevant markets under Section 7 of the Clayton Act, 15 U.S.C. § 18.

Preshow Services and Cinema Advertising Product Markets

i. Preshow Services

63. Preshow services consist of the packaging of advertisements and content into a preshow delivered to exhibitors, enabling them to earn revenue from the use of their screens before the feature film. The price charged to exhibitors for preshow services is the portion of advertising revenue retained by the network.

64. The sale of preshow services to exhibitors constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act. There are no reasonable substitutes for preshow services. Exhibitors cannot easily replace the preshow services that they buy from cinema advertising networks because individual exhibitors generally lack sufficient screens and geographic reach to secure national advertising. Nor can exhibitors sufficiently replace national advertising in preshows with local and regional advertising because local and regional advertising generates far less revenue than national advertising. Because there are no reasonable substitutes for preshow services, a hypothetical monopolist of all such services could profitably impose a SSNIP. Thus, the market for preshow services is a relevant product market in which to assess the competitive effects of this acquisition.

ii. Cinema Advertising

65. Cinema advertising is the on-screen advertising incorporated in the preshow. The sale of cinema advertising to advertisers is a relevant product market and line of commerce under Section 7 of the Clayton Act. Cinema advertising has important attributes that differentiate it from other forms of video advertising. For example, the preshow is projected on a large screen with high-quality video and sound in a darkened auditorium. In contrast to TV and other video advertising platforms, the audience cannot avoid the advertisements by fast forwarding through

them, clicking past them, or changing a channel. The preshow also allows for long-form advertisements typically not available on TV, and it reaches a weekend audience and light TV viewers who are otherwise difficult to reach.

66. Many advertisers value the combination of attributes afforded by cinema advertising, and few would switch to other forms of video advertising in response to a SSNIP of cinema advertising. A hypothetical monopolist over all cinema advertising would profitably impose a SSNIP and, thus, the market for cinema advertising is a relevant product market in which to assess the competitive effects of this acquisition.

Relevant Geographic Market for Preshow Services and Cinema Advertising

67. NCM and Screenvision compete with each other throughout the United States. Exhibitors and advertisers in the United States would not switch to cinema advertising networks located outside of the United States in the event of a SSNIP in the United States. Accordingly, the United States is a relevant geographic market for preshow services sold to exhibitors and for cinema advertising sold to advertisers within the meaning of Section 7 of the Clayton Act.

VI. COMPETITIVE EFFECTS

A. Exhibition of First-Run, Commercial Movies in the Local Markets

68. 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, students, or children) moviegoers will begin to frequent their rivals' theatres. Exhibitors also compete by seeking to license the first-run movies that are likely to attract the largest numbers of moviegoers. In addition, exhibitors 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,

reserved, and recliner seating), and the broadest variety and highest quality snacks, food, and drinks at concession stands or cafés in the lobby or served to moviegoers at their seats.

69. AMC and Carmike currently compete for moviegoers in the Local Markets. These markets are highly concentrated, and in each market, AMC and Carmike are significant competitors, given their close proximity. Their rivalry spurs each to improve the quality of its theatres and keeps ticket prices in check.

70. In each of the Local Markets, AMC's acquisition of Carmike will lead to significant increases in concentration and eliminate existing competition between AMC and Carmike.

71. Market concentration is often a useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase that concentration, the more likely it is that the transaction would result in reduced competition, harming consumers. Market concentration commonly is measured by the Herfindahl-Hirschman Index ("HHI"), as discussed in Appendix A. Markets in which the HHI exceeds 2,500 points are considered highly concentrated, and transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed likely to enhance market power.

72. All of the Local Markets are highly concentrated and will experience significant HHI increases as a result of the transaction. In each of the Local Markets, the proposed acquisition would give AMC control of at least half, and sometimes all, of the first-run, commercial movie theatre screens and between 48% and 100% of the annual box office revenues. In each of the Local Markets, the acquisition would yield post-acquisition HHIs of between 3,800 and 10,000, representing increases in the range of 600 to 5,000 points.

73. Today, were one of Defendants' theatres to increase unilaterally ticket prices in each of Local Markets, the exhibitor that increased price would likely suffer financially as a substantial number of its customers would patronize the other exhibitor. The acquisition would eliminate this pricing constraint. 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 for matinees, children, seniors, or students.

74. The proposed acquisition likely would also reduce competition between AMC and Carmike over the quality of the viewing experience at the theatres in the Local Markets. If no longer motivated to compete, AMC and Carmike would have reduced incentives to maintain, upgrade, and renovate their theatres, to improve the theatres' amenities and services, or to license the most popular movies, thus reducing the quality of the viewing experience for moviegoers in the Local Markets.

75. For all of these reasons, AMC's acquisition of Carmike likely will result in a substantial lessening of competition in each of the Local Markets.

B. Preshow Services and Cinema Advertising in the United States

76. The proposed transaction also would likely 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.

AMC's Simultaneous Ownership of Equity Interests in NCM and Screenvision Will Likely Substantially Lessen Competition

77. As a significant owner of equity interests in both NCM and Screenvision post-merger, AMC would have an incentive to reduce the head-to-head competition between NCM and Screenvision. AMC will not benefit from strong competition between NCM and

Screenvision post-merger because the competition will lower the profits AMC earns from NCM and Screenvision through its ownership interest.

78. In light of this incentive, AMC will likely use its influence and governance rights in both companies to ensure that NCM and Screenvision compete less aggressively to sign contracts with exhibitors and advertisers at the expense of the other network. AMC will also have the ability to use its access to confidential, nonpublic, and trade secret information from NCM and Screenvision to facilitate collusion by passing that competitively sensitive information between NCM and Screenvision.

79. The lessening of competition between NCM and Screenvision will likely result in lower payments to exhibitors and/or lower quality preshows for exhibitors. Given that NCM and Screenvision control over 80% of screens in the United States, it would be difficult for exhibitors to substitute to other, smaller networks.

80. Additionally, as a result of this lessening of competition, advertisers will no longer benefit from the lower prices that have resulted from the competition between NCM and Screenvision. Advertisers do not have choices other than these two networks to reach a broad number of viewers of their cinema advertising.

The Merger Will Likely Substantially Lessen Competition in Both Markets Because It Will Likely Weaken Screenvision's Ability to Compete

81. The loss of an independent Carmike also likely would weaken Screenvision's ability to remain a robust, competitive check on NCM, the only other significant competitor in the preshow services and cinema advertising markets. Scale is an important element of competition for advertisers and, in turn, for exhibitors. Carmike is Screenvision's largest exhibitor, and Screenvision touts the Carmike theatre network's current, broad scale when competing to execute deals with advertisers and exhibitors.

82. Screenvision also relies on Carmike's expansion plans to maintain and possibly expand the scale of its network of screens. Under Carmike's contract with Screenvision, all newly-acquired or -built Carmike theatres that have a preshow are automatically assigned to the Screenvision network. As a result, Carmike has fueled much of Screenvision's growth in recent years through its acquisitions of existing theatres and new theatre builds. This growth is important to maintaining scale since exhibitors, including Carmike, periodically close theaters that are no longer economically viable. Additionally, Screenvision's scale is at risk as the industry consolidates and more of the exhibitors with which it had previously contracted migrate to the contracts between NCM and its Founding Members: AMC, Regal, and Cinemark.

83. NCM's Founding Members and Carmike are the only exhibitors that have made significant acquisitions as the exhibitor industry has been consolidating. These exhibitors have long-term exclusive contracts with either NCM or Screenvision. If AMC acquires Carmike, the AMC/NCM exclusive arrangement will be expanded to Carmike and all of the merged firm's future theatre acquisitions and new builds will affiliate with NCM. Screenvision will lose access to its only substantial source of theatre acquisitions and the number of independent exhibitors unencumbered by long-term exclusive dealing arrangements for which Screenvision can compete will shrink even more as industry consolidation continues. Screenvision will only be able to rely on the other, smaller exhibitors for theatre acquisitions or new builds to maintain its network scale. These exhibitors will be unable to replace the growth that Carmike would have likely provided in the absence of the merger.

84. Competition will be lessened in the preshow services and cinema advertising markets because the merger will weaken one of the only two competitors. In the preshow services market, because NCM and Screenvision closely monitor each other and battle for

market share, the competition between them provides tangible benefits for exhibitors with respect to price and quality of preshows. The proposed merger would likely substantially lessen the competition between NCM and Screenvision that has yielded these benefits, potentially forcing exhibitors to raise prices to consumers or forgo theatre improvements to offset the resulting reduction in revenue that they earn from preshows.

85. In the cinema advertising market, the resulting lessening of competition from the proposed acquisition would negatively impact advertisers, who pay NCM and Screenvision to place their ads in the movie preshows. Currently, advertisers benefit from competition between NCM and Screenvision for the placement of their ads. The proposed merger would likely substantially lessen the competition between NCM and Screenvision that has yielded these benefits, likely forcing advertisers to pay higher prices or accept lower quality placement of their advertising in the movie pre-shows.

VII. ENTRY

86. Sufficient, timely entry that would deter or counteract the anticompetitive effects in the relevant markets alleged above is unlikely. Exhibitors are reluctant to locate new, first-run, commercial theatres near existing, first-run, commercial theatres unless the population density, demographics, or the quality of existing theatres makes new entry viable. Timely entry of new, first-run, commercial movie theatres in the areas in and around the Local Markets would be unlikely to defeat a price increase by the merged firm.

87. Additionally, the entry barriers associated with developing a cinema advertising network are high, and thus new entry or expansion by existing competitors is unlikely to prevent or remedy the proposed merger's likely anticompetitive effects in the preshow services and cinema advertising markets. Barriers to entry and expansion include the time and cost of

developing a network of screens to achieve sufficient scale. NCM's and Screenvision's lock-up of almost all of the exhibitors in the United States through staggered long-term contracts makes entry a long process. This adds to the already high cost of building the infrastructure necessary to develop and attract national advertisers. It also increases the length of time an entrant must sustain losses before its scale is large enough to sell advertising at long-term profitable rates.

88. Exhibitors generally cannot supply preshow services themselves to replace the likely substantial lessening of competition in the preshow services market. Individual exhibitors or groups of small exhibitors whose contracts with NCM or Screenvision are expiring are unlikely to be able to establish cost-effective sales forces, attract national advertisers, or otherwise develop a sufficient infrastructure to reasonably replace lost competition.

VIII. VIOLATION ALLEGED

89. Plaintiff hereby reincorporates paragraphs 1 through 88.

90. The likely effect of AMC's proposed acquisition of Carmike would be to substantially lessen competition in each of the relevant markets identified above in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

91. Unless enjoined, the proposed transaction would likely have the following effects, among others:

- (a) the prices of tickets at first-run, commercial movie theatres in the areas in and around the Local Markets would likely increase above levels that would prevail absent the acquisition;
- (b) the quality of first-run, commercial theatres and the viewing experience at those theatres in the Local Markets would likely decrease below levels that would prevail absent the acquisition;

- (c) the quality of and revenues from preshow services provided to exhibitors would likely decrease below levels that would prevail absent the acquisition; and
- (d) the cost to place ads in theatre preshows to advertisers will likely increase to levels above, and the quality of advertising will decrease to levels below, those that would prevail absent the acquisition.

IX. REQUESTED RELIEF

92. Plaintiff requests that:

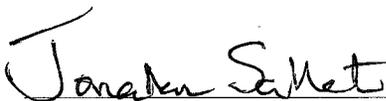
- (a) AMC's proposed acquisition of Carmike be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
- (b) Defendants be permanently enjoined from and restrained from carrying out the proposed acquisition or any other transaction that would combine the two companies;
- (c) Plaintiff be awarded its costs of this action; and
- (d) Plaintiff be awarded such other reliefs as the Court may deem just and proper.

Dated: 12/20/2016

FOR PLAINTIFF UNITED STATES OF AMERICA



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APPENDIX A
Herfindahl-Hirschman Index

The term “HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the relevant 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.

Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See* U.S. Department of Justice & Federal Trade Commission, *Horizontal Merger Guidelines* §5.3 (2010) (“Guidelines”). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the Guidelines. *Id.*