COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/07/288)

Dated: 4th May, 2016

Notice under Section 6 (2) of the Competition Act, 2002 given by PVR Limited

CORAM:

Devender Kumar Sikri
Chairperson

S. L. Bunker
Member

Sudhir Mital
Member

Augustine Peter
Member

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Member

Legal Representative: ELP Advocates & Solicitors and Shardul Amarchand Mangaldas

Order under Section 31(7) of the Competition Act, 2002 ("Order")

Introduction

1. On 8th July, 2015, the Competition Commission of India ("**Commission**") received a notice ("**Notice**") under sub-section (2) of Section 6 of the Competition Act, 2002 ("**Act**") given by PVR Limited ("**PVR**"/"**Acquirer**") pursuant to the execution of an agreement dated 9th

June, 2015 between DLF Utilities Limited ("**DUL**") and PVR ("**Combination Agreement**") (hereinafter, PVR and DUL are collectively referred to as the "**Parties**").

2. The proposed combination relates to the acquisition by PVR of DUL's film exhibition business, comprising of 39 screens (29 existing and 10 upcoming) ("**DT**"/ "**Target Business**") as a going concern on a slump sale basis ("**Proposed Combination**").

Parties to combination

3. PVR is a listed public limited company registered under the Companies Act, 1956 and is engaged in the business of developing, operating and managing cinema theatres across India. As stated in the Notice, PVR has 467 screens in 43 cities across India. PVR has five subsidiaries in India: (a) PVR bluO Entertainment Limited; (b) PVR Leisure Limited; (c) PVR Pictures Private Limited; (d) Lettuce Entertain You Limited; and (e) Zea Maize Private Limited.

4. DUL, a part of the DLF Group, is an indirect wholly owned subsidiary of DLF Limited. It is engaged in the business of providing and maintaining commercial office & retail properties, electricity generation & distribution, development of real estate, marketing and advertising in commercial & retail properties and operating and maintaining cinema theatres/multiplexes across India. At present, DUL has 29 screens in Delhi, Gurgaon and Chandigarh. It has been stated in the Notice that DUL is in the process of developing two additional properties in NOIDA & Delhi (Mall of India[1], NOIDA with 7 screens and Yashwant Palace, Chanakya Puri, Delhi having 3 screens respectively), which are also being acquired by PVR as part of the Proposed Combination. DUL has three wholly owned subsidiaries in India: (a) Ariadne Builders & Developers Private Limited; (b) Hyacintia Real Estate Developers Private Limited; and (c) DLF Energy Private Limited.

Information obtained under provisions of the Act and Combination Regulations during the course of inquiry

5. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulations**"), *vide* letter dated 22nd July, 2015, the Acquirer was required to provide certain information/document(s) by 27th July, 2015. The Acquirer submitted its partial response on 19th August, 2015 and complete response on 25th August, 2015, after seeking

[1]Now operational

an extension of time. Further, the Acquirer filed certain additional submissions on 3rd September, 2015, 9th September, 2015 and 14th September, 2015.

6. In terms of sub-regulation (3) of Regulation 19 of Combination Regulations, *vide* letters dated 27th August, 2015, certain third parties (including multiplex theatres, single screen theatres, film distributors and licensing authorities) were required to provide information by 4th September, 2015. In this regard the responses were received from the said third parties, *inter alia,* after seeking extension(s) of time. Further, letters were issued to certain competitors of the Parties namely, Cinepolis, Inox, M2K and Wave cinemas on 20th October 2015 in continuation of Commission's earlier letters dated 27th August 2015 and to Cinepolis, M2K, Paras, Virat Cinema and Miraj Cinemas on 8th December 2015 seeking certain details in respect of their future expansion plans. The last response from the said competitors was received on 19thDecember 2015 ("**Regulation 19(3) Responses**").

7. During the course of inquiry, apart from letters issued under sub-regulation (3) of Regulation 19 of the Combination Regulations, letters were also issued to third parties such as multiplex theatres and real estate developers under Section 36 of theAct on various occasions, seeking certain details with regard to their future expansion plans in terms of likely year of entry, the status of construction of multiplexes etc., in the identified relevant markets[2]. The said details ("**Third Party Responses**") have also been considered by the Commission for the purpose of competition assessment.

8. Further, since additional information was required from the Acquirer, letters were issued under sub-regulation (4) of Regulation 5 of the Combination Regulations on 26th November, 2015, 30th December, 2015, 10th February, 2016 and 19th February, 2016, to which responses were filed by the Acquirer on 8th December, 2015 and 11th January, 2016, 12th February, 2016 and 22nd February, 2016 respectively, followed by a submission dated 23rd February, 2016.

9. Based on information in the public domain, which indicated that there is a possibility that there has been pre-payment of consideration for the Proposed Combination to DLF Limited/DUL, the Commission sought clarification from the Acquirer *vide* letter dated 2nd

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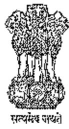
[2]Letters under Section 36 of the Act were issued to the following real estate developers viz., Lucky Star Estate (India) Private Limited (Virat cinemas), Unity Buildwell Limited, Bird Airport Hotel Private Limited, Malhotra Brothers (Exhibitors) Pvt. Limited (Paras Cinemas), Puri Buildwell Private Limited, Tirupati Infra Projects Private limited, Mera Baba Realty Associates Private Limited, Sri Lal Mahal Limted, Bestech India Private Limited, Ameya Universal Projects Private Limited, Advance India Projects Limited, M3M India Private Limited, Citra Properties Limited (India Bulls), Supertech Realtech Private Limited, MMR Saha Infrastructure Private Limited, CBS International , A B Alcobev Private Limited, Libra Entertainment Pvt. Ltd., Gupta Builders and Promoters Private Limited, North Delhi Metro Mall Private Ltd., and DMRC, seeking details of the future expansion plans by 27th January, 2016. The last response was received from the real estate developers and DMRC on 10th February, 2016.



May, 2016 issued under sub-regulation 4 of Regulation 5 of the Combination Regulations. The response of the Acquirer was received on 3rd May, 2016 wherein the Acquirer has clarified that no payment has been made by PVR to DLF/DUL as consideration with respect to the Proposed Combination. The Acquirer reiterated that the Combination Agreement expressly provides that the consideration price will only be paid on fulfillment of the conditions precedent which include approval from the Commission. The Commission noted the said response in its meeting held on 04th May, 2016.

Investigation under the provisions of Section 29 of the Act

10. The Commission considered the facts available on record, details provided in the Notice, response filed by the Acquirer and Regulation 19(3) Responses in its meeting held on 7th October, 2015. Based on above, the Commission was of the *prima facie* opinion that the Proposed Combination is likely to cause appreciable adverse effect on competition ("**AAEC**") in the relevant markets for exhibition of films in multiplex theatres in (a) New Gurgaon[3]; (b) South Delhi; (c) North, West and Central Delhi; (d) NOIDA; and (e) Chandigarh and directed that a show-cause notice be issued to the Acquirer in terms of sub-section (1) of Section 29 of the Act. Accordingly, a show cause notice was issued to the Acquirer on 9th October, 2015 ("**SCN**") wherein the Acquirer was directed to show cause, in writing, within thirty days of the receipt of the SCN, as to why investigation in respect of the Proposed Combination should not be conducted. The Acquirer, *vide* letter dated 4th November, 2015, sought an extension of three weeks, i.e., till 30th November, 2015 to file its response to the SCN. The Commission granted the Acquirer an extension of time to file its response to the SCN till 20th November, 2015.

11. The response to the SCN was received on 20th November, 2015 ("**Response to SCN**"). The Acquirer also made voluntary written submissions on 26th November, 2015.

12. The Commission, in its meeting held on 30th November, 2015, considered and assessed the Response to SCN and formed a *prima facie* opinion, under sub-section (2) of Section 29 of the Act, that the Proposed Combination is likely to cause AAEC in the relevant product markets in the relevant geographic markets of: (a) Gurgaon; (b) South Delhi; (c) North, West and Central Delhi; (d) NOIDA; and (e) Chandigarh. Therefore, the Commission decided to issue a direction to the Acquirer to publish details of the Proposed Combination within ten working days of said direction for bringing the Proposed Combination to the knowledge or information of the public and persons affected or likely to be affected by such combination in accordance with sub-section (2) of Section 29 of the Act read with

[3]The theatres in New Gurgaon include PVR MGF Metropolitan Mall, PVR Ambience Mall, PVR Sahara Mall, DT Mega Mall, DT City Centre, DT Star Mall.

Regulation 22 of the Combination Regulations. Accordingly, the direction was issued to the Acquirer on 1st December, 2015 in this regard.

13. In accordance with the directions of the Commission, the said details of the Proposed Combination were published by the Acquirer on 12th December, 2015 as per Form IV contained in Schedule II to the Combination Regulations and other applicable provisions. *Vide* the said publication, the Commission invited comments / objections / suggestions in writing, in terms of the provisions of sub-section (3) of Section 29 of the Act, from any person(s) adversely affected or likely to be affected by the Proposed Combination within fifteen working days from the date of publication, i.e., by 5th January, 2016.Accordingly, comments/objections were received from stakeholders (consumers, competitors and distributors) under the provisions of the Act. In addition, the Commission also received certain *suo moto* information/comments from the public on the Proposed Combination during the course of inquiry.

14. *Vide* two separate letters dated 30th December, 2015, the Acquirer submitted a request for grant of hearing before the Commission and inspection of documents including the public comments / objections received, pursuant to publication under the provisions of the Act.

15. *Vide* letter dated 4th January, 2016, the Acquirer submitted additional information including, *inter alia*, communication from certain distributors as regards their views on the Proposed Combination and information received from developers regarding upcoming multiplex theatres in Delhi-NCR and Chandigarh.

16. Pursuant to the said publication of the details of the Proposed Combination, the Commission received comments from various stakeholders. The Commission in its meeting held on 18th January, 2016 noted the comments received from different stakeholders and decided to seek clarifications on the comments submitted by stakeholders and certain other relevant information from the Acquirer in terms of sub-section (4) of Section 29 of the Act. Accordingly, a letter was issued to the Acquirer on 27th January 2016, under sub-section (4) of Section 29 of the Act, the response to which was submitted by the Acquirer on 8th February, 2016.

17. The Commission, in its meeting, held on 18th January, 2016 also considered the request of the Acquirer for grant of inspection of documents filed on 30th December, 2015 and decided to grant inspection of case documents including the public comments / objections received from the stakeholders under the provisions of the Act.

18. The Commission, in its meeting held on 27th January, 2016, considered the application dated 30th December, 2015 filed by the Acquirer and granted oral hearing. Accordingly, the

Acquirer, through its authorized representatives, was heard on 9th February, 2016 and 10th February, 2016.

19. The Commission considered the information filed in the Notice, Response to SCN, response dated 8th February, 2016, Regulation 19(3) Responses, Third Party Responses, *suo-moto* public comments and public comments/objections received pursuant to publication under the provisions of the Act and written and oral submissions of the Acquirer in relation to the Proposed Combination in its meeting held on 11th February, 2016 and 17th February, 2016 and decided to proceed with the case in accordance with the provisions contained in Section 31 of the Act as detailed below.

Competition Assessment

Relevant Market

20. As per the Act, the examination of the likelihood of a combination resulting in an AAEC is undertaken in context of a relevant market. Further, Section 2(r) of the Act defines relevant market as,

> *"the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets".*

21. Accordingly, the competition effects of the Proposed Combination were analysed by delineating the relevant markets in terms of relevant product markets and relevant geographic markets. The relevant markets were defined in a manner that would include the most relevant constraints on the behaviour of the Parties.

Relevant Product Market

22. As per Section 2(t) of the Act, the relevant product market is defined as,
"a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use"

Submissions of the Acquirer

23. The Acquirer has defined the relevant product market as the market for exhibition of films through theatres. It has been stated that market for exhibition of films through theatres can be defined as a distinct relevant market because new films are generally available only in theatres and the experience of watching films at a theatre is different from other entertainment activities and other modes of watching films such as DVD, cable/satellite

and pay per view services such as video on demand, digital downloads and streaming via internet.

24. As per the submissions of the Acquirer in the Notice, the relevant product market should include both single screen theatres and multiplex theatres, due to, *inter alia*, the following reasons: (a) the primary objective of going to a theatre is to watch a film, i.e., the product being consumed in this case is a film and both multiplexes and single screens are engaged in the service of film exhibition through theatres; (b) for a consumer wishing to watch a film, the number of screens at a theatre may not be a factor influencing his/her choice, thus, in terms of intended use both single screens and multiplexes are substitutes; (c) traditionally, there was a difference between single screens and multiplexes in terms of facilities and quality of service, however, in recent years given the changes in the market, this difference has ceased to exist. For instance, PVR Rivoli, PVR Plaza, Delite cinemas, M cinemas and DT Savitri provide same experience as a multiplex; (d) the ability of a single screen to be converted into a multiplex also suggests that the two form part of the same relevant market; (e) the content provided by single screen and multiplex is the same with no exclusivity in content with any cinema exhibitor in India, the only distinguishing factor being different associated services/features in the theatre; (f) most single screen cinemas are located in market complexes which provide services identical to that of a mall; (g) single screens also tend to have their own dedicated parking facilities which customers find more user friendly than those offered by malls which is shared between multiplexes and other retailers; (h) single screens also have larger format screens than multiplex; and (i) from the point of view of distributors there is no difference between single screen cinemas and multiplexes in that they vigorously compete for screen space at both multiplex and single screens.

Decisional Practice of the Commission

25. The Commission noted that in the earlier case of Carnival Cinemas / Big Cinemas (C-2015/01/236), the following observations were made on the distinction between single screen theatres and multiplex theatres:

> *"...Multiplex cinemas are changing the way the films are viewed, particularly in the big cities of India. The single screen market, on the other hand, which are losing out to multiplexes in the film exhibition space are attempting to compete with multiplexes by improving the movie watching experience in the single screen theatres... It is observed that the multiplexes are usually costly in comparison to the single screen theatres. As already noted, multiplexes are characterized by modern technology, good ambience and related services of good quality. It is therefore observed that generally as per growing trend, especially in the bigger cities, the multiplexes may be classified as being distinct from the single screens..."*

Assessment of relevant product market

26. The Commission considered the issues of: (a) multiplex theatres and single screen theatres forming part of the same relevant product market; and (b) inclusion of high-end single screen theatres in the same relevant product market.

27. As regards the issue of multiplex theatres and single screen theatres forming part of the same relevant market, the Commission noted the submissions of multiplex theatres, single screen theatres and distributors received as part of Regulation 19(3) Responses relating to the distinction between single screen theatres and multiplex theatres. The Commission observed that the majority of multiplex theatres and single screen theatres, in their responses, have submitted that multiplex theatres and single screen theatres do not compete with each other as multiplexes have an advantage in terms of offering more choice of films to the consumer, whereas single screens have the disadvantage of being able to screen only one film at a time and also carry the risk of loss by way of screening a non-performing film. It has also been submitted that multiplex theatres and single screen theatres cater to different audiences. The former cater, generally, to audiences having relatively higher paying capacity. Further, multiplex theatres offer additional facilities such as shopping area, fast food centres and other recreational facilities. Thus, there is no comparison between the amenities offered by multiplex theatres and single screen theatres. Moreover, the prices of tickets and food and beverages are also not comparable in multiplex theatres and single screen theatres. The Commission also noted the submissions of certain distributors that the audiences attracted by multiplex theatres are different from those of single screen theatres in terms of choice of films. It was noted that while multiplex theatres offer a wide range of films such as mainstream commercial films, niche films, English/Hollywood films and regional films, single screen theatres largely exhibit mainstream commercial films and occasionally dubbed regional films owing to the tastes and preferences of the respective category of customers.

28. Based on the decisional practice of the Commission, the responses received from the single screen theatres, multiplex theatres, distributors, and the differences established between single screen theatres and multiplex theatres based on characteristics, intended use and prices, the Commission was of the view that the relevant product market for the purpose of the Proposed Combination should be exhibition of films through multiplexes.

29. As regards the issue of including high-end single screen theatres in the relevant product market, the Commission noted that high-end single screen theatres such as PVR Rivoli, PVR Plaza, Delite cinemas, M cinemas and DT Savitri that provide the same experience as multiplex theatres are not truly representative of single screen theatres as a category.

Rather, they represent the exception to the rule. These screens are a high-end variant of single screen theatres, majority of which are owned by the multiplex chains themselves. The Commission noted that though high-end single screen theatres may offer some of the facilities of multiplexes and at comparable prices to multiplex theatres; they are distinct from multiplex theatres in terms of other characteristics. For example, high-end single screen theatres are constrained in terms of number of films they can screen per day and thus the choice of films and show timings they can offer to consumers. Also, they are mostly standalone cinema theatres, not attached to shopping malls and therefore do not offer the same composite entertainment experience as multiplex theatres. However, based, *inter alia,* on Regulation 19(3) Responses, the Commission recognised that high-end single screen cinema theatres may attract a similar clientele and may offer similar facilities and in some cases act as a competitive constraint to multiplex theatres. Hence, the Commission observed that for the purpose of assessment of the Proposed Combination, the relevant product market may be widened to include high-end single screen theatres in the geographic areas where such theatres are present, in addition to multiplex theatres.[4]

Relevant Geographic Market

30. As per Section 2(s) of the Act, the relevant geographic market is defined as,

> *"a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas"*

Submissions of the Acquirer

31. Based on current and future overlaps, the Acquirer, in the Notice, defined the relevant geographic markets, for the purpose of the Proposed Combination, as a) Chandigarh; and b) Delhi NCR. It has been submitted by the Acquirer that defining Delhi NCR as a single relevant geographic market is appropriate since Delhi and its neighbouring regions comprising Delhi NCR are well connected as a result of improved transport facilities in the region.

[4]The Acquirer in the Response to SCN had submitted that PVR Director's Cut theatre and gold class screens at Select city walk and Ambience mall should be excluded from the total number of screens in South Delhi and Gurgaon. The Commission noted that PVR Director's Cut theatre constitutes a distinct market segment and could be excluded from the total number of screens as prices are more than four times even the highest price charged in multiplexes across the Delhi NCR region. However, gold class screens at Select City Walk Mall and Ambience Mall, which are located in same theatres, may not be excluded because they offer a slightly more expensive offering to the consumers which may be regarded as substitutable with the normal multiplex screen, the price of gold class being one and half to two times that of the normal multiplex screen.

32. It has been further submitted by the Acquirer that although Delhi NCR is well connected and Delhi's borders are porous, for the purpose of assessment of the Proposed Combination, geographic markets could alternatively be defined by further segmenting Delhi NCR into different geographic markets at the city level as: (a) Delhi; (b) Gurgaon; (c) NOIDA; and (d) Chandigarh. It has been further submitted that there is no present or potential future overlap between the Parties in Ghaziabad and Faridabad.

33. In support of its relevant geographic market definitions, the Acquirer has also referred to an earlier case[5] decided by the Commission wherein the Commission had used the concept of chains of substitution to define relevant geographic market.

Decisional Practice of the Commission

34. The Commission, in its earlier decision of Carnival Cinemas/Big Cinemas[6], made following observations on the relevant geographic market:

> *"....... it is observed that considering the fact that consumers are reluctant to travel long distances to watch a movie, different cities where films are exhibited may be considered as different relevant geographic market.... Further, even within a city itself, based on the size of the city and the aforementioned factors, the relevant geographic market for exhibition of films could be further narrowed down".*

Assessment of relevant geographic market:

35. The Commission observed that consumers usually prefer to view films in theatres in nearby areas and would choose among the available nearby theatres. Thus, theatres located in a particular area would be competing only with theatres in that local area. In other words, the geographic market in the cinema exhibition business appears narrower than city wide as has been defined by the Acquirer.

36. In order to delineate relevant geographic market and to verify whether the conditions of competition are homogeneous or distinguishable in various parts of Delhi NCR and Chandigarh, questionnaires, under Regulation 19(3) of Combination Regulations, were sent to the multiplex theatres and single screen theatres, identified as competitors by the Acquirer, as regards, *inter alia*, (a) the average distance which their customers are willing to travel to watch a film at their multiplex/single screen theatre; and (b) which particular theatres are considered by them as their competitors.

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[5]Notice under Section 6 (2) of the Competition Act, 2002 given by IndusInd Bank Limited (15 June 2015), Combination Registration No. C-2015/04/268, CCI

[6]*http://www.cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2015-01-236.pdf*

37. In the Regulation 19(3) Responses, most of the multiplex theatres have submitted that customers usually come from areas within the range of 5-10 kilometres. Further, based upon theatres identified as competitors by multiplex/high-end single screen theatres in the Regulation 19(3) Responses, it is evident that only the multiplex theatres in the local area are regarded as competitors and not the theatres that are located relatively farther away. Further, the competitors of the Parties in their responses have stated that they take into account various factors, such as, income level/paying capacity, tastes & preferences of customers and number of competitors in the vicinity while determining the price of tickets. The Commission observed that the fact that the geographic market is local is reinforced by the fact that the prices charged by the multiplex theatres are different across different parts of Delhi NCR with higher prices being charged in certain parts, such as, South Delhi and Gurgaon. Further, the fact that clientele of multiplex theatres is different in different regions of Delhi NCR has also been confirmed by responses of certain distributors. For example, the Commission noted that major distributors of Hollywood films have stated that bulk of their revenue comes from multiplex theatres located in South Delhi and Gurgaon.

38. As regards the issue of chains of substitution pointed out by the Acquirer, the Commission noted that given the difference in characteristics of the relevant market in the two cases, the two cannot be compared and application of concept of chains of substitution to widen the relevant geographic market to comprise of entire Delhi NCR or even the whole of Delhi would not be appropriate in the present case, which is also confirmed by Regulation 19(3) Responses.

39. In view of the foregoing, the Commission was of the view that Delhi NCR can be sub-divided into the following distinct geographic markets, viz., South Delhi, North, West & Central Delhi, East Delhi, Gurgaon, Ghaziabad, Faridabad, NOIDA and Greater NOIDA.

40. The Commission, at the time of forming *prima facie* opinion under Section 29(1) of the Act, was of the view that based on the` Regulation 19(3) Responses received, Gurgaon may be sub-divided into the following three distinct regions, i.e., New Gurgaon, Old Gurgaon and Sohna Road. As regards the city of Chandigarh, the Commission was in agreement with the definition of relevant geographic market which was proposed by the Acquirer. Thus, based on current and expected overlaps between the Parties, at the time of formation of *prima-facie* opinion under Section 29(1) of the Act, the Commission had defined the relevant geographic market as: (a) New Gurgaon; (b) South Delhi; (c) North, West and Central Delhi; (d) NOIDA; and (e) Chandigarh.

41. After duly considering the Response to SCN, the responses received from distributors and comments received from the public during the course of inquiry, wherein Gurgaon has been referred to as one geographic market, the Commission was of the view that Gurgaon may be defined as one relevant geographic market. Thus, based on the overlaps between the

Parties, for the purpose of competition assessment of the Proposed Combination, the Commission defined the relevant geographic markets as (a) Gurgaon; (b) South Delhi; (c) North, West and Central Delhi; (d) NOIDA; and (e) Chandigarh.

Delineation of Relevant Markets

42. Accordingly, Commission has delineated the relevant markets as under:

   i. Relevant market for exhibition of films in multiplex theatres in Gurgaon;
   ii. Relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi;
   iii. Relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in North, West & Central Delhi;
   iv. Relevant market for exhibition of films in multiplex theatres in NOIDA; and
   v. Relevant market for exhibition of films in multiplex theatres in Chandigarh.

Assessment of AAEC in the identified relevant markets

43. The likelihood of AAEC in each relevant market has been examined in accordance with the factors laid down in sub-section (4) of Section 20 of the Act. As is generally accepted, market concentration is a useful indicator of the likely competitive effects of a combination and Herfindahl Hirschman Index ("**HHI**") is one of the metrics used to assess the level of market concentration and the changes in the concentration due to a combination. The market concentration in the relevant markets as delineated above has therefore, been analysed, *inter alia,* on the basis of the post-combination value of HHI and the change in HHI pursuant to the Proposed Combination, in the succeeding paragraphs. Keeping in view the thresholds used in the advanced jurisdictions, it is observed that the markets with post-merger HHI more than 2000 are considered as highly concentrated and markets with post-merger HHI between 1000 and 2000 as moderately concentrated, with the indication of concern of an adverse effect on competition in the market, if: (a) the post-merger HHI is above 2000 and increase in HHI is 150 or more; or (b) the post-merger HHI is between 1000 and 2000 and increase in HHI is 250 or more.

44. The Commission noted that as per the Notice, the Parties are contemplating entries in certain relevant markets, which are likely to become operational by 2018. Further, as submitted by the Acquirer in the Notice, a number of competing theatres are also likely to come up in the relevant markets in the same period. Further as per international best practices in merger regulation, the time period taken into account for imminent entry is generally to 2-3 years. Thus, in order to account for future overlaps and consequent impact on competition, the Commission carried out competition assessment in terms of current scenario as well as number of screens likely to be operational by 2018.

45. As discussed above, the Regulation 19(3) Responses have clearly indicated that a higher number of screens confers various advantages such as the ability to screen several films simultaneously and increase in the number of show timings etc. Hence, for the purpose of competition assessment of the Proposed Combination, market shares have been computed on the basis of number of screens.

46. The Acquirer, in the Notice and subsequent submissions, has submitted that in Delhi, Gurgaon, NOIDA and Chandigarh, the prices of tickets in cinema theatres are regulated by the respective licensing authorities, thus alleviating possible concerns on price rise, post-combination. In this regard, the Commission noted that effective regulation of ticket prices is only present in Chandigarh, where the prices are effectively capped by the licensing authority (and not in Delhi, Gurgaon or NOIDA). Further, the Commission observed that price rise is only one amongst the several other likely competition concerns that could arise on account of such a combination where there are significant overlaps, including possible deterioration of quality, lack of consumer choice and negative impact on innovation, etc.

Markets without appreciable adverse effect on competition

Relevant market for exhibition of films in multiplex theatres in Chandigarh

47. *Level of concentration:* The Commission noted that in Chandigarh, the Acquirer operates three multiplex theatres (with 21 screens) and DUL operates one multiplex theatre (with 3 screens). Thus, the Parties together operate 24 screens out of a total of 45 multiplex screens in Chandigarh. It is noted that the Acquirer's pre-combination market share of 46.7% would increase to 53.3%, post-combination, i.e., an increment of 6.6%. Accordingly, pre-combination HHI of 2681.5 would increase to 3303.7, post combination with an increment of 622.2, which is indicative of a concentrated market. The Commission noted that when upcoming entries by way of Cinepolis, Zirakpur (4 screens) and Cinepolis, C&C Mohali (9 screens) till 2018 are taken into account, pre-combination market share of the Acquirer increases from 36.2% to 41.4%, post-combination, with the incremental market share being 5.2%. Accordingly, the pre-combination HHI of 2425.7 increases to 2800.2 post-combination, i.e., an increment of 374.6.

48. *Change in concentration/Incremental market shares:* The Commission noted that the additional number of screens acquired by the Acquirer is only 3 and the incremental market share is 5.2% which is not significant.

49. *Constraints exerted by competitors:* Considering the upcoming entries till 2018, the Commission noted that there would continue to be a number of competitors such as Cinepolis, Inox, Carnival and Wave with market shares of 29.3%, 10.3%, 6.9% and 6.9%,

respectively present in this relevant market. Of these, Cinepolis (29.3%) in particular, would be likely to provide significant competitive constraint to PVR (41.4%).

50. *Conclusion:* The Commission observed that post combination, market concentration, after taking account imminent entry (by the year 2018) is significant. However, considering aspects such as low incremental market shares and presence of effective competitors and keeping in view the factors laid down in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have an appreciable adverse effect on competition in this relevant market.

Relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in North, West and Central Delhi:

51. *Level of concentration:* The Commission noted that in North, West and Central Delhi, the Acquirer operates four multiplex theatres and two high-end single screen theatres (collectively 18 screens) and DUL operates one multiplex theatre (with 4 screens) out of 60 screens in this relevant market. It is noted that the Acquirer's pre-combination market share of 30% would increase to 36.7% post-combination, i.e., an increment of 6.7%. Accordingly, pre-combination HHI of 1600 would increase to 2000, post combination with an increment of 400, which is indicative of a concentrated market. The Commission noted that when entries till 2018 by way of PVR Vegas (10 screens), Cinepolis, Rohini (4 screens) and Cinepolis, Janak (4 screens) are taken into account, pre-combination market share of the Acquirer increases from 35.9% to 41%, post-combination, with the increment of 5.1%. Accordingly, the pre-combination HHI of 1965.8 increases to 2334.0 post-combination, i.e., an increment of 368.2.

52. *Change in concentration/Incremental market shares:* The Commission noted that the additional number of screens acquired by the Acquirer is only 4 and the incremental market share is to 5.1%, which is not significant.

53. *Constraints exerted by competitors:* Considering the entries till 2018, the Commission noted that there would continue to be a number of competitors such as Cinepolis, Movietime, INOX and M2K with market shares of 17.9%, 11.5%, 10.3% and 6.4%, respectively present in this relevant market, the biggest competitor being Cinepolis (17.9%).

54. *Conclusion:* The Commission observed that post combination, market concentration, after taking account imminent entry (by the year 2018) is significant. However, considering the aspects such as low incremental market shares and presence of effective competitors and keeping in view the factors laid down in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have an appreciable adverse effect on competition in this relevant market.

Markets with appreciable adverse effect on competition

55. The Commission decided that the Proposed Combination is likely to give rise to AAEC in the following relevant markets:

Relevant market for exhibition of films in multiplex theatres in NOIDA

56. The Commission noted that the Parties were not operating in NOIDA at the time of filing of Notice. However, as per the information given in the Notice, the Parties were envisaging entry in this market and were thus potential competitors if the upcoming entries up to 2018 are considered. Accordingly, competition assessment of the Proposed Combination for this relevant market was carried out keeping in view upcoming entries up to 2018.

57. *Level of concentration:* Considering the imminent entries of Wave Cinemas (5 screens) and MMR (6 screens) till 2018, the Commission noted that in NOIDA, the Acquirer would operate two multiplex theatres (with 30 screens) whereas DUL operates one multiplex theatre (with 7 screens). Thus, the Parties together would operate 37 screens out of 69 screens in NOIDA. It is observed that the pre-combination market share of 43.5% would increase to 53.6%, post-combination, the incremental market share being 10.1%. Accordingly, pre-combination HHI of 2510 would increase to 3392.1, post combination, and increment of 882.1, which is indicative of a highly concentrated market.

58. *Change in concentration/Incremental market shares:* The Commission noted that the additional number of screens being acquired by the Acquirer in this relevant market is 7 and the incremental market share is 10.1%, which is significant.

59. *Constraints exerted by competitors:* Considering the upcoming entries till 2018, the Commission noted that next biggest competitors, i.e., Wave and Spice have market shares of 14.5% and 13%, respectively, as compared to PVR's relatively high market share at 53.6% and therefore, they may not constitute an adequate competitive constraint.

60. *Efficiencies*: The Commission noted that the Acquirer has stated that the Proposed Combination is also expected to bring operational and organisational efficiency by pooling resources together and utilising them optimally, reducing overheads, administrative and managerial and other expenditures. The Commission observed that the efficiencies are not combination specific, i.e., it cannot be said that there are no less anti-competitive ways to achieve the efficiencies. Further, the Commission noted that no evidence has been provided as regards the efficiencies translating into lower prices or better quality for customers on a lasting basis. Overall, there is no evidence to suggest that efficiency gains as a result of the Proposed Combination would offset, to any significant extent, the concerns of AAEC.

61. *Likelihood that the combination would result in the parties to combination being able to significantly and sustainably increase prices or profit margins*: The Commission observed that the likelihood of combination resulting in sustained / significant increase in prices is high as there would be limited incentive for the Acquirer to maintain competitive prices in the absence of effective competition.

62. *Nature and extent of innovation*: The Commission observed that post combination, the incentives for the Acquirer to innovate further are likely to be very limited owing to lack of effective competition.

63. *Conclusion*: The Commission observed that the market concentration and the resulting increment, after taking into account imminent entries by the end of 2018, is significant. Further, considering the factors laid down in sub-section (4) of Section 20 of the Act as applicable to this relevant market, including the absence of effective competitors, the Commission is of the opinion that the Proposed Combination is likely to have an appreciable adverse effect on competition in this relevant market.

64. *Commitments offered by the Acquirer*: In their Response to SCN, further revised *vide* their response dated 8th February, 2016, the Acquirer offered a commitment in relation to termination of the agreement dated 31st March, 2015, entered into with International Recreational Parks Pvt. Limited for the development of a multiplex with 15 screens in Garden Galleria Mall, NOIDA ("**Garden Galleria**"), which is under development and is scheduled to be completed in 2017.The Commission noted that it has been also submitted that Garden Galleria has received necessary approvals and construction is at an advanced stage. The Acquirer has given the following commitment:

> *"PVR shall terminate its agreement dated 31st March, 2015, entered into with International Recreational Parks (P) Ltd for development of a multiplex in Garden Galleria. PVR shall serve a termination notice to the International Recreational Parks (P) Ltd prior to completion of Proposed Combination. International Recreational Parks (P) Ltd shall be free to enter into any fresh agreement with any other theatre operator for the development of a multiplex in Garden Galleria."*

65. The Commission noted that in a scenario where PVR does not operate the multiplex theatre in Garden Galleria and instead Garden Galleria is operated by some other operator in 2018, the Acquirer's pre-combination market share of 43.5% reduces to 31.9% post-combination. Further, assuming that Garden Galleria is operated by a new multiplex operator, the commitment offered by the Acquirer would have the impact of creating another competitor with 21.7% market share. In this scenario taking into account the commitment offered, market concentration would reduce and HHI would now be 2005.9, decreasing by 504.1

from the pre-combination level of 2510. The other competitors which would continue to remain in the market are Wave, Spice, MMR, Carnival, Movietime, with market shares of 14.5%, 13%, 8.7%, 7.2% and 2.9%, respectively.

66. The Commission noted that the imminent entries in this relevant market are expected to start providing effective competition only after 2018, as confirmed by real estate developers MMR and CBS which are coming up with multiplex theatres in shopping malls in the year 2018 and 2020, respectively. It is noted that these real estate developers in their responses to the letters sent by the Commission have stated that they have not yet tied up with any cinema theatre operator.

67. The Commission noted that the Acquirer in its response dated 22nd February, 2016 has reiterated the above commitment and submitted additional commitments in the relevant market for exhibition of films in multiplex theatres in NOIDA as follows:

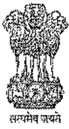
> *"PVR shall not expand, i.e., open through organic expansion or takeover through inorganic acquisition, any new screens (either single screen or multiplex), for a period of 3 years from the date of completion of the Proposed Combination in the relevant geographic market of NOIDA".*[7]
>
> *"PVR shall terminate its Agreement dated 31 March, 2015, entered into with International Recreational Parks (P) Ltd for the development of a multiplex in Garden Galleria. PVR shall serve a termination notice to International Recreational Parks (P) Ltd prior to the completion of the Proposed Combination. International Recreational Parks (P) Ltd shall be free to enter into a fresh agreement with any other theatre operator for the development of a multiplex in Garden Galleria. Further, PVR shall not acquire any influence / ownership / interest, either directly or indirectly, over Garden Galleria for a period of five years from the date of the termination notice referred to above."*

68. The Commission is of the view that said commitments would adequately alleviate the competition concerns arising in this relevant market, subject to compliance with the requirements stated in **Annexure A.**

Relevant market for exhibition of films in multiplex theatres in Gurgaon

69. *Level of concentration:* The Commission noted that in this relevant market, the Acquirer operates three multiplex theatres (with 16 screens) and DUL operates three multiplex theatres (with 8 screens). It is observed that the Parties together operate 24 screens out of a total of 38 screens in Gurgaon. It is observed that the Acquirer's pre-combination market

[7] Emphasis supplied



share of 42.1% would increase to 63.2%, post-combination, with incremental market share being 21.1%. Accordingly, pre-combination HHI of 2562.3 would increase to 4335.2, post combination, with an increment of 1772.9, which is indicative of a highly concentrated market. The Commission noted that, when entries till 2018 by way of PVR Airia Mall (7 screens), Cinepolis, Bramha Mall (9 screens) and INOX(7 screens) are taken into account, the pre-combination market share of 37.7% would increase to 50.8%, post-combination, and the incremental market share would be 13.1%. Accordingly, pre-combination HHI of 2190.3 would increase to 3179.3, post-combination with increment of 989. It is observed that increase in market concentration even after taking into account entries up to 2018 is significant.

70. *Public/stakeholders Comments received during the course of inquiry and under Section 29(3) of the Act*: The Commission noted that *vide* the stakeholder comments received during the course of inquiry and public comments received pursuant to publication of the details of the Proposed Combination under the provisions of the Act, consumers and competitors have raised concerns that in Gurgaon, post-combination, PVR will acquire increased market power which may lead to significant and sustainable increase in prices and deterioration in quality. Further, it has been stated that the Proposed Combination would lead to reduction in choice available to consumers. Another submission of competitors and consumers is that PVR and DT are regarded as effective competitors and the Proposed Combination is thus causing the removal of an effective competitor. It has also been pointed out that the Proposed Combination is likely to prevent other cinema theatres from accessing movies for exhibition from distributors and advertising content thereby adversely affecting competitors as well distributors and the advertising industry. It has also been stated that as a result of the Proposed Combination, cinema viewers would have no effective option but to visit the multiplexes of the Acquirer. In addition, some distributors have pointed out that there is a strong likelihood that the Acquirer would use its strengthened position to disadvantage distributors not only locally in these regions, but also in other regions around the country.

71. *Change in concentration/Incremental market shares:* Considering the upcoming entries by 2018, the Commission noted that the additional number of screens being acquired is 8 and the incremental market share of the Acquirer, i.e., 13.1%, is significant.

72. *Constraints exerted by competitors:* The Commission noted that considering the imminent entries till 2018, the next biggest competitors, Cinepolis and Inox, would have market shares of 16.4% and 14.8%, respectively as compared to PVR's relatively high market share of 50.8% and therefore they may not constitute an adequate competitive constraint The other competitors would be SRS, Grand and Carnival with relatively low market shares of 6.6%, 6.6% and 4.9%, respectively.

73. *Efficiencies*: The Commission noted that the Acquirer has stated that the Proposed Combination is also expected to bring operational and organisational efficiency by pooling resources together and utilising them optimally, reducing overheads, administrative and managerial and other expenditures. The Commission observed that the efficiencies are not combination specific, i.e., it cannot be said that there are no less anti-competitive ways to achieve the efficiencies. Further, the Commission noted that no evidence has been provided as regards the efficiencies translating into lower prices or better quality for customers on a lasting basis. Overall, there is no evidence to suggest that efficiency gains as a result of the Proposed Combination would offset, to any significant extent, the concerns of AAEC.

74. *Likelihood that the combination would result in the parties to combination being able to significantly and sustainably increase prices or profit margins*: The Commission observed that the likelihood of the Proposed Combination resulting in sustained / significant increase in prices is high as there would be limited incentive for the Acquirer maintain competitive prices in the absence of effective competition.

75. *Nature and extent of innovation*: The Commission observed that post combination, the incentives for the Acquirer to innovate further are likely to be very limited owing to lack of effective competition.

76. *Conclusion*: The Commission observed that the market concentration and resultant increment, both at present and after taking into account imminent entries by the end of 2018, is significant. Further, considering the factors laid down in sub-section (4) of Section 20 of the Act as applicable to this relevant market and the absence of effective competitors, the Commission is of the opinion that the Proposed Combination is likely to have an appreciable adverse effect on competition in this relevant market.

77. *Commitments offered by the Acquirer*: In their response dated 8th February, 2016, the Acquirer has offered a commitment in relation to termination of agreement dated 18th September, 2015 entered into with Reach Promoters Private Limited for the development of a multiplex with 7 screens in Airia Mall, Gurgaon ("**Airia Mall**") which is scheduled to be completed in 2017. The Commission noted that it has been also submitted that Airia Mall has received necessary approvals and construction is at an advanced stage. In this regard, the Acquirer has given the following commitment:

> *"PVR shall terminate its agreement dated 18th September, 2015, entered into with Reach Promoters Private Limited for development of a multiplex in AiriaMall. PVR shall serve a termination notice to the Reach Promoters Private Limited prior to completion of Proposed Combination. Reach Promoters Private Limited shall be free to enter into any fresh agreement with any other theatre operator for the*

development of a multiplex in Airia. Further, PVR will provide a copy of the termination notice to the monitoring trustee and/or the Hon'ble Commission."

78. The Commission noted that in a scenario where PVR does not operate the multiplex theatre in Airia Mall and instead it is operated by some other operator, the Acquirer's pre-combination market share of 37.7% increases to 39.3%, post-combination. Further, assuming that Airia is operated by a new multiplex operator the commitment offered by the Acquirer would have the impact of creating another competitor with 11.5% market share. The increase in market concentration in this scenario would be significantly less with the pre-combination HHI of 2190.3 increasing to 2276.3, the incremental HHI being 86.0. The Commission further noted that the other competitors that would continue to remain in the market are Inox, Cinepolis, SRS, Grand and Carnival with market shares of 16.4%, 14.8%, 6.6%, 6.6% and 4.9%, respectively.

79. The Commission noted that the imminent entries in this relevant market are expected to start providing effective competition only after 2019, wherein real estate developers such as Bestech Athena and Advance India are coming up with multiplex theatres by the years 2019 and the multiplex operator Cinepolisis is coming up with multiplex theatres in 2021 & 2022. It is noted that these real estate developers in their responses to the letters sent by the Commission have stated that they have not yet tied up with any cinema operator.

80. In this regard, the Acquirer in its response dated 22nd February, 2016 has reiterated the above commitment and submitted additional commitments for the relevant market for exhibition of films in multiplex theatres in Gurgaon as follows:

> *"PVR shall not expand, i.e., open through organic expansion or takeover through inorganic acquisition, any new screens (either single screen or multiplex), for a period of 3 years from the date of completion of the Proposed Combination in the relevant geographic market of Gurgaon"*[8].
>
> *"PVR shall terminate its Agreement dated 18 September 2015, entered into with Reach Promoters Private Limited for the development of a multiplex in Airia Mall. PVR shall serve a termination notice on Reach Promoters Private Limited prior to the completion of the Proposed Combination. Reach Promoters Private Limited shall be free to enter into a fresh agreement with any other theatre operator for the development of a multiplex in Airia Mall. Further, PVR shall not acquire any influence / ownership / interest, either directly or indirectly, over Airia Mall for a period of five years from the date of the termination notice referred to above."*[9]

[8] Emphasis supplied
[9] Emphasis supplied

81. The Commission is of the view that said commitments would adequately alleviate the competition concerns arising in this relevant market subject to compliance with the requirements stated in **Annexure A**

Relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi

82. *Level of concentration*: The Commission observed that in this relevant market, PVR operates three multiplex theatres and one high-end single screen theatre (with a total of 13 screens) and DT operates two multiplex theatres and one high-end single screen theatre (with a total of 14 screens). Thus, PVR and DT together operate 27 screens out of 34 screens. It is observed that the Acquirer's pre-combination market share of 38.2% would increase to 79.4%, post-combination, with an increment of 41.2%. Accordingly, pre-combination HHI of 3391 would increase to 6539.8, post combination, with an increment of 3148.8, which is indicative of a highly concentrated market. The Commission noted that when imminent entries till 2018 by way of DT Chanakyapuri (3 screens), Paras (2 screens) and Bird Hotel (1 screen) are considered, the Acquirer's pre-combination market share of 32.5% would increase to 75%, post-combination, with an increment of 42.5%. Accordingly, pre-combination HHI of 3062.5 would increase to 5825.0, post-combination with a change in HHI of 2762.5. It is observed that the increase in market concentration, after taking into account imminent entries, is significant.

83. *Change in concentration/Incremental market shares:* The Commission noted that the additional number of screens acquired by the Acquirer is 17 and considering the upcoming entries by 2018, the incremental market share would be 42.5%, which is significant.

84. *Likelihood that combination would result in the removal of a vigorous and effective competitor in the market*: The Commission observed that PVR is acquiring its closest competitor which is also, at present, the biggest player in this relevant market. Thus, the Proposed Combination would result in the removal of a vigorous and head to head competitor of PVR, i.e., DT. This concern is also echoed in the submissions of various stakeholders during the course of inquiry under the provisions of the Act, which are detailed subsequently.

85. *Constraints exercised by competitors*: The Commission noted that as compared to the Acquirer's post combination market share of 75%, the next biggest remaining competitor would be Inox with a market share of only 12.5%, which would constitute an inadequate competitive constraint. The other competitors would be M-Cinema (2.5%), Batra (2.5%), Bird (2.5%) and Paras (5%) with relatively low market shares.

86. *Comments from stakeholders pursuant to publication of details of the proposed combination under the provisions of the Act*: The Commission noted that in the stakeholders' comments received during the course of inquiry and public comments received pursuant to publication under the provisions of the Act, concerns have been raised that in South Delhi, post-combination, PVR will acquire increased market power. The stakeholders have expressed concerns that PVR and DT are the closest competitors especially in South Delhi and the elimination of DT from the market may lead to monopolisation of the market, enabling PVR to sustainably increase prices. Further, it has been stated that PVR may acquire a position wherein it would be able to monopolise the choice of movies leading to reduction in choice for the end consumer. Stakeholders have also raised issues regarding the quality of services, stating that cinema goers would have no option other than PVR Cinemas, irrespective of the quality of services provided. It has been stated that the Proposed Combination would not only result in reduction of available choices, but would also adversely impact consumers in terms of high prices, food quality, service quality (including, *inter alia*, quality of seats, cleanliness, interval timings, delays in start of movie) and safety issues, etc. Certain members of the public have stated that cinema-goers would have no option left but to go to PVR Cinemas and that the Proposed Combination would adversely impact the common man because of the reduction in competition. It has been stated, *inter alia*, that the Proposed Combination would eliminate any healthy competition in the exhibition industry and that there would be no effective competitor for screening of movies. It is therefore gathered from the majority of the public responses received by the Commission that the public is concerned about the adverse impact of the Proposed Combination on competition in this relevant market. In addition, some distributors have pointed out that there is a strong likelihood that the Acquirer would use its strengthened position to disadvantage distributors not only locally, but also in other regions around the country.

87. *Barriers to entry*: The Commission observed that in Regulation 19(3) Responses, some of the competitors have highlighted that given the limited availability of real estate for the purpose of exhibition of films through multiplex theatres on account of regulatory restrictions, there is limited scope for new entry through the organic route by way of either the opening of new theatres on owned land or operating theatres on a tenancy/revenue-sharing basis in a new shopping mall. The Commission observed that in South Delhi, availability of commercial space for shopping malls is limited in contrast to areas such as NOIDA, Greater NOIDA and Ghaziabad where new shopping malls are coming up as newer real estate spaces are being explored.

88. *Efficiencies*: The Commission noted that Acquirer has stated that the Proposed Combination is also expected to bring operational and organisational efficiency by pooling resources together and utilising them optimally, reducing overheads, administrative, and

managerial and other expenditures. The Commission observed that the efficiencies are not combination specific, i.e., it cannot be said that there are no less anti-competitive ways to achieve the efficiencies. Further, the Commission noted that no evidence has been provided as regards the efficiencies translating into lower prices or better quality for customers on a lasting basis. Overall, there is no evidence to suggest that efficiency gains as a result of the Proposed Combination would offset, to any significant extent, the concerns of AAEC.

89. *Degree of countervailing buying power*: The Commission observed that in the market of multiplexes, the only countervailing buying power with the consumer is to switch to another multiplex in the relevant market that provides comparable facilities at a lower price. However, in South Delhi there would hardly be any option available to consumers if the Acquirer, post combination, decides to raise its prices or the service quality is unsatisfactory.

90. *Likelihood that the combination would result in the parties to combination being able to significantly and sustainably increase prices or profit margins*: The Commission observed that the likelihood of Proposed Combination resulting in sustained / significant increase in prices is high as there would be limited incentive for the Acquirer to maintain competitive prices in the absence of effective competition. This has also been stated in the comments received from stakeholders/public during the course of inquiry.

91. *Nature and extent of innovation*: The Commission observed that post combination, the incentives for the Acquirer to innovate further are likely to be very limited owing to lack of effective competition.

Issues pertaining to Distributor-Exhibitor relationship

92. The Commission observed that the Proposed Combination is likely to increase the market power of the Acquirer vis-à-vis distributors which may result in refusal to exhibit films, unfair terms, less favourable terms for comparatively lower budget films across the country or even for all films, whether niche or blockbuster, preferential treatment for Acquirer's own films, etc., resultantly, *inter alia*, impacting consumer choice adversely. This has been confirmed by certain distributors in Regulation 19(3) Responses.

93. In this regard, the Acquirer has submitted that there is no exclusivity of content with any distributor in India and all distributors supply films to all exhibitors without any exclusive arrangements in order to maximize their revenues. Further, the Acquirer has submitted that an addition of merely 39 (less than 5% of the total screens in India) in the identified relevant markets would not give the Acquirer any substantial negotiation power, especially in view of the fact that most of the contracts are entered into between distributors and film

exhibitors on pan – India or regional basis. It has been stated that producers/ distributors supply content/ films to exhibition chains, which fill in seats at cinemas and in turn help exhibitors sell Food & Beverages products and generate advertising revenue. Producers/ distributors have an ability to stop releasing their films at cinemas at a negligible business opportunity loss and without causing any major wastage of cost as, there are other avenues available to the distributors/ producers to showcase their films such as TV, internet, etc. However, delay in the release of films, even for a short duration, e.g. 3-4 weeks, can cause a massive business opportunity loss and a substantial wasted cost (in terms of rent, man power, maintenance, power etc.) to the cinema chains. Therefore, as per the Acquirer, the Proposed Combination would not result in any harm to the distributors.

94. The Commission observed that while the distributors control the nature of content, the exhibition and derivation of commercial value from that content is completely in the hands of the exhibitor as they control the terms of films exhibition, such as, show timings and the duration of exhibition. The Commission observed that this discretion at the hands of the exhibitor may result in foreclosure in the upstream market and thus may resultantly affect the consumer.

95. The Acquirer has proposed the following commitment in relation to above:

> *"PVR shall not seek exclusivity of content from any distributor for a period of five years from the date of final order of the Hon'ble Commission".*

In this regard, the Commission observed that Acquirer would not actually need any exclusivity of content owing to its high market share in this relevant market, post combination. Further, some distributors especially of the Hollywood films have stated that share of the Parties in their revenues from South Delhi is overwhelmingly high. In view of the foregoing, the commitment offered by the Acquirer does not alleviate the concerns regarding distributor exhibitor relationship in relation to studio films.

96. *Conclusion*: Considering the facts on record and details provided in the notice and assessment of Proposed Combination on the basis of factors laid down in sub-section (4) of Section 20 of the Act, the Proposed Combination is likely to give rise to AAEC in the relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi.

97. *Commitments offered by the Acquirer*: The Commission has noted the commitments offered by Acquirer in the Response to SCN, further revised vide response dated 8th February, 2016, which are as under:

a. Cap on ticket prices:

"*PVR shall cap its ticket price for a period of three years from the date of completion of the Proposed Combination, at the current prices which have been approved by the Licensing Authority for each of PVR cinemas and DT cinemas listed below.. Following the third anniversary of completion of the Proposed Combination, PVR shall, subject to approval from the Licensing Authority, be permitted to annually increase its prices for each of the theatres by no more than 5% of the then prevailing ticket price. The price cap shall expire on the fifth anniversary of the completion of the Proposed Combination.*

The price cap shall apply to the following theatres: PVR Anupam (Saket); PVR Select City Walk; PVR Sangam; PVR 3Cs; DT DLF Place; DT Promenade; DT Savitri GK II; DT Chanakyapuri

b. Cap on Food &Beverages (F&B) Prices:

"*PVR shall cap its F&B prices for its existing product portfolio for a period of three years from the date of completion of the Proposed Combination, at the current prices for each of PVR cinemas and DT cinemas listed below. Following the third anniversary of completion of the Proposed Combination, PVR shall be permitted to annually increase its F&B prices for each of the theatres by no more 5% of the then prevailing price of the relevant F&B product. The price cap shall expire on the fifth anniversary of the completion of the Proposed Combination.*

The price cap shall apply to the following theatres: PVR Anupam (Saket); PVR Select City Walk; PVR Sangam; PVR 3Cs; DT DLF Place; DT Promenade; DT Savitri GK II; DT Chanakyapuri "

c. Quality commitment:

"*PVR shall continue to:*

i. *Maintain and upgrade quality of its theatres including audio/video, comfortable seating, safety, proper fittings and fixtures;*
ii. *Renovate its existing properties as may be required from time to time;*
iii. *Maintain the quality of F&B.*
iv. *PVR shall submit a quality audit report by an independent agency every year to the Hon'ble Commission for a period of 5 years from the date of completion of the Proposed Combination".*

d. Freeze on expansion:

> *"PVR shall not expand, i.e., open through organic expansion or takeover through inorganic acquisition, any new screens (either single screen or multiplex), for a period of 5 years from the date of completion of the Proposed Combination in the relevant geographic market of South Delhi. This commitment shall not apply to DT Chanakyapuri (1000 seats and 3 screens) which is expected to open in 2016."*

e. Commitment with distributors:

> *"PVR shall not seek exclusivity of content from any distributor for a period of five years from the date of final order of the Hon'ble Commission"*

98. The Commission (by majority) noted that the idea behind ex *ante* review of combinations is to restrain those combinations, which, if allowed to go forward, would be likely to adversely affect competition in the relevant market. Combinations by their very nature can eliminate any competition that exists between the parties and reduce the number of firms competing in the relevant market. Where this reduction is likely to cause AAEC, the market will be less oriented to consumer and efficiency goals such as lower prices, better quality, more consumer choice and innovation (even in the absence of any violations of competition law). In short, the aim of *ex ante* review is to avert structural changes that would damage the incentives to compete. Behavioural remedies such as price caps and quality commitments would not adequately replicate the outcomes of a competitive market. The Commission noted that price caps and quality commitments offered in this case would be akin to an undertaking by the Acquirer not to abuse the dominant position being created in the relevant market of exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi as a result of the Proposed Combination, with the requirement that the Commission monitor the same on an ongoing basis. The purpose of remedies is to preserve to the extent possible the pre-combination level of competition by recreating as far as possible the competitive status quo in the affected markets. In this context it was noted that the behavioural commitments referred above would not effectively alleviate the competition concerns in the relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi, apart from the fact that behavioural remedies would be difficult to formulate, implement & monitor and run the risk of creating market distortions. This is in line with international best practices wherein structural remedies as they directly address the cause of competitive harm arising from the elimination of a vigorous competitor and have durable impact by way of creating an effective competitor to the combined entity, are preferred to behavioural remedies for

horizontal combinations[10]. Further, in the case of divestiture, there would be no need for ongoing oversight or intervention. It is also noted that international best practices suggest that in the absence of a suitable remedy, such as when divestiture is not possible, in a case where a structural remedy is required to address AAEC, the only alternative may be to direct that the Proposed Combination shall not take effect.

99. In the present case, while submitting behavioural remedies for the relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi, the Acquirer has indicated that there are several contractual impediments to divestiture, *inter alia*, on account of: (a) the underlying transaction being structured as a slump sale; and (b) divestiture resulting in significant costs for the Acquirer, *inter alia*, on account of termination fees payable for the leases held by the Acquirer. In this regard, it was noted by the Commission that the Combination Agreement provides that PVR would enter into fresh lease agreements with DLF Limited and/or its group companies on the date of consummation of the Proposed Combination and the present lease agreements in favour of DUL would be terminated.

Decision of the Commission

100. The Commission (by majority) rejected the commitments offered by the Acquirer in this relevant market and observed that in order to alleviate the likely AAEC concerns in this relevant market, divestiture of screens of the Acquirer would be required. The Commission noted that keeping in view the structural changes arising from the Proposed Combination in this relevant market and the likely scenario in 2018, the minimum number of screens to be divested in the relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi is eleven (11). This would reduce the market share of the Acquirer, post divestiture to 47.5% and the approved purchaser of these 11 screens would be able to provide significant competitive constraints to the Acquirer, as it would have a market share of at least 27.5%. Further, post-divestiture, the impact of the Proposed Combination would be to increase market concentration to a limited extent wherein assuming that the 11 screens divested are acquired by a new competitor, the HHI would increase from 3062.5 (pre combination) to 3212.5 (post combination) limiting the increment in HHI to 150. The Commission (by majority) was of the view that divestiture of screens belonging to DT would address the above mentioned contractual limitations, as

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[10] The Commission (by majority) relied, *inter alia*, on the EC Notice on remedies under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008; FTC, Negotiating Merger Remedies: Statement of the Bureau of Competition of the Federal Trade Commission (Jan 2012); US DoJ, Antitrust Division Policy Guide to Merger Remedies (June 2011), ICN, Merger Working Group Project on Remedies in Merger Review: Interim Report (March 2015) and ICN, Merger Remedies Review Project (June 2005).

the divestiture would take place after consummation of the Proposed Combination and PVR would not be required to divest any of its existing theatres in South Delhi.

101. The minority view however held that the commitments offered by the Acquirer are adequate as they retain the competitive outcomes, particularly the pre-combination prices and quality. The minority view held that the divestiture of 11 screens in South Delhi, though not impossible, would be burdensome without corresponding gains. Further, the dissenting Members agreed with the submission of the Acquirer that the divesture is costly. Their view was that though implementation of behavioural remedy generally imposes higher administrative burden than that of structural remedies, the same cannot be a ground for denying an otherwise appropriate remedy.

Other Competition Concerns

Cooperation Agreement

102. The Commission noted that the Parties propose to enter into a Cooperation Agreement regarding management and operation of multiplex spaces in the malls developed by DLF. As per the Cooperation Agreement, Acquirer has been granted a right of first offer to operate and manage multiplex spaces on a leasehold basis in future mall developments carried out by the DLF Group for a period of 5 years from the closing of the Proposed Combination. The Commission observed that the Cooperation Agreement does not appear to be integral or necessary for the Proposed Combination. Further, the Commission noted that the pre-emption rights enjoyed by PVR over the malls developed by DLF may lead to exclusive dealing of DLF with PVR and may create barriers to entry for competitors of PVR. The Acquirer in the Response to SCN and response dated 8th February, 2016 has undertaken that it shall not sign or execute the Cooperation Agreement. The Commission noted and accepted the commitment offered by the Acquirer subject to compliance with the requirements stated in **Annexure A**.

Non-Compete Agreement

103. The Commission observed that the Parties propose to enter into a "Non-compete and Non-Solicitation Agreement" ("Non-Compete Agreement"), which imposes an obligation requiring DUL, not to engage in the business of operating and managing cinema theatres/multiplexes for the purpose of providing entertainment to the public for a period of 5 years from the consummation of the Proposed Combination in India. The Commission observed that the geographic scope and duration of the non-compete clause do not appear to be directly related and/or necessary to the Proposed Combination and therefore, appear to be unreasonable. In this regard, the Acquirer has submitted that the non-compete

obligations are necessary: (a) to ensure that the value of the assets being acquired, i.e., all the customers, vendors, suppliers, goodwill etc., do not stand diminished or compromised; and (b) to safeguard the Target Business for which the Acquirer is making a significant investment both by way of consideration but also on an ongoing basis through lease agreements with DLF. In the Response to SCN and response dated 8th February, 2016, the Acquirer submitted the following commitments:

i. *Reduction in the term of non-compete clause from five years to three years; and*
ii. *Reduction in the geographical extent of the non-compete clause from India to only Delhi-NCR and Chandigarh*"

104. The Commission noted that the commitments offered by the Acquirer for reducing the term of the non-compete clause from 5 years to 3 years and reducing the geographical scope of non-compete clause from India to only Delhi-NCR and Chandigarh appear to mitigate competition concerns arising from Non-Compete Agreement and may be accepted subject to compliance with the requirements stated in **Annexure A**.

105. Subject to compliance of commitments offered by the Acquirer, the Commission noted that AAEC concerns are mitigated in (a) the relevant market for exhibition of films in multiplex theatres in Gurgaon and (b) the relevant market for exhibition of films in multiplex theatres in NOIDA and also as regards the Non-Compete Agreement and the Cooperation Agreement. However, the Commission noted that the Proposed Combination gives rise to AAEC concerns in the relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi. The Commission noted that in accordance with the provisions of the Act, it may either direct that the combination shall not take effect or may propose a modification to the combination. The Commission (by majority) decided to propose modification to the Proposed Combination under sub-section (3) of Section 31 of the Act.

Proposal for Modification to the Proposed Combination issued under Section 31(3) of the Act (by Majority) (hereinafter referred to as "Proposal for Modification")

106. Based on the above, the Commission (by majority) issued the Proposal for Modification, under sub-section (3) of Section 31 of the Act, on 25th February, 2016. The Acquirer was required to submit acceptance/amendment of the Proposal for Modification within 30 working days of the issue of the Proposal for Modification in terms of extant provisions of the Act. The Minority View with reference to the Proposal for Modification issued under sub-section (3) of Section 31 of the Act, as contained in a dissent note dated 7th March, 2016 was communicated to the Acquirer *vide* Commission's letter dated 14th March, 2016 ("**Dissent Note**").

107. In the Proposal for Modification, in relation to the relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi, the Commission, *inter alia*, proposed that the Parties shall divest, or procure divestiture of:

    i. *DT Saket Theatre Assets and DT Vasant Kunj Theatre Assets (collectively referred to as "Saket-VK Assets"); or*
    ii. *DT Chanakyapuri Theatre Assets, DT Savitri Theatre Assets and DT Vasant Kunj Theatre Assets (collectively referred to as "GK-CH-VK Assets").*
    ("**Divestment Assets**")

108. The Proposal for Modification detailed the procedure for the divestiture of assets including the timelines and methodology for divestiture of the Divestment Assets including due diligence and reporting, etc. The Proposal for Modification also included details covering, *inter alia,* preservation of economic viability, marketability and competitiveness of the Divestment Assets, non-acquisition of direct or indirect influence over the whole or part of Divestment Assets by the Acquirer for a period of five years from the closing date[11]. Further, the Proposal for Modification also contained the detailed methodology for approval of the purchaser proposed by the Acquirer and of the sale and purchase agreement thereof and covered the aspects of monitoring agency, divestiture agency, sale of divestment assets and second divestiture period etc.

109. A revision (by way of correction of a minor error[12]) to the Proposal for Modification was communicated to the Acquirer on 1st March, 2016.

110. The Acquirer, *vide* application dated 15th March 2016 requested for inspection of case documents/records, which was granted by the Commission. Accordingly, the Acquirer inspected the case documents/records on 7th April, 2016.

111. The Acquirer submitted its response on 11th April, 2016 after seeking an extension of one working day. In its response, the Acquirer proposed amendment to the Proposal for Modification under sub-section (6) of Section 31 of the Act by way of an alternate proposal comprising the following:

    i. The Combination Agreement will be amended, such that the cinema assets (comprising 1 screen) located at DT Savitri ("**DT Savitri Assets**") and DT Saket

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[11] Date on which transfer of legal title of the Divestment Assets to Approved Purchaser(s) takes place
[12] The revision entailed substitution of words "**Annexure A**" appearing in para 2 of Commission's Communication dated 25.02.2016 with the words "**Annexure I**" and words, "**Dated: 17.02.2016**" appearing on the top right corner of the annexure to the Commission's Communication dated 25.02.2016 with the words "**Annexure I**".

(comprising 6 screens) ("**DT Saket Assets**") will be excluded from the scope of the Proposed Agreement ("**Amendment to Combination Agreement**").

ii. Further, PVR will not acquire any influence/ownership/interest, either directly or indirectly over DT Savitri Assets or DT Saket Assets for a period of 3/5[13] years from the date of completion of the Proposed Combination.

iii. In addition, PVR will not expand i.e, open through organic expansion or takeover through inorganic expansion (either single screens or multiplexes) for a period of 5 years from the date of completion of the Proposed Combination in the relevant geographic market of South Delhi ("**Freeze on Expansion**").

(Hereinafter, the above amendments are collectively referred to as "**Alternate Proposal**")

112. The Acquirer in its response dated 11th April 2016 also proposed, *inter alia*, that the Commission may re-consider the 'Hybrid Remedy Proposal' (behavioural remedies) submitted in the response dated 8th February 2016 and submission dated 23rd February 2016 which, *inter alia*, included: (a) ticket price cap (at 10% discounted rate) for five years (with a marginal increase of 5% in the fourth and fifth years); (b) F&B price cap at existing prices for a period of five years (with a marginal increase of 5% in the fourth and fifth years); (c) quality commitments; (d) commitment not to seek exclusivity with distributors (on pan India basis) for 5 years; and (e) freeze in expansion for five years.

113. The Acquirer in its response dated 11th April, 2016 also submitted details of certain upcoming theatres in South Delhi which were not considered by the Commission (by majority) while issuing the Proposal for Modification owing, *inter alia*, to lack of confirmation of these entries by developers, and requested the Commission to consider the same while assessing the amendments submitted.

114. The Acquirer has made the following submission in support of the efficacy Alternate Proposal,

"[U]nder the Alternate Proposal, PVR proposes to freeze its expansion in South Delhi (through organic and inorganic means) for a period of 5 years (in addition to immediately excluding 7 screens from the Proposed Combination). It is important to note that as a result of this proposed freeze in expansion, PVR will neither acquire (a)

[13]The Acquirer has stated that it believes that 3 years is the relevant time period where potential AAEC concerns exist, however if the Commission is of the view that such a commitment should extend to 5 years, PVR is willing to extend the commitment to 5 years.

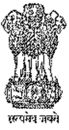
*any of the other 7 currently existing screens (which do not belong to PVR or DT)[*Satyam/Inox (5 screens), M-Cinema (1 screen) and Batra (1 screen)*][14]; nor (b) any upcoming screens in South Delhi, which is estimated to be at least 17 screens in the next 3 years (therefore, amounting to a total of at least 24 screens). [*The upcoming screens include Unity Buildwell-Okhla (6 screens); Virat Cinemas – Dakshin Puri (2 screens); Ansal Plaza, Andrews Gunj (6 screens); D2 Hotel – Aerocity (1 screen) and Paras Cinemas, Nehru Place (2 screens)*][15] *However, if the modification proposal under the Majority Order were to be implemented, although PVR would not be permitted to acquire/retain either 11 or 13 screens of DUL, it will be free to acquire 24 or more screens in South Delhi (which are not likely to require the Hon'ble Commission's approval, based on the prescribed thresholds under the Competition Act). Please note, as at least the 17 upcoming screens are available to be signed up by PVR today itself, PVR is in a position to acquire these screens almost immediately. Accordingly, pursuant to the modification proposal in the Majority Order, PVR may end up with a significantly higher number of screens (and higher market share).*"

115. It has also been stated by the Acquirer that the mechanism of amending the Combination Agreement to exclude certain theatres of DUL is preferred over acquiring the theatres and thereafter divesting (as proposed in the Proposal for Modification) on account of various issues associated with a divestiture. It also preserves DLF's right to freedom of choice over its tenants, as it is free to either continue to operate the excluded cinemas on its own or sell it to a third party of its choice.

116. The Acquirer has further stated that if either (a) the Proposal for Modification is required to be implemented, or (b) any more screens in addition to the excluded cinemas (seven screens) is required to be excluded/divested, the Proposed Combination will become wholly unfeasible and commercially unviable for PVR and DLF and would be a disproportionate and unreasonably burdensome remedy.

117. The Commission, in its meeting held on 21st April, 2016 considered the submissions of the Acquirer and decided to issue letters to the real estate developers in order to confirm the status of the upcoming properties in South Delhi as per the submissions of the Acquirer. Accordingly, letters were issued to three real estate developers namely Unity Buildwell Private Limited, Lucky Star Estate (India) Private Limited (Virat Cinemas) and Ansal Property and Infrastructure Limited on 22nd April 2016 along with directions to submit their response by 27th April 2016. The responses from the developers were received in time.

[14] Added for clarification
[15] Added for clarification



Assessment of Alternate Proposal

118. The Commission considered the responses filed by the said real estate developers in its meeting held on 2nd May, 2016. The Commission noted that the real estate developers have confirmed that a total of 14 screens would be added to the relevant market by the year 2018. ("**Additional Entries**") Moreover, the Commission noted that the Acquirer has in the Alternate Proposal committed to a Freeze on Expansion wherein it would not expand organically or inorganically for a period of five years ensuring that the imminent entry would be only on account of competitors.

119. In this backdrop the Commission noted that, when the Additional Entries are taken into account, the scenario in 2018 would be that PVR would have pre-combination, 13 screens (24.1%) out of total of 54 screens in the relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi, whereas DT would be the next highest competitor with 17 screens (31.5%). Thus, the Commission observed that if these entries are taken into account, the pre-combination market share of 24.1% would increase to 55.6%, post combination with an increment of 31.5%. Accordingly, pre-combination HHI of 1941 would increase to 3456.8, post combination with an increment of 1515.8.

120. The Commission observed that if the Alternate Proposal is implemented, then in accordance with the information in respect of Additional Entries, post combination, PVR would operate 23 screens out of a total of 54 screens in this relevant market. The Commission observed that the market share of the Acquirer post combination would then be 42.6%. Also, in this scenario market concentration would be relatively less as the post-combination HHI would be 2352 with the increment of 411.5 (over the pre-combination HHI of 1941). Apart from DT, which would retain 7 screens (13%)[16], the other competitors would be Ansal (11.1%), Unity-Okhla (11.1%), Inox (9.3%), Paras (3.7%), Virat (3.7%), M-Cinema (1.9%), Bird (1.9%) and Batra (1.9%).

121. The Commission noted that in order to alleviate the competition concerns arising in this relevant market in addition to the Freeze on Expansion, an undertaking in relation to the non-acquisition of direct / indirect influence over DT Savitri Assets and DT Saket Assets would be necessary for a period of five years ("**Non-Acquisition of Interest**").

122. The Commission is of the opinion that keeping in view the facts and circumstances of the present case, the Alternate Proposal including Amendment to Combination Agreement, Freeze on Expansion and Non-Acquisition of Interest, as above ("**Accepted Alternate**

[16] The Acquirer in its response dated 11th April 2016 has stated that, "DUL will retain two theatres comprising of 7 screens (DT Savitri- 1 screen and DT Saket- 6 screens) and will be free to operate these theatres on its own or sell such theatres to an independent party, independent of the proposed transaction."

Proposal") would alleviate AAEC concerns emanating from the Proposed Combination in the relevant market for the exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi.

123. The Commission noted that behavioural remedies were offered by the Acquirer at various stages during the inquiry. It was noted that while issuing the Proposal for Modification, the Commission (by majority) rejected the offered behavioural remedies on grounds that they did not address AAEC concerns in the relevant market and the Commission (by majority) deemed fit to issue the Proposal for Modification requiring structural remedies. Accordingly, the 'Hybrid Remedy Proposal'[17] would not be regarded an amendment to the Proposal for Modification in terms of sub-section (6) of Section 31 of the Act and thus cannot be considered under sub-section (7) of Section 31 of the Act.

Differing View

124. The differing Members (who had earlier dissented at the time of issue of the proposal for modification) noted that the Commission (by majority), vide its letter dated 25.02.2016, had sent a proposal (for modification of the proposed combination) under section 31(3) of the Act to the acquirer proposing divestment of identified 11 screens in the relevant geographical market of South Delhi along with certain ancillary requirements. They further noted that under the Act, the acquirer has the option either to accept the modification proposed or to submit amendment to the modification proposed. Instead of accepting the modification or submitting amendment to the modification in clear terms, it has submitted that the hybrid of structural and behavioural remedies submitted vide its letters dated 08.02.2016, 22.02.2016 and 23.02.2016 (hybrid remedies) would be the best to address the competition concerns raised by the Commission, particularly keeping in view the additional upcoming screens in South Delhi. They also noted that the acquirer has submitted an alternative remedy (alternate proposal) in case the Commission rejects the hybrid remedies. The alternate proposal is, in fact, a modified proposed combination wherein it would acquire 07 existing and 03 upcoming screens in relevant geographical market of South Delhi instead of 14 existing and 03 upcoming screens envisaged in the proposed combination for which notice was filed on 08.07.2015.

125. The differing Members found that the hybrid remedies address AAEC concerns associated with the proposed combination fully for the reasons explained in the dissent note dated 07.03.2016, which is at Appendix A. It is more so when the competition concerns are less when the additional upcoming screens are taken into account. They, therefore, were strongly in favour of approving the proposed combination, which was filed under notice dated 08.07.2015, under section 31(7) of the Act, subject to hybrid remedies.

[17] Term used by the Acquirer in its response dated 11th April, 2016.

126. The differing Members, however, noted that the majority has not regarded the hybrid remedies as an amendment to the proposal for modification. Therefore, the differing Members considered the alternate proposal which is a modified proposed combination, wherein the acquirer proposes to acquire less number of screens with a commitment that it would not expand in South Delhi through organic or inorganic means for a period of five years. They did not find AAEC concerns in the modified proposed combination, which is an acquisition of a smaller scale, along with a commitment not to expand. Hence they have no objection to the modified proposed combination

Approval

127. Pursuant to the above, the Commission hereby approves the Proposed Combination under sub-section (7) of Section 31 of the Act, subject to the Parties complying with commitments in relation to (a) relevant market for exhibition of films in multiplex theatres in NOIDA;(b) relevant market for exhibition of films in multiplex theatres in Gurgaon; (c) Co-operation Agreement; and (d) Non-Compete Agreement as detailed in **Annexure A** and carrying out the Modification to the Proposed Combination as detailed in the **Annexure B**.

128. It is however to be noted, that the Commission is granting the present approval, under sub-section (7) of Section 31 of the Act, and that such approval is being granted, pursuant to the underlying competition assessment, based upon the information/details provided by the Parties, in the notice given under subsection (2) of Section 6 of the Act. This approval should not be construed as immunity in any manner from subsequent proceedings before the Commission for violations of other provisions of the Act. It is incumbent upon the Parties to ensure that this *ex-ante* approval does not lead to ex-post violation of the provisions of the Act.

129. The Commission may at any time request information from the Parties that is reasonably necessary for the effective implementation of the Order.

130. The Annexures enclosed in the Order shall form an integral part of the Order.

131. In carrying out the aforesaid modification, the Parties shall comply with the provisions of the Act, the Combination Regulations and the Competition Commission of India (General Regulations), 2009.

132. The Order shall stand revoked, if any time, the information provided by the Acquirer is found to be incorrect.

133. The Secretary is directed to communicate to the Parties accordingly.

COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2015/07/288)

ANNEXURE A

Compliance Requirements regarding the commitments offered by the Acquirer and accepted by the Commission

A. Commitments pertaining to Relevant Market for Exhibition of films in Multiplex Theatres in NOIDA

The Commission accepts the commitments offered by the Acquirer[18] regarding the relevant market for exhibition of films in multiplex theatres in NOIDA subject to the Acquirer complying with the following:

i. The Acquirer shall, within thirty (30) days from the date of issue of the Order ("**Effective Date**")[19], submit a letter confirming that it has terminated its lease agreement dated 31st March, 2015, entered into with International Recreational Parks (P) Ltd for development of a multiplex in Garden Galleria, along with a copy of the termination notice issued by the Acquirer. The said letter will be co-signed by the authorized signatory of International Recreational Parks (P) Ltd. The Parties shall not consummate the Proposed Combination till this requirement is complied with.

   a. For a period of three (3) years from the date on which the Proposed Combination, as modified by the Order is consummated ("**Date of Completion**"[20]), the Acquirer shall, within fifteen (15) days of end of each financial year, submit a certificate issued by its statutory auditor to the effect that,

      During the preceding financial year, PVR has not expanded its presence in business of exhibition of films through multiplex theatres in NOIDA, i.e., it did not open through organic expansion or takeover through inorganic acquisition, any new screens (either single screen or multiplex).

ii. For a period of five (5) years from the date of completion of the Proposed Combination, the Acquirer shall, within fifteen (15) days of end of each financial year, submit a certificate issued by its statutory auditor to the effect that,

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[18] PVR, as defined in the Order for the purposes of Annexure A and Annexure B, shall include its subsidiaries, affiliates, associate companies, and enterprises directly or indirectly controlled by PVR, whereby the terms "enterprise" and "control" shall bear the meaning provided under the Act.

[19] Effective Date is hereby defined as Date of issue of the Order

[20] Date of Completion is hereby defined as the date on which the Proposed Combination, as modified by the Order is consummated.

a. During the preceding financial year, PVR has not acquired any direct or indirect influence or ownership or interest in Garden Galleria[21].
b. PVR is in compliance with the commitments offered by it to the Commission regarding the relevant market for exhibition of films in multiplex theatres in NOIDA.

B. ***Commitments pertaining to Relevant Market for Exhibition of films in Multiplex theatres in Gurgaon***

The Commission accepts the commitments offered by the Acquirer regarding the relevant market for exhibition of films in multiplex theatres in Gurgaon subject to the Acquirer complying with the following:

i. The Acquirer shall, within thirty (30) days from the Effective Date, submit a letter confirming that it has terminated its agreement dated 18 September 2015, entered into with Reach Promoters Private Limited for the development of a multiplex in Airia Mall, along with a copy of the termination notice issued by the Acquirer. The said letter will be co-signed by the authorized signatory of Reach Promoters Private Limited. The Parties shall not consummate the Proposed Combination till this requirement is complied with.

ii. For a period of three (3) years from the Date of Completion of the Proposed Combination, the Acquirer shall, within fifteen (15) days of end of each financial year, submit a certificate issued by its statutory auditor to the effect that:

   a. During the preceding financial year, PVR has not expanded its presence in business of exhibition of films in multiplex theatres in Gurgaon, i.e., it did not open through organic expansion or takeover through inorganic acquisition, any new screens (either single screen or multiplex).

iii. For a period of five (5) years from the Date of Completion of the Proposed Combination, the Acquirer shall, within fifteen (15) days of end of each financial year, submit a certificate issued by its statutory auditor to the effect that:

   a. During the preceding financial year, PVR has not acquired any direct or indirect influence or ownership or interest in Airia Mall[22].

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[21] As defined in the Order
[22] As defined in the Order

b. PVR is in compliance with the commitments offered by it to the Commission regarding the relevant market for exhibition of films in multiplex theaters in Gurgaon.

C. *Commitments regarding the Non-compete and Non Solicitation Agreement proposed to be executed by and between DLF Utilities Limited and PVR Limited ("Non Compete Agreement")*

The Commission accepts the commitments offered by the Acquirer regarding the Non Compete Agreement subject to the Acquirer submitting within thirty (30) days from the Effective Date: (a) a copy of the modified Non Compete Agreement after incorporating the revised terms provided by the Acquirer in its commitments; and (b) a copy of the revised combination agreement after incorporating the revised terms in all provisions pertaining to Non Compete Agreement in the Combination Agreement and annexures/exhibits thereto. The Parties shall not consummate the Proposed Combination till this requirement is complied with.

D. *Commitments regarding Cooperation Agreement proposed to be executed by and amongst DLF Limited, DLF Utilities Limited and PVR Limited ("Cooperation Agreement")*

The Commission accepts the commitments offered by the Acquirer regarding the Co-operation Agreement subject to the Acquirer submitting, within thirty (30) days of the Effective Date, (a) a letter confirming that it will not enter into the Cooperation Agreement. The said letter should be co-signed by DLF Limited and DLF Utilities Limited; and (b) a copy of the revised combination agreement after deleting all provisions pertaining to Cooperation Agreement, in the Agreement and annexures/exhibits thereto.The Parties shall not consummate the Proposed Combination till this requirement is complied with.

COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2015/07/288)

ANNEXURE B

Modification to the Proposed Combination

The Commission accepts the amendment to the Proposal for Modification offered by the Acquirer under sub-section (6) of Section 31 of the Act regarding the relevant market for exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi as per the Accepted Alternate Proposal and approves the Proposed Combination subject to the Parties complying with the following modifications (Collectively referred to as "**Modification to the Proposed Combination**"):

A. Compliance by the Acquirer:

i. *Amendment to the Combination Agreement*: The Acquirer shall, within thirty (30) days from the Effective Date carry out the Amendment to the Combination Agreement and submit a copy of the revised combination agreement duly incorporating the same.The Parties shall not consummate the Proposed Combination till this requirement is complied with.

ii. *Freeze on expansion*: For a period of five (5) years from the Date of Completion of the Proposed Combination, the Acquirer shall, within fifteen (15) days of end of each financial year, submit a certificate issued by its statutory auditor to the effect that:

> During the preceding financial year, PVR has not expanded its presence in business of exhibition of films in multiplex theatres and high-end single screen theatres in South Delhi, i.e., it did not open through organic expansion or takeover through inorganic acquisition, any new screens (either single screen or multiplex).

iii. *Non-acquisition of Interest:*For a period of five (5) years from the Date of Completion of the Proposed Combination, the Acquirer shall, within fifteen (15) days of end of each financial year, submit a certificate issued by its statutory auditor to the effect that:

   a. During the preceding financial year, PVR has not acquired any direct or indirect influence or ownership or interest in DT Savitri Assets and DT Saket Assets.

   b. PVR is in compliance with the Modification to the Proposed Combination.

B. *Compliance by DUL:*

DUL shall:

(a) Submit within thirty (30) days of the Effective Date an undertaking to the effect that it will ensure that DT Savitri Assets and DT Saket Assets continue to provide effective competition to PVR by:

(i) either continuing to operate DT Savitri Assets and DT Saket Assets itself for a period of five (5) years from the Date of Completion of the Proposed Combination, duly maintaining the economic viability, marketability and competitiveness of these assets so as to provide effective competitive constraint to PVR; or

(ii) selling/leasing or otherwise transferring these assets to an effective and viable competitor, independent of PVR.

(b) DUL shall ensure that prior approval of the Commission is obtained before there is any change in ownership /operation of the DT Savitri Assets and DT Saket Assets (including renting/leasing of these properties), if it takes place within the period of five years following Date of Completion of the Proposed Combination.

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APPENDIX - A

Fair Competition For Greater Good

COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/07/288)

Dated: 07.03.2016

Dissent Note

Proposal for Modification to the Proposed Combination issued under Section 31(3) of the Act in respect of notice dated 8th July, 2015 filed by PVR Ltd. under Section 6 (2) of the Act

1. On 08.07.2015, the Competition Commission of India (**Commission**) received a notice of the proposed combination under Section 6 (2) of the Competition Act, 2002 (**Act**) given by PVR Limited (**Acquirer**) pursuant to execution of an agreement dated 09.06.2015 entered into between the acquirer and DLF Utilities Limited. The proposed combination relates to the acquisition by the acquirer of DUL's film exhibition business DT Cinemas ("**Target**") comprising 29 existing and 10 upcoming screens as a going concern on a slump sale basis.

2. The Commission has issued the proposal dated 17.02.2016 under Section 31(3) of the Act seeking modification to the proposed combination. Para 16 of the proposal states that the Commission has considered the relevant material in the matter in its meetings on 11.02.2016 and 17.02.2016. However, at Paras 56-57 and 66-67, it is stated that the Commission is of the view that the commitments provided by the acquirer *vide* its letter(s) dated 22.02.2016 would adequately address competition concerns. Since the Commission has not met in this matter after 17.02.2016 and did not have the opportunity to consider the material provided by the acquirer *vide* its letter(s) dated 22.02.2016, the proposal does not reflect the views of the Commission. Nevertheless, since the proposal dated 17.02.2016 has been issued by the Commission, we hereafter refer it as the majority proposal (MP). We are writing this dissent note along with the rationale for the same, as expressed by us in the meetings of the Commission on 11.02.2016 and 17.02.2016, and also keeping in view the MP.

3. We are in agreement with the determination and identification of the relevant product and relevant geographical markets as laid out in the MP. The relevant product market is 'the market for exhibition of films in multiplexes' and the relevant geographical markets are: (a) North, West & Central Delhi, (b) Chandigarh, (c) Gurgaon, (d) NOIDA and (e) South Delhi. Our understanding of the competition concerns and remedies to address them for these markets are briefly as under:
   a. We agree with the MP that the proposed combination is not likely to give rise to any appreciable adverse effect on competition (AAEC) in the geographical markets of (a) North, West & Central Delhi, and (b) Chandigarh.
   b. We broadly share the competition concerns expressed in the MP in respect of markets of (a) Gurgaon, and (b) NOIDA. We, however, find the remedy proposed for *Garden Galleria* in Noida and *Airia* in Gurgaon for five years

is not necessary as the acquirer has committed to terminate the agreement with the multiplex developer (who is independent of the acquirer) prior to completion of the proposed combination and it is excessive as competition concerns are being alleviated in the initial three years in these markets as per the MP itself.

c. As regards geographical market of South Delhi, we are of the firm view that given the state of competition in film exhibition market, as reflected by threat of substitutes, threat of new entrants, power of suppliers, power of consumers, and intra-industry rivalry, in the said market, and having due regard to the factors stated in Section 20 (4) of the Act, the behavioural remedies as offered by the acquirer are adequate to address competition concerns arising from the proposed acquisition and no structural remedy is required. We deal with this market in detail in subsequent paragraphs.

d. We are of the firm view that the remedy proposed in the MP is excessive and disproportionate. At global level, the acquirer acquires 29 existing screens and 10 upcoming screens and the remedy in the MP requires it to divest 11 existing screens and 22 upcoming screens. In respect of geographical market of South Delhi, the acquirer acquires 11 existing screens and three upcoming screens and the remedy in the MP requires it to divest 11 existing screens. In our considered opinion, the MP goes far beyond the economics of combination and negates freedom of trade by enterprises and hampers the ease of doing business.

4. It is worth recalling the genesis of the competition law. S.V.S. Raghavan Committee, whose recommendations led to the enactment of the Act, had expressed serious concerns against adoption of an overtly strict approach while reviewing transactions under merger control provisions as the same may hamper competition in the Indian market rather than promoting the same. Paras 4.7.7 of the Report of the Committee reads as under:
"*4.7.7 ... In view of this, it is extremely important that the law regarding mergers be very carefully framed and the provisions regarding prohibition of mergers be used very sparingly. This is particularly important at the current stage of India's corporate development. Relative to the size of major international companies, Indian firms are still small. With the opening of trade and Foreign Direct Investment, Indian firms need to go through a period of consolidation in order to be competitive. Any law on merger regulation must take account of this reality.*"

5. While assessing a proposed combination, one needs to understand the state of competition in the relevant market. One is tempted to use measures of concentration of market (not market power) as proxy for the state of competition. These measures include 'four enterprise concentration ratio', the 'Herfindahl-Hirschman Index (HHI)', the turnover of top 'n' enterprises as percentage of total turnover of the industry, Bodenhorn's measure of mobility, etc. These are used for the sake of simplicity – simple to compute and simple to understand. However, these measure only the level of concentration, not the

state of competition. These do not reflect, for example, entry or exit barriers, if any, which affect the state of competition in the market. These do not subsume most of the factors (for example, degree of countervailing power) enumerated in Section 19(7) of the Act, which are required to be considered while determining whether a combination would have AAEC in the relevant market.

6. It has been rightly stated at Para 37 of the MP that HHI is one of the metrics used to assess the level of market concentration and changes in concentration due to a combination. This is the starting point. However, the determination of AAEC requires assessment of competition, much beyond concentration / HHI. Further, the MP states that an increase of HHI by 150 in cases where post-merger HHI is above 2000 indicates adverse effect on competition. However, the proposed combination causes an increase of HHI by 622 in 2015 and 375 in 2018 in Chandigarh. The MP yet concludes that the proposed combination does not have AAEC. This only indicates that HHI is not sacrosanct and concentration per se is not bad. It is interesting to note that the MP at Para 81 suggests the remedy of divestment of minimum 11 screens in South Delhi as it ensures increase in HHI within 150. This formula driven approach of limiting increase in HHI to 150 could have been adopted on day one of the receipt of the notice, and there was no need for detailed competition assessment, including public notice and consultation. The Commission could have even laid down by regulations that a proposed combination would be allowed only if increase in HHI is less than 150.

7. In economic literature, competition is considered perfect, if the market has freedom of entry, large number of participants where every participant is price taker, perfect symmetry of information, homogenous product, *etc.* In real life, perfect competition does not exist. A market is considered more competitive, the closer it is to the state of perfect competition. The closeness is ideally captured by econometric estimates of elasticity of demand and elasticity of supply which accurately measure the strength of market power. A supplier of an essential product, which does not have close substitutes, has higher market power as the demand for this is inelastic. In the absence of details to facilitate econometric estimation of elasticities, it is reasonably adequate to use Porter's five forces analysis (of the level of competition), which subsumes most of the factors required to be considered under Section 19(7) of the Act.

8. We note that the exhibition market has three set of players, namely, consumers, distributors and multiplex operators. While the consumers prefer to watch films in the nearby theatres, the distributors and multiplex exhibitors generally operate in the pan-India market. In this background, we proceed to analyse the five forces one by one in respect of the market of South Delhi:
(a) Threat of substitutes: It is very high. The multiplexes face competition from various other means of accessing films. These include single screens, home theatres, CD and DVD players, Television Channels, DTH Channels, streaming from Internet, etc. These modes are cost effective and easily accessible, while switching cost and brand loyalty are negligible.

(b) Threat of new entrants: It is moderate or moderately high. There is absolutely no entry barrier. 100% FDI is permitted for this business, which has enabled entry of global as well as domestic players in a big way. Brand identity, switching costs, economies of scale, etc. are low. Product differentiation is moderate. On the face of it, it appears that the supply of real estate is limited. In fact, it is not so, taking into account redevelopment of commercial land, conversion of existing single screens to multiplexes, availability commercial space in metro stations in South Delhi and neighbouring areas, and also keeping in view the New Delhi Master Plan 2021. Further, FAR is quite high while multiplexes do not need much real estate. However, capital and technology costs are high. It takes quite some time to obtain various licenses required for exhibition business.
(c) Industry rivalry: It is very high. As per the data provided by the acquirer, it operated at an occupancy ratio of 34% in Delhi and 28% in Gurgaon in the year 2014-15. Also, Inox's occupancy for the first quarter of 2014-15 was stated to be 33% as against 26% in the same quarter last year.[1] A small shift of the audience from the acquirer's multiplexes to other screens on account of increase in prices or decrease in quality would make the business unviable, given that breakeven is stated to be around 30%.
(d) Bargaining power of suppliers (distributors): It is high. The number of suppliers is low. They have distinct products with very low substitutes. Importantly, they generally have agreements with exhibitors on pan-India basis, not in respect of individual relevant markets.
(e) Bargaining power of buyers: It is moderate or moderately low. The product has many substitutes and switching cost is low. However, they are not organised and are sensitive to prices. They choose halls nearest to their location.
In view of the above, the competition intensity in film exhibition market is pretty high and it is extremely difficult to abuse market power.

9. We note that the acquirer has 467 screens pan-India pre-combination and will have 506 (467+39) screens post-combination. The pertinent question is: whether the acquirer will use its market power in the geographical market of South Delhi only and compromise quality or choice of services and or raise the prices of tickets and food & beverages, at the cost of its reputation in several hundreds of other relevant markets pan-India, including the neighbouring markets of South Delhi? Further, whether with the divestiture of mere 11 screens out of 506 screens pan-India, will the acquirer, which in the opinion of the majority, would abuse market power, behave in a nice way? In our opinion, the simple answers to these questions are in negative. It takes years and sometimes even decades to build a reputation in respect of quality of a product, just a few months or one bad conduct to spoil the same. An entity having high concentration in just one little geographical market would not abuse its dominance in that market at the cost of harming its reputation in the

[1] http://articles.economictimes.indiatimes.com/2015-07-22/news/64725465_1_inox_leisure-june-quarter-screen-capacity accessed on 01.03.2016 at 05:30 p.m.

entire country specially when competition is hotting up with new players acquiring a number of screens throughout the country. Further, as per the acquirer, there are about 1900 multiplex screens available pan-India in addition to 6200 single screens available to the consumers. As per Forbes India magazine[2], there are about 9000 screens in India, of which multiplexes account for approximately 25%. Hence, it seems that the acquirer has around 25% market share in the relevant product market of exhibition of films in multiplexes (506 screens out of around 2000 screens). Though the acquirer is dominant in the market of South Delhi, its stake is entire India, where it is facing competition from all quarters, and, as such, it cannot behave differently in South Delhi.

10. Whenever competition authorities decipher any competition concern inherent in a proposed combination, they endeavour to allow the combinations with the least burdensome remedies which effectively address competition concerns inherent in the combination and do no more, while retaining its potential benefits. They generally use two sets of remedies - structural remedies and behavioural remedies – either alternately or in combination to address competition concerns. Both the sets have relative merits and demerits and one could be more suitable than the other in a given context. The choice of remedy is guided by its suitability to address the competition concerns at hand and the burden of such remedies. Generally, the authorities are guided by considerations such as proportionality, effectiveness and the associated costs and benefits of such remedies in the given context.

11. In the instant case, the acquirer has committed to competitive outcomes through a combination of behavioural and structural remedies (price caps, non-expansion, etc. in the geographical market of South Delhi) and through structural remedies (divestiture of 15 upcoming screens in the geographical market of NOIDA, divesture of 7 upcoming screens in the geographical market of Gurgaon, etc.). The commitments offered by the acquirer are extracted hereunder:

"*(a) divestiture of 15 screens in NOIDA at Garden Galleria;*
(b) divestiture of 7 screens in Gurgaon at Aria Mall;
(c) commitment to not open any new theatre or acquire existing theatres in South Delhi for a period of 5 years;
(d) price caps on ticket and F&B prices for each of PVR and DT Cinemas in South Delhi for a period of 5 years (with an ability to increase prices by no more than 5% of prevailing prices in the 4th and 5th years respectively);
(e) quality commitment in South Delhi for a period of 5 years;
(f) commitment that PVR shall not demand exclusively from distributors anywhere in India, even though no exclusivity arrangements currently exist;

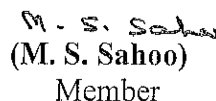
[2] http://forbesindia.com/printcontent/39899 accessed on 01.03.2016 at 05:30 p.m.

(g) *reduction in the period of non-complete with DUL from 5 years to 3 years and limitation on the scope of the non-complete to Delhi NCR and Chandigarh; and*
(h) *commitment that PVR shall not enter into the Co-operation Agreement with DUL and DLF Limited.*"

12. The remedy should aim to retain competitive outcomes (price, choice, quality and availability) as it prevailed before the competition or as it prevails in a neighbouring market. We find that the commitments made by the acquirer retains the competitive outcomes, particularly the pre-combination prices and quality. It defies normal behaviour and common sense that the acquirer will not abide by the commitments. We also find that the commitments are sufficient to address the competition concerns, particularly keeping in view the five forces analysis, having due regard to factors enumerated in Section 19 (7) of the Act, and considering proportionality, effectiveness and costs and benefits of alternative remedies.

13. As against this, the divestiture of 11 screens is South Delhi, as proposed in the MP, though not impossible, is burdensome without corresponding gains. As stated by the acquirer, almost all the screens in the geographical market of South Delhi are being run by the acquirer on long-term lease and in the event the acquirer is required to divest 11 screens out of the same, it will have to pay the residual lease rent for the unexpired period of lease, which is substantial. We tend to agree with the submission of the acquirer that the divesture is costly.

14. We are conscious that implementation of behavioural remedy generally imposes higher administrative burden than that of structural remedy. However, administrative burden cannot be a ground for denying an otherwise appropriate remedy. Moreover, in the instant case, it will not be difficult for the acquirer to carry out and for the Commission to monitor price cap on tickets as well as food and beverages as the same are sold to the customers through Vista software. Importantly, the share of distributors in the revenue and collection of entertainment tax by the Government of NCT are being effected through Vista only. There is no scope to disbelieve the authenticity of the data on vista software and thus, the need for Commission's supervision will be minimal.



(Sudhir Mital	**(M. S. Sahoo)**	**(Justice G. P. Mittal)**
Member	Member	Member