

JUDGE TORRES

14 CV 8732
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

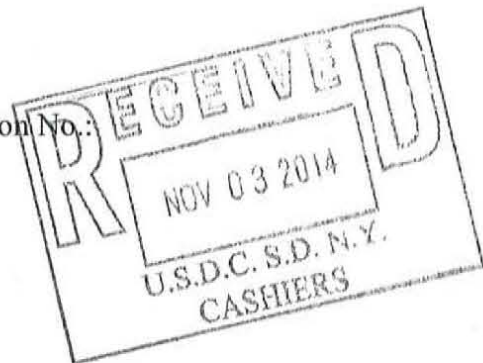
Plaintiff,

v.

NATIONAL CINEMEDIA, INC.,
NATIONAL CINEMEDIA, LLC,
SV HOLDCO, LLC, and
SCREENVISION, LLC,

Defendants.

Civil Action No.:



COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief to prevent the acquisition of Screenvision, LLC ("Screenvision") by National CineMedia, LLC ("NCM LLC") and National CineMedia, Inc. ("NCM Inc.") (collectively, "NCM"). The United States alleges as follows:

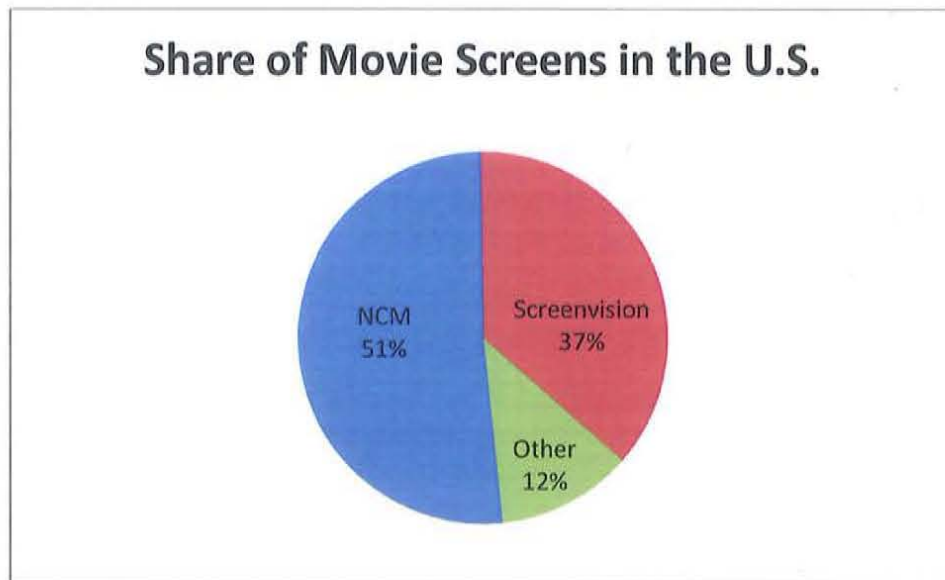
I. INTRODUCTION

1. More than two-thirds of the U.S. population goes to the movies at least once every year. On almost all movie screens, before the previews and feature film begin, the audience is presented with a preshow – a video program consisting of advertisements, special content segments (e.g., a "behind the scenes" look at a new TV show featuring interviews with the cast), and theater announcements. The preshow is typically twenty to thirty minutes long and is designed to engage moviegoers as they wait for the feature film to start.

2. For advertisers, the preshow is a unique opportunity to reach an attentive audience using a large screen with the benefit of high-quality video and sound. For movie theater owners (“exhibitors”), many of them small businesses, the revenue earned from preshow advertisements provides an important source of income that supplements revenue earned through ticket sales and concessions.

3. Cinema advertising networks act as intermediaries between exhibitors and advertisers. The networks sell screen time to advertisers and package the advertisements and content into a preshow, and exhibitors display the preshow on their movie screens. The networks retain a portion of the advertising proceeds for the services they provide.

4. Defendants NCM and Screenvision are the only two significant cinema advertising networks in the United States. Together they serve about 88% of all movie screens in the country:



5. NCM and Screenvision compete head-to-head in selling cinema advertising to advertisers and in providing preshow services to exhibitors. Over the past two years, the competition between Defendants has intensified as Screenvision has evolved into a particularly

aggressive competitor. In late 2012, Screenvision increased its efforts to sell national advertising and steal share from NCM by reducing its cinema advertising prices and offering exhibitors better financial incentives. This strategy has allowed Screenvision to make significant inroads at NCM's expense.

6. Concerned about eroding margins in the face of this intensified competition, NCM determined it had two options: it could compete more aggressively, or it could acquire its only competitor. NCM chose the latter.

7. Section 7 of the Clayton Act prohibits mergers that "tend to create a monopoly," and that is precisely what this proposed transaction would do. If allowed to proceed, the proposed transaction would eliminate competition that has yielded substantial benefits for exhibitors and advertisers. For the reasons set forth below, the proposed transaction should be enjoined.

II. DEFENDANTS AND THE TRANSACTION

8. NCM LLC is a Delaware limited liability company headquartered in Centennial, Colorado. It has a national cinema advertising network that covers about 20,000 of the approximately 39,000 movie screens in the United States. It sells cinema advertising that reaches moviegoers across the United States. In 2013, NCM LLC earned approximately \$426 million in gross advertising revenue.

9. NCM Inc. is a Delaware corporation headquartered in Centennial, Colorado. NCM Inc. is the managing member and owner of 45.8% of NCM LLC. The remaining 54.2% is owned by the three largest exhibitors in the United States – Regal Entertainment Group ("Regal") (20.1%), AMC Entertainment Inc. ("AMC") (15.0%), and Cinemark Holdings, Inc. ("Cinemark") (19.1%).

10. These three exhibitors (the so-called "Founding Members") exercise a significant degree of control and influence over NCM. In addition to holding 54% of NCM's equity, they have representatives on NCM's Board of Directors and enjoy substantial governance rights, including approval rights over certain NCM contracts with competing exhibitors. NCM management routinely consults with executives of the Founding Members.

11. Screenvision is a Delaware limited liability company headquartered in New York, New York. It has a national cinema advertising network that covers approximately 14,300 screens in the United States. For approximately 3,200 of those screens, Screenvision provides national advertising through brokers. Carmike, the fourth largest exhibitor in the United States, owns a 19% share of Screenvision. In 2013, Screenvision earned approximately \$160 million in gross advertising revenue.

12. SV Holdco, LLC is a Delaware limited liability company headquartered in New York, New York, and is the parent of Screenvision, LLC.

13. On May 5, 2014, NCM Inc. agreed to purchase Screenvision LLC from SV Holdco, LLC for \$375 million, consisting of \$225 million in cash and approximately 10 million shares of NCM Inc. common stock, subject to adjustment.

III. JURISDICTION, INTERSTATE COMMERCE, AND VENUE

14. The United States brings this action, and this Court has subject-matter jurisdiction over this action, under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

15. Defendants are engaged in, and their activities substantially affect, interstate commerce. Screenvision and NCM provide preshow services to thousands of theaters across all fifty states. Both also sell cinema advertising to advertisers throughout the United States.

16. Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22. This Court also has personal jurisdiction over each Defendant. Both Defendants transact business in this judicial district.

IV. INDUSTRY BACKGROUND

A. Preshows

17. A preshow is video programming that plays on a movie screen in advance of the previews and feature film. It consists primarily of national, regional, and local advertisements but also contains announcements explaining theater policies, previews of special theater events, and special “behind-the-scenes” content segments promoting new and upcoming TV shows, movies, and other products.

18. The preshow is divided into segments, typically an early and a late preshow. Advertisements for local or regional businesses near a theater’s location (*e.g.*, a local dentist or restaurant) generally play in the early preshow, while advertisements for products sold nationwide (*e.g.*, cars or cell phone service) generally play in the late preshow, closer to the scheduled show time of the feature film when more moviegoers are in their seats. A typical preshow will have as many as twelve to fourteen minutes of advertising, broken up into 15, 30, 60, or 90 second spots.

19. Cinema advertising has important attributes that differentiate it from other forms of advertising. The preshow is projected on a large screen with high-quality video and sound in a darkened auditorium. In contrast to TV and other video advertising platforms, the audience cannot avoid the advertisements by fast forwarding through them, clicking past them, or changing a channel. The preshow also allows for long-form advertisements typically not

available on TV (*e.g.*, a 90 second spot), and reaches a weekend audience and light TV viewers who are otherwise difficult to reach.

20. National advertisers pay for cinema advertising on a cost-per-thousand (“CPM”) impressions basis, meaning that advertisers pay the network a set amount per moviegoer.

B. The Sale of Preshow Services to Exhibitors

21. For exhibitors, the preshow represents a unique opportunity to supplement revenue earned through ticket sales and concessions. Because much of the revenue generated through ticket sales must be paid to the movie studios, the ability to earn a revenue stream from preshow advertising is especially important for exhibitors.

22. To obtain preshows, exhibitors enter into long-term, exclusive contracts with Defendants. Under the contracts, Defendants commit to marketing the preshow screen time to advertisers and packaging the advertisements and other content into an entertaining video program. Exhibitors agree to display the preshow on their movie screens. The networks retain a portion of the advertising proceeds for the services they provide.

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

C. Defendants Are the Only Significant Competitors Offering Preshow Services to Exhibitors

24. As NCM’s top executive in charge of exhibitor relations has acknowledged, there are only “two national players in the preshow space.” NCM and Screenvision collectively serve approximately 88% of the movie screens in the United States.

25. Through contracts with exhibitors, NCM and Screenvision have each established a nationwide network of movie screens. NCM's cinema advertising network covers about 20,000 of the approximately 39,000 screens in the United States, including screens in 49 of the top 50 designated market areas ("DMAs"); Screenvision's cinema advertising network covers about 14,300 screens, including screens in all 50 states, each of the top 50 DMAs, and 94% of all DMAs. DMAs are geographic areas of the United States ranked by population size. National advertisers are typically interested in reaching the top DMAs, which are the most populous areas of the country.

26. Spotlight Cinema Networks ("Spotlight") is the only other cinema advertising network that attracts national advertisers. Spotlight is a niche player with a network of about 700 screens in art-house and luxury theaters. It offers its exhibitors short preshow services that are limited to only a few minutes and typically contain only national advertisements. Spotlight's small network of exhibitors caters to a narrow demographic of moviegoers – an older, affluent audience that appeals to a small subset of national advertisers marketing luxury products and brands. Thus, it does not offer a viable alternative to Defendants' networks for advertisers seeking to market their products to a diverse national audience. And because Spotlight does not attract such advertisers, it is not a meaningful alternative for the mainstream exhibitors that obtain preshow services from Defendants.

27. Although local advertising brokers provide preshow services to exhibitors (and a handful of exhibitors perform these services for themselves), their market shares are small. These firms focus on selling to local and regional advertisers, and their exhibitors' theaters generally draw relatively small audiences. To the extent their preshow services include national advertisements, those advertisements are typically sold by Screenvision in exchange for a share

of the advertising revenue. These brokers' reliance on Screenvision for national advertising limits their competitive significance.

D. Competition Between Defendants Has Resulted in Substantial Benefits for Exhibitors

28. NCM and Screenvision compete head-to-head to win exclusive contracts with exhibitors. Because most movie screens in the United States are under contract with either NCM or Screenvision, Defendants compete to steal share from one another when these multi-year contracts come up for renewal or are renegotiated. According to Screenvision's internal bid tracking reports, Screenvision faced NCM on almost all of its contested bidding opportunities (measured by screens) over the past three years. By contrast, Screenvision faced Spotlight – the niche firm that caters to art-house and luxury theaters – on only a small fraction of bids during this period.

29. NCM and Screenvision carefully monitor each other's efforts to win contracts with exhibitors. Each keeps close tabs on the expiration dates of the other's exhibitor contracts, identifying as key prospects exhibitors whose theaters draw large audiences or are located in particular geographic areas, such as the top DMAs. Armed with this information, Defendants approach exhibitor prospects with proposals to renew their contracts or switch networks. In many instances, this approach is made several years before the contract expires.

30. Typically, contract negotiations with exhibitors involve multiple rounds of proposals with exhibitors playing NCM and Screenvision off each other to obtain the most advantageous contract terms. NCM and Screenvision compete vigorously by offering attractive pricing terms such as a more favorable revenue share, a higher minimum payment guarantee, or an upfront payment at the beginning of the contract term. One or both firms may also offer to subsidize some equipment costs.

31. The competition between Defendants has resulted in significant financial benefits for exhibitors. NCM and Screenvision often match or exceed the other's bids. For example, in the spring of 2011, NCM ended a bidding war for a Screenvision exhibitor affiliate by offering a \$14.5 million upfront payment. In the fall of 2013, Screenvision offered an additional \$1 million as a signing bonus to retain another one of its exhibitor affiliates.

32. NCM and Screenvision also battle over the non-price terms of their contracts with exhibitors, affording exhibitors greater flexibility and control over the preshows and higher-quality programming. Screenvision has been particularly accommodating of exhibitors' preferences, extolling its flexibility relative to NCM as a way of winning or keeping exhibitors. For instance, Screenvision offers some exhibitors the right to reject preshow content, including the advertisements themselves. Screenvision also allows exhibitors to opt for a shorter preshow, which frees up more screen time for exhibitors to promote their own products or schedule additional movie showings. NCM generally provides uniform preshows to exhibitors, but on at least one occasion, the presence of a competing bid from Screenvision forced NCM to match the creative approval rights offered by Screenvision. NCM and Screenvision also compete by producing high-quality preshows with engaging content.

E. Screenvision Has Evolved into a More Aggressive Competitor

33. Before 2012, NCM and Screenvision commanded CPMs for cinema advertising that were substantially higher than those of other media (including primetime TV and cable) and enjoyed large margins. After Screenvision was acquired by a private equity firm in 2010, an outside consultant retained to analyze the business concluded that NCM was benefitting disproportionately from the status quo. While CPMs were high, key advertiser accounts went to NCM, and Screenvision's revenues were on the decline.

34. In late 2012, in an effort to reverse this trend, Screenvision adopted an aggressive pricing strategy that involved lowering its CPMs to undercut NCM's prices by 50% or more. After launching this new strategy, Screenvision's head of advertising sales instructed his staff: "We will not lose [to NCM] on price. . . . You must do whatever we need to do and win these head to head battles."

35. Observing that Screenvision had adopted "[a] very unusual strategy in a duopoly," NCM was deeply concerned about this "wholesale change" to the industry caused by Screenvision's aggressive pricing strategy, viewing it as a "direct threat to [NCM's] business model."

36. NCM decided to lower its CPMs to compete with Screenvision on specific buys. Advertisers and their advertising agencies embraced this intensified price competition. Executives from both NCM and Screenvision reported instances in which advertisers pushed Defendants to compete vigorously on price. For example, a Screenvision executive announced that a particular customer said it was opening up a bid to both NCM and Screenvision "and [they] will have to battle it out on pricing." An NCM executive reported that Screenvision "told [an] agency [Screenvision] will beat us on any price."

37. Hoping that various NCM initiatives would force Screenvision to "blink" and abandon its new price-cutting strategy, NCM's CEO resisted a wholesale change in NCM's pricing policy, declaring in late 2013 that Screenvision's pricing strategy was commoditizing cinema advertising and refusing to follow Screenvision "down the pricing death spiral!!!!!!!!!!!!!!"

38. By early 2014, Screenvision was having a significant impact on NCM. In a February 2014 presentation to its Board of Directors, Screenvision reported: "We woke the beast. In spite of fundamental differences in strategy, NCM is quick to drop price."

39. Screenvision's new strategy proved effective. Over a period of 18 months, Screenvision won substantial advertising business from NCM and reversed its downward revenue trend. Screenvision augmented its CPM pricing strategy by offering advertisers attractive new terms such as demographic guarantees, *i.e.*, commitments to deliver a set number of impressions to a targeted demographic.

40. Screenvision also continued competing aggressively for exhibitor contracts. For example, Screenvision's approach in a recent battle to win a large exhibitor contract was so aggressive that it prompted a senior NCM executive to observe, "[w]e need to buy [Screenvision] before either us or [Screenvision] does a stupid deal with [the exhibitor]."

F. The Proposed Merger Is Driven by NCM's Desire to Eliminate Competition from Screenvision

41. By April 2014, NCM had arrived at what it called a "Strategy Decision Crossroads," identifying two possible ways to cope with Screenvision's competitive tactics. One option, "Plan A," was to acquire Screenvision, which NCM executives had been considering for some time. As NCM previously had concluded, acquiring Screenvision would give NCM the ability to "Control Selling Tactics," including "Pricing." NCM's "Plan B" was to compete with Screenvision by "[r]eset[ting] NCM CPMs to current market levels" and "continuing to expand impression base through Affiliate additions." By early May 2014, NCM had resolved its internal debate, choosing to buy Screenvision instead of competing with it.

V. THE RELEVANT MARKETS

42. Cinema advertising networks operate in two distinct markets: preshow services sold to exhibitors and cinema advertising sold to advertisers.

A. Preshow Services

43. Preshow services consist of the packaging of advertisements and content into a preshow delivered to exhibitors, enabling them to earn revenue from the use of their screens before the feature film. The price charged to exhibitors for preshow services is the portion of advertising revenue retained by the network. Preshow services constitute a relevant product market and line of commerce under Section 7 of the Clayton Act. There are no reasonable substitutes for preshow services. Exhibitors cannot easily replace the preshow services they buy from cinema advertising networks because individual exhibitors generally lack sufficient screens and geographic reach to secure national advertising. Nor can they sufficiently replace national advertising in preshows with local advertising because local advertising generates much less revenue than national advertising.

44. A well-accepted methodology for assessing a relevant market for antitrust analysis is to ask whether a hypothetical monopolist over all products in the market would profitably impose at least a small but significant and non-transitory increase in price, or SSNIP. *Fed. Trade Comm'n & U.S. Dep't of Justice Horizontal Merger Guidelines* (2010). The market for preshow services satisfies this test. Because there are no reasonable substitutes for preshow services, a hypothetical monopolist of all such services would increase price by at least a SSNIP. Thus, the market for preshow services is an antitrust relevant market.

B. Cinema Advertising

45. Cinema advertising is the on-screen advertising incorporated in the preshow. The sale of cinema advertising to advertisers is a relevant product market and line of commerce under Section 7 of the Clayton Act. Cinema advertising has important attributes that differentiate it from other forms of video advertising. For example, the preshow is projected on a large screen

with high-quality video and sound in a darkened auditorium. In contrast to TV and other video advertising platforms, the audience cannot avoid the advertisements by fast forwarding through them, clicking past them, or changing a channel. The preshow also allows for long-form advertisements typically not available on TV, and it reaches a weekend audience and light TV viewers who are otherwise difficult to reach.

46. Many advertisers value the combination of attributes afforded by cinema advertising, and few would switch to other forms of video advertising in response to a SSNIP of cinema advertising. A hypothetical monopolist over all cinema advertising would profitably impose a SSNIP and thus, the market for cinema advertising is an antitrust relevant market.

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

VI. ANTICOMPETITIVE EFFECTS

A. The Proposed Transaction Would Eliminate Competition in the Market for Preshow Services

48. NCM's acquisition of Screenvision would end the vigorous competition between these firms, leaving exhibitors at the mercy of a monopolist. Because these firms closely monitor each other and battle for market share, the competition between them provides tangible benefits for exhibitors with respect to price and quality. If allowed to proceed, the merger would eliminate the competition that has yielded these benefits, potentially forcing exhibitors to raise prices to consumers or forgo theater improvements in order to offset the resulting reduction in revenue.

49. NCM would be free to impose its will on exhibitors and likely would offer them reduced financial inducements, *e.g.*, lower revenue shares, minimum guarantees, and upfront payments. NCM is also likely to stop offering its exhibitors the greater flexibility and control over the preshow that is a hallmark of Screenvision's competitive strategy.

50. Even before the expiration of their contracts, exhibitors likely would suffer from the loss of competition because the contracts do not completely insulate them from harm. For example, under the existing contracts, when an advertiser buys less than the entire network of movie screens, Defendants have the ability to steer advertising to the theaters of their choice. Post-merger, in the absence of competition, the combined firm would have the ability and incentive to favor exhibitors that have signed new contracts on less favorable terms or favor its Founding Members (Regal, AMC, and Cinemark) by placing more lucrative advertisements with them. Pre-merger, the prospect of competition at the end of a contract term creates an incentive for Defendants to market advertising time to maximize their chances of retaining independent exhibitor affiliates.

51. For certain NCM exhibitors, the proposed merger has already resulted in a meaningful loss of competition. Before the decision to merge with NCM, Screenvision had viewed the "next couple of years as opportunistic years to potentially gain some share from [NCM]" by going after exhibitors whose contracts were expiring. But the decision to merge dampened Screenvision's appetite to compete for these contracts. As Screenvision's head of exhibitor relations testified, "[I]f we had not announced a merger six months ago, I would know exactly what's expiring when, but I've kind of not pursued those circuits, because I don't think they would think about signing a deal with Screenvision – moving from NCM to sign a deal with Screenvision when they may be – we may be one company by that time."

52. Defendants have already taken steps to stabilize current rates and contract terms. Before the merger announcement, Defendants had been competing aggressively for exhibitors, offering increasingly better financial terms and other incentives. After the merger announcement, NCM and Screenvision offered to freeze existing contract rates for an additional five years, which served to deprive exhibitors of the benefits of head-to-head competition that likely would have occurred if not for the proposed merger. In doing so, NCM made one key change, eliminating “minimum patron guarantee” escalation clauses that had served to protect exhibitor revenues. These clauses had been offered when NCM and Screenvision were competing aggressively against each other but, looking at a future without competition from Screenvision, NCM determined it no longer needed to offer them.

53. Neither NCM nor Screenvision likely would have pursued a blanket contract extension strategy in the absence of the proposed merger. When asked whether Screenvision had ever previously offered such a blanket contract extension, Screenvision’s CEO replied: “No, we haven’t.” He explained, “Well, we actually never in the past ever expected we would get any positive response from sending out these notices.” Before the merger announcement, exhibitors seeking to improve contract terms at renewal likely would have been unwilling to extend their existing rates and terms for an additional five years. The announcement of the proposed merger changed this calculus – making the extension of today’s rates more appealing than the prospect of negotiating new rates and terms with a monopolist.

54. Finally, if the merger were allowed to proceed, independent exhibitors would lose the option of buying preshow services from a network that is not jointly owned by the three largest exhibitors in the United States – Regal, AMC, and Cinemark. These exhibitors, NCM’s Founding Members, exercise a significant degree of influence over NCM, including the ability to

affect NCM's dealings with competing, independent exhibitors. For example, the Founding Members have the right to block NCM from entering into contracts with expenditures exceeding \$1 million. Upfront payments exceeding \$1 million are common when NCM and Screenvision compete aggressively for exhibitors, and NCM has to submit such proposed independent exhibitor contracts to the Founding Members for their review and approval. Moreover, NCM has consulted with Founding Members' executives on proposed contract terms that NCM is considering offering to independent exhibitors, including whether NCM should implement the recent strategy to offer five-year contract extensions.

55. NCM's ownership structure is an important consideration for many exhibitors in choosing between NCM and Screenvision. One Screenvision executive who works on deals with exhibitors described the "competitive advantage" of Screenvision's ownership structure: "[W]e cater to many independent theatre owners, where NCM has a tendency to express favoritism towards their 3 founding exhibitors." The Founding Members would have the incentive to raise their rivals' costs for preshow services and the ability to do so through their influence over the operation of the merged firm. The competitive effects of the proposed merger are likely to be more pronounced as a result of this incentive.

B. The Proposed Transaction Would Eliminate Competition between NCM and Screenvision for Advertisers

56. NCM's acquisition of Screenvision would also end the vigorous competition between NCM and Screenvision for the sale of cinema advertising. For NCM and Screenvision, by far the most important constraint when they negotiate with advertisers is the risk that advertisers will turn to the other network. The merger would remove that competitive constraint. Screenvision's aggressive tactics over the past 18 months have triggered a price war between the firms, resulting in substantially lower prices and better terms for advertisers. If allowed to

proceed, the merger would eliminate the competition that has yielded these benefits and lead to higher prices. For NCM, the prospect of eliminating this vigorous competition was a key driver of the deal.

57. The merger would also eliminate an important source of innovation for advertisers. Screenvision has been a driving force behind recent quality improvements, leading NCM executives to push their teams to “stay on top of our game.” As one NCM executive noted, “it’s not just about price, [Screenvision] caves on every point and gives clients/agencies everything they ask for and more.” A 2014 annual survey of agencies and advertisers confirmed this observation, with Screenvision receiving top ranking in nearly every category, including for “Innovative and Creative Opportunities” and “Advanced Research Insights and Support.”

58. Screenvision has also been a leader in targeted advertising and has offered advertisers greater accountability for results. For example, in 2012, Screenvision began offering advertisers demographic guarantees, which represented a sea change in cinema advertising. As NCM’s President of Marketing and Sales observed, “my reluctance to do [demographic guarantees] for ten years has been a key strategy and saves us millions of dollars. . . . I knew that the buyers would like them, but I felt that we could get away with not giving demo guarantees and minimize some downside risk.” With Screenvision introducing this method of purchasing cinema advertising, however, it “create[d] the necessity for [NCM] to do the same.”

59. In these ways and more, Screenvision has spurred lower prices, innovation, and quality improvements in cinema advertising. If the merger were allowed to proceed, NCM would no longer face this important competitive pressure.

VII. ABSENCE OF COUNTERVAILING FACTORS

A. Barriers to Entry and Expansion Are High

60. The entry barriers associated with developing a cinema advertising network are high, and thus new entry or expansion by existing competitors is unlikely to prevent or remedy the proposed merger's likely anticompetitive effects. Barriers to entry and expansion include the time and cost of developing a network of screens to achieve sufficient scale, NCM's and Screenvision's lock-up of almost all exhibitors in the United States through staggered long-term contracts, and the time and cost of building the infrastructure necessary to develop and attract national advertisers.

61. Exhibitors cannot supply preshow services themselves as an effective alternative to the merged company. Individual exhibitors or groups of small exhibitors whose contracts with NCM or Screenvision are expiring are unlikely to be able to establish cost-effective sales forces, attract national advertisers, or otherwise develop a sufficient infrastructure to reasonably replace the merged company.

B. Defendants' Claimed Efficiencies Should Not Be Credited

62. Defendants claim that the merger would enable them to offer ubiquitous coverage, leading to an increase in both the CPMs paid by advertisers and the number of cinema advertisements sold. However, advertisers already can obtain ubiquitous coverage – they easily can, and often do, purchase cinema advertisements across both of Defendants' networks. To the extent advertisers were to pay higher CPMs as a result of the merger, it would be due to the elimination of competition and the exercise of market power by the merged firm. Defendants also claim that the merger would enable them to target advertisements more effectively, but it is unlikely that Defendants' ability to target as a combined company would be materially better

than it is today. Defendants cannot demonstrate that these or any other claimed efficiencies are merger specific or sufficient to counteract the anticompetitive effects that would inevitably flow from creating a monopoly. Defendants' efficiencies claims amount to a bald assertion that bigger is somehow better for both advertisers and exhibitors even though the merger would leave them with only one supplier of cinema advertising and preshow services.

VIII. VIOLATION ALLEGED

63. The United States alleges and incorporates paragraphs 1 through 62 as if set forth fully herein.

64. The effect of the proposed transaction, if approved, likely would be to lessen competition substantially, and to tend to create monopoly, in interstate trade and commerce in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

65. Among other things, the transaction would likely have the following effects:

- (a) Eliminating significant head-to-head competition between NCM and Screenvision in the provision of preshow services to exhibitors;
- (b) Creating a combined NCM-Screenvision with the ability to increase the revenue share received by the merged firm, and reduce or eliminate guaranteed minimum payments and upfront payments made to exhibitors;
- (c) Creating a combined NCM-Screenvision with the ability to reduce the quality of preshow services to exhibitors;
- (d) Eliminating significant head-to-head competition between NCM and Screenvision for the sale of cinema advertising; and
- (e) Causing prices to rise for cinema advertising.

IX. REQUEST FOR RELIEF

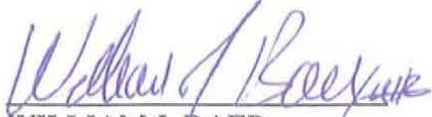
66. The United States requests:

- (a) That the acquisition of Screenvision by NCM Inc., and the subsequent contribution of Screenvision's assets to NCM LLC, be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
- (b) That Defendants be permanently enjoined and restrained from carrying out the planned acquisition of Screenvision by NCM Inc. or any other transaction that would combine the two companies, or would combine Screenvision and NCM LLC;
- (c) That Defendants rescind, at the option of the exhibitor, all contract extensions and contracts executed after the announcement of the proposed transaction on May 5, 2014;
- (d) That the United States be awarded its costs of this action; and
- (e) That the United States be awarded such other relief as the Court may deem just and proper.

Dated this 3rd day of November 2014.

Respectively submitted,

FOR PLAINTIFF UNITED STATES:



WILLIAM J. BAER
Assistant Attorney General



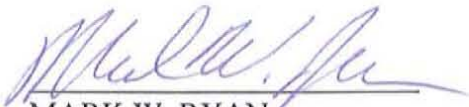
RENATA B. HESSE
Deputy Assistant Attorney General



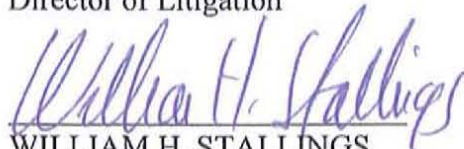
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Director of Civil Enforcement



MARK W. RYAN
Director of Litigation



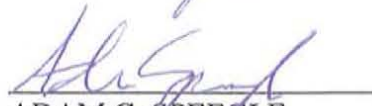
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