PUBLIC VERSION

COMMERCE ACT 1986: BUSINESS ACQUISITION SECTION 66: NOTICE SEEKING CLEARANCE

15 March 2010

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

1. SUMMARY OF APPLICATION

1.1 Hoyts Corporation Holdings (NZ) Limited, is considering the acquisition, directly or indirectly, of 100% of the Berkeley film exhibition business assets [ ].

1.2 Hoyts Cinemas (NZ) Limited and the Berkeley Group are both in the business of exhibiting films to the public.

1.3 The proposed Acquisition will not result in a substantial lessening of competition in any market for the following reasons:

(a) The market has a large number of existing competitors, in the total cinema market in New Zealand there are at least 80 participants. AHL/SkyCity is the largest participant with approximately [ ]% New Zealand-wide and [ ]% Auckland-wide. The merged entity will face vigorous competition from its existing competitors. In particular, AHL is expected to be even more vigorous and exert even more competitive constraint than SkyCity Cinemas did in the past.

(b) Barriers to entry and expansion by either existing or new operators are low where expansion opportunities are created by substandard product offerings. In essence, a cinema is a commodity; it is a room in a convenient location with a screen. There is no material brand loyalty. The New Zealand market has seen recent examples of local entry and expansion.

(c) Consumers are highly price sensitive and discerning as to the quality of the product offering, and so switch readily between cinema operators. There is price competition between cinema operators on ticket sales and concession sales. Cinema operators are incentivised to have competitive ticket prices so that they are able to generate volume through their cinemas to increase quantities of concession sales (which are an important source of revenue). Furthermore, cinema operators cannot overcharge for concessions as there are invariably many other food or drink options in the general vicinity of a cinema that consumers could substitute to if they considered that the prices for concessions were too high. This creates a highly competitive environment for both ticket prices and concession prices.

(d) There is significant constraint from other forms of entertainment. The New Zealand cinema industry, like the industry in the rest of the world, is currently facing vigorous competition from other forms of entertainment such as video games, DVDs, multi-channel television, streaming video to the home, digital video recorders, pay per view telecasts and online entertainment. The New Zealand cinema industry is particularly vulnerable to piracy given that it frequently has later release dates than overseas countries.

(e) The major film studios/distributors have countervailing market power due to their scale and copyright to a continuing stream of blockbuster films.

(f) The merger will allow the parties to better spread the costs of Digital Cinema conversion so that this new product can be offered in the near future, which will benefit consumers. This will allow the merged entity to be better equipped than either business alone to be a viable and vigorous competitor to AHL (formerly SkyCity).

1.4 Accordingly, the proposed Acquisition is not likely to substantially lessen competition in any market in New Zealand.

PART 1: TRANSACTION DETAILS

1. **Provide the name of the acquirer (person giving notice), and the name and position of the individual responsible for the notice.**

1.1 This notice is given by Hoyts Corporation Holdings (NZ) Limited ("**Hoyts NZ**" or the "**Applicant**"):

Hoyts Corporation Holdings (NZ) Limited
286 Mt Wellington Highway
AUCKLAND 1641

Attention: Delfin Fernandez

1.2 All correspondence and notices in respect of the application be directed in the first instance to:

Russell McVeagh
Barristers & Solicitors
PO Box 8
AUCKLAND 1140

Attention:	Sarah Keene, Partner / Troy Pilkington, Solicitor
Telephone:	09 367 8133 / 09 367 8108
Fax:	09 367 8595
Email:	sarah.keene@russellmcveagh.com / troy.pilkington@russellmcveagh.com

2. **Provide the name of the other merger parties, and the name/position of the relevant individual within the relevant merger parties.**

2.1 The other merger party is Everard Entertainment Limited as the 100% owner of the Berkeley Cinema Group ("**Berkeley**") business.

2.2 Contact details are as follows:

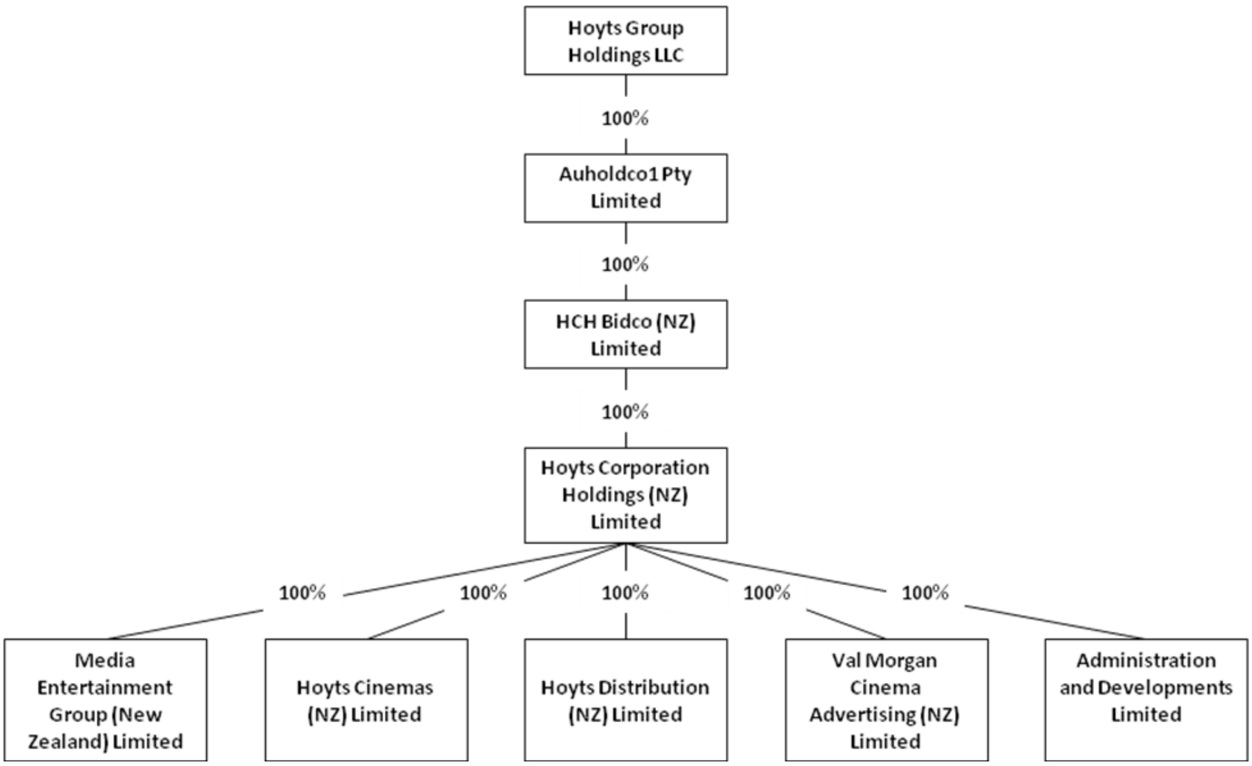
Everard Entertainment Limited
Brian Eldridge (Director)
C/- Ross Melville PKF
Level 5
50 Anzac Ave
AUCKLAND 1641
Email: brian@bcg.net.nz

3. With respect to the merger parties, list the relevant companies and the person or persons controlling these directly or indirectly. Please use organisational charts or diagrams to show the structure of the ownership and control of the acquirer and participant(s) to the acquisition.

Hoyts

3.1 The organisational chart below illustrates the structure of the relevant ownership and control of the Applicant.

Figure 1 - Organisation chart showing relevant ownership and control of the Applicant



3.2 The Applicant is ultimately 100% owned by Hoyts Group Holdings LLC ("**Hoyts Group**"), which is domiciled in the United States of America. Hoyts Group, through its subsidiaries which are based in Australia and New Zealand, is primarily involved in operating cinemas for film exhibition, cinema advertising and film distribution in Australia and New Zealand. Hoyts Group is itself owned by Pacific Equity Partners Pty Ltd ("**PEP**") an Australian private equity investment company, and Intermediate Capital Group (“**ICG**”), a listed investment firm and fund manager of buyout debt.

3.3 Details of the Applicants' subsidiaries are as follows:

(a) Hoyts Cinemas (NZ) Limited ("**Hoyts Cinemas NZ**") is a 100% owned subsidiary of the Applicant. Hoyts Cinemas NZ owns and operates 7 cinema complexes with a total of 49 screens for film exhibition to the public in New Zealand. Further details of Hoyts Cinemas NZ's operations are set out at paragraph 8;

(b) Hoyts Distribution (NZ) ("**Hoyts Distribution**") Limited is a 100% owned subsidiary of the Applicant. Hoyts Distribution purchases the rights to distribute independent films in New Zealand for exhibition through cinema, television and home entertainment channels. Hoyts Distribution is operated independently to Hoyts Cinemas NZ and all transactions between the two take place on an arm's length basis;[1]

(c) Val Morgan Cinema Advertising (NZ) Limited ("**Val Morgan**") is a 100% owned subsidiary of the Applicant. Val Morgan provides cinema advertising in New Zealand by renting screen time from film exhibitors to provide a unified multi-screen national offer, competing with television and other media. Val Morgan owns the exclusive rights to sell cinema advertising prior to a movie on Hoyts Cinemas NZ screens as well as selling cinema advertising to other film exhibitors in New Zealand. Val Morgan is operated independently to Hoyts Cinemas NZ and all transactions between the two take place on an arm's length basis;

(d) Media Entertainment Group (New Zealand) Limited is a 100% owned subsidiary of the Applicant. At present it is a shell company and does not trade;

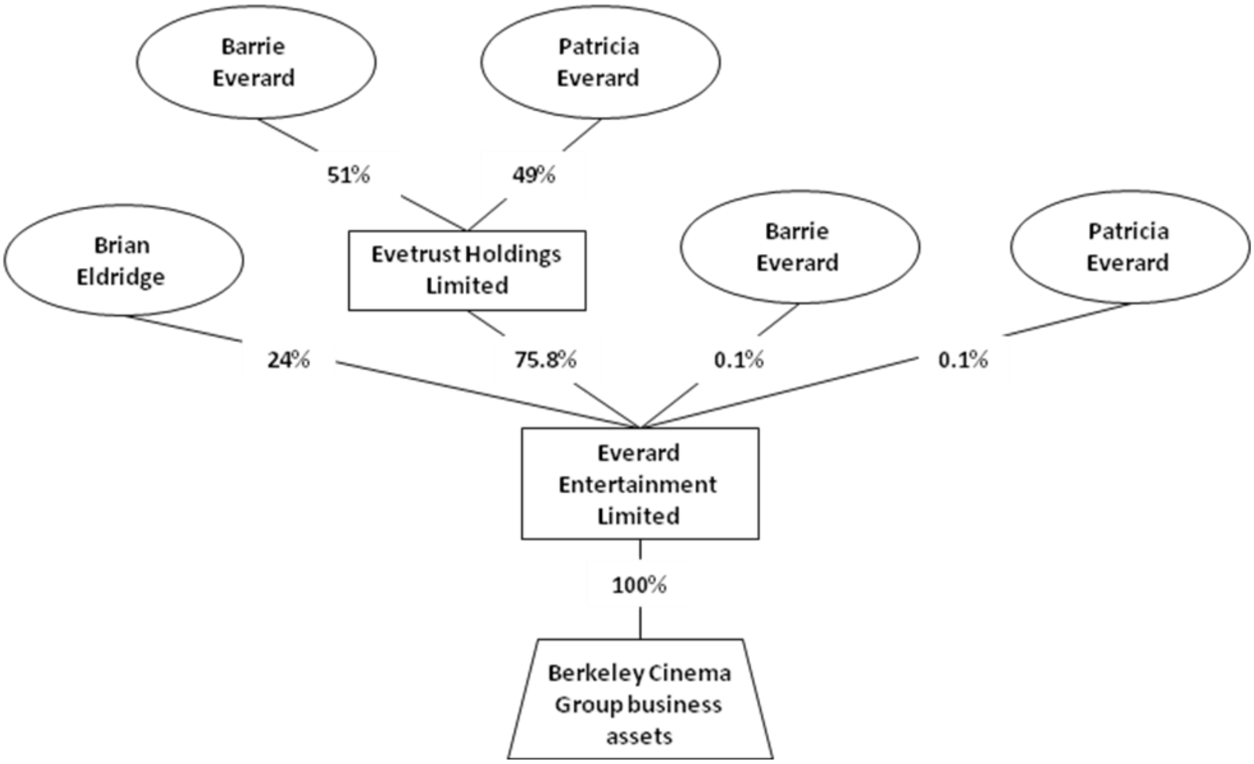
(e) Administration and Developments Limited is a 100% owned subsidiary of the Applicant. At present it is a shell company and does not trade.

[1] See further para 3.6 below.

Berkeley Cinema Group

3.4 The organisational chart below illustrates the structure of the relevant ownership and control of Berkeley.

Figure 2 - Organisation chart showing relevant ownership and control of the Berkeley Cinema Group



3.5 The Berkeley business consists of four cinema complexes with a total of 21 screens for film exhibition in the Auckland region. The Berkeley's business assets are based in Auckland and are 100% owned by Everard Entertainment Limited. Everard Entertainment Limited is a privately held company ultimately owned by Barrie Everard, Patricia Everard and Brian Eldridge.

Links between merger parties

3.6 Currently Hoyts Distribution distributes films for exhibition to Hoyts Cinemas NZ and to Berkeley as well as to other film exhibition businesses. Hoyts Distribution is operated as a separate and distinct business from Hoyts Cinemas NZ and all transactions between the two take place on an arm's length basis. It is necessary for these transactions to take place on an arm's length basis as Hoyts Distribution has obligations to the film makers that produce a film to maximise returns for that film maker and, therefore, needs to deal with all film exhibitors on a commercial basis so that it does not jeopardise its relationship with film makers. Neither the Applicant nor Berkeley have, nor are intended to have post-Acquisition, an exclusive distribution arrangement with Hoyts Distribution.

3.7 In addition, Val Morgan rents screen time from Hoyts Cinemas NZ and Berkeley to sell advertising space on Hoyts Cinemas NZ's and Berkeley's screens prior to films. Val Morgan is operated as a separate and distinct business from Hoyts Cinemas NZ and all transactions between the two take place on an arm's length basis.

4. Provide details on what is to be acquired.

4.1 The Applicant seeks clearance to acquire, directly or indirectly, the Berkeley film exhibition business assets [ ] as described in the Agreement for Sale and Purchase between the Applicant and Everard Entertainment Limited ("**the Acquisition**").

5. Fully explain the commercial rationale for the proposed merger. Specify whether this is part of an international merger.

5.1 Through the Acquisition, the Applicant seeks to create an even better and more efficient film exhibition business to compete strongly with New Zealand's largest film exhibitor Amalgamated Holdings Ltd ("**AHL**"), the new owner of the SkyCity Cinema business and 50% owner of Rialto Cinemas.

5.2 Specifically, the Acquisition would provide the Applicant with the opportunity to:

(a) *Create growth in the film exhibition/cinema industry and develop its operations in the retail of cinema experiences for the public:* Internationally there has been a trend for film exhibitors to convert their cinemas to digital projection ("**Digital Cinema**") to replace the conventional 35mm celluloid film projection ("**Celluloid Cinema**"). Mainstream film exhibitors in New Zealand have not yet commenced this digital conversion in earnest, however, the Applicant intends to commence this conversion to provide a better quality cinema product for consumers to drive growth in cinema admissions. Digitalisation requires capital investment to convert screens to Digitial Cinema standard. The minimum cost for a 2D digital screen is estimated at approximately $100,000 for a projector, screen, server and peripherals. The costs involved with digitalisation form part of the rationale for the Acquisition so that suitable financing options and installation support can be accessed and used for converting a large number of screens. Another trend in international exhibition is to enhance the standard movie-going experience with premium cinema, big screen and other enhanced cinema experiences which require substantial capital expenditure to install. A combined Hoyts/Berkeley would be better placed to compete in Digital Cinema conversion, that is being lead by

AHL/SkyCity, and to compete in the provision of enhanced cinema experiences in the New Zealand industry;

(b) *Rationalise costs by making their procurement more efficient and to make cost savings through scale efficiencies*: The enhanced scale efficiencies of the merged entity would allow for improved procurement, efficiency optimisation of logistics and an enhanced New Zealand dedicated management team of the New Zealand based investments. Lower costs and more targeted management focus will benefit the consumers of cinema offerings;

(c) [ ]

(d) *Be better placed to compete with other forms of entertainment*: The New Zealand cinema industry, like the industry in the rest of the world, is currently facing vigorous competition from other forms of entertainment such as video games,[2] DVDs, multi-channel television, streaming video to the home, digital video recorders ("**DVRs**"), pay per view telecasts and online entertainment (together "**digital leisure substitutes**").[3] The merged entity would be better placed to offer consumers the best product at prices, times and locations, utilising the trends and product innovation, to create an entertainment product that is competitive with other digital leisure substitutes.

5.3 In summary, the Applicant sees the Acquisition as necessary to ensure that in the long term both the Hoyts Cinemas NZ and Berkeley businesses remain strong and vigorous competitors to AHL in New Zealand. The merged entity will be better equipped than either business alone to weather the future challenges of competition from other digital leisure substitutes and film piracy to be a viable and vigorous competitor to AHL. Furthermore, the merged entity will be in a strong position to quickly invest to complete Digital Cinema conversion so that this new product can be offered in the near future, to the benefit consumers.

5.4 The acquisition is not part of an international merger, Berkeley is a film exhibition business owned by a New Zealand company. Berkeley currently only operates cinema premises within the Auckland region.

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[2] Wallop, H. (2009, December 26). Video games bigger than film. The Daily Telegraph. Retrieved from http://www.telegraph.co.uk/technology/video-games/6852383/Video-games-bigger-than-film.html

[3] The UK Film Council. (2006). The plateau in cinema attendances and drop in video sales in the UK: the role of digital leisure substitutes. London, Hasan Bakhshi. Retrieved from http://www.ukfilmcouncil.org.uk/media/word/f/q/plateau.doc

6. Provide copies of the final or most recent versions of any document bringing about the proposed merger.

6.1 The relevant transaction documentation is enclosed in **Confidential Appendix One**.

7. If any other jurisdiction's competition agency has been (or will be) notified of the proposed merger, please list each competition agency notified (or to be notified) and the date of the notification.

7.1 Not applicable. This is a transaction that only affects in New Zealand.

PART 2: THE INDUSTRY

8. Describe the relevant goods or services supplied by the merger parties (it is sufficient to refer in general terms to activities in which there will be no aggregation).

8.1 Both the Applicant, through Hoyts Cinemas NZ, and Berkeley are active in the public exhibition of films in cinemas in New Zealand. This involves acquiring the rights for public exhibition of films from film studios/distributors and other exhibition rights from suppliers of non-film content, the sale of cinema tickets, advertising in cinemas, food and drink for consumption during film exhibition ("**concessions**") and the sale of related products and merchandise.

The Applicant

8.2 Hoyts Cinemas NZ owns and operates the following 7 cinema complexes with a total of 49 screens:

(a) *Regent on Worcester, Christchurch*: A 4 screen cinema complex at 94 Worcester Street, Christchurch;

(b) *Riccarton, Christchurch*: A 7 screen cinema complex at Westfield Riccarton, Riccarton, Christchurch;

(c) *Moorhouse, Christchurch*: An 8 screen cinema complex at 392 Moorhouse Avenue, Christchurch;

(d) *Northlands, Christchurch*: A 6 screen cinema complex at Northlands Shopping Centre, Main North Road, Papanui, Christchurch;

(e) *Octagon, Dunedin*: A 6 screen cinema complex at 33 The Octagon, Dunedin;

(f) *Sylvia Park, Auckland*: A 10 screen cinema complex at Sylvia Park Shopping Centre, 286 Mt Wellington Highway, Mt Wellington, Auckland; and

(g) *Wairau Park, Auckland*: An 8 screen cinema complex at 19 Link Drive, Glenfield, Auckland.

8.3 Hoyts Cinemas NZ's primary demographic is consumers aged 35 and under. Hoyts Cinemas NZ caters to this demographic by carrying a wide range of the latest blockbuster and mainstream Hollywood films.

8.4 As noted at paragraph 3.3 above the Applicant also owns Hoyts Distribution and Val Morgan, however, Berkeley does not distribute films nor compete with Val Morgan in offering cinema advertising services and so there is no aggregation in these areas. Furthermore, as noted above Hoyts Distribution and Val Morgan are, by commercial necessity, operated independently from Hoyts Cinemas NZ.

Berkeley

8.5 Hoyts Cinemas NZ and Berkeley have different target demographics, namely, Hoyts Cinemas NZ mainly targets "blockbuster" mainstream, younger, customers whereas the Berkeley has an emphasis on specialised quality films to cater to and attract more mature and discerning audiences. The Berkeley also offers higher end catering and cuisine than other mainstream cinema chains. This includes offering cafe quality coffees and having an alcohol license at their premises so that customers can take wine and beer into the cinema.

8.6 The Berkeley circuit comprises of 4 cinema complexes in Auckland with a total of 21 screens:

(a) *Mission Bay, Auckland*: A 4 screen cinema complex at 85 Tamaki Drive, Mission Bay, Auckland;

(b) *Hibiscus Coast, Auckland*: A 5 screen cinema complex at 6 Link Crescent, Whangaparaoa, Hibiscus Coast, Auckland;

(c) *Botany Downs, Auckland*: A 8 screen cinema complex at 588 Chapel Road, Botany Downs, Auckland;

(d) *Takapuna, Auckland*: A 4 screen cinema complex at 34 Anzac Street, Takapuna, Auckland.

8.7 The Mission Bay, Takapuna and Hibiscus Coast Berkeley cinemas are best described as "boutique complexes" due to the smaller number of screens and smaller auditoriums at these locations. Botany Downs operates more like a traditional mainstream multiplex.

8.8 Berkeley's primary demographic is mature consumers over the age of 35. This is due to Berkeley having more of an emphasis on specialised quality films in its film schedules.

9. Describe the industry or industries affected by the proposed acquisition. Where relevant, describe how sales are made, the supply chain(s) of any product(s) or service(s) involved, and the manufacturing process. If relevant, provide a glossary of terms and acronyms.

9.1 We understand the Commission is familiar with how the film exhibition industry operates. Nevertheless, the following is a high level summary of the operation of the industry:

Production

9.2 Films may be produced either by independent film makers or by a major film studio (ie a film production and distribution company). The majority of films that have cinematic release in New Zealand are produced by one of the six major film studios:

(a) Warner Bros. Entertainment ("**Warner Bros.**"): Warner Bros. owns the following production companies: HBO Warner Bros. Pictures, New Line Cinema, HBO Films, Castle Rock Entertainment, Turner Entertainment and Warner Bros. Animation;

(b) Fox Filmed Entertainment ("**Fox**"): Fox owns the following production companies: 20th Century Fox 20th Century Fox Animation, New Regency, Fox Searchlight and Fox Faith;

(c) Paramount Motion Pictures Group ("**Paramount**"): Paramount owns the following production companies: Paramount Pictures, Nickelodeon Movies, MTV Films and Paramount Vantage;

(d) Sony Pictures Entertainment ("**Sony**"): Sony owns the following production companies: Columbia Pictures, Sony Pictures Animation, Sony Pictures Classics, Screen Gems, TriStar Pictures, Destination Films, Triumph Films and Stage 6 Films;

(e) Walt Disney Motion Pictures Group ("**Disney**"): Disney owns the following production companies: Walt Disney Pictures/Touchstone Pictures (unified business with separate brands), Pixar Animation Studios, Walt Disney

Animation Studios, ImageMovers Digital, Disneynature, Miramax Films and Hollywood Pictures; and

(f) NBC Universal ("**NBC Universal**"): NBC Universal owns the following production companies: Universal Studios, Universal Animation Studios and Focus Features.

Distribution

9.3 A major film studio will typically appoint one of its own subsidiaries companies to distribute a film. All of the major film studios have established offices in New Zealand.

9.4 An independent film maker will negotiate a distribution deal with a film distribution company. Independent film makers often use film festivals as an opportunity to get the attention of distributors. Once a distributor is interested in a film, the two parties arrive at a distribution agreement either under a leasing model (the distributor agrees to pay a fixed amount for the rights to distribute the film) or a profit-sharing relationship.

9.5 With Celluloid Cinema the distributor determines the number of prints to make to lease to film exhibitors based on its assessment of the number of cinemas a movie can successfully open in (as the cost of creating each film print can be as much as NZ$3,500 depending on the length of the film). This distribution model will alter somewhat as Digital Cinema is phased in as distributors would no longer have the cost of creating, sending out and replacing perishable 35 millimetre movie prints. Under Digital Cinema the distribution of films to cinemas is potentially much cheaper, quicker and easier for distributors so films under a Digital Cinema may get much wider cinematic release on many more screens across New Zealand as there would be almost no marginal cost for a distributor to provide further digital "prints".

9.6 Due to the size of the market and the comparatively limited box office potential of films in New Zealand, distributors frequently decide to import and use second hand prints in New Zealand for films with modest box office expectations, rather than pay for additional new 35 mm prints. This results in New Zealand receiving later release dates for such films than many parts of the world (and Australia in particular) as New Zealand distributors wait for these prints to become available and subjects the New Zealand industry to piracy. If those countries which supply second hand prints to New Zealand convert to Digital Cinema before New Zealand exhibitors, then the supply of such second hand prints will dry up. This will likely have one of two results: either the New Zealand distributor will have to create new prints and will likely seek to pass the costs onto exhibitors; or the New Zealand distributor will make a commercial decision not to release such films in cinemas and so deprive New Zealand consumers of the opportunity to view them. The most positive outcome for the New Zealand industry and audiences will occur if New Zealand exhibitors transition to Digital Cinema at a similar rate and time to Australia and other international territories.

Figure 3 - Market share of film distributors in New Zealand

Distributor	Revenue for 01/01/2009 to 31/12/2009 (NZ$)	Market share (%)
Paramount Pictures	[ ]	[ ]
Fox	[ ]	[ ]
Sony Pictures International	[ ]	[ ]
Hoyts Distribution	[ ]	[ ]
Walt Disney Studios	[ ]	[ ]
Roadshow	[ ]	[ ]
Warner Bros	[ ]	[ ]
Hopscotch	[ ]	[ ]
Madman Cinema	[ ]	[ ]
Rialto	[ ]	[ ]
Saggi Motion Pictures	[ ]	[ ]
Vendetta Films	[ ]	[ ]
Mindblowing Films	[ ]	[ ]
Forum Films	[ ]	[ ]
Independent NZ	[ ]	[ ]
Palace Films	[ ]	[ ]
Dream Movie Australia	[ ]	[ ]
Arkles Entertainment	[ ]	[ ]
Cine Vista	[ ]	[ ]
Metropolis Film	[ ]	[ ]
Swish MG Distribution	[ ]	[ ]
Inside Section	[ ]	[ ]
TOTAL	**[ ]**	**100.00%**

Source: Nielsen EDI Australia

9.7 The major film studios have a considerable degree of bargaining power in negotiating distribution agreements with film exhibitors. The viability of a film exhibitor depends on it having access to all available releases from the major film studios; it could not compete without the suite of films of any of the major film studios. Typically the agreements reached provide the distributor with a percentage of the box office ticket sales and include terms that stipulate the length of screening (the "**Engagement Period**") and the session times for a particular film. Almost half of the revenue from ticket sales goes back to the film's distributor and studio. Typically, the percentage of ticket sale revenue that the distributor takes decreases on each week that a movie is in the cinema. Therefore, the movie has to pull in sizeable audiences for several weeks in order for film exhibitors to make a reasonable profit on a particular film.

9.8 At the end of the Engagement Period for a film, the film exhibitor pays the distributor its share of the box office earnings and returns the print. If a movie is very popular and can continue to draw a steady crowd, the film exhibitor may renegotiate to extend the lease agreement.

9.9 The major film distributors' behaviour would indicate that they see markets on a national level. Most films in New Zealand are now given a national release (that is, a particular title is released in a large number of cinemas across the country on the same day) for the purposes of coordinating national television and magazine advertising to promote a particular title and to prevent the potential for revenue losses to piracy that arises when titles are not released simultaneously. In their decisions as to when to release a title and how many prints to supply, distributors consider the national behaviour of their competitors. For example, the wide release of a popular film by one distributor may cause another distributor to delay its popular release.

Cinema advertising

9.10 We understand the Commission is familiar with the operation of the cinema advertising industry. The relationship between cinema advertising clients and cinemas is almost always mediated by cinema advertising service providers such as Val Morgan. Cinema advertising service providers generally have an exclusive relationship with a cinema or chain of cinemas allowing them to display advertisements in film sessions. Cinema advertising service providers:

(a) Acquire the right to exhibit cinema advertising in cinemas from cinema operators;

(b) Sell cinema advertising time to advertisers;

(c) Produce, or arrange for the production of, certain cinema advertising; and

(d) Schedule the cinema advertising for exhibition at the relevant cinemas.

Concessions

9.11 Cinemas also sell food and beverages for consumption as consumers watch a film. Concessions are an important source of revenue for cinema operators. Typically cinema operators in New Zealand acquire food and beverage supplies from New Zealand based food and beverages suppliers on short term contracts, with most contracts being shorter than three years.

10. Describe the current industry trends and developments including the role of imports and exports, emerging technologies, and/or changes in supply and demand dynamics.

Convergence of technology and media

10.1 There are a number of growing trends in entertainment. Primarily, consumers have greater access to sources of digital entertainment than ever before. The levels of ownership of PCs, broadband connection, video game consoles, flat panel televisions, home theatre systems, DVRs and mobile media devises continues to grow rapidly. The advancement of technology creates an increasing array of digital entertainment options for consumers, from social networking to watching user generated content online. These days practically all content, including much film content, is available on demand for consumers. PCs, home theatre hard drives and portable devices (such as iPods) are all capable of playing films.

10.2 In addition, network television stations are increasingly screening television series of cinematic quality and content such as *The Sopranos*, *Band of Brothers* and *The Pacific* and video game developers are releasing games with film-like story lines that are of cinematic quality such as *Call of Duty: Modern Warfare 2*. These developments are crossing the boundary that separates films from video games and television.

10.3 The convergence of these media and technology options increasingly exerts competitive pressure on cinema operators and will create challenges for the way in which cinemas are operated to ensure their viability and relevance to consumers into the future. In addition, the proliferation of these technological options has led to an increase in the unauthorised recording (piracy) and illegal distribution of films. Such piracy also creates challenges for cinema operators as films may be illegally downloaded in large numbers by consumers whilst films are still in their release window at cinemas, particularly when the New Zealand release window is after the release of the film in other countries.

Digital Cinema

10.4 Digital Cinema is the next evolution of the film exhibition industry; an industry that has seen many evolutions over the past 100 years including the transition from silent films to "talkies", the transition from black and white to colour images and the transition from mono sound to stereo sound.

10.5 Digital Cinema technology is a reasonably new and developing technology that since approximately 2007 has begun replacing Celluloid Cinema internationally. Digital cinema refers to the distribution of a film via hard drives, optical disks, the internet or satellite which is then exhibited using a digital projector instead of a conventional film projector.

10.6 The benefits of Digital Cinema conversion include:

(a) Digital Cinema "prints" do not deteriorate over time (ie no scratches, jumps, dirt or flicker);

(b) The distribution of films to cinemas will be much cheaper, quicker and easier. Celluloid Cinema must be physically transported to and from locations as needed. With Digital Cinema extra copies of a film can be distributed and shown at virtually no extra cost to the distributor as films may be distributed electronically. This means that distributors will be willing to allow much wider releases of films across many more cinema operators and many more screens. This also means that it will be more economically viable to distribute minority interest films and to provide blockbuster films on the date of release to small independent cinemas regardless of their auditorium size or physical location;

(c) The release of films to New Zealand cinemas earlier, and more concurrently with international releases, than they might otherwise receive if reliant on second hand Celluloid Cinema. This will reduce the scope for piracy to undermine the release of films in New Zealand and allow for distributors of films to capitalise on the "global hype" of a film's international release in their New Zealand promotions; and

(d) There will be cost savings for the exhibitors, namely in the reduction in prints assembly and in staff costing due to less set up for projection.

10.7 However, the most significant benefit for cinema operators from Digital Cinema may be in terms of the flexibility that it offers as a medium. Digital Cinema may allow cinemas to diversify and differentiate their product offerings. A single digital file could contain various cuts of a film, each suitable for a different customer type. The same digital file could contain a director's cut for film enthusiasts, a sub-titled version for the hearing impaired or foreign language viewers or an edited version that could achieve a different censorship rating. The biggest development for cinemas could be the ability for cinema operators to offer access to an even wider range of cultural experiences in addition to films such as live sporting events, opera and music concerts. In the past major sports events and music concerts lured consumers away from the cinema. However, in the future live relays to a Digital Cinema will create an opportunity for growth for cinemas. Live cinema broadcasts could become supplementary venues for large sporting events such as the Rugby World Cup and cinemas could become "community hubs" for viewing content that extends beyond simply film exhibition.

3D Cinema

10.8 In recent years there has been development in three-dimensional ("**3D**") technology to project films at cinemas in 3D. 3D films are currently experiencing a worldwide resurgence coinciding with the development of computer-generated imagery, Digital Cinema conversion and the introduction of high-definition video standards. Films can only be shown by cinemas in 3D by using Digital Cinema technology. The following table (**Figure 4**) demonstrates consumers' preference for films in 3D when a 3D alternative is offered:

Figure 4 - Comparison of 2D and 3D box office revenue for films released in New Zealand in 3 D

Film	2D			3D			3D %	
	Week 1 Screens	Gross Box Office	Average revenue per screen	Week 1 Screens	Gross Box Office	Average revenue per screen	Week 1 Screens (%)	Gross Box Office (%)
Avatar	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Up	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Ice Age 3	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Cloudy With a Chance of Meatballs	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Monsters vs Aliens	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Coraline	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
My Bloody Valentine	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
Bolt	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
G-Force	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
A Christmas Carol	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
The Final Destination	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
TOTAL	**[ ]**	**[ ]**	**[ ]**	**[ ]**	**[ ]**	**[ ]**	**[ ]**	**[ ]**

Source: Screen data by Nielsen EDI Australia.

11. Please highlight any relevant mergers that have occurred in this industry over the past three years.

11.1 AHL entered into an agreement to acquire the core cinema businesses in New Zealand of SkyCity Entertainment Group Ltd for NZ$61.1 million on November 23, 2009. On 7 January 2010 it was publicly announced that due diligence had been completed and a final sale and purchase agreement signed. It was announced that the parties settled the transaction on 18 February 2010. The acquisition included SkyCity's 14 cinemas in New Zealand, joint venture interests of 50% in Rialto Cinemas and 67% in Damodar SKYCITY Fiji Cinemas JV.

11.2 In June 2007 Reading sold out its 50% joint venture operation with Everard Entertainment Limited. This left Everard Entertainment Limited with 100% of the Berkeley Cinemas business.

11.3 The Applicant is not aware of any other transactions that have occurred in the past three years.

PART 3: MARKET DEFINITION

Horizontal Aggregation

12. For each area of aggregation of market shares, please define the relevant market(s).

12.1 The Acquisition will give rise to aggregation between the parties in respect of the exhibition of films to the public. The acquisition will not result in any aggregation in film distribution nor the provision of cinema advertising services, as Berkeley is not active in film distribution nor cinema advertising services and Hoyts Cinemas NZ acts independently of Hoyts Distribution and Val Morgan.

Product Market

Film exhibition

12.2 The Commission has previously considered the film exhibition industry in *Decision 265: Hoyts Corporation Holdings Operations (NZ) Limited / Pacer Kerridge Corporation Limited* ("***Hoyts/Pacer Kerridge***"). In this decision, the Commission found the relevant markets to be separate markets for the production of films, the distribution of films, and exhibition of films to the public. In the balance of this application, the Applicant has used the Commission's previous product market analysis, however, the Applicant notes the increasing level of vigorous competition from other forms of entertainment such as:

(a) *Video games*: In the UK more money was spent during 2009 on video games than on films, including both trips to the cinema and films on DVD.[4] As evidence of the degree of competitive constraint that films are subject to from video games, it is worth noting that video game *Call of Duty: Modern Warfare 2* grossed more than NZ$1.4 billion in worldwide retail sales since its November launch, which means that its revenue was greater than blockbuster movie *Avatar* during its first five days on sale.[5]

(b) *Internet/digital distribution of feature films*: The internet is fast becoming a major source of film and television content for consumers with digital distribution growing at a rapid speed.[6] There are three main types of distribution available via the internet:

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[4] Wallop, H. (2009, December 26). Video games bigger than film. The Daily Telegraph. Retrieved from http://www.telegraph.co.uk/technology/video-games/6852383/Video-games-bigger-than-film.html

[5] Sherwood, J. (2010, January 14). Modern Warfare 2 outsold Avatar, claims developer. Register Hardware. Retrieved from http://www.reghardware.co.uk/2010/01/14/mw2_vs_avatar/

[6] Baage, J. (2009, January 29). Netflix - Blu-Ray Adoption Slower Than Internet Movie Streaming Adoption. Retrieved from http://www.dmwmedia.com/news/2009/01/29/netflix-blu-ray-adoption-slower-internet-movie-streaming-adoption

(i) Film streaming: this refers to internet content that downloads to a user's computer on a temporary basis while the content is being viewed. When the consumer closes out of the application no data remains on their hard drive;

(ii) Download-to-rent: this refers to internet content that downloads to a user's hard drive or portable media device for a specified period of time before self-deleting;

(iii) Download-to-own: this involves the consumer receiving data from a main source to be stored on their hard drive. This is the digital equivalent of purchasing a DVD in that the consumer retains ownership of the product and can view the product as often as they like.

(c) *DVDs*: The pricing of DVDs for purchase and rental, including the growth of online DVD rental companies in New Zealand such as Sky Network Television Limited's ("**Sky**") majority owned Screen Enterprises Ltd with its *Fatso* brand, places significant pricing constraint on cinema operators. The Ministry of Economic Development ("**MED**") recognises that due to the different release windows around the world and the ability to parallel import DVDs into New Zealand, cinemas can face competition from DVD rentals and sales. This is particularly the case as the ban on parallel importing of films during the cinematic release window does not apply to the import of videos or DVDs for a person's own private or domestic use. New Zealand analysis demonstrates that in the past decade:[7]

> [C]inema revenues were undermined as consumers substituted viewing films on parallel imported DVDs for the cinema format…
>
> [F]or films subject to parallel importing, the substitution from cinema to DVD media caused a statistically significant decline in New Zealand cinema revenues

Further, it is worth noting that internationally when sales of DVDs increase, cinema box office ticket sales decrease and vice versa.[8] The window between cinema and DVD release used to be fixed at least six months. However, with increased technological advances studios are narrowing this release window in

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[7] Burgess, M. and Evans, L. (2005, 1 December). *Parallel Importation and Service Quality: An Empirical Investigation of Competition between DVDs and Cinemas in New Zealand*. Journal of Competition Law and Economics 2005. Retrieved 27 July, 2009 from http://www.iscr.org.nz/f175,3740/3740_parallel_importing_191005.pdf

[8] McBride, S. (2010, January 4). Cinema Surpassed DVD Sales in 2009. The Wall Street Journal. Retrieved from http://online.wsj.com/article/SB20001424052748704789404574636531903626624.html

many cases and this increases the competitive constraint that home theatre imposes on cinema.[9]

(d) *Technological developments in television*: The development and increased affordability of large, high-definition flat screen televisions means that consumers can create an experience that is close to cinematic quality in their own home. This has imposed competitive constraint on cinemas.[10] Furthermore, it is now expected that 3D televisions will become widespread within the next few years, further enabling consumer to create an experience close to cinematic quality in their own homes. In addition, as noted at paragraph 10.2 above network television are increasingly producing television series of cinematic quality and video game developers are releasing games with film like story lines that are of cinematic viewing quality. These developments are crossing the boundary that separates films from video games and television.

(e) *Films on demand*: Consumers now have many options for viewing films at home. For example, pay-per-view television services, such as Sky's ("**Sky**") Sky on Demand, personal digital video recorders ("**DVRs**") such as Sky's MySkyHDi service and Telecom New Zealand Limited's ("**Telecom**") new TiVo service allows consumers to watch movies on demand.[11] Consumers now have a vast array of options that they consider when assessing their chosen forum for watching a film.[12]

12.3 The increased blurring of distinction between the various forms of digital leisure is illustrated by movie producers now, on occasion, simultaneously releasing films at cinemas, online on pay-per-view and through digital distribution.[13]

12.4 The Applicant is of the view that all digital leisure substitutes fall within a single product market, and that there is a chain of substitution operating between the various digital leisure options. This view is based primarily on the strong degree of demand-side

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[9] Sells, M. (2007, June 1). Judgment Day for Movie Theaters: Will technology terminate the future of the cinema—or is it the key to its survival? Movie Maker. Retrieved 27 July, 2009 from http://www.moviemaker.com/distribution/article/judgement_day_for_movie_theaters_3397/

[10] Barnes, B. (2008, March 24). Regal, Like AMC, to Add Imax Screens. The New York Times. Retrieved 27 July, 2009 from http://www.nytimes.com/2008/03/24/business/media/24imax.html?_r=1&ex=1364097600&en=801375b9f5677f2c&ei=5090&partner=rssuserland&emc=rss

[11] Telecom's TiVO CASPA On-Demand service allows consumers to choose from a wide range of classic and new-release movies whilst sitting at their television. Consumers can select their preferred title and then a movie will be downloaded.

[12] (2010, January 8). Avatar in the home: Once again, 3D television is poised to enter the living room. The Economist. Retrieved from http://www.economist.com/sciencetechnology/displaystory.cfm?story_id=15253989

[13] MacNab, G. (2009, January 22). Making movies the main event. Screen daily. Retrieved from http://www.screendaily.com/reports/in-focus/making-movies-the-main-event/5009897.article

substitutability between watching a film at the cinema and the other digital leisure substitutes. The key to market definition is substitutability, the extent to which customers can readily switch between products.[14]

12.5 Nevertheless, despite these other digital leisure substitutes, in the balance of this application, the Applicant has used the Commission's previous market analysis, namely the relevant product market being the 'exhibition of films to the public'.

Advertising

12.6 The parties and their respective competitors also provide cinema advertising to advertisers. As the Commission has noted in Decision No. 485 cinema advertising:

> …rarely forms a large or essential part of a client's advertising campaign.

Therefore, cinema advertising falls within a much broader product market for advertising as prospective advertisers may also advertise on other media including television, radio, newspapers, magazines and outdoor/billboards; the Applicant's market knowledge indicates that cinema advertising only represents [ ]% of total advertising in New Zealand. Therefore, the aggregation in any advertising market from this Acquisition is not material. The Applicant therefore, has not discussed the definition of any advertising market in the balance of this application.

Functional level

12.7 Berkeley is not active in film distribution nor the provision of cinema advertising services. Therefore, the functional levels that both the Applicant and Berkeley operate in are as outlined below:

(a) Each of the Applicant and Berkeley exhibit films to the public, therefore, a relevant functional dimension of the market is the retail exhibition of films to the public.

(b) Each of the Applicant and Berkeley negotiate film distribution agreements with film distributors, therefore, a relevant functional dimension of the market is the acquisition of rights from film distributors to exhibit films to the public.

Geographic area

12.8 In the *Hoyts/Pacer Kerridge* decision the Commission did not undertake an analysis of geographic markets on a local basis. The Applicant considers that many aspects of competition in this industry take place on a national scale. For example:

[14] *Ophthalmological Society of New Zealand v Commerce Commission* (2004) 10 TCLR 994 (HC) para 191.

(a) The major film distributors' behaviour indicates that they see markets on a national level. Most films in New Zealand are now given a national release distributors will typically take national television and magazine advertising to promote a particular title; and

(b) Cinema ticket prices are broadly similar across all of New Zealand which indicates that cinemas are competing with other cinemas and other digital leisure substitutes, as noted at paragraph 9.9 above, on a national scale in making their pricing decisions.

12.9 Demand substitution takes place within local regions, and in Auckland across Auckland based on a chain of substitution between cinema complexes.

12.10 This is consistent with the analysis of local markets the Commission has previously undertaken in Decision No. 438 *Progressive Enterprises Limited and Woolworths (New Zealand) Limited* (13 July 2001) that:

> Where there are competing stores within 5 km distances, by the chain of substitution these stores will fall within the one market and the market will therefore be greater than 5 km in dimension.

12.11 The Applicant notes that the United Kingdom Competition Commission ("**UKCC**") has analysed competition effects of mergers in the film exhibition market in local markets based on 20 minute drive time distances.

12.12 If this approach is adopted, the relevant local markets for the exhibition of films to the public would also be delineated by a geographic radius of 20 minute drive time distances around each existing Hoyts premises in Auckland and these radii would be extended by the chain of substitution by other cinema premises that fall within the 20 minute drive time radii, consistent with the approach adopted by the Commission in Decision No. 438. This would make local markets actually broader than the 20 minute drive time radius around a particular cinema premise. Nevertheless, the Applicant has used the 20 minute drive time distances around its Auckland premises as a proxy for the geographic area of local markets for calculating the aggregated market shares that are illustrated in table form at **Figures 8 and 9**. [ ]

Customer dimension and timeframe

12.13 Customer dimension: The parties and their respective competitors provide film exhibition services and sell concessions to the general public, ie at a retail level.

12.14 Timeframe: There are no contracts with customers at the retail level. For the acquisition of rights, film exhibitors and film distributors reach contractual terms for particular films that last only for the Engagement Period. Therefore, all transactions occur on a frequent basis.

13. Where relevant, please explain how products or services are differentiated within the market(s).

13.1 Cinema operators differentiate their offering by films that they exhibit and by the food, drink and services that they offer. In addition, cinema premises are differentiated from one another by the 'look and feel' of the physical environment.

13.2 Films are not a homogenous product. Film exhibition offerings are differentiated based on titles and genres of films. Consumers demonstrate a desire for variety in film viewing and switch their cinema ticket purchases between a variety of film genres. Examples of film genres include action films, adventure films, comedy films, family films, children's films, animated films, dramas, horror films, science fiction films, fantasy films, war films, historical films and documentaries. Therefore, generally speaking, cinemas carry a broad range of titles across various genres to maximise potential purchases by customers.

13.3 However, there is some differentiation by cinemas between "mainstream"/"blockbuster" movie titles and "niche" / "art house" / "independent" (together "**art house**") movie titles. There are some specialist cinemas that only show art house films (for example, Academy Cinemas). These tend to be independently owned cinemas. Berkeley, whilst not showing only art house films, does have more of a focus towards more specialised quality films in comparison with the Applicant, AHL and other mainstream competitors.

13.4 Consequently, the Applicant and Berkeley, particularly in its boutique cinema complexes, have different target demographics, and consequently offer different cinema products to consumers. On product offering, Hoyts and Berkeley would not be considered to be each other's closest competitor.

13.5 In the *Hoyts/Pacer Kerridge* decision the Commission acknowledged the distinguishing characteristics of commercial and "art" movies, however did not consider the two types of movies to be sufficiently distinct to justify their separation into two markets.

13.6 Cinema operators may also distinguish their product based on the quality of their seating and services. For example, Berkeley operates the Circle Lounge and Hoyts operates La Premiere which both offer luxury seats for extra comfort and restaurant amenities for a higher ticket price. Hoyts also operates '*Xtremescreen*', a mega-screen concept, and '*the halfpipe*', a bean bag cinema targeting younger movie-goers.

13.7 Small independent cinemas are also well placed to differentiate on the basis of perceived quality. These boutique cinemas can often offer higher-end seating, buildings that are of historical or architectural significance, staff that can take a personal interest in the smaller audiences and higher end catering and cuisines (for example, cinemas where customers can take wine and beer into the cinema). Anecdotally, it seems that certain demographics, in particular mature consumers over the age of 35, prefer to see films at boutique cinemas rather than go to a multi-screen complex. Indeed, for some consumers, support for an independent cinema is also part of a wider desire to support smaller, more local businesses.

VERTICAL INTEGRATION

14. Provide details of any creation or strengthening of vertical integration that would result from the proposed merger. Please use organisational charts or diagrams to illustrate the structure of the ownership and/or control of the participants and the vertical relationships in question.

14.1 Whilst the Applicant owns Hoyts Distribution (NZ) Ltd and Val Morgan Cinema Advertising (NZ) Limited, it operates Hoyts Cinemas (NZ) Ltd as an independent commercial unit from its distribution and cinema advertising services activities. The Applicant would also intend to operate Berkeley as an independent commercial unit from its distribution and advertising services activities.

14.2 The Applicant does not intend for Hoyts Distribution to have any exclusive agreements with Berkeley or Hoyts Cinemas NZ for the acquisition of films. Hoyts Distribution will continue to be operated on an arm's length basis from the Applicant's cinema businesses in New Zealand. As noted at paragraph 3.6 above, Hoyts Distribution has obligations to the film makers that produce a film to maximise returns for that film maker. Therefore, Hoyts Distribution cannot compromise that obligation by favouring any one exhibitor, for example Hoyts Cinemas NZ, or else Hoyts Distribution's ability to acquire films for distribution would be jeopardised.

14.3 Val Morgan currently owns the exclusive rights to sell cinema advertising prior to a movie on both Hoyts Cinemas NZ's and Berkeley's screens. These arrangements are intended to continue post-Acquisition and, therefore, the situation would not be materially different from the situation in the Counterfactual.

14.4 Therefore, the Applicant is of the view that there will be no strengthening of vertical integration that will result from the Acquisition. As noted at **Figure 3**, Hoyts Distribution (NZ) Ltd is one of many players in the distribution industry with approximately [ ]%

share and Val Morgan's position in respect of the merged entity and all other cinema operators would not be materially different in the Factual in comparison with the Counterfactual.

PART 4: COUNTERFACTUAL

15. In the event that the proposed merger does not take place, describe what is likely to happen to the business operations of the merger parties and the market/industry.

15.1 The Applicant considers that consolidation will ensure that the Applicant and Berkeley are best placed to act as a vigorous, viable and enduring competitive constraint on AHL/SkyCity.

15.2 The New Zealand cinema industry is currently operating less favourably than it is in other countries around the world, such as Australia, despite significant new cinema builds over the past five years. This less favourable nature of the New Zealand market may be due to the combination of a number of factors specific to this country:

(a) Delayed releases to New Zealand due to the cost of 35mm Celluloid Cinema film prints that sees New Zealand waiting for second hand prints after the release windows in other countries. This prevents distributors in New Zealand from being able to capitalise on the "global hype" of international releases and sees the industry particular vulnerable to the effects of film piracy;

(b) Parallel importing that means DVDs can be purchased cheaply and very soon after the end of the cinema window; and

(c) The "outdoors" nature of New Zealand society that means that customers are more reluctant to attend the cinema on a fine weather day than in other countries.

In the face of the costs to upgrade to Digital Cinema and 3D technology, Everard Entertainment Limited would likely be looking to new investors to fund Digital Cinema conversion in order to compete with AHL and Reading, and with the other digital leisure substitutes.

15.3 Consolidation can enhance the future of Berkeley's boutique cinema complex offering by enabling a merged entity:

(a) to rationalise costs;

(b) be better placed to access suitable financing options and installation support for Digital Cinemas conversion;

(c) [ ];

(d) to be better placed to compete with AHL; and

(e) to be better placed to compete with other forms of entertainment.

15.4 The vendor has not confirmed to the Applicant whether other bidders are interested, or if so, who other bidders may be. Therefore, the Applicant considers the most appropriate counterfactual is the status quo.

PART 5: COMPETITION ANALYSIS

EXISTING COMPETITORS

16. Identify all of the relevant competitors in the market(s), including near competitors and importers in the market(s), and describe how they all compete in the market(s).

AHL/SkyCity Cinemas

16.1 As mentioned above, following the purchase of the 14 SkyCity Cinema complexes and the joint venture interests in Rialto Cinemas, AHL is the largest cinema operator in terms of market share in both the Auckland region and nationwide. A final sale and purchase agreement has been signed, and the parties settled the transaction on 18 February 2010. AHL's SkyCity Cinemas compete primarily in mainstream blockbuster films.

16.2 Internationally, the AHL Entertainment Division consists of four cinema brands: Event Cinemas, Greater Union, Birch Carroll & Coyle and Cinestar. These businesses exhibit films in Australia, United Arab Emirates, Netherlands and Germany.

16.3 AHL has the economies of scale and international breadth necessary to enable it to compete strongly with a combined Hoyts/Berkeley. AHL is also currently investing in Digital Cinema in Australia and has indicated that it will pursue similar investment in New Zealand.[15] In addition AHL has stated that it intends to expand its cinema operations and that it intends to create growth by investing in new product initiatives and an expanded 3D footprint.[16]

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[15] (2009, January 25). Australia firm buys SkyCity cinemas. The Dominion Post. Retrieved from http://www.stuff.co.nz/business/market-data/3094960/Australian-firm-buys-SkyCity-cinemas

[16] (2009, November 2). AHL: Presentation to Investors. Retrieved from http://www.ahl.com.au/images/asxdocs/nov2009/Investor_Presentation.pdf

16.4 Therefore, AHL is considered to be poised to be an even more vigorous competitor than SkyCity Cinemas was under its previous owners.

16.5 AHL has a total of 104 screens at the following 14 cinema complexes in Auckland, Hamilton, New Plymouth, Wellington and Whangarei:

(a) 5 screens in Whangarei, 18 James St, Whangarei;

(b) 10 screens at Westfield Albany, 219 Don McKinnon Drive, Albany, Auckland;

(c) 8 screens at Westfield St Lukes, St Lukes, Auckland;

(d) 8 screens at Westfield Manukau, Amersham Way, Manukau City, Auckland;

(e) 8 screens at Westgate Shopping Centre, Fernhill Drive, Massey, Auckland;

(f) 8 screens at Westfield Westcity, Edsel Street, Henderson, Auckland

(g) 8 screens at Broadway, 77 Broadway, Newmarket, Auckland;

(h) 8 screens at Highland Park, 20 Dunrobin Place, Highland Park, Auckland;

(i) 13 screens at Queen Street, 291-297 Queen Street, Auckland, Central Auckland;

(j) 6 screens at Westfield Chartwell, cnr Hukanui and Comries Roads, Chartwell, Hamilton;

(k) 7 screens on the cnr of Ward and Anglesea Streets, Hamilton;

(l) 5 screens in New Plymouth, Devon Street East, New Plymouth;

(m) 9 screens at Westfield Queensgate, 45 Knights Road, Lower Hutt, Wellington;

(n) 1 screen at the Embassy Theatre, 10 Kent Terrace, Wellington.

16.6 AHL also has a 50% share in the Rialto branded cinemas.

Reading Entertainment

16.7 Reading Entertainment has cinemas throughout Australia, USA and New Zealand. Reading Cinemas also has a 50% share in the Rialto branded cinemas. In 1999 Reading Cinemas did not have any "Reading" branded cinemas in New Zealand; however since then the Reading Cinema circuit has expanded rapidly. At present Reading has cinemas in Wellington, Hastings, Invercargill, Napier, Porirua, Queenstown, Rotorua and Christchurch and competes primarily in mainstream blockbuster films.

16.8 Reading has a total of 48 screens at the following 9 complexes:

(a) 5 screens in Rotorua at 1281 Eruera St, Rotorua;

(b) 4 screens in Napier, cnr Station and Munroe Streets, Napier;

(c) 4 screens in Hastings at Heretaunga St East, Hastings;

(d) 5 screens in Porirua, Titahi Bay Rd, North City Shopping Centre, Porirua;

(e) 10 screens in Central Wellington, 100 Courtenary Place, Wellington;

(f) 4 screens in Coastlands, Rimu Rd, Paraparaumu;

(g) 4 screens at The Palms, New Brighton Road, Shirley, Christchurch;

(h) 3 screens in Queenstown, 11 The Mall, Queenstown; and

(i) 5 screens in Invercargill, 29 Dee Street, Invercargill

16.9 Reading is yet to enter the Auckland market but is considered to be a strong existing competitor.

Rialto

16.10 Rialto Cinemas is a chain of cinemas in New Zealand owned and operated by a joint venture between AHL and Readings Cinemas. Rialto Cinemas operates 4 cinema complexes around New Zealand including Auckland, Palmerston North, Christchurch and Dunedin. Rialto has a total of 17 screens at the following 4 complexes as follows:

(a) 7 screens in Auckland at 169 Broadway, Newmarket, Auckland;

(b) 1 screen in Palmerston North at Broadway Avenue, Palmerston North;

(c) 3 screens in Christchurch on the cnr of Moorhouse Ave and Durham Street, Christchurch; and

(d) 6 screens in Dunedin at 11 Moray Place, Dunedin.

16.11 Rialto Cinemas screen mainly independent and "art house" movies, and also screen films from the major film distributors including Roadshow, Paramount, Sony Pictures and

Fox. Rialto Cinemas also screen many Film Festivals every year and operates as an independent chain, separate from the larger cinema circuits that own it.

Independent Cinemas

16.12 In Auckland, independent cinemas account for [ ]% of the Auckland region by revenue share and have a material presence in both the relevant local markets. Nationwide independent cinemas account for [ ]**%** of cinema revenue. Independent cinemas in Auckland include:

(a) 2 screens at Academy Cinemas Auckland Limited ("**Academy**"), 44 Lorne Street, Auckland;

(b) 2 screens at Bridgeway Cinemas Limited ("**Bridgeway**"), 122 Queen Street, Northcote, Auckland;

(c) 1 screen at the Lido Cinema, 427 Manukau Road, Epsom, Auckland owned and operated by Lido Cinema Limited ("**Lido Cinemas**");

(d) 1 screen at the Capitol Cinema, 610 Dominion Road, Mt Eden, Auckland owned and operated by Lido Cinemas;

(e) 2 screens at Waiheke Island Community Cinema, 2 Korora Road, Waiheke Island; and

(f) 1 screen at Hollywood Cinemas, 20 St Georges Road, Avondale, Auckland.

16.13 The publicly owned Civic Theatre on Queen Street also regularly shows art house films and films during film festivals. In addition, the Applicant also understands that there are attempts by the Victoria Theatre Trust to reopen the old Victoria Theatre in Devonport as a multi-purpose performing venue and cinema.

16.14 Other independent cinemas nationally, amongst more than 60 others, include:

(a) Lido Cinema Hamilton Limited, at 501 Victoria Street, Hamilton owned and operated by Lido Cinemas;

(b) BayCity Cinemas with premises in central Tauranga, Elizabeth Street (8 screens) and Mount Maunganui, Mauganui Road (4 screens);

(c) Victoria Cinemas Limited in Hamilton, at 690 Victoria Street, Hamilton;

(d) Rialto Tauranga Cinemas Limited at 21 Devonport Road, Tauranga;

(e) Ascot Cinemas Limited in Wellington, at 68 Queen Street, Upper Hutt; and

(f) Matakana Cinemas at 2 Matakana Valley Rd, Matakana, north of Auckland.

17. Outline the estimated market shares in terms of sales, and, where relevant, volume and productive capacity, of the merger parties and competitors identified above. Please include the estimated total value of the domestic market; and the source of the data provided.

Figure 5 - Estimated market share for film exhibition New Zealand wide for the year ended 31 December 2009

	Screen numbers	Screen share (%)	Revenue for 1/1/2009 to 31/12/2009 (NZ$)	Revenue share (%)
Hoyts	56	13.53%	[ ]	[ ]
Berkeley	21	5.07%	[ ]	[ ]
Merged Entity	***77***	***18.60%***	***[ ]***	***[ ]***
AHL/SkyCity	104	25.12%	[ ]	[ ]
Rialto	16	3.86%	[ ]	[ ]
Reading	48	11.59%	[ ]	[ ]
Other	169	40.82%	[ ]	[ ]
Total	**414**	**100.00%**	**[ ]**	**100.00%**

Source: Nielsen EDI Australia

Figure 6 - Estimate market share for film exhibition Auckland wide for the year ended 31 December 2009

	Screen numbers	Screen share (%)	Revenue for 1/1/2009 to 31/12/2009 (NZ$)	Revenue share (%)
Hoyts	18	14.40%	[ ]	[ ]
Berkeley	21	16.80%	[ ]	[ ]
Merged Entity	***39***	***31.20%***	***[ ]***	***[ ]***
AHL/SkyCity	71	56.80%	[ ]	[ ]
Rialto Newmarket	7	5.60%	[ ]	[ ]
Bridgeway	2	1.60%	[ ]	[ ]
Waiheke Cinema	2	1.60%	[ ]	[ ]
Academy Cinema	1	0.80%	[ ]	[ ]
Avondale Hollywood	1	0.80%	[ ]	[ ]
Lido - Epsom	1	0.80%	[ ]	[ ]
Lido - Balmoral Capitol	1	0.80%	[ ]	[ ]
Total	**125**	**100.00%**	**[ ]**	**100.00%**

Source: Nielsen EDI Australia

Figure 7 - Geographical distribution of cinemas in the Auckland region

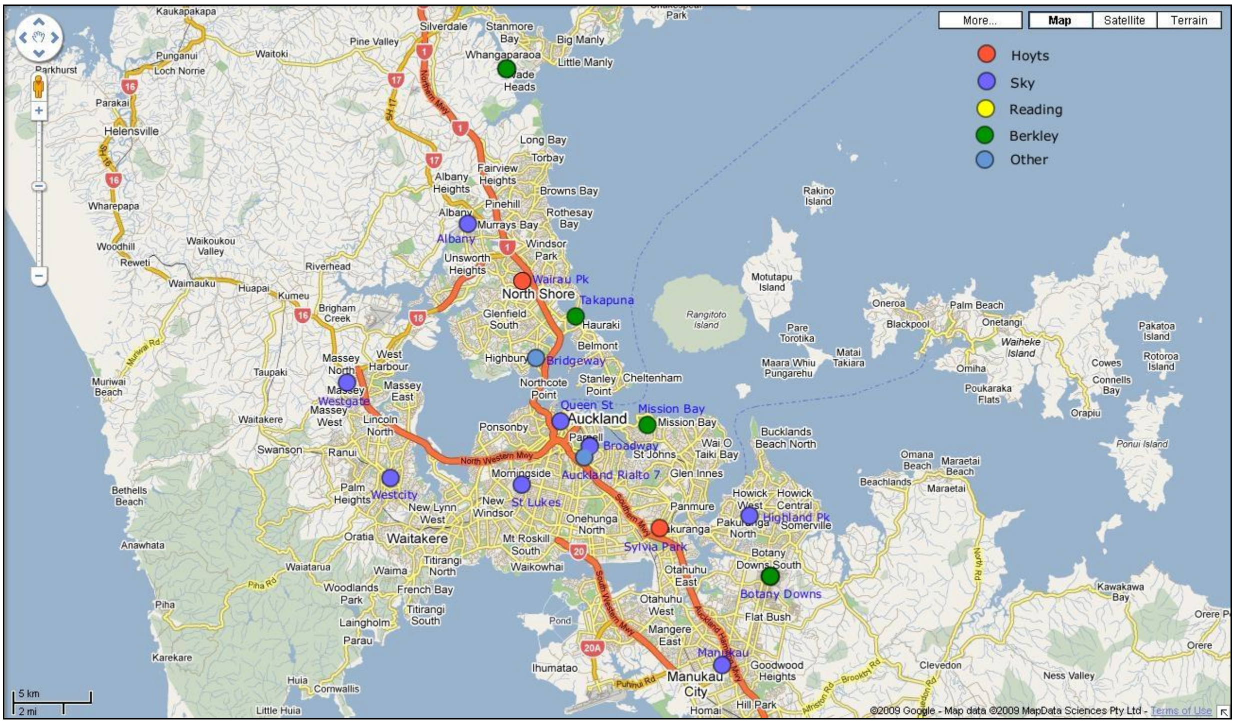

Figure 8 - Local market within 20 minute drive time of Hoyts Sylvia Park for the year ended 31 December 2009

	Drive time to Hoyts Sylvia Park	Screen numbers	Screen share (%)	Revenue for 1/1/2009 to 31/12/2009 (NZ$)	Revenue share (%)
Hoyts Sylvia Park	n/a	10	16.39%	[ ]	[ ]
Berkeley Mission Bay	19 minutes	4	6.56%	[ ]	[ ]
Berkeley Botany Downs	19 minutes	8	13.11%	[ ]	[ ]
Combined Entity		***22***	***36.07%***	***[ ]***	***[ ]***
Rialto Newmarket	18 minutes	7	11.48%	[ ]	[ ]
AHL/SkyCity Queen St	18 minutes	12	19.67%	[ ]	[ ]
AHL/SkyCity Manukau	12 minutes	8	13.11%	[ ]	[ ]
AHL/SkyCity Broadway	18 minutes	8	13.11%	[ ]	[ ]
AHL/SkyCity IMAX	18 minutes	1	1.64%	[ ]	[ ]
Total for AHL/SkyCity/Rialto		***36***	***59.01%***	***[ ]***	***[ ]***
Lido - Epsom	16 minutes	1	1.64%	[ ]	[ ]
Lido - Balmoral Capitol	16 minutes	1	1.64%	[ ]	[ ]
Academy	18 minutes	1	1.64%	[ ]	[ ]
TOTAL	**n/a**	**61**	**100.00%**	**[ ]**	**100.00%**

Source: Nielsen EDI Australia. Drive time based on drive times estimated by MapData Sciences Pty Ltd

Figure 9 - Local market within 20 minute drive time of Hoyts Wairau Park for the year ended 31 December 2009

	Drive time to Wairau Park	Screen numbers	Screen share (%)	Revenue for 1/1/2009 to 31/12/2009 (NZ$)	Revenue share (%)
Hoyts Wairau Park	n/a	8	21.62%	[ ]	[ ]
Berkeley Takapuna	11 minutes	4	10.81%	[ ]	[ ]
Combined Entity		***12***	***32.43%***	***[ ]***	***[ ]***
AHL/SkyCity Albany	13 minutes	10	27.03%	[ ]	[ ]
AHL/SkyCity Queen Street	19 minutes	12	32.43%	[ ]	[ ]
AHL/SkyCity IMAX	19 minutes	1	2.70%	[ ]	[ ]
Total for AHL/SkyCity		***23***	***62.16%***	***[ ]***	***[ ]***
Bridgeway	14 minutes	2	5.41%	[ ]	[ ]
TOTAL	**n/a**	**37**	**100.00%**	**[ ]**	**100.00%**

Source: Nielsen EDI Australia. Drive time based on drive times estimated by MapData Sciences Pty Ltd

18. To what extent do you consider that the merged entity would be constrained in its actions by the conduct of existing competitors in the markets affected?

18.1 The Applicant considers that the merged entity would be constrained in its actions by the conduct of existing competitors in New Zealand such as AHL, Reading, Rialto and other independent cinemas. Any attempt to increase prices above competitive levels, or reduce quality or service below competitive levels would result in a loss of sales to these other existing competitors.

18.2 Cinema operators are incentivised to have competitive prices so that they are able to generate volume through their cinemas to increase quantities of concession sales. As noted at paragraph 9.11 above, the sale of concessions is an important source of revenue for cinema operators. If a cinema sought to overcharge for its concessions the consumer will include this in its assessment of whether or not to view a film at that cinema and whether or not to bring in their own refreshments or simply not eat or drink during the screening of a film. Typically there are many other food or drink options in the general vicinity of a cinema that consumers could substitute to if they considered that the prices for concessions were too high. This creates a highly competitive environment.

18.3 Consumers are highly price sensitive and switch readily between cinema operators. For example, cinema operators observe significant decreases in customers if another cinema operator in that region discounts its prices. In essence, a cinema is a commodity; it is a room with a screen. There is limited brand loyalty. The consumer decides which cinema to patronise based on 'what movie do I want to see, where and when and at what price.'

18.4 AHL is a formidable competitor of Hoyts and Berkley and is in a strong position to expand in response to any attempt by Hoyts to increase its ticket prices above competitive levels. AHL will remain the clear market share leader in both the New Zealand and Auckland markets and in a strong position given its international support, financial support, access to commercial movie release dates and expertise to expand should it identify any market opportunities. Given its recent entry into the New Zealand market AHL is expected to be even more vigorous and exert even more competitive constraint on the Applicant and Hoyts than SkyCity Cinemas did in the past, particularly in light of its stated intentions to expand its cinema operations and create growth by investing in new cinema product initiatives.

18.5 In addition, the Applicant considers the pricing of other digital leisure substitutes and all other entertainment options (such as tickets to sporting events and live theatre) when setting the prices of its cinema tickets. In particular, as consumers begin to favour the convenience of on-line purchase and immediate delivery to their homes of film content, sales by digital delivery will be an increasingly popular option for consumers and will provide a real competitive constraint on the prices film exhibitors are able to charge for film exhibition at the cinema.

18.6 The above factors will act as a significant and enduring constraint on the merged entity's ability to raise prices above competitive levels.

POTENTIAL COMPETITION

Conditions of Entry

19. Please explain the requirements for new entry and/or importers in the relevant market(s).

19.1 The Applicant considers barriers to entry to be relatively low. The number of new cinemas and multi-screen complexes that have been developed and opened in recent years is evidence of this.

19.2 The key entry requirements to becoming a cinema operator are:

(a) a cinema site in a suitable location;

(b) access to film supply;

(c) staff; and

(d) cinema projection equipment (either Celluloid Cinema or Digital cinema).

19.3 New competitor entry can occur in three ways: the acquisition of an existing cinema, the conversion of a building to use as a cinema, and the building of a new cinema.

One-to-four screen 'boutique' cinema

19.4 Identification of a suitable site for a one-to-four screen boutique cinema would not be a particularly onerous task, as retail space of a sufficient size frequently becomes available. Therefore, there is sufficient available retail space such that securing an appropriately located site for a one or two screen cinema is not a significant barrier to entry.

19.5 While multi-premise cinema chains do have advantages in negotiating terms with film studios, boutique cinemas, despite not having economies of scale, often have other advantages such as:

(a) the ability to compete on price as their overheads are often lower and they are operating out of older, fully depreciated premises;

(b) the ability to hand pick their film choices to target their niche audience; local people can request what they want to see, and have a personal connection with the staff and other film-goers;

(c) the ability to differentiate themselves from the cinema chains; many cinema goers use boutique cinemas because of their point of difference, ie their small nature is itself 'product differentiation' that attracts a certain customer type;

(d) independent cinemas do not rely to the same extent as cinema chains to access to commercial movies at the first release date. Unlike major commercial movies, "art house" movies are not considered to be dependent, to the same extent, on simultaneous nationwide release; and

(e) the ability to charge premium ticket prices for the experience of going to a boutique cinema.

Multi-screen cinema complex

19.6 The barriers to entry by establishing a multi-screen cinema complex are larger than the establishment of a boutique cinema but they should not be considered to be significant in a market that generates revenue close to $[ ] annually nationwide and $[ ] annually in the Auckland region.

19.7 Many of the recent new multi-screen cinema complexes have been established by "piggy-backing" on developments being undertaken by third parties rather than film exhibitors developing green-field sites themselves. For example, AHL's complex at Westfield Albany and the Applicant's complex at Sylvia Park are examples of cinema complexes being developed as new shopping centres are being developed. AHL's cinema complexes at Westfield Manukau and Westfield Chartwell are examples of cinema complexes being developed as existing shopping centres undergo refurbishment.

19.8 An example of large scale recent entry is that of Reading. Reading only entered the New Zealand market 10 years ago and it now has 48 screens nationwide and [ ]% revenue share. Similarly, in 1999 Berkeley only had 4-screens at Mission Bay and since then has converted Takapuna's one screen cinema into another 4-screen complex. It has also taken control of the 5-screen cinema complex at Hibiscus Coast and developed and opened the 8-screen cinema complex at Botany Downs.

19.9 Anecdotally, it has been observed that film distributors will support the development of a new cinema complex with undertakings to provide film supply, particularly where distributors consider that the existing cinema operators are not serving customers well by offering modern and well maintained cinema facilities.

20. Include a full discussion on any factors that could impede entry; and what might prompt new entry post-merger.

20.1 Any attempts to price above the standard level of pricing used across New Zealand, or a drop in the service/quality levels below competitive levels, could prompt a new entry into the cinema exhibition market.

20.2 The New Zealand cinema industry is less saturated than in Australia. There is, therefore, the potential for a new entrant to participate in the Auckland market.

20.3 Furthermore, the cinema industry at present is proving to be dynamic and undergoing a major resurgence both internationally and in New Zealand. The growth and popularity both of 3D films and digital cinema has led to a significant growth in cinema and box-office revenue during 2009 internationally. In New Zealand gross box office takings increased by [ ] in 2009.[17]

20.4 Another important factor is that Digital Cinema will create further growth and opportunities for cinema operators. There will be cost savings for the exhibitors, namely in the reduction in prints assembly and possibly in staff costing due to less set up for projection. Additional smaller auditoria will become viable and provide greater choice for local audiences as a Digital Cinema operator will be able to obtain access to "prints" at the time of release regardless of their size or location given that there is no marginal cost for distributors to distribute films more widely. Furthermore, Digital Cinema is a more flexible medium and could offer greater access to an even wider range of films and other cultural experiences such as live sporting events, opera and music concerts. Such flexibility offers the opportunity for cinemas to become community focal points, especially in smaller and more rural communities. For example, cinemas in small communities could screen Rugby World Cup 2011 matches live and already overseas cinemas in the UK are exploiting these new industry opportunities by screening six nations rugby matches live in 3D.[18]

LIKELIHOOD, EXTENT AND TIMELINESS OF ENTRY (THE LET TEST)

21. Please name any likely businesses (including overseas businesses) you are aware of that do not currently supply the market but which you consider could supply each of the relevant market(s). Discuss the likelihood of such entry.

21.1 New Zealand has fewer visits to the cinema per year than other similar countries, such as Australia and USA, on a per capita basis (as **Figure 10** illustrates). This demonstrates that New Zealand has potential for entry or expansion by existing or new competitors. If New Zealand cinemas are increasingly able to offer concurrent releases with the rest of the world, then cinema attendances in New Zealand will likely increase towards the levels of Australia and USA as distributors are able to capitalise on "global hype" in their promotions of films in New Zealand and combat the effects of piracy. For example, the extent of the success of the film *Avatar* in New Zealand can in part be attributed to the concurrent release it received with overseas countries and the ability that this offered the distributors to capitalise on this hype and generate box office sales before pirated copies were being widely viewed in New Zealand. The conversion to

[17] Source: Motion Picture Distributors' Association of New Zealand Incorporated. Gross Box Office revenue for 2009 was $[ ] compared with $[ ] in 2008.

[18] (2009, January 12). England v Wales Six Nations game to be screened in 3D. BBC. Retrieved from http://news.bbc.co.uk/2/hi/uk_news/wales/8454422.stm.

Digital Cinema in the New Zealand industry will create this growth by allowing for releases in New Zealand that are concurrent with international releases.

Figure 10 - Number of visits to the cinema per year on a per capita basis during 2008

Rank	Country	2008 cinema admissions per capita
1	Iceland	5.4
2=	Ireland	4.2
2=	Singapore	4.2
4=	Australia	4.1
4=	US	4.1
6	**New Zealand**	**3.6**
7	Canada	3.2
8	South Korea	3.1
9	France	3.0
10	India	2.9

Source: Unpublished data from the Cinema Intelligence Service.

21.2 Internationally there are many large cinema exhibitors that currently do not have a presence in New Zealand. The following is a list of the three largest cinema operators in the world:

(a) The Regal Entertainment Group ("**Regal**") is the world's largest cinema operator. Regal operates premises in the United States, consisting of 6,801 screens at 522 complexes;[19]

(b) Cinemark Holdings, Inc ("**Cinemark**") is the world's second largest cinema operator. Cinemark operates in North America and Latin America and internationally has Worldwide Cinemark has 451 complexes in 13 countries;[20] and

(c) Terra Firma Capital Partners Limited ("**Terra Firma**") is the third largest cinema exhibitor in the world and is the largest outside of North America with cinemas in UK, Ireland, Germany, Austria, Italy, Portugal and Spain. Terra Firma has a total of 1,746 screens in 193 cinema sites. The business operates under the name of Odeon in the UK and retains the UCI and Cinesa national brands outside of the UK.[21]

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[19] (2010, January 25). Regal Entertainment Group. NY Times. Retrieved from http://topics.nytimes.com/topics/news/business/companies/regal-entertainment-group/index.html
[20] (2010). Cinemark Theatres. Wikipedia. Retrieved from http://en.wikipedia.org/wiki/Cinemark_Theatres
[21] (2007). Terra Firma Annual Review. Terra Firma. Retrieved from http://www.terrafirma.com/ar07.pdf

21.3 The Applicant is not currently aware whether any of these large cinema operators have intentions to enter the New Zealand market, however, they should be considered well placed to enter the New Zealand market if opportunities were to present themselves.

21.4 In addition, India's largest exhibitor Reliance Mediaworks Limited ("**Reliance**") (formerly Adlabs Films Limited), owned by Reliance Entertainment, has unveiled plans for global expansion. Reliance has recently acquired 240 screens across the US,[22] has acquired a majority and controlling interest in Malaysia's Lotus Five Star Cinemas[23] and recently commenced establishing cinema complexes in the Netherlands.[24] As a large international conglomerate that is eyeing global expansion, particularly in cinema exhibition, Reliance should be considered to be a possible entrant that would be able to compete extremely effectively with the merged entity and AHL etc. if it was to enter the New Zealand industry. In addition Reliance owns the world's largest facility dedicated to the conversion of 2D films and videos into 3D,[25] a film post production business in the UK[26] and is considered to be a potential purchaser of the US film studio Metro-Goldwyn-Mayer ("**MGM**").[27]

22. To what extent do you consider that potential entry would be sufficient to constrain the merged entity in the markets affected?

22.1 The Applicant expects that the threat of new entry by an international player would constitute a real constraint on the merged entity. This is particularly so given the international expansion that is currently being pursued by Reliance coupled with Reliance's strength in Digital Cinema and many other facets of film production and distribution. The industry trends toward the implementation of Digital Cinema and 3D would mean that Reliance, or any other large international cinema complex, would be well placed to compete very effectively almost immediately with the existing New Zealand competitors.

[22] Shackleton, L. (2008, march 28). Adlabs cinema chain set for global, digital expansion. Screendaily.com. Retrieved from http://www.screendaily.com/adlabs-cinema-chain-set-for-global-digital-expansion/4038014.article

[23] Jhunjhunwala, U. (2008, May 7). Adlabs acquires majority share in Malaysian cinema chain. Screendaily.com. Retrieved from http://www.screendaily.com/adlabs-acquires-majority-share-in-malaysian-cinema-chain/4038620.article

[24] Raghavendra, N. (2009, May 25). Big Cinemas forays into the Netherlands. The Economic Times. Retrieved from http://economictimes.indiatimes.com/Big-Cinemas-forays-into-Netherlands/articleshow/4573467.cms

[25] Reliance, In-Three Partner on 2D-3D Conversion Facility in India. Digital Cinema Report. Retrieved from http://www.digitalcinemareport.com/node/1443

[26] (2010, January). Reliance MediaWorks acquires UK-based ilab. Business Standard. Retrieved from http://www.business-standard.com/india/news/reliance-mediaworks-acquires-uk-based-ilab/82462/on

[27] (2010, January 23). Reliance-ADAG among 10 suitors for MGM: Wall Street Journal. Entertainment Daily. Retrieved from http://blog.taragana.com/e/2010/01/23/reliance-adag-among-10-suitors-for-mgm-wall-street-journal-83509/

22.2 The success and market share that Reading has achieved since entering the New Zealand market in 2000 illustrates the growth and scale that new entrants can achieve. Since entering the market it has grown its market share by revenue to [ ]%.

22.3 Competitors can enter the market with only one premise to begin with. The actual current threat by overseas competitors either by the purchase of an existing cinema premises or by establishing a new cinema premises is, and will continue to be, a significant constraint on competitive conduct in this industry. In addition, the ease of entry and expansion by small-scale cinema operators will ensure that these competitors continue to exercise significant price constraints in this industry.

22.4 Nevertheless, the Applicant believes that the continued presence of vigorous competitors such as AHL would continue to be the main source of constraint on the merged entity.

23. How long would you expect it to take for entry to occur, and for market supply to increase, in respect of each of the potential entrants named in question 21 above?

23.1 As noted at paragraph 22.2 above, the success and market share that Reading has achieved since entering the New Zealand market in 2000 illustrates the growth that entrants can achieve in reasonably short space of time. A new entrant from overseas could establish a de novo multi-screen site within 18 months to 3 years of making the decision to enter the New Zealand market. This is consistent with the UKCC's view in previous decisions concerning the industry in the UK where it found that the time required to plan and build a new cinema is typically in the range of 18 months to 3 years.[28]

COUNTERVAILING POWER OF BUYERS

24. To what extent do you consider that the merged entity would be constrained in its actions by the conduct of buyers in the markets affected?

24.1 The Applicant does not consider that it has any market power in relation to its buyers. There are two buyers relevant to this issue: cinema advertisers and consumers.

24.2 Both the Applicant and Berkeley sell cinema advertising by renting screen time to Val Morgan. Val Morgan owns the exclusive rights to sell cinema advertising prior to a movie on Hoyts Cinemas NZ and Berkeley screens. In essence, Val Morgan simply operates as a collective buying agent for advertisers. The countervailing power that the

[28] Vue Entertainment Holdings (UK) Ltd and A3 Cinema Limited Competition Commission (24 February 2006).

Applicant and Berkeley need to consider when determining prices for cinema advertising is that of the actual advertiser as the advertiser is the entity that ultimately purchases advertising from the cinema operator. Other media including television, radio, newspapers, magazines and outdoor/billboards place an important constraint on the providers of cinema advertising, with cinema advertising only representing [ ]% of total advertising in New Zealand. As the Commission has noted in Decision No. 485 cinema advertising:

> …rarely forms a large or essential part of a clients advertising campaign.

24.3 As a result, any price increase above competitive levels by a cinema operator to a cinema advertiser to be passed on to the advertisers would immediately result in media buyers shifting their advertising to more cost-effective media. A cinema operator cannot afford to raise prices without losing substantial business to other media. Consequently, advertisers have significant countervailing power. Advertising agencies are extremely sensitive to changes in price and would react to a price increase by diverting money used to purchase cinema advertising to other media.

24.4 Similarly, in setting ticket prices cinema operators are cognisant of the variety of other entertainment options (including digital leisure substitutes) and the range of other cinema operators in determining their ticket prices. For consumers cinema tickets are only one of a vast array of entertainment options that consumers may switch to. As a result, any price increase above competitive levels by a cinema operator for tickets would immediately result in consumers switching their spending to another cinema operator or other entertainment options.

24.5 Consequently, the Applicant is firmly of the view that the Acquisition will not substantially lessen competition in this market. To the contrary, the Acquisition would have a pro-competitive effect due to the synergies it would afford the merged entity.

25. If you consider that there is a constraint from buyers, identify the top five buyers by sale and/or volume (including overseas companies/importers) in the relevant market(s). Where there are significant differences in the size of buyers please provide details for five medium and five small buyers.

25.1 The top five advertising purchasers for time on Hoyts Cinema NZ's screens during 2009 were as follows:

(a) [ ];

(b) [ ];

(c) [ ];

(d) [ ]; and

(e) [ ].

COORDINATED MARKET POWER

26. Identify and discuss the various characteristics of the market that, post-merger, you consider would either facilitate or impede coordination.

26.1 The risk of coordinated effects post-Acquisition is low. The film exhibition industry is characterised by a number of features which condition against prospects for coordinated effects. Consistent with the approach taken by the High Court in *Brambles New Zealand Ltd v Commerce Commission* (2003) 10 TCLR 868 (HC), the conditions for concluding that there would be effective and sustainable coordinated behaviour as a result of the acquisition simply do not exist in the film exhibition industry. The film exhibition industry, by contrast, is characterised by:

(a) Low barriers to expansion;

(b) The asymmetry of market shares and of costs;

(c) A differentiated product offering that is differentiated by product characteristics;

(d) The large number of fringe competitors; and

(e) The countervailing power of acquirers.

26.2 Neither the Applicant nor Berkeley is aware of any past or current co-ordination of activities with any other competitors in supply to the New Zealand market.

26.3 The film exhibition industry does not show evidence of price coordination. Standard competitive price matching and price following is a feature of the market as one would expect.

26.4 In summary, the Applicant currently competes vigorously in the film exhibition industry. The proposed Acquisition will not impact on this intense competition.

26.5 For all the reasons set out above, the application of the tests in the Commission's Guidelines reveal that there would not be scope for the exercise of co-ordinated market power in this market.

EFFICIENCIES

27. If applicable, provide a description of any efficiencies that you believe the acquisition could bring. Would such efficiencies enhance rivalry, or offset the impact of a lessening of competition?

27.1 As noted at paragraph 5 the Acquisition will provide the Applicant with the opportunity to:

(a) Rationalise costs by making procurement more efficient;

(b) To make cost savings through scale efficiencies;

(c) To access suitable financing options and installation support for digitalisation of a large number of screens; and

(d) [ ].

27.2 The Applicant considers that by streamlining and rationalising the parties' operations it will be able to make material cost savings. The Applicant believes this cost minimisation will be a pro-competitive efficiency and will generally reduce duplication and spread costs, in particular, the investment of digitalisation across a greater base. These synergies and efficiencies will allow the Applicant to pass on the benefits of more efficient supply to the consumer and be a more vigorous competitor to AHL.

27.3 [ ]

OTHER FACTORS

28. Where relevant, provide a description of any other features of the market(s) that should be taken into account in considering the effect of the proposed merger.

The countervailing market power of suppliers

28.1 The Applicant does not consider that it has any market power in relation to its suppliers. There are two suppliers relevant to this issue: film distributors and concession suppliers.

28.2 The major film studios/distributors have market power due to their scale and copyright to a continuing stream of blockbuster films (namely, Warner Bros., Fox, Paramount, Sony, Disney and NBC Universal). Any time that a distributor has the copyright to a popular film (for example Avatar) that distributor has an even stronger bargaining position over cinema exhibitors by virtue of having a monopoly of a key film.

28.3 In relation to concession suppliers, cinema exhibitors represent a non-material source of revenue for concession products (for example soft drinks, chocolate, popcorn, ice cream). The Acquisition will not result in the merged entity obtaining significantly improved terms from these suppliers.

PART 6: FURTHER INFORMATION AND SUPPORTING DOCUMENTATION

29. Provide the contact details of relevant competitors, buyers and suppliers and any other relevant market participants in the form of the example table shown below.

	Name of Company (both legal and trading names)	**Contact details (postal and physical address, telephone, fax and website)**	**Relevant contact person (name, position, and contact details)**
COMPETITORS	AHL/SkyCity Cinemas	Level 5, 82 Symonds St, Auckland CBD P.O Box 2384, Shortland Street, Auckland 1140 Ph 09 3099137 www.skycitycinemas.co.nz	Jane Hastings General Manager 09 302 7079
	Reading Cinemas	Reading Courtenay, Mezzanine Level, 100 Courtenay Place, Wellington Private Bag 24-902, Manners Street, Wellington 04 382 9528 www.readingcinemas.co.nz	Mark Kendrick General Manager
	Rialto Cinemas	Level 5, 82 Symonds St, Auckland CBD P.O Box 2384, Shortland Street, Auckland 1140 Ph 09 3099137 www.rialto.co.nz	Kathryn Bennett Group Manager 09 306 0210
	Bridgeway Cinemas Limited	122 Queen St, Northcote, Auckland 09 481 0040	
	Waiheke Island Community Cinema	2 Kororoa Rd, Oneroa, Waiheke Island	09 372 4240
	Hollywood Cinemas, Avondale	20 St Georges Rd Avondale Auckland	09 828 8393
	Lido Cinema Limited	427 Manukau Rd, Epsom Auckland 09 630 1500 (also Capitol Cinema and Lido Hamilton) www.lido.co.nz	Richard Dalton 09 630 6042
BUYERS	**Val Morgan**	**Level 18, 120 Albert St, Auckland**	09 377 7917

	Name of Company (both legal and trading names)	Contact details (postal and physical address, telephone, fax and website)	Relevant contact person (name, position, and contact details)
SUPPLIERS	Paramount Pictures	Level 1, 303 Parnell Road, Parnell, Auckland P.O. Box 37-373, Parnell, Auckland 1151 09 303 5290	Peter Garner General Manager 09 3796 269
	Fox	Level 1, 16 Waverley Street, Auckland CBD P.O Box 6923, Wellesley Street, Auckland 1141 09 309 0957	Mark Croft General Manager 09 309 0957
	Roadshow	Ground Floor, Roadshow Building, 686 Rosebank Road, Avondale, Auckland Private Bag 19989, Avondale, Auckland 1746 09 820 8880	Lisa Hubbard General Manager 09 820 8885
	Sony Pictures International	Level 1, 19 Hargreaves St, College Hill, Ponsonby, Auckland P O Box 68041, Newton, Auckland, 1145 09 366 9480	Andrew Cornwell General Manager 09 366 9484
	Warner Bros	As Roadshow above	
	Walt Disney Studios	Suite 1A, level 2, Site 3, 30 St Benedicts St, Newton, Auckland P.O Box 37-524 Parnell Auckland 1151 09 302 7560	Robert Crockett General Manager 09 3027567
	Hoyts Distribution	286 Mt Wellington Highway, Mt Wellington, Auckland 1644 PO Box 132011, Sylvia Park, Auckland 1644 09 573 9069	Elizabeth Trotman General Manager 09 573 9063
	Hopscotch		Gordon Adam 09 445 1195
	Metropolis Film	Same as above for Hopscotch	
	Rialto	Level 1, 2 Fitzroy St, Ponsonby, Auckland 09 378 3373	Andrew Shreeve Sales Manager 09 376 9166
	Madman Cinema	Madman Cinema, 8A Ponsonby Road, Ponsonby 1022, Auckland 09 360 3788	Michael Eldred
	Swish MG Distribution	No longer in business	
	Dendy Films	No longer in business	
	Independent	Not a distributor, an EDI listing	

	Name of Company (both legal and trading names)	Contact details (postal and physical address, telephone, fax and website)	Relevant contact person (name, position, and contact details)
	NZ	for the extremely small distributors or one-off's all combined	
	Forum Films	021 2322 540	Pritesh Raniga
	Saggi Motion Pictures	273C Maungaraki Rd, Maungaraki, Lower Hutt 5010, Wellington 04 566 8414	Sattish Saini
	Arkles Entertainment	No longer in business	
	Palace Films	Unknown.	
	Imax	Unknown.	
	UIP	No longer in business. Now Paramount Pictures	
	Rep Films	No longer in business	
	Carlson Marketing Limited	Ground Floor, 109 Carlton Gore Road, Newmarket, Auckland	
	Loyalty New Zealand Limited (Flybuys)	PO Box 3451, Wellington	
	Val Morgan	Level 18, 120 Albert St, Auckland	
	Coca Cola	The Oasis, Mt Wellington, Auckland	
	Fonterra Brands (NZ) Limited	Fonterra Centre, 9 Princes St, Auckland	
TRADE ASSOCIATIONS	New Zealand Motion Picture Exhibitors Association (**NZMPEA**)	www.nzmpea.org.nz Email:enquiries@nzmpea.org.nz Phone: +64 (4) 499-0650 Fax: +64 (4) 473-8873 P O Box 24545, Wellington	
ANY OTHER RELEVANT MARKET PARTICIPANTS OR INTERESTED PARTIES	Motion Picture Distributors Association (**MPDA**)	Level 3 14-16 College Hill, Auckland PO Box 2627 Auckland	09 361 3882
	New Zealand Motion Picture Industry Council (**NZMPIC**)	Care of MPDA as above	

30. Please provide a copy of the most recent annual report for each of the merger parties. If an annual report is not available, please provide a copy of the audited financial statements of the merger parties (profit and loss account, showing total turnover and profit before tax, and balance sheet). If the merger only relates to a segment of the business of the merger parties, please also provide a copy of any management accounts for the relevant business segment.

30.1 Hoyts Cinemas NZ's accounts for the year ended 30 June 2009 are enclosed in **Hoyts' Confidential Appendix Two**.

30.2 Everard Entertainment Limited's accounts for the year ended 31 March 2009 are enclosed in **Everard Entertainment Limited's Confidential Appendix Three**.[29]

PART 7: CONFIDENTIALITY

31. If you wish to request confidentiality for specific information contained in or attached to the notice, please state why you consider the information to be confidential and state the reasons for your request in terms of the criteria set out in the Official Information Act 1982.

31.1 Confidentiality is sought in respect of the information in this application that is contained in square brackets. Confidentiality is sought for the purposes of section 9(2)(b) of the Official Information Act 1982 on the grounds that:

(a) the information is commercially sensitive and valuable information which is confidential to the participants; and

(b) disclosure would be likely unreasonably to prejudice the commercial position of the participants, as the parties providing the information.

31.2 The Applicant requests that it be notified of any request made to the Commission under the Official Information Act 1982 for release of the confidential information. The Applicant also requests that the Commission seek and consider The Applicant's views as to whether the information remains confidential and commercially sensitive at the time responses to such requests are being considered.

31.3 The foregoing equally applies in respect of any additional information provided to the Commission that is expressed to be confidential.

[29] Each of **Hoyts' Confidential Appendix Two** and **Everard Entertainment Limited's Confidential Appendix Three** is confidential vis-à-vis the other party to the transaction.

THIS NOTICE is given Delfin Fernandez of Hoyts Corporation Holdings (NZ) Limited.

I hereby confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to the applicant which is relevant to the consideration of this application has been supplied; and
- all information supplied is correct as at the date of this application/notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this 15 of March 2010

Delfin Fernandez, Hoyts Corporation Holdings (NZ) Limited

I am a director/officer of the company and am duly authorised to make this application/notice.