

COMMERCE COMMISSION CLEARANCE APPLICATION

Commerce Act 1986: Business Acquisition

Section 66: Notice Seeking Clearance

Date: 22 January 2009

The Registrar
Market Structure Team
Commerce Commission
PO Box 2351
Wellington

Pursuant to section 66(1) of the Commerce Act 1986, notice is hereby given seeking clearance of a proposed business acquisition.

EXECUTIVE SUMMARY

- 1.1 This is an Application for clearance pursuant to section 66(1) Commerce Act 1986 made by Media Monitors Pty Limited to acquire the business and assets of Chong Bureau Limited.
- 1.2 The proposed merger will result in some aggregation in the market for the provision of media monitoring services for press, broadcast and, to a lesser extent, internet. The relevant market is referred to in this application as the "Media Intelligence" services market. There will be nominal aggregation in the market for press release distribution services and media analysis services.
- 1.3 Media Intelligence services are provided by monitoring media sources and collecting information relevant to client requirements. Relevant media information is delivered to clients in accordance with client requirements in respect to their search criteria. Invariably clients are able to self-supply through a variety of internet based services and procure content similar to that which would otherwise be provided by a Media Intelligence service provider. This operates as a constraint on market participants currently and this would continue in both the factual and the counterfactual.
- 1.4 If the proposed transaction proceeds, current and potential competitors will continue to constrain the merged entity, including:
 - 1.4.1 Meltwater News is a recent entrant in the New Zealand Media Intelligence market that is quickly expanding operations around the world;
 - 1.4.2 Associated Australian Press (**AAP**) (trading as Newscentre) is extremely active in the Media Intelligence market in Australia. AAP already has a presence in the New Zealand market which would further enable it to quickly establish operations in New Zealand;
 - 1.4.3 the New Zealand Press Association (trading as NewsQuest); and
 - 1.4.4 The Knowledge Basket.
- 1.5 Media Intelligence operations require limited technology and infrastructure, copyright licences that are readily available and staff. These are considered as very low barriers to entry. The ACCC has determined in the context of the Media Intelligence market in Australia that barriers to entry are not high and are likely to fall as internet based technology improves.
- 1.6 In summary, the Applicant's view is that existing and potential competitors, increasingly low barriers to entry/expansion and the ability of clients to self-supply using internet based services will mean that the proposed transaction will not substantially lessen competition in any market.

PART 1: TRANSACTION DETAILS

2. CONTACT DETAILS

2.1 This application is made by:

Media Monitors Pty Limited (ACN 002 533 851)
Level 3, 219-241 Cleveland Street
Strawberry Hills, NSW 2012
AUSTRALIA

Attention: John Croll
Chief Executive Officer
Phone: +61 2 9318 4000
Fax: +61 2 9318 4112
Email: John.Croll@mediamonitors.com.au

2.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Quigg Partners
Solicitors
PO Box 3035
WELLINGTON

Attention: John Horner / Melissa Pengelly
Phone: +64 4 474 0754 / 474 0757
Fax: +64 4 472 7271
Email: johnhorner@quiggpartners.com /
melissapengelly@quiggpartners.com

3. PARTICIPANTS

Acquirer

3.1 The proposed acquirer of the Business (as defined below) is Media Monitors Pty Limited (referred to herein as **Media Monitors** or the **Applicant**) or a wholly owned subsidiary.

3.2 Media Monitors is a privately owned Australian company incorporated in New South Wales. Media Monitors (including through operating subsidiaries) operates in Australia, New Zealand and in parts of Asia providing media intelligence services. Such services involve the gathering, collating and provision of information (content) to clients from publicly available sources. Media Monitors Limited (NZCN 1471802), a New Zealand incorporated company operating a media intelligence business in New Zealand out of Wellington is a wholly owned subsidiary of Media Monitors. For the purpose of this application, reference to Media Monitors shall also refer to its wholly owned subsidiary Media Monitors Limited where the context requires.

3.3 A wiring diagram of the Media Monitors group is attached to this application as Appendix A.

3.4 For more details regarding Media Monitors please see:
<http://www.mediamonitors.co.nz>

Target Business

- 3.5 The target business which is the subject of this application is the business of Chong Bureau Limited (NZCN 807702) (**Chong**) which operates under the brand “Chong Newztel Media_Watch”. Chong is a Media Intelligence services business with offices in Wellington and Auckland.
- 3.6 Chong is a company incorporated in New Zealand and is wholly owned by Chong Holdings Limited (NZCN 1704743) which is in turn wholly owned by Gould Holdings Limited (NZCN 976245).
- 3.7 Contact details for the Chong business are below:

Chong Bureau Limited
Level 2, Warren House
84 Gloucester Street
CHRISTCHURCH

Attention: George Gould

c/- Richard Austin
Gould Holdings Limited

Phone: +61 3 377 6699
Fax: +61 3 377 4792
Email: richard.austin@gouldholdings.com

- 3.8 For further details regarding the Chong business, please see:
<http://www.mediaintelligence.co.nz>.

Interconnected and Associated Parties

- 3.9 Media Monitors has a fifty percent interest in MediaPeople (NZ) Limited (NZCN 636034) (**MediaPeople**). The other fifty percent owner is David Reade. MediaPeople maintains and sells a comprehensive online database and book form directory of media and journalist contacts in New Zealand.
- 3.10 There are no other interconnected bodies corporate relevant to this application.

4. WHAT IS BEING ACQUIRED

- 4.1 Media Monitors is seeking to acquire all of the business and assets of Chong (**Business**).

5. COMMERCIAL RATIONALE FOR THE PROPOSED TRANSACTION

- 5.1 The commercial rationale for the acquisition of the Business is to build scale for Media Monitors in New Zealand. The acquisition of the Business presents an opportunity for cost savings.

6. DOCUMENTATION

- 6.1 A copy of the signed Heads of Agreement regarding the proposed acquisition of Chong by Media Monitors is attached as Appendix B.

7. NEW ZEALAND ONLY

- 7.1 The proposed transaction is limited to the acquisition of a business in New Zealand. No competition agency in another jurisdiction has been or will be notified.

PART 2: THE INDUSTRY

8. BUSINESS ACTIVITIES OF EACH PARTICIPANT

- 8.1 Both Media Monitors and Chong monitor public information channels. They provide information of relevance to clients in accordance with their search criteria by scanning press, radio and television across New Zealand as well as keeping track of relevant websites and blogs worldwide.
- 8.2 The supply of press, broadcasting and internet monitoring services is referred to herein as **Media Intelligence**.
- 8.3 Media Monitors offers media analysis services whereby media content is analysed and reports are prepared for clients. Chong have only very recently begun to offer media analysis services and has nominal market share. []. MC McNamara Research Limited is regarded as the dominant provider of media analysis services in New Zealand, followed by Ipso Facto and Media Monitors. Most public relations firms also offer certain media analysis services to their clients making this a competitive market. For these reasons the media analysis market is not further considered in this application.
- 8.4 Both Media Monitors and Chong also offer press release distribution services. MediaPeople (50% owned by Media Monitors) has a comprehensive database of media contacts and journalists in online and hard copy versions. These products are typically used by public relations firms and communications and media advisers. Other services offered by MediaPeople include 'Newsdesk', which provides a professional and independent opinion and action plan for a client's press release and Fotostor.com which distributes photographs in JPEG form with captions/stories for collection by media and associated training. Chong also offers press release distribution services through an exclusive arrangement with the New Zealand Press Association (**NZPA**) business trading as 'MediaCom'. The Applicant understands that Chong's clients have independent arrangements in place for the media distribution arrangements. The Applicant is advised that revenue received by Chong in connection with press release distribution services is no more than [] for the 6 month period since the beginning of the arrangement with NZPA. The NZPA MediaCom services are and will continue to be provided to its clients directly by the NZPA regardless of whether the proposed transaction proceeds. As with media analysis services, most public relations firms offer press release distribution services to their clients. Because of the nominal increase in market share that will result from the proposed transaction the press release distribution services market is not considered further in this application.
- 8.5 Both Chong and Media Monitors currently offer clients an online portal facility from which they are able to access and aggregate relevant media information in accordance with their requirements. This aspect of service is a point of difference in terms of how Media Intelligence services are delivered to clients.

9. HOW SALES ARE MADE

- 9.1 Media Intelligence providers are intermediaries between the media generators/providers and a very small proportion of media consumers. Media Intelligence providers need to be efficient, innovative and low cost to gain and retain clients. Any reduction in the quality of services provided or any increase in prices without improved performance or products is considered likely to result in

- 9.2 The provision of Media Intelligence services is not specific to any industry or industries. Clients include government departments, statutory bodies, public and private companies and representative organisations (e.g. trade unions and trade associations). Clients will provide Media Intelligence service providers with search criteria in respect of issues, products, people and/or organisations that they wish to monitor. Charges are incurred depending on the volume of relevant material that is delivered in accordance with the search criteria.
- 9.3 Sales can be made by clients directly contacting and engaging the services of Media Intelligence providers or sales teams from the providers contacting potential clients.
- 9.4 It is common for clients to engage Media Intelligence providers on a contractual basis. Contract terms typically vary between []. When client contracts come up for renewal clients will typically seek renewed pricing information from different Media Intelligence providers who offer the services required. As a result of this process, clients can be retained or competitors can win these contracts. [].
- 9.5 It is common for large corporate clients to invite a number of Media Intelligence providers to tender for the services that they require. These contracts can vary in length and value, but are usually for a minimum of [] and up to a maximum of [] and typically involve a spend by the client for such services of over [] per annum. []. Often only a select number of providers are invited to tender for such large contracts.
- 9.6 A tender process is also the method used by government departments for large Media Intelligence contracts. Requests for proposals are officially lodged with the Government Electronic Tendering Services and publicly available for all providers to respond to. These contracts are usually for a period of [] with a value of over [] per annum. [].

10. INDUSTRY TRENDS AND DEVELOPMENTS

- 10.1 The continual growth in media information which is available on the internet creates a dynamic environment in which Media Intelligence providers must continue to innovate in order to provide a service of value to their clients.
- 10.2 The amount of media generated information which is available on the internet continues to increase. Currently content from national newspapers is available free or on a 'pay per item' basis on the newspapers' websites. New Zealand broadcasters operate free live stream or 'on demand' broadcasting for selected programs and offer the ability to watch or download podcasts via their internet sites on a free or 'pay as you go' basis.
- 10.3 For Media Intelligence providers advances in technology mean digital broadcast capture is now very simple and cheap and the digital format of broadcast content enables quick and efficient delivery to clients through readily available technology and infrastructure.

- 10.4 In addition, most media content is able to be freely obtained by clients through a RSS feed or FTP (file transfer protocol) feed. A RSS feed can be established to enable receipt of media content directly from a content generator. In addition, an FTP feed enables a file to be transferred to a client's intranet from a generator of content in a particular format (e.g. web-based, html or word document) as specified by the client.
- 10.5 Filtering and customised alerting services from search engines such as Google and Yahoo! are also freely available to improve the quality and relevance of information received via RSS and FTP feeds.
- 10.6 The constraint of self-supply which is increasingly relevant to Media Intelligence providers has been particularly evident recently as the global recession has taken shape. In particular, pressure has come on the providers of Media Intelligence services to reduce charges to clients. In addition, in some cases, clients are choosing to reduce the services or not renew their arrangements upon the expiry of a contract. [].
- 10.7 []. The Applicant strongly believes that it must continue to be efficient, innovative and provide exceptional service to clients to maintain current pricing, regardless of whether or not the proposed acquisition proceeds.

11. INDUSTRY ACQUISITIONS AND MERGERS

- 11.1 The Applicant has made the following acquisitions in the last three years:
- 11.1.1 acquisition of CARMA International (Asia Pacific) Pty Limited in Australia; an exclusive Asia-Pacific franchise of global media analysis firm, CARMA International, Inc. in January 2006;
 - 11.1.2 acquisition of Reham Australia Monitoring Services Pty Limited in Australia in May 2006;
 - 11.1.3 the remaining 26% of shares in Media Monitors Limited (the New Zealand company) that it did not already own, in 2008; and
 - 11.1.4 acquisition of 50% in MediaPeople (NZ) Limited (through Media Monitors Limited), an Auckland-based specialist in media targeting in February 2007.
- 11.2 It is noted that an informal application was made to the Australian Competition & Consumer Commission in respect of the Applicant's acquisition of the Reham business in 2006. The ACCC did not oppose the acquisition (reference #24070).
- 11.3 Gould Investments Limited acquired Chong in September 2005. As a result of internal group structuring, Chong became a wholly owned subsidiary of Chong Holdings Limited (previously called Half a Day Limited) which in turn is a wholly owned subsidiary of Gould Holdings Limited.
- 11.4 Chong came to being as a result of an amalgamation on 30 June 2006 of the following companies:
- 11.4.1 Chong Bureau Limited;
 - 11.4.2 Newstel News Agency Limited, which was acquired by Chong Bureau Limited in May 2006; and

11.4.3 Newsmonitor Services Limited, which was acquired by Newztel News Agency, also in May 2006.

11.5 Bolero Broadcast Monitoring Services' customer list was acquired by Chong Bureau in April 2007.

PART 3: MARKET DEFINITION

12. HORIZONTAL AGGREGATION

Services Market

12.1 If the proposed transaction proceeds, there will be an aggregation of market share in the:

12.1.1 Media Intelligence (press, broadcast and internet monitoring) services market;

12.1.2 media analysis services market; and

12.1.3 media distribution services market.

12.2 As identified above, the aggregation in media analysis and media distribution services is considered as nominal because the presence of Chong in these markets is small.

Functional dimension

12.3 The functional dimension of the relevant market is the provision of services on a retail basis.

Geographical Area

12.4 Media Intelligence services are provided to clients nationwide and therefore the geographical area to be considered is New Zealand.

Client dimension and timeframe

12.5 The clients of Media Intelligence providers are many and varied, large and small, public and private. There is no price discrimination between different groups of clients although on occasion discounted rates may be negotiated with significant clients on longer term contracts.

12.6 There is no relevant temporal dimension to the relevant market.

13. DIFFERENTIATION OF SERVICE WITHIN MARKETS

13.1 Media Intelligence services can be differentiated by variable quality standards in terms of speed, relevance and accuracy. Other differentiating factors in terms of quality include:

13.1.1 "look and feel" presentation – being the formatting of and method of delivering information to clients, particularly with respect to press monitoring. This means that relevant media content can be delivered in a manner that accurately represents the information's physical context at the source, usually in PDF format. The Applicant considers that while clients value the "look and feel" presentation, clients would readily dispense with that feature in the face of a price rise. Further, it is not considered particularly onerous for a competitor to introduce a "look and feel" presentation offering; and

13.1.2 delivery of content through web portals – this means of delivery is a value added benefit but would not be difficult for a competitor to replicate and the costs to do so would not be prohibitive.

13.2 Access to media content is not a differentiating factor in Media Intelligence services. Any Media Intelligence provider has the ability to access all media content, including material that may not be published by the media via the NZPA news feed through subscription.

14. VERTICAL INTEGRATION

14.1 There is no vertical integration relevant to this proposed merger.

PART 4: COUNTERFACTUAL

15. COUNTERFACTUAL

- 15.1 In the event that the proposed merger does not take place, the status quo where Chong and Media Monitors compete in the Media Intelligence services market would likely continue. It is considered as possible that the Business or shares in Chong would be sold to a third party.
- 15.2 Under this counterfactual, both Chong and Media Monitors would continue to compete in a market, as referred to in paragraph 9, constrained primarily by the fact that Media Intelligence services are only desirable if prices charged are reasonable and the services provided continue to add value and meet or exceed client expectations. Where prices are increased the Applicant believes that clients will resort to alternative internet based providers and self supply techniques and systems.

PART 5: COMPETITION ANALYSIS

16. EXISTING COMPETITORS

Current and near competitors

- 16.1 There are a number of competitors or near competitors in the Media Intelligence market:
- 16.1.1 **Australian Associated Press** (<http://aap.com.au>) is an established Australian news gathering organisation which has a presence in New Zealand and is well placed to immediately enter and effectively compete in the New Zealand Media Intelligence services market. It is understood that AAP have a strong relationship with the New Zealand Press Association and would be likely to be able to quickly secure licences with publishers given that New Zealand publishers are mainly Australian owned and therefore members of AAP.
- 16.1.2 The **New Zealand Press Association** (<http://www.nzpa.co.nz/media-monitoring>) offers an online press monitoring product, **NewsQuest**, which provides access to comprehensive content from its members, plus the full New Zealand Press Association news feed. NewsQuest allows users to track items of interest, create personal folders and email content to others, which is similar to Media Monitors' Mediaportal service. The NZPA also offers a profiles service, where clients are sent media items based on their customised requirements. This is similar to the Media Monitors' brief system.
- 16.1.3 **Meltwater News** (<http://meltwaternews.com/home/contact.php?by=sydney>) is a specialist online media monitoring company serving the international marketplace since 2001. They operate in 41 offices across Europe, Asia, Australia and North and South America and monitor over 50,000 media publications and 1500 blogs in 23 languages. The Meltwater news monitoring service allows retainer clients access to critical media and business information published online. Clients access their relevant media content through a portal. In addition, clients can access real-time reports on industry trends and market competition. Meltwater offers its services in New Zealand from Australia, via a telephone call centre approach. It has successfully entered into arrangements with prior clients of Media Monitors, including [] and the Applicant believes that Meltwater has been involved in tenders for Media Intelligence services for large New Zealand based clients.
- 16.1.4 **The Knowledge Basket** (<http://www.knowledge-basket.co.nz/kete/eclips.html>) is an online service which provides access to a number of databases and sources and is used primarily by librarians and researchers. Such databases include LegislationNZ, Newztext (which provides access to Fairfax New Zealand newspapers, APN's NZ Herald newspapers, The National Business Review, The Independent, Radio NZ news (in real time), Rural News and many New Zealand magazines covering business and industry news), New Zealand Index (accesses indexed records of New Zealand) and LINX (combined database of Auckland, Wellington and Christchurch Law Societies containing references to court judgements, articles and texts held by the three law societies). The Knowledge Basket provides a service called E-clips which

is a complete online, text based, press monitoring service. The Knowledge Basket website provides that it is used by universities, polytechnics, schools, and large corporations such as Telecom New Zealand, Russell McVeagh, Phillips Fox, Deloitte Touche Tohmatsu, Parliament, government departments and media researchers. The Knowledge Basket has competed effectively with Media Monitors in the past, for example []

- 16.1.5 **Factiva** (<http://www.factiva.com/>) is a major online media content source with international coverage. It has more than 20,000 sources from more than 159 countries in 22 languages, including 600 newswires (400 which update continuously), more than 2,500 newspapers with same day archival coverage, more than 5,500 business and industry publications, television and audio transcripts along with audio and video coverage, financial information for more than 32,000 private and public companies, pictures from Reuters, McClatchy-Tribune Photo Service, Fairfax Media, Fashion Wire Weekly, SDA Infografik _ATS Infographie, as well as web and blog content from more than 4,000 business and news sites worldwide. Factiva also has an alerting option that includes group alerting, peer-to-peer alert sharing and continuous alerting. The Applicant understands that Factiva provides Media Intelligence services in New Zealand to clients including major accountancy firms and banks.
- 16.1.6 **Scoop** (<http://www.scoop.co.nz/myscoop/about.html>) is a New Zealand based online business. Scoop has a product called NewsAgent, which they describe as “a professional media intelligence service”. Scoop claims that its tracking service NewsAgent, monitors emerging issues and gathers media intelligence on brands, organisations or specific topics in real-time — delivered to their email in-box as it gets released to the media. Scoop claims that NewsAgent provides clients with access to more than 100 “Topic Indexes” covering everything from Parliament and political parties to business, industry, health and education. The Applicant understands Scoop has in place arrangements with TV3 whereby broadcast content is made available to Scoop for its NewsAgent users. The Scoop site also provides for keyword searches which searches around 200 items published every day.
- 16.1.7 **NZX Newsroom** (<http://www.newsroom.co.nz/Main/Products.aspx>) offers a similar service to Scoop called NewsMail. NZX Newsroom is owned by NZX Limited. NZX Limited acquired in April 2008, “Dairy Week” which was the first dedicated electronic news service specifically designed for the Australian and New Zealand dairy industry. It provides a weekly compilation of abstracts from domestic and international sources in a bulletin delivered to clients’ inbox on a weekly basis. Such sources used to compile the bulletin come from Australia and New Zealand and include all media, e.g. newspapers, radio, TV, press releases, internet etc. This is an example of a niche Media Intelligence service provider. See <http://www.dairyweek.com>.
- 16.1.8 **Ipsos Facto** a division of Acumen Republic, (<http://www.acumenrepublic.co.nz/our-brand.html>) offers predominantly analysis services, but also provides ad hoc media alerting and monitoring products to its clients. The Acumen Republic is an amalgam of a number of divisions under different brand names, including Consultus, a leading PR company.

16.1.9 **Lexis Nexis** (<http://www.lexis.com/>) is a leading global provider of content-enabled workflow solutions designed specifically for professionals in the legal, risk management, corporate, government, law enforcement, accounting, and academic markets. LexisNexis is available in New Zealand and serves customers in more than 100 countries with provides access to five billion searchable documents from more than 40,000 legal, news and business sources.

16.1.10 Major media company **Nielsen Media Research** (<http://nz.acnielsen.com/site/index.shtml>) has in the past provided media monitoring services to clients in New Zealand, but ceased to do so in June 2007. There is a real possibility they could re-instate this service given a market opportunity.

16.1.11 As can be seen from the **Acumen Republic** example (above), public relations firms already provide limited media monitoring services to their clients which could be expanded to a full Media Intelligence offering.

16.1.12 It is understood that established media analysis service provider **McNamara Research** has in the past investigated the possibility of providing Media Intelligence services and could in fact do so given a market opportunity.

16.1.13 **TNS** (<http://www.tnsglobal.com/global/alm/new-zealand/>), a major media and research organisation, now owned by **WPP**, operate in New Zealand providing market research products. TNS could quickly establish its Media Intelligence division in New Zealand. TNS Media Intelligence is one of the largest media monitoring organisations in the world.

17. MARKET SHARES

17.1 The total value of the Media Intelligence market in New Zealand is estimated to be [] million in terms of revenue. Of this, Chong has approximately [] and Media Monitors has approximately []. The balance of market share is held by NZPA NewsQuest (approximately []), Knowledge Basket (approximately []) and other competitors including Scoop, NZX Newsroom and Meltwater.

17.2 The source of the data provided in 17.1 is from actual data in respect of Media Monitors and Chong and are 'best guess' estimates by management of the Applicant in respect of the balance.

18. CONSTRAINTS ON MERGED ENTITY BY EXISTING COMPETITORS:

18.1 The Applicant considers that a merged Chong/Media Monitors entity would continue to be constrained by the presence in the market of NZPA NewsQuest, Meltwater and other internet based providers. As identified above, Meltwater is a recent entrant to the Media Intelligence market in New Zealand and is aggressively expanding worldwide. It is expected that both NZPA and Meltwater could quickly and effectively expand in New Zealand to gain market share, particularly in the event the merged entity increased prices and/or decreased service quality levels.

18.2 While clients of Media Monitors are typically committed to contracts of [] the nature of the client base being a large number of small to medium

sized clients (in terms of revenue generating) means that at any particular time, a large number of clients will be faced with the decision of renewing arrangements with their current service provider or considering their options, including using an alternative provider or self-supply.

18.3 [].

18.4 As discussed below, the additional threat of AAP quickly entering the New Zealand market is also considered by the Applicant to be a significant constraint on any Chong/Media Monitors merged entity raising prices or reducing service levels.

POTENTIAL COMPETITION

19. CONDITIONS OF ENTRY

19.1 A new entrant to the Media Intelligence service market in New Zealand would require the following:

Management

19.1.1 a General Manager with an approximate salary of [];

Account Management

19.1.2 one to three (depending on size of client base) account management staff with an average salary of [] per annum per manager. If a business was in the establishment phase the number of staff required would be staged over time to match client growth;

General technology costs

19.1.3 a web portal and server with a one off development fee of approximately [] plus infrastructure of approximately [];

Press Monitoring

19.1.4 a copyright licence from the Print Media Copyright Agency which is available on a "per click" basis, meaning there are no up front costs. Ideally a competitor would want direct PDF feed arrangements with a number of publishers which would cost approximately [] per year, but again in this regard there are no upfront costs;

19.1.5 infrastructure and software to receive scanned images and PDFs, segment them into individual articles, an OCR (optical character recognition) engine, a search engine and a means of delivery to clients, via internet. The cost of this infrastructure would be in the vicinity of [].

19.1.6 Suitable press monitoring staff. The number of staff required to provide press monitoring service to a commercially viable number of clients would depend on the level of quality, in terms of relevance, the competitor wanted to provide. Low relevance/quality would only require approximately four to six people at an average salary of [] per annum. Higher relevance/quality would require higher skilled people to make decisions regarding relevance of certain media content for clients. A high quality

Broadcast

- 19.1.7 suitable broadcast monitoring staff. The number of staff required to provide broadcast monitoring services is approximately six people on an average salary of approximately [];
- 19.1.8 technology and infrastructure to provide broadcast monitoring, which can be very basic. No more than two televisions, six digital tuners and five computers with digital recording capacity would be required to provide a basic but functional broadcast monitoring service to clients. There would need to be a database for the monitored summaries and a means of delivering both summaries and content, again preferably internet based. Broadcast infrastructure would cost approximately []. This could be reduced if a low cost, less comprehensive business model was implemented; and
- 19.1.9 copyright licences. These are readily available and are obtained on a royalty fee "pay as you go" basis.

Simpler business model possible

- 19.2 As an alternative, it is also possible for a new entrant to the Media Intelligence market to establish a New Zealand business using a model which requires considerably less investment than that set out above. A basic, less comprehensive, service model would be extremely simple to establish and would not require the capital expenditure and personnel required for the level of service offered by Chong and Media Monitors and could be expected to become increasingly significant as the prevailing economic conditions worsen. An example of this model currently in the market would be the "E-clips" business model such as that currently offered by The Knowledge Basket. This service already competes effectively with Media Monitors.
- 19.3 As previously noted, broadcast content available via the internet is readily able to be downloaded or listened to by any person with a computer. Advances in technology mean digital broadcast capture is now very simple and cheap, significantly reducing the barriers to entry. The digital format of broadcast content enables quick and efficient delivery to clients through readily available technology and infrastructure.

20. NEW ENTRY INTO MARKET

Factors which could impede entry

- 20.1 As referred to above, the Applicant considers that there are no factors that could materially impede entry into the New Zealand Media Intelligence market. While Chong and Media Monitors have the benefit of market reputation and an existing client base (most of which are subject to a contract term of []) such factors are not considered onerous for a new entrant. In particular (for the reasons discussed below), AAP is in a very strong position to take advantage of the low barriers to entry and expansion in the event a merged Chong/Media Monitors entity should raise prices or reduce service levels.

- 20.2 Part 3, section 91 of the Copyright Act 1994 ensures any person has the right to record and copy as long as “equitable remuneration” is paid to the copyright holder.

What would prompt entry post merger?

- 20.3 Post merger, entry could be prompted by a perception of high prices and/or low levels of service by the merged Media Monitors/Chong entity. If there was a reduction or cessation of dynamic innovation in the level or manner in which Media Intelligence services are provided, that too could prompt entry by a new competitor operating in other countries (e.g AAP and/or TNS).

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

21. BUSINESSES LIKELY TO ENTER MARKET

- 21.1 Australia Associated Press (**AAP**) is considered by the Applicant as highly likely to enter the New Zealand market. This would be a logical continuation of recent growth in Australia and an extension of their existing presence in New Zealand (see www.newscentre.com.au).
- 21.2 The Applicant considers that it is only a matter of time before AAP enters the New Zealand market for the following reasons:
- 21.2.1 AAP is an aggressive and expanding competitor of Media Monitors in Australia;
- 21.2.2 AAP already has a presence in New Zealand through a journalists bureau for reporting and media production company PageMasters NZ Pty Limited;
- 21.2.3 AAP has, in Australia, the systems, technology and staff required to effectively compete in New Zealand;
- 21.2.4 []; and
- 21.2.5 the Applicant understands that AAP has a close relationship with the New Zealand Press Association (**NZPA**) and other publishers (namely, APN and Fairfax) and would therefore be well placed to quickly secure the necessary copyright licences.
- 21.3 If the proposed acquisition proceeds this will present AAP with an ideal opportunity to enter the market and vigorously compete with Media Monitors.
- 21.4 If a combined Media Monitors/Chong entity was to unduly increase prices or allow service levels to fall, the applicant considers that market entry by AAP would be inevitable, immediate and effective.
- 21.5 Other possible entrants to the New Zealand market include:
- 21.5.1 **TNS**, a major media and research organisation, owned by WPP and operating in New Zealand providing market research products. TNS Media Intelligence is one of the largest media monitoring organisations in the world (see www.tnsmi.co.uk);

21.5.2 **Cision**, a media intelligence organisation with market presence in Europe, North America and Asia (see www.cision.com) which the applicant understands is looking to expand business operations into South East Asia; and

21.5.3 **Factiva**, which is owned by Dow Jones, part of the global News Corporation media conglomerate. Factiva has over 1.8 million subscribers and offers over 22,000 media content sources from 159 countries in 22 languages. Traditionally Factiva was sold into information professional (research/library/knowledge management staff), but the company is now offering news monitoring and analysis solutions via web portal, including their Insight Analysis and Factiva Search 2.0 products. Clients can search the database of global (including New Zealand) media content sources and/or set up filters and specific search criteria similar to the services offered by Media Monitors and Chong. The Applicant understands that in December 2008 Dow Jones entered into an agreement with Commercial Monitors in Australia for the supply of Australian Broadcast monitoring digital video and audio clips and summaries.

21.6 The applicant does not consider the entry of TNS Media Intelligence and Cision as highly likely but considers it possible, particularly if a merged Media Monitors /Chong entity were to raise prices or in the event service levels decline.

21.7 Major media company Nielsen Media Research has in the past provided media monitoring services to clients in New Zealand, but pulled out of this service in June 2007. There is a significant possibility they could re-instate this service given a market opportunity.

22. EXTENT OF POTENTIAL ENTRY AS CONSTRAINT TO MERGED ENTITY

22.1 It is considered highly likely that potential entry will be sufficient to constrain the merged entity if the proposed acquisition proceeds.

23. TIMING FOR ENTRY

23.1 Entry to the New Zealand market could be achieved within three to six months or even sooner where entry is made incrementally, starting with specific media sources and expanding overtime.

24. COUNTERVAILING POWER OF BUYERS

Self Supply by Clients

24.1 Many clients of Media Intelligence service providers are able to satisfy all of their Media Intelligence service requirements by allocating internal resource to search for particular information through different media.

24.2 This is made possible by the major daily newspapers in New Zealand having an online presence with search functions (see www.nzherald.co.nz and www.stuff.co.nz). Both TVNZ and TV3 provide limited free access to download broadcast media content via the internet. Most major New Zealand radio stations (e.g. Radio New Zealand) also offer media content by way of live feeds and in archived podcasts. This enables clients or prospective clients of Media Intelligence providers to access broadcast content quickly and efficiently.

- 24.3 The costs of bringing these services in-house would vary depending on the level of service required. An internet search of major newspapers and other online content would be at nominal cost. Internet based Media Intelligence providers (e.g. Knowledge Basket, Scoop and NZX Newsroom) can be used to supplement the in-house efforts of organisations.
- 24.4 The advantages offered by Media Intelligence service providers such as Media Monitors are speed, relevance and accuracy. By outsourcing the services to specialist providers such as Media Monitors, the speed, relevance and accuracy are improved. Media Intelligence service providers are, and will continue to be, highly incentivised to ensure service levels and delivery methods (and other features) are continually improved in order to maintain current revenue given the ongoing increase in the use of the internet as the source for media and other information.
- 24.5 Many organisations satisfy their basic Media Intelligence service requirements without engaging a Media Intelligence service provider through the use of the internet. The costs of this approach are minimal because the task can be carried out by any staff member that has internet access and a basic understanding of how to use search engines and the subject matter(s) that the particular organisation is interested in. For large organisations, it is typical that the person or team responsible for communications and/or media relations would be in the best position to oversee media monitoring also. For clients that incur more than \$50,000 per annum with a Media Intelligence service provider, a junior/intermediate person with training and/or experience in media/communications would be a commercially viable proposal if self supply was considered the preferred option.
- 24.6 By way of example of how more sophisticated systems can be devised and implemented as opposed to using a Media Intelligence provider, see www.olympicsoftware.co.nz/resource/library/casestudies/aucklandcitycouncil/tabid/398/default.aspx
- 24.7 In summary, if the proposed acquisition proceeds, the ability of organisations to replace the services offered by Media Monitors with their own monitoring efforts using the internet will continue to act as a competitive constraint on Media Monitors in the event that service levels are reduced or prices are increased. The Applicant is willing to illustrate to the Commission how a client can easily implement systems via the internet whereby media intelligence can be obtained directly from media generators.
- 24.8 It is noted that the Commission has previously found that the availability of self-supply as a constraint on the proposed merged entity, including in Decision No. 439 involving the acquisition of PMI Mortgage Insurance Australia of CGU Lenders Mortgage Insurance Limited, in respect of which the relevant market was the supply of lender's mortgage insurance (**LMI**) to lenders of residential mortgages. Notwithstanding that self-insurers were not considered competitors in the sense that they did not compete for business externally, the Commission recognised that:
- 24.8.1 self-insurers, being large banks, reduce the LMI market available to the non-lender suppliers and can directly influence that market by the aggressiveness with which they pursue new business in the residential mortgage lending market; and

24.8.2 self-insuring banks should be considered to represent a source of countervailing power on the buyers side of the market since they could use their ability to self-insure as a lever to negotiate a good deal with an LMI supplier.

24.9 In its overall conclusion, the Commission placed significant weight on the effectiveness of the countervailing buyer power. The Commission noted first that the merged entity would obtain a market share that fell outside the Commission's safe harbour guidelines. The Commission found that the new entry would not provide constraint on the merged entity and that the constraint provided by existing competition would not in itself be sufficient to constrain the merged entity. The Commission stated at paragraph 210 that:

"However, the strong countervailing power of the purchasers of LMI, together with the potential or expansion by clearly identifiable market participants, would be sufficient to constrain the merged entity The Commission considers that such a constraint would, in comparison to the constraints provided in the current market by existing competitors, be sufficiently effective to ensure that any lessening of competition following the acquisition would not be substantial."

24.10 Other examples of decisions where self-supply was considered by the Commission include:

24.10.1 Decision 524 (VISY Industrial Plastics (NZ) Limited acquiring ACI Operations NZ Limited) where significant countervailing buyer power of Frucor through its ability to self-supply and to sponsor expansion was considered relevant, together with existing levels of competition and the ability of existing participants to expand (acquisition cleared);

24.10.2 Decision 381 (Medical Waste Group Limited and San-I-Pak (NZ) Limited) where the Commission noted that large-scale users of medical waste treatment services appear to produce volumes of waste sufficient to support either a new entrant into the market or the installation of their own autoclave to treat their own waste. Even though no large waste producer had moved in this direction, the Commission noted that *"an incumbent would recognise the ability of certain buyers to build their own facility, and thus would offer lower prices to those producers to retain their business whilst charging higher prices to others whose options are more limited"* (paragraph 155). Countervailing buyer power was therefore limited to large scale waste producers, whilst other producers, it felt, would have no countervailing power in the foreseeable future. Whilst the acquisition was not cleared by the Commission and countervailing buyer power was limited, an analogy can be made to the realisation of the incumbent in that decision of the ability for some buyers to self supply in the same way that Media Monitors/Chong would recognise that all of its current and potential buyers could self supply and is thereby constrained by the ever-present risk of this;

24.10.3 Decision 442 (United Environmental Limited acquiring Solvent Services Limited) where the Commission noted that the ability of one acquirer to self-supply in a relatively short time frame suggested that some acquirers of disposal services could self-supply if they became dissatisfied with the merged entity's service and would therefore impose some constraint on the merged entity.

25. CONSTRAINT FROM BUYERS

25.1 Constraint by buyers is and will continue to be present if the proposed acquisition proceeds due to the self supply option described above.

25.2 The top five clients of the Applicant by revenue for 2007/2008 are:

25.2.1 [];

25.2.2 [];

25.2.3 [];

25.2.4 []; and

25.2.5 [].

25.3 Each of the top five buyers generated revenue for the Applicant of between \$75,000 and \$90,000 in 2008.

25.4 Five medium sized clients of the Applicant, in terms of revenue for 2007/2008, are:

25.4.1 [];

25.4.2 [];

25.4.3 [];

25.4.4 []; and

25.4.5 [].

25.5 Each medium sized client generated revenue for the Applicant of between \$15,000 and \$30,000 in 2008.

25.6 Five small clients of the Applicant, in terms of revenue for 2007/2008, are:

25.6.1 [];

25.6.2 [];

25.6.3 [];

25.6.4 []; and

25.6.5 [].

25.7 Each small client generated revenue for the Applicant of less than \$5,000 in 2008.

26. CO-ORDINATED MARKET POWER

26.1 As noted in the Commission's Mergers and Acquisition Guidelines (Part 8, page 32), market power is likely to be exercised only when the market is unconstrained by potential entry, and where other competition factors are either absent or

insufficient to nullify the market power. The ability for clients of Media Intelligence providers to use internet based providers or to self-supply using internet search techniques, the low barriers to entry and the threat of expansion from near entrants and other potential competitors both from within New Zealand and overseas, means the exercise of market power by a merged Chong/Media Monitors entity will be sufficiently constrained and any collusion, tacit or explicit, would be quickly undermined.

27. **EFFICIENCIES**

- 27.1 The proposed merger of Media Monitors and Chong would certainly give rise to a number of efficiencies that are not obtainable by other means. Savings, largely through the reduction of overheads such as premises, infrastructure and staff, will result in lower costs and reduce the likelihood of any increase in prices. By reducing costs, the merged entity will be better equipped to deliver a cost-effective service which compares favourably with a self supply option for clients who themselves are becoming increasingly cost conscious. In this sense the merger is pro competitive.

PART 6: FURTHER INFORMATION AND SUPPORTING DOCUMENTATION

28. Contact details of relevant competitors, buyers and suppliers and any other relevant market participants are set out below:

	Name of Company	Contact Details	Relevant Contact Person
Competitors	NZPA NewsQuest	P: (04) 498 7367 E: simon.randall@nzpa.co.nz	Simon Randall Manager Commercial Services
	Meltwater	P: +61 2 9037 1261 E: sales.sydney@meltwaternews.com	General Sales
	The Knowledge Basket	P: (09) 621 0476 E: dave@knowledge-basket.co.nz	Dave Keet Director
	Scoop	P: (04)-9101844 E: ngaruna@scoop.co.nz	Ngaruna Kapinga Data Sales Manager
	NZX Newsroom	P: (04) 495 2822 E: peter@newsroom.co.nz	Peter Fowler Managing Editor
	AAP	P: +61 2 93228120	Kylie O'Reilly Managing Director
	Factiva	P: 0800 442 434	General Sales
	Nielson Media Research	P: (09) 970 4188	Media Helpdesk
	MC McNamara Research	P: (04) 499 6680 E: mary@mcmac.co.nz	Mary McNamara
	Lexis Nexis	T: (09) 368 2180 E: jo.hammer@lexisnexis.co.nz	Jo Hammer
Buyers	See details provided in the main body of the application.		
Trade Associations	Not applicable		
Any other relevant market participants or interested parties	Not applicable		

29. ANNUAL REPORTS

- 29.1 A copy of the most recent annual reports for Media Monitors Limited and Chong is attached at Appendix C.

PART 7: CONFIDENTIALITY

30. CONFIDENTIALITY MATTERS

- 30.1 The information deleted from the public version of this application is considered by the Applicant as commercially sensitive and confidential. Disclosure of the information would be likely to unreasonably prejudice the commercial position of the Applicant.

This NOTICE is hereby given by:

Media Monitors Pty 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(s) which is relevant to the consideration of this application/notice 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 this application/notice.

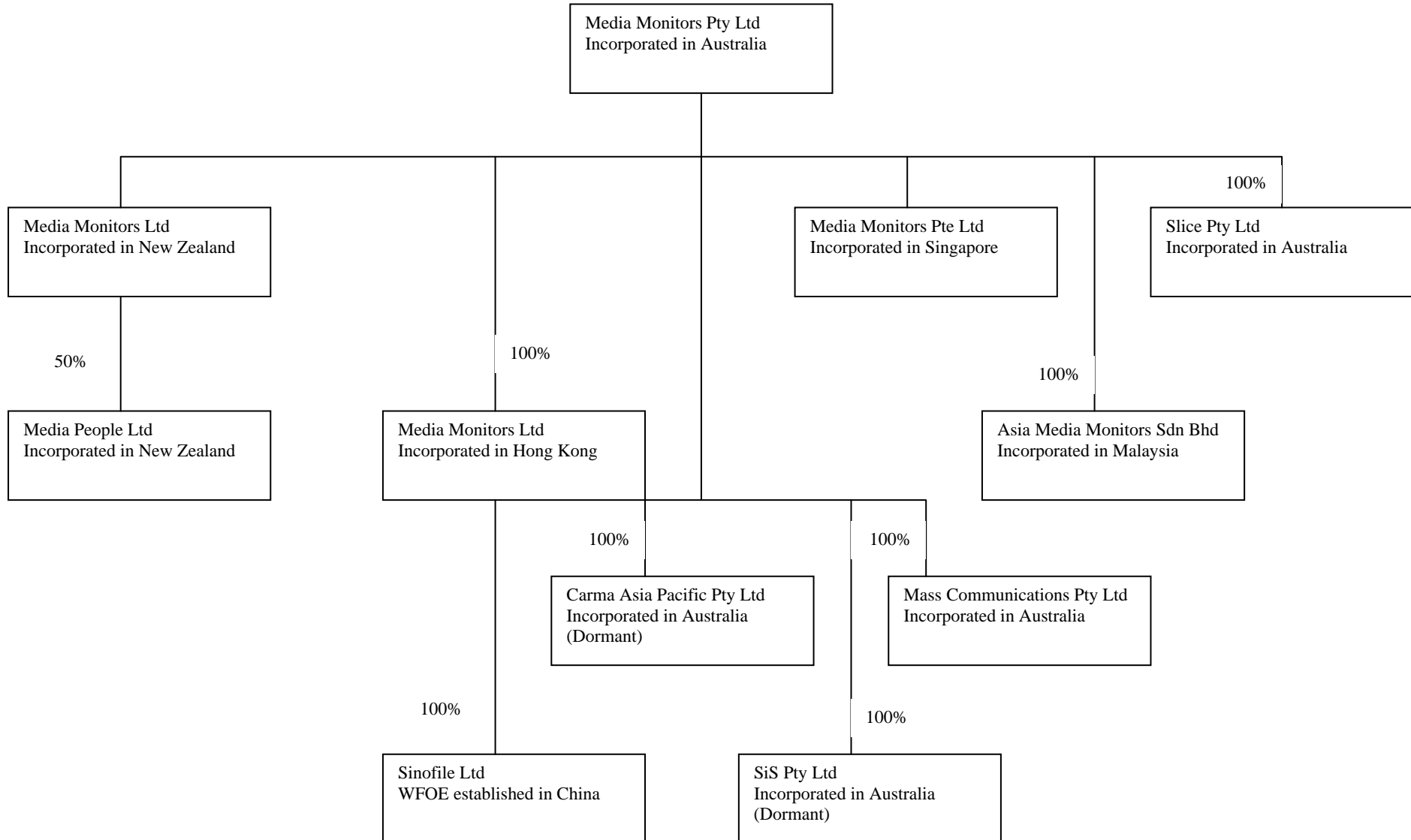
DATED this 22nd day of January 2009

A handwritten signature in black ink, appearing to read "John Croll", with a long, sweeping flourish extending from the end of the name.

JOHN CROLL
CHIEF EXECUTIVE

JH127393

APPENDIX A: MEDIA MONITORS LEGAL WIRING DIAGRAM



APPENDIX B: HEADS OF AGREEMENT
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