



COMMERCE COMMISSION

Decision No. 516

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

MEDIMEDIA (NZ) LIMITED

and

ADIS INTERNATIONAL LIMITED

The Commission: Peter JM Taylor
Denese Bates QC
Donal Curtin

Summary of Application: The acquisition by MediMedia (NZ) Limited of the business, intellectual property, and assets of the New Zealand publications of Adis International Limited

Determination: Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition.

Date of Determination: 18 December 2003

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Competition Analysis

The Medicines Information Market

6. In the medicines information market, the merged entity would have 100% market share as the proposed acquisition would reduce the number of suppliers from two to one. The loss of competition between MediMedia and Adis is of concern to the Commission as it could result in an increase in price and/or a reduction in product quality.
7. The Commission concludes that the aggregation of all the barriers to entry results in a high overall barrier to entry in this market, and that entry in is unlikely within a two year period starting from the exercise of market power.
8. However, the Commission considers that the pharmaceutical companies would have considerable countervailing power sufficient to prevent MediMedia from exercising market power post-acquisition. In addition, GPs, through their individual reactions to a price rise from zero, would as a group also provide a degree of countervailing power.

The General Information Market

1. The Commission considers that, despite the loss of competition between *NZGP* and *Doctor*, RNZCGP's two publications would offer an alternative to *NZGP* and *Doctor* and would be likely to provide sufficient constraint on MediMedia.
9. The Commission concludes that there are no significant barriers to entry in this market. The Commission considers that if entry with a publication as competitive as *Doctor* were possible at a time when the incumbent was not exercising market power, because of the low barriers to entry, entry would be likely, timely and of an extent sufficient to constrain MediMedia if it attempted to exercise its market power post-acquisition.
10. The Commission also considers that the pharmaceutical companies would have countervailing power sufficient to prevent MediMedia from exercising market power. In addition, GPs, through their individual reactions to a price rise from zero, would, as a group, also provide a degree of countervailing power.

The Advertising Services Market

11. The Commission considers that there would be aggregation in the advertising services market. However, the pharmaceutical companies also use other channels of advertising, such as conferences and sales representatives, and tend to allocate a

greater proportion of their marketing budgets to these channels. These are likely to provide sufficient constraint against the exercise of market power by MediMedia post-acquisition.

12. The Commission considers that the aggregation of all the barriers to entry results in a low overall barrier to entry in this market and it considers that entry or expansion into the advertising services market would be likely, and would be timely enough and sufficient in extent, to constrain MediMedia from exercising market power post-acquisition.
13. The Commission also considers that the pharmaceutical companies have a considerable degree of countervailing power through their ability to expand their use of alternative marketing channels that would prevent MediMedia from exercising market power.

OVERALL CONCLUSION

14. The Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, in the following markets:
 - the medicines information guides market;
 - the general information publications market; and
 - the advertising services market.
15. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to the proposed acquisition by MediMedia of the business, intellectual property, and assets of the New Zealand publications of Adis.

THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act (the Act) was registered on 24 November 2003. The notice sought clearance for the acquisition by MediMedia (NZ) Limited (MediMedia) of the business, intellectual property, and assets of the New Zealand publications of Adis International Limited (Adis).

THE PROCEDURES

2. Section 66(3) of the Act requires the Commission either to clear or to decline to clear a notice given under s 66(1) within 10 working days, unless the Commission and the person who gave notice agree to a longer period. An extension of time was agreed between the Commission and the Applicant. Accordingly, a decision on the Application was required by 19 December 2003.
3. The Applicant sought confidentiality for specific aspects of the Application. A confidentiality order was made in respect of the information for up to 20 working days from the Commission's determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply.
4. The Commission's approach was based on the principles set out in the Commission's *Practice Note 4*.²

THE PARTIES

MediMedia

5. MediMedia is a publisher, via print or electronic media, of medicines and general health information. MediMedia is based in the United States and has offices throughout Europe and Asia, as well as in New Zealand and Australia.
6. In New Zealand, MediMedia issues a wide range of publications including medicines directories, professional newspapers and patient-health information. MediMedia also sells database services and GP accessories - such as prescription pads, target cards, and direct mail assembly - to healthcare professionals.

Adis

² Commerce Commission, *Practice Note 4: The Commission's Approach to Adjudicating on Business Acquisitions Under the Changed Threshold in Section 47 – A Test of Substantially Lessening Competition*, May 2001.

7. Adis is a publisher, via print or electronic media, of drug and general medical information. Adis is ultimately owned by the Wolters Kluwer Group, which is based in the Netherlands and has offices throughout the world.
8. In New Zealand, Adis operates as the Pharma Solutions division of Wolters Kluwer, and provides a range of medical information - including publications and drug information - to healthcare professionals, including GPs, specialists, hospitals and pharmacies.

OTHER RELEVANT PARTIES

The Royal New Zealand College of General Practitioners (RNZCGP)

9. The RNZCGP is a professional body and postgraduate educational institute established in 1974 (having been a branch of the Royal College of General Practitioners since 1957). It provides on-going educational support and training for general practitioners, and standards-setting for general practice.
10. The RNZCGP also publishes *New Zealand Family Physician (NZFP)* and *GP Pulse*. Both publications are provided to its members free of charge, and are funded via advertising and members' levies.

APN Educational Media (NZ) Limited (APN)

11. APN was established in 2000, and publishes a wide range of educational and general health publications such as *Nursing Review* and *Midwifery News*. Of relevance to this Application is APN's publication, *New Zealand Health Review*, which is aimed at hospitals, specialists and GPs.

Pharmac

12. Pharmac is a Crown Owned Entity responsible for the management of pharmaceutical subsidies in New Zealand. Pharmac advised the Commission that its objective is to obtain the best outcome for consumers from the funding it receives from the Minister of Health. Pharmac runs competitive tenders with the pharmaceutical companies for generic medicines, and arranges and negotiates with the suppliers of non-generic medicines to receive a range of subsidised medicines.
13. Pharmac also has a responsibility to ensure the best use of its subsidised medicines by prescribers by:
 - making sure medicines are not under- or over-used; and
 - producing educational materials for consumers and prescribers.

Medsafe

14. Medsafe is a branch of the Ministry of Health. Its regulatory role is to ensure the safe use of medicines within New Zealand. All medicines used in New Zealand must be registered with Medsafe. Pharmaceutical companies are required to provide Medsafe with detailed information for every prescription or restricted medicine in the form of datasheets. Medsafe publishes these datasheets in full on its website.

Large Pharmaceutical Companies

15. There are a number of large pharmaceutical companies in New Zealand that distribute a wide range of prescription and over-the-counter (OTC) medicines. Of relevance to this Application is the pharmaceutical companies' advertising of medicines in general health and medicines publications.

Health Technology Limited (MedTech)

16. Health Technology was established in 1983, and provides practice management software (GP software)(MedTech 32) to approximately [] of GPs in New Zealand. MedTech incorporates *MIMS* prescribing software into its GP software.

Intrahealth Limited (Intrahealth)

17. Intrahealth provides GP software to around [] of GPs in New Zealand. Intrahealth obtains raw data from Adis and then incorporates it into its GP software. Intrahealth considers that its information on medicines in New Zealand is equivalent to that of *MIMS*.

INDUSTRY BACKGROUND

18. A wide range of medical publications are produced for GPs, specialists, pharmacies, hospitals, and the health sector in general. The types of publications may be placed into two categories, namely, general information and specific medical information.

General Information Publications for GPs

19. General information publications are weekly or monthly newspapers or magazine-style publications that provide the medical industry with general industry news and updates. These publications consist of editorial, journalistic, and advertising content common to most magazine or newspaper publications. They are generally provided free of charge to GPs, and via a subscription fee to others in the medical profession. The general information publications for GPs are almost entirely funded by advertising revenue from pharmaceutical companies.
20. There are a number of general information publications for GPs produced in New Zealand. Those affected by this acquisition are described below.

Doctor

21. *Doctor* is published by MediMedia and is targeted at GPs. It contains clinical articles, industry updates and news, as well as general interest articles such as movie reviews. *Doctor* has a circulation of approximately 4,000, and is provided free of charge to GPs. While *Doctor* is primarily aimed at GPs, it is also supplied on subscription to around 400 subscribers in the health sector, many of whom are specialists.

New Zealand General Practitioner (NZGP)

22. *NZGP* is published fortnightly by Adis and is targeted at GPs. Like *Doctor*, it contains clinical articles, industry updates and news, as well as general interest articles such as movie reviews. *NZGP* also contains some classified advertising. *NZGP* has a total circulation of approximately 4,500, which, like *Doctor*, largely consists of GPs. *NZGP* is free to GPs, and by subscription to other health professionals.

New Ethicals Journal (NE Journal)

23. *NE Journal* is published monthly by Adis and is targeted at GPs and specialists. Unlike *Doctor* and *NZGP*, it contains specialist technical and clinical information aimed at keeping GPs and specialists up to date on the latest medical issues. *NE Journal* has a total circulation of around 6,500, which includes GPs, specialists, registrars, medical schools and libraries. It is provided free to GPs and specialists, and by subscription to other health professionals.

NZFP

24. *NZFP* is published monthly by RNZCGP, and has been distributed to its members free of charge since 1974. The purpose of *NZFP* is to keep RNZCGP members informed on a wide range of medical issues. It generally contains more specialist and clinical information than does *Doctor* or *NZGP*. *NZFP* has a total circulation of around 3,500, which is almost entirely to GPs, and is supplied free of charge.

GP Pulse

25. *GP Pulse* is also published by the RNZCGP, and is provided free of charge to its members. It was launched in August 2003, and will be published five times a year. It is a newsletter-style publication concentrating on issues facing GPs, and is intended by NZCGP to be a means of improving communication between the RNZCGP and its members. While *GP Pulse* does not currently contain any advertising, it is intended that advertising space will be offered in 2004. It has a total circulation of around 3,500, which is almost entirely to GPs.

Medicines Information Guides

26. Medicines information guides are reference guides targeted at GPs and specialists, and provide in summary form the information on medicines required by the medical profession. These guides are used by prescribers of prescription medicines, who are primarily GPs and to a lesser extent by pharmacists and specialists. They come in hard copy and electronic format. Like general health information publications, these guides are almost entirely funded by the revenue they earn from selling advertising space to pharmaceutical companies.
27. There are two medicines information guides as follows.

*New Ethicals Catalogue*³ (*NE Catalogue*)

28. The *NE Catalogue* was launched in the early 1970s and, is published twice a year in a print format by Adis. It is targeted at prescribers, who are for the most part GPs and specialists. It provides basic details of brand name pharmaceutical products available in New Zealand. Each product is listed alphabetically by brand name, except for OTC medicines, which are listed by therapeutic class.
29. Medicine entries are prepared from official product information obtained from Medsafe data sheets, Pharmac and/or the pharmaceutical companies themselves. Medically or pharmaceutically qualified in-house editorial staff summarise the information, and emphasise the most important and practical details about each medicine.
30. The *NE Catalogue* is free to all prescribers, and on a subscription basis to others. As at 1 December 2003 it had a circulation of [], [] of which were paid for by a subscription of \$205, and [] were provided free.

MIMS Medicines Database (MIMS)

31. *MIMS* was launched in November 2001 and is an electronic medicines information guide published by MediMedia. It is targeted at anyone within the health sector who prescribes medicines. Like the *NE Catalogue*, it provides details of brand name pharmaceutical products available in New Zealand. It contains a search engine whereby prescribers may search for medicines and listings of medicines within a therapeutic class.
32. Like the *NE Catalogue*, *MIMS* medicine entries are prepared from official product information obtained from Medsafe data sheets, Pharmac and/or the pharmaceutical companies themselves. As with the *NE Catalogue*, qualified in-house editorial staff summarise the information on each medicine.

³ Adis also produces the *New Ethicals Compendium* which is purchased by hospitals, large GP practices and pharmacies, and contains complete medicines information. It is updated bi-annually.

33. *MIMS* is free to GPs and is by subscription to specialists and other health professionals. It has [] registered users. Prescribers utilise *MIMS* in two distinct ways. Approximately [] prescribers use *MIMS* via their GP software, while the balance of [] operate it independently of their GP software via CD Rom.

GP Software

34. Approximately 80% of GPs in New Zealand utilise GP software, which enables GPs to manage all areas of their practice, including billing, appointments and prescriptions. There are three main GP software providers, MedTech, Intrahealth and Houston. Table 1 outlines the approximate market shares of each GP software company and whether data from *MIMS* or *NE Catalogue* is used.

Table 1
GP Software Market Shares (Approximate)

GP Software	Market Share	Data Obtained Via
MedTech	[]%	MIMS
Intrahealth	[]%	New Ethicals
Houston	[]%	MIMS
Others	[]%	Estimated

35. [

]

Databases

36. Both general health and specific medical publications are distributed by the publishers with the help of database address lists. Database address lists of GPs can be obtained from a variety of sources, including the New Zealand Medical Association and private companies such as the Atlantis Group and MediMedia themselves.

Pharmaceutical Companies

37. General information health publications and medicines information guides are primarily funded by the advertisements that pharmaceutical companies place in them.

38. Pharmaceutical companies have set marketing budgets, and use a number of methods to reach their target audience of prescribers (primarily GPs). These include:

- advertising in medicines information guides used by GPs;
- advertising in general health publications read by GPs;

- direct mail;
 - sales representatives who visit GPs;
 - conferences and trade shows attended by GPs; and
 - direct-to-consumer television and print media advertising.
39. Pharmaceutical companies target GPs as they are the primary prescribers of medicines to patients. Pharmaceutical companies are keen to advertise subsidised medicines to GPs as GPs will almost always prescribe a subsidised medicine to obtain the best value for their patients.
40. All pharmaceutical companies spoken to advised the Commission that they view the medicines information guides and the general information publications for GPs as important avenues through which to advertise their products. They advertise in these publications because their circulation generally guarantees that at least 80% or more of GPs or other prescribers will see their advertisements. Pharmaceutical companies also expect that the publications will maintain a high quality of editorial content and information so that circulation figures are maintained.
41. While the pharmaceutical companies generally viewed the medicines information guides and general health publications as important avenues through which to target GPs, other methods such as direct mail, sales representatives and conferences were also viewed as important tools in targeting GPs and other prescribers.

PREVIOUS DECISIONS

42. The Commission has previously considered related activities in the *Independent News Decision*⁴.
43. In this Decision, the Commission considered that there were separate markets for each media form (print, media, television and radio). Within each medium there was a market for the provision of advertising services, and a market for the dissemination of news, information and entertainment. The Applicant focused on demand-side factors in submitting that the relevant market was for publications covering fishing, boating and related activities, which included a wide range of publications dealing with outdoor activities such as hunting and duck shooting. However, the Commission found that the market was for publications about fishing and boating only, and that while this could be considered a narrow market, if there were no issues in the narrow market, there would be no issues in a broader market.

⁴ Commerce Commission, *Decision No. 395: Independent News Auckland Limited/Review Publishing Co Limited*, 16 June 2000.

44. The Commission also noted that there could be strong supply-side substitution in terms of magazine publications, as existing magazines could easily change their content to cater for new audiences. For example, a hunting magazine could devote a substantial portion of its content to fishing, if it believed there was sufficient market demand. The Commission nevertheless adopted a narrow market, but stated that the ease by which existing publications could alter their content was likely to represent an on-going constraint.
45. Another relevant Decision is the *Val Morgan Decision*⁵. This Decision concerned the vertical acquisition of the major Australasian cinema advertising company by a joint venture of three major cinema exhibitors – Hoyts, Village and Greater Union (Australia only).
46. The acquisition raised concerns about foreclosure and market power in the film advertising markets in which Val Morgan operated. The cinema exhibitors represented [] of screens nationally, but significantly higher screen numbers ([]) in the major urban centres, which users of cinema advertising considered particularly important. However, the Commission was satisfied there would not be a substantial lessening of competition due to the countervailing power of advertising agencies, who would respond to a price increase by switching to other media types, and the presence of constraints from outside the market such as from the television and print media.
47. The Commission has also considered a number of Applications concerning radio spectrum management rights. In these Decisions, the Commission has adopted similar markets to those of the *Independent News Decision*. The Commission defined the markets as follows:
- the market for the provision of radio advertising services to advertisers attracted by the listener profile of the stations concerned; and
 - the market for the provision of news, information and entertainment services to listeners without charge.

⁵ Commerce Commission, *Decision 485: Val Morgan Holdings Pty Limited/ValMorgan & Co (Aust) Pty Limited and Media Entertainment Group Limited*, 18 December 2002.

MARKET DEFINITION

48. The Act defines a market as:

. . . a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them.

49. For competition purposes, a market is defined to include all those suppliers, and all those buyers, between whom there is close competition, and to exclude all other suppliers and buyers. The focus is upon those goods or services that are close substitutes in the eyes of buyers, and upon those suppliers who produce, or could easily switch to produce, those goods or services. Within that broad approach, the Commission defines relevant markets in a way that best assists the analysis of the competitive impact of the acquisition under consideration, bearing in mind the need for a commonsense, pragmatic approach to market definition.⁶

50. The Commission defines relevant markets in terms of four characteristics or dimensions:

- the goods or services supplied and purchased (the product dimension);
- the level in the production or distribution chain (the functional level);
- the geographic area from which the goods or services are obtained, or within which the goods or services are supplied (the geographic extent); and
- the temporal dimension of the market, if relevant (the timeframe).

Product Market

51. The delineation of relevant markets as a basis for assessing the competitive effects of a business acquisition begins with an examination of the goods or services offered by each of the parties to the acquisition. Both demand-side and supply-side factors are generally considered in defining market boundaries. Broadly speaking, a market includes products that are close substitutes in buyers' eyes on the demand-side, and suppliers who produce, or are able easily to substitute to produce, those products on the supply-side.

52. The Commission takes the view that the appropriate time period for assessing substitution possibilities is the longer term, but within the foreseeable future.⁷ The

⁶ Australian Trade Practices Tribunal, *Re Queensland Co-operative Milling Association*, above note 10; *Telecom Corporation of NZ Ltd v Commerce Commission & Ors* (1991) 3 NZBLC 102,340 [

].
⁷ In *Tru Tone Ltd v Festival Records Retail Marketing Ltd* [] 2 NZLR 351 Smellie J and the Court of Appeal on appeal approvingly quoted an earlier decision of the Commerce Commission in *Edmonds Food Ind Ltd v W F Tucker & Co Ltd* (Decision 21, June 1984) where the Commission had ruled: "A market has been defined as a field of actual or potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive".

Commission considers this to be a period of one year, which is the period customarily used internationally in applying the SSNIP test (see below) to determine market boundaries. The Commission takes into account recent, and likely future, changes in products, relative prices and production technology in the process of market definition.

53. The Applicant submitted the following product market definitions:

- the market for advertising services for prescription medicines to prescribers and pharmacists through electronic and print media; and
- the market for medicines and general health information to prescribers and pharmacists.

54. The Applicant submitted that these market definitions recognise that the general health and specific medical guides are almost entirely supported by advertising revenue from the pharmaceutical companies, and that without this revenue both markets could not operate.

55. The Applicant included both general information and specific medical guides in the same markets. The Applicant stated that this was because both types of publication have the same target audience, and are funded by the advertising revenue from the same pharmaceutical companies advertising in both.

56. The Commission has considered the demand-side and supply-side factors of the activities affected by the proposed acquisition in framing its market definitions, and these issues are reviewed below.

Medicine Information Guides and General Information and News Publications

Demand-side Substitutability

57. Close substitute products on the demand-side are those between which at least a significant proportion of buyers would switch when given an incentive to do so by a small change in their relative prices.

58. The Commission does not consider the provision of medicines information for prescribers (*NE Catalogue* and *MIMS*) as part of the same market as that for the provision of news and general information for GPs (*NZGP*, *Doctor*, *NE Journal* and *NZFP*). These two services cannot be seen as substitutes on the demand-side as they deal with different information. The medicines information contained in the *NE Catalogue* and *MIMS* is an essential aid when a GP prescribes medicines. This information is not contained in the other publications. In the case of a small change in price or quality in the provision of medicines information publications, the media for news, general information and entertainment would not be considered as substitutes.

59. Similarly, the Commission does not consider the provision of news and general information for GPs as part of the same market as that for the provision of news and general information for pharmacists and others. These two services cannot be seen as substitutes on the demand-side as they deal with different issues and have a different readership. The Commission understands that GPs do not read the publications dedicated to pharmacists and other markets. Likewise, the Commission was told that while pharmacists may be interested in the publications for GPs, they do not generally read them. The Commission therefore considers that in the case of a small change in prices or quality in the publications providing news and general information for GPs, the publications providing news and general information for pharmacists and others would not be considered as a substitute from the demand-side.

Supply-side Substitutability

60. Close substitute products on the supply-side are those between which suppliers can easily shift production, using largely unchanged production facilities and little or no additional investment in sunk costs, when they are given a profit incentive to do so by a small change in their relative prices.

61. It is reasonably easy to shift production from one type of print publication to another, e.g. to switch from producing a print newspaper for GPs to a print medicines guide. Shifting production from print to the electronic form of the catalogue is considered more difficult due to the different skills required. However, the Commission considers that as both MediMedia and Adis participate in the provision of medicines information and general information for GPs, and there is ready access to programming resource with which to develop an electronic form of the catalogue, they could reasonably easily switch to the other market. Likewise, any firm entering one of these markets could reasonably easily switch to the other market.

62. The Commission therefore considers that there is a degree of supply-side substitutability between medicines information guides and general information for GPs and pharmacists publications.

Conclusion on Medicine Information Guides and General News and Information Publications

63. The Commission considers that although there is a degree of supply-side substitutability between the two types of publication, there is clearly not substitutability from a demand-side. The Commission therefore considers that, for the purposes of competition analysis of the proposed acquisition, there are separate product markets for:

- medicines information guides (both print and electronic);
- news and general information publications for GPs; and
- news and general information publications for pharmacists and others.

Advertising Services

64. The Commission considers that the supply of pharmacist-targeted advertising services for pharmaceutical companies would not be affected by the potential acquisition. Also, the Commission considers that amongst all the prescribers, those that would be most affected by the proposed acquisition GPs and specialists.
65. However, the proposed acquisition would result in aggregation in the supply of GP and specialists targeted advertising services for pharmaceutical companies. With advertising to GPs and specialists, the following advertising channels are seen as close substitutes by most pharmaceutical companies:
- medicines guides;
 - magazines for GPs;
 - direct mail;
 - sales representatives;
 - sponsoring clinical papers;
 - guest speakers at seminars and conferences; and
 - display stands at conferences.
66. Only the first two advertising channels are directly related to the acquisition. The others are under the direct control of pharmaceutical companies.
67. The pharmaceutical companies advised the Commission that advertising in the medicines guides and GP newspapers and magazines is important as it is a proven way of reaching the target audience. Nonetheless, if the rates for advertising in either type of publication increased by a SSNIP, or the quality of the services decreased, they would either switch a percentage of their spend to the other type of publication, or increase their use of the other advertising channels.
68. The Commission therefore considers that there is substitutability on the demand-side between advertising services in medicines information guides, advertising services in news and general information publications for GPs, and advertising through direct mail, sales representatives, sponsorship of clinical papers, sponsoring guest speakers at conferences and seminars, and display stands at conferences.
69. Suppliers of advertising services are MediMedia and Adis via the medicines information guides and the news and general information publications for GPs, and the pharmaceutical companies themselves with respect to the other advertising channels. MediMedia and Adis supply advertising services in both type of publication, and there is clearly supply-side substitutability between them. Likewise, the pharmaceutical companies can switch easily between the other types of

advertising channels. It would be less straightforward to switch between supplying advertising services in the two types of publications and supplying them by means of the other advertising channels. However, the pharmaceutical companies advised the Commission that although they have no desire to do so, they could produce the two types of publications themselves, and MediMedia and Adis, if it were considered to be a viable part of their businesses, could also provide advertising services by such channels as direct mail and conferences.

70. The Commission therefore considers that there is substitutability from the supply-side between the supply of advertising services in medicines information guides, the supply of advertising services in news and general information publications for GPs, and advertising through the other channels.

Conclusion on Advertising Services

71. The Commission considers there is there is one market for the supply of GP and specialist targeted advertising services to pharmaceutical companies.

Conclusion on Product Markets

72. The Commission considers the relevant product markets are:

- the market for the supply of medicines information guides to GPs;
- the market for the supply of GP specific news and general information publications;
- the market for the supply of news and general information publications to pharmacists; and
- the supply of GP and specialist targeted advertising services to pharmaceutical companies.

73. There is no aggregation in the market for the provision of news and general information for pharmacists and others, and so this market is not considered further.

Functional Markets

74. The Applicant submitted that a functional level distinction is not relevant to the Application as the relevant markets are focused on the distribution by different methods or channels of communication of information.
75. A range of functional levels are involved in the proposed acquisition. The Commission agrees with the Applicant that it is not necessary to define these levels for the purposes of competition analysis in this particular case, save to note that intermediate (as opposed to final) goods and services are involved.

Geographic Markets

76. The Applicant submitted that the relevant geographical dimension is the whole of New Zealand, as the product markets are directed to prescribers and pharmacists all around the country.
77. The Commission concurs that the appropriate geographic area is a national one.

Other Issues

78. MediMedia will be acquiring *New Ethics Counselling (NE Counselling)*. *NE Counselling* is an electronic publication which provides a tool to assist pharmacists to provide improved patient care and has a total circulation of around 250 pharmacists and contains no advertising. This information includes:
- dosage by indication of age;
 - medicines interactions and side effects;
 - suitability of medicines in pregnancy and lactation; and
 - customised patient information leaflets detailing this information.
79. The Commission notes that MediMedia publishes *Everybody*. *Everybody* is provided free to GPs, and consists of tear off leaflets with simplified information for patients on diseases such as cancer or heart disease.
80. The Commission considers that *NE Counselling* and *Everybody* are different products insofar as *Everybody* is used by GPs to provide patients with information on diseases, while *NE Counselling* is used by pharmacists to provide customers with information on medicines. Accordingly, these two products fall in different markets from each other and from the other publications owned by Adis and MediMedia. The Commission will therefore not consider them any further.

Conclusion on Market Definition

81. The Commission concludes that the relevant product markets are:
- the national supply of medicines information guides to GPs and specialists (the medicines information guides market);
 - the national supply of GP-specific news and general information publications (the general information publications market); and
 - the national supply of GP and specialist targeted advertising services to pharmaceutical companies (the advertising services market).

COUNTERFACTUAL AND FACTUAL

82. In reaching a conclusion about whether an acquisition is likely to lead to a substantial lessening of competition, the Commission makes a “with” and “without” comparison rather than a “before” and “after” comparison. The comparison is between two hypothetical future situations, one with the acquisition (the factual) and one without (the counterfactual).⁸ The difference in competition between these two scenarios is then able to be attributed to the impact of the acquisition.

83. Establishing a counterfactual is a critical step for the subsequent analysis as it forms the benchmark against which any changes arising from the proposed acquisition are to be measured. In framing a suitable counterfactual, the Commission bases its view on a pragmatic and commercial assessment of what is likely to occur in the absence of the proposed acquisition.⁹

Factual

84. MediMedia stated in its Application that if the acquisition were to proceed, [

]

85. In the factual scenario there would be a [] The suppliers of medicines information guides to GPs and specialists would reduce from two to one. The suppliers of general information publications to GPs would reduce from three to two, with the only competitor to MediMedia being RNZCGP, which, as discussed below with respect to existing competition, would have a small market share.

Counterfactual

86. MediMedia stated in its Application that Adis [

]

87. When interviewed, Adis advised that the CEO of Wolters Kluwer had publicly stated that he did not believe advertising-based business is the strategic direction for the company. However, Adis said [

]

⁸ Commerce Commission, *Decision 410: Ruapehu Alpine Lifts Ltd/Turoa Ski Resorts Ltd (in receivership)*, 14 November 2000, paragraph 240, p 44.

⁹ Commerce Commission, *Decision No. 277: New Zealand Electricity Market*, 30 January 1996, especially p 16.

88. Adis said it would be reviewing the publications in January and that []

89. The Commission therefore considers that the appropriate counterfactual is the status quo except for the [].

COMPETITION ANALYSIS

90. Having defined the factual and counterfactual, the Commission assesses the following for each of the relevant markets:¹⁰

- the probable nature and extent of competition that would exist in a significant section of the market, but for the acquisition (the counterfactual);
- the nature and extent of the contemplated lessening of competition by considering market concentration, existing competition and potential competition, and other competition factors such as countervailing power flowing from the proposed acquisition (the factual); and
- whether the contemplated lessening of competition is substantial.

91. The first step in assessing competition is to look at market shares. In this merger, market shares are measured by advertising revenue and by readership. This is followed by an application of the Commission's 'safe harbours'.

92. A business acquisition is considered unlikely to substantially lessen competition in a market where, after the proposed acquisition, either of the following situations exist:

- where the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is below 70%, the combined entity (including any interconnected or associated persons) has less than in the order of a 40% share; or
- where the three-firm concentration ratio (with individual firms' market shares including any interconnected or associated persons) in the relevant market is above 70%, the market share of the combined entity is less than in the order of 20%.

¹⁰ See *Dandy Power Equipment Pty Ltd v Mercury Marina Pty Ltd* (1982) ATPR 40-315, 43-888, pp 43–887 to 43-888; adopted in New Zealand in *ARA v Mutual Rental Cars* (1987) 2 NZLR 647; *Tru Tone Ltd v Festival Records Retail Marketing Ltd* (1988) 2 NZLR 352; *Fisher & Paykel Ltd v Commerce Commission* (1990) 2 NZLR 731; *Commerce Commission v Carter Holt Harvey*, unreported, High Court, Auckland, CL 27/95, 18/4/00.

93. However, market shares are insufficient in themselves to establish whether competition in a market has been lessened. Additional factors must also be considered before a conclusion is reached. These factors are:
- existing competition;
 - potential competition; and
 - other competition factors, such as countervailing power.
94. The Commission then assesses whether the merger is likely to result in a substantial lessening of competition (SLC) in any market by comparing the expected competition in the factual and counterfactual.
95. Section 2(1A) of the Act provides that “substantial” means “real or of substance”. Substantial was considered by McGechan J in *Commerce Commission v Port Nelson Ltd* (1995) 6 TCLR 406, 434. He observed that:
- “substantially lessening competition” is taken as meaning “lessening competition in a way which is more than insubstantial or nominal”. The merely ephemeral and minimal will not suffice. Inevitably, that will involve some attention to relativity; and in the end be a question of judgment on a matter of degree.”
96. The Commission considers that it is necessary to identify a real lessening of competition that is not nominal, rather than a quantifiable measure of lessening. The lessening needs to be of such a size, character and importance that it is worthy of consideration.¹¹ Overall, the Commission considers that substantially lessening competition concerns a real or substantial impact on a market in a way of a lessening, hindering and preventing the process of workable and effective competition.

The Medicines Information Guides Market

Existing Competition in the Medicines Information Guides Market

97. The Applicant submitted that there are a number of medicines information guides that are used, or could potentially be used, by GPs or other prescribers. It listed a number of overseas guides such as the *British National Formulary (BNF)* or the *Australian Medicines Handbook*.
98. However, the Commission found that GPs and specialists do not use these guides currently and would be unlikely to use them in the event of a price increase, as they:
- are not specific to the New Zealand market;
 - often use the scientific name of a medicine rather than the brand name;

¹¹ *Dandy Power Equipment Pty Ltd v Mercury Marina Pty Ltd* 43-888.

- do not contain information on Pharmac subsidies; and
- are not free of charge, unlike the New Zealand guides (to GPs).

99. The Applicant also cited the Medsafe data sheets and the Pharmac schedule as other possible source of medicines information available to GPs and specialists. However, the Commission was advised in interviews with GPs and their representative bodies that GPs almost never use Medsafe datasheets even though they are readily obtainable because they are lengthy, complicated, and almost impossible to read quickly. GPs were also unlikely to use the Pharmac Schedule because it contains information on subsidised medicines only, and contains no information on precautions or side-effects.

100. Consequently, the Commission considers that MediMedia and Adis are effectively the only suppliers of medicines information guides that are used by GPs in New Zealand. Post-acquisition, the combined entity would have a market share of 100%.

101. Tables 2 shows that MediMedia currently has a market share of [] and Adis has a market share of [] based on advertising revenue, although this measure does not accurately represent the demand for the two publications.

Table 2
Market Shares in the Medicines Information Guides Market
by Advertising Revenue

Company	Advertising Revenue 2002/2 – 2003/2	Market Share %
Adis <i>(NE Catalogue)</i>	\$[]	[]
MediMedia <i>(MIMS)</i>	\$[]	[]
Total	\$[]	[]
Merged Entity	\$[]	100%

Source: New Zealand Medical Promotion Index – 5 year survey to 2003

102. Table 3 shows the circulation of each medicines information guide. The majority of users of MIMS also use the *NE Catalogue* so that these figures cannot be used to generate market shares.

Table 3
Circulation of Medicines Information Guides

Company	Circulation/ Readership
Adis (<i>NE Catalogue</i>)	[]
MediMedia (<i>MIMS</i>)	[]

103. *NE Catalogue* currently generates the most advertising revenue. This is likely to be due to it being the established medicines guide in New Zealand dating from the early 1970s. *MIMS* has only recently entered the market, but its market share is increasing rapidly. Advertising revenue has increased from [] in 2001/2002 to [] in 2002/2003. *MIMS*' increasing market share is likely to be a direct result of GPs' and prescribers' growing preference for an electronic guide that integrates with their GP software.
104. The Commission found that GPs and prescribers tend to use both the *NE Catalogue* and *MIMS*. While GPs may utilise both types of guides, the Commission nevertheless found that MediMedia and Adis actively compete for readership and pharmaceutical companies' advertising business. Both companies compete on price and quality of service.
105. Historically, there was only one participant in the market. Adis was the sole provider of medicines information guides from the 1970s until the entry of *MIMS* in 2001. This is also the case in other markets overseas, such as the United Kingdom, where there is still just one supplier.
106. MediMedia entered the market in November 2001 with an innovation: an electronic equivalent to Adis's print *NE Catalogue*. MediMedia's entry was a manifestation of GPs becoming computer literate, and the efficiencies GPs could gain by having an *NE Catalogue*-style database integrated in their existing GP software. Industry participants considered that the *NE Catalogue* would eventually be surpassed by *MIMS* as more and more doctors became reliant on integrated GP software.
107. Industry participants advised that in time, it is likely that the market for medicines information guides may return to being able to accommodate only one supplier, with the electronic version of the guide eventually surpassing the print version. They were of the view that the market is only currently accommodating two providers due to the natural transition from print medium to electronic medium. The Commission accepts this, but is uncertain what the timeframe for this transition will be, and whether the print version will be completely replaced by the electronic version.

Conclusion on Existing Competition

108. In the medicines information market, the merged entity would have 100% market share. The proposed acquisition would reduce the number of suppliers from two to one, leaving the merged entity potentially able to reduce the quality of the medicines guides, or introduce a charge to GPs who currently receive it free of charge. The loss of competition between MediMedia and Adis is of concern to the Commission as it could result in an increase in price and/or a reduction in product quality, particularly as pharmaceutical companies highlighted that there was currently competitive tension between MediMedia and Adis in this market.
109. The Commission concludes that there would be no existing competition that could constrain MediMedia post-acquisition from exercising market power.

Potential Competition

110. A business acquisition is unlikely to result in a substantial lessening of competition in a market if behaviour in that market continues to be subject to real constraints from the threat of market entry.
111. The likely effectiveness of the threat of new entry in constraining the conduct of market participants following a business acquisition that might otherwise lead to a substantial lessening of competition in a market is determined by the nature and effect of the aggregate barrier to entry into that market.

Barriers to Entry

112. The Commission considers that, for the purpose of considering this issue, a barrier to entry is best defined as a cost or other disadvantage that a business has to face to enter, or expand into, a market that an established incumbent does not face.
113. The Commission is of the view that the entry conditions in the medicines information market are:
- access to relevant medicines information;
 - capital investment;
 - distribution/integration into medical practice software; and
 - access to advertising revenue.

114. Each of these potential barriers to entry is discussed in detail below.

Access to Relevant Medicine Information

115. The Applicant submitted that access to comprehensive medicines information for all New Zealand prescription medicines is essential for entry into this market. Such

information is readily available through the Medsafe website, and from information supplied by the pharmaceutical companies. It also submitted that any trained New Zealand pharmacist would have the expertise to locate, summarise and format the relevant drug information.

116. Industry participants confirmed that the information required is readily available. Medsafe advised that its datasheets would be available to a new entrant provided the information was not misrepresented or improperly edited or changed. A new guide would also need to state whether a medicine is funded by Pharmac. This information is publicly available.
117. Industry participants also advised that health professionals with the ability to locate, format and summarise the information are available in New Zealand, and that GPs' addresses could be purchased from The Atlantis Group Ltd.
118. Accordingly, the Commission considers that access to information, although a critical condition of entry, would not be a barrier to entry.

Establishment Costs

119. The Applicant submitted that there are no abnormal costs that would impede entry to the medicines information market. These costs would only include computer costs, payment for skilled personnel and accommodation expenses, the last being for a normal commercial environment with small premises.
120. The Applicant also submitted that, given the comparatively low volume of product needed to service the market, production costs would not be unusually high. However, this is not a relevant consideration as clearly total costs vary with volume, so low volumes mean low total costs and higher volumes means higher total costs. A more relevant issue is how the unit costs compare with those of the incumbent, and whether any of the costs would be sunk.
121. The Commission has been advised by industry participants that a new entrant would have to produce at least an electronic source of medicines information if it were to be competitive against MediMedia for more than just the short term. As discussed above, there is a gradual transition from the print form of medicines information to the electronic *MIMS*, and so any entrant providing only a print version would struggle to compete against MediMedia. Accordingly, a further capital cost would be involved in developing an electronic form of medicines information that could compete with *MIMS*, and making that available to prescribers. MediMedia advised that it had cost [] to develop *MIMS* to a form capable of being integrated into the Meditech and Houston medical practice software. Houston advised that the cost of integration was approximately [] MedTech advised that the integration cost was []. All these costs would be sunk.

122. Pharmac advised the Commission that when it considered entering the market with an electronic medicines information guide, it had a budget of [] to do this and that much of the expected cost would be sunk.
123. The Commission considers that the sunk costs would be reasonably significant in the context of the small market, and accordingly would amount to a fairly high barrier to entry.

Distribution/Integration into GP Software

124. A print form of medicines information guide could be distributed by post, and address lists of registered medical practitioners could be purchased from companies providing these lists.
125. However, the Commission has been advised that in order for a new entrant to be able to effectively compete against MediMedia post-acquisition, the entrant would have to produce an electronic source of medicines information. Pharmac, for example, said that it would only enter the market with an electronic medicines guide.
126. There are approximately 2,870 full-time GPs practising in New Zealand. MediMedia currently provides *MIMS* to [] GPs through it being integrated into their practice software, which is provided by MedTech ([]) and Houston ([]). []
127. ProCare Health, an Independent Practitioners Association with 370 GP members representing about 200 medical practices, advised the Commission that it had spoken to MedTech about integrating its own programme into MedTech's software, but had been told by MedTech that it was not possible as MedTech was bound to MediMedia.
128. It should be noted that even if []

129. Intrahealth, which has provided approximately [] GPs with GP software, has a strategic alliance with Adis whereby Adis has supplied Intrahealth with its New Ethicals pharmaceutical database for inclusion in the Intrahealth software. []

130. The current agreement with Intrahealth together with the Medtech and Houston contracts, excludes an entrant from distributing a new product through GP software to at least [99%] of fulltime practising GPs that utilise GP software, so that an entrant

would only be able to sell to [] as well as accessing any GPs that do not currently use the software. After the termination of the Intrahealth agreement, this could increase to up to [4%]. Intrahealth advised the Commission that it would consider changing to a new entrant if the product were better, and if that entrant covered the IT costs and paid a further [] incentive to switch, as it took about one year and cost approximately [] to get the Adis database to work.

131. The Commission is of the view that unless a new entrant was prepared to pay the switching costs for Intrahealth and its product was a significant improvement on the current product, it is likely that Intrahealth would continue to use the Adis database, which would be owned by MediMedia post-acquisition and that it would be difficult for an entrant to break into the market.
132. Another potential source of customers for an entrant is hospitals. MediMedia currently supplies *MIMS* to the hospitals covered by Auckland DHB through a licence agreement. MediMedia also has arrangements with Mid Central Health and Southland District Health Board. None of these arrangements are exclusive. Furthermore there are several District Health Boards with which an entrant could enter into agreements.
133. Although it appears that a new entrant might be able to provide an electronic form of medical information to hospitals, to be viable economically, and for it to be a constraint on MediMedia, it would also need to be able to supply this information to GPs. The current agreements between MediMedia and MedTech and Houston prevent a new entrant providing an electronic source of medicines information that is integrated with medical practice software to []% of the GPs that use such software.
134. Even if Intrahealth would use a medicines information source from a new entrant, that entrant could only provide an electronic medicines guide to up to 4% of GPs using practice software, as well as targeting the approximately 570 GPs who do not currently use software. The agreement between MediMedia and MedTech would prevent a new entrant from achieving a viable business as the pharmaceutical companies would only consider advertising with a medicines guide that reaches at least 80% of GPs, as discussed in paragraph 168.
135. In summary, a new entrant, to be able to compete against MediMedia post-acquisition, would have to produce an electronic source of medicines information. Furthermore, the entrant would need to supply the electronic medicines information guide to at least 80% of practising GPs to be able to obtain sufficient advertising revenue from the pharmaceutical companies. Because of the [], a new entrant would likely only be able to supply 4% of practising GPs using practice software. Given the small proportion of the market accessible to a new entrant the ability of the entrant to recover the costs of developing an electronic source of medicines information is questionable. The Commission therefore concludes that the ability to integrate an electronic form of medicines information in to GP software would amount to a high barrier to entry.

Advertising Revenue

136. The Applicants submitted that the advertising revenue from pharmaceutical companies necessary to sustain an entrant in this market is accessible to any existing firm or new entrant able to persuade the advertiser that their product is of value.
137. However, when interviewed, MediMedia stated that getting advertising is the biggest issue facing an entrant, and to obtain advertising, a guide would need to be supplied to at least 90% of GPs and would have to be available without charge. MediMedia said that over the last two years there had not been sufficient advertising revenue to sustain an alternative medicines guide. Adis confirmed that to be sustainable, an entrant would need to have an advertising base, and to get this, an entrant would have to supply its guide to a large percentage of GPs. Adis said that the market is too small, and does not and would not continue to support two guides.
138. The pharmaceutical companies were also of the view that as the current market is small, it could not support a third guide.
139. MediMedia stated that the only way a new entrant would be accepted by GPs would be if it added something not covered by the existing *NE Catalogue* or *MIMS*. Adis said that GPs would not use a new guide unless there was a real improvement over the incumbents.
140. GPs spoken to advised the Commission that they would consider a new source of medicines information if it were accurate, timely, relevant to New Zealand, was of good quality, was user friendly and had the information necessary to help in prescribing decisions. It would also need to be free of charge.
141. Pharmaceutical companies advised that they would only advertise in a new medicines information guide if it were supplied to at least 80% of GPs, was updated frequently enough, had sound and reliable information, and was of high quality. Some companies said that they would consider advertising in a guide that only covered certain geographic areas, such as Auckland only, if the advertising rates were cheaper than the incumbents. Others said they would not consider advertising in a regional guide.
142. Pharmaceutical companies and GPs were of the view that if the proposed acquisition occurred, a new entrant could succeed and obtain the necessary advertising, if MediMedia started charging GPs. Although GPs would probably continue to use *MIMS* and the *NE Catalogue* in the meantime, and possibly continue to use old copies, rather than buy new versions are they were published, because they require the information they contain, they would switch to a new entrant if it met the requirements set out above in paragraph 139.
143. The pharmaceutical companies advised the Commission that if post-acquisition MediMedia were to increase advertising rates for *MIMS* and the *NE Catalogue*, they

would respond by decreasing the volume of advertising and might advertise in a new entrant if it met their requirements.

144. The pharmaceutical companies also advised that if the quality of the MediMedia guides declined, readership would decline, and exposure of their advertising would drop, so they would look for alternatives for their advertising. This would include a new entrant that met their requirements. This would also be the case if readership declined as a result of MediMedia charging the GPs for the *NE Catalogue* and *MIM*, in the event that this led to a drop in usage by GPs.
145. However, with respect to integration into GP software, as explained in paragraphs 124 to 135, the [] means that a new entrant could not meet the pharmaceutical companies' criterion, as it would not be able to sell its product to a large enough percentage of GPs.
146. The Commission therefore considers that access to advertising revenue would be a barrier to entry.

Conclusion on Barriers to Entry

147. The Commission has considered the various factors relevant to the assessment of the entry barriers in the medicines information guides market. The Commission concludes that the aggregation of all the barriers to entry results in a high overall barrier to entry in this market.

The "LET" Test

148. Where barriers to entry or expansion in a market are clearly low, it may be unnecessary for the Commission to identify specific businesses that might enter. In other markets, where barriers are higher, as in this case, the Commission seeks to identify possible new entrants as a way of testing the assessed entry barriers.
149. In order for the threat of market entry to be such a constraint on the exercise of market power as to alleviate concerns that a business acquisition could lead to a substantial lessening of competition, entry of new participants in response to the exercise of market power must be likely, sufficient in extent and timely (the *let* test).
150. The mere possibility of entry is, in the Commission's view, an insufficient constraint on the exercise of market power to alleviate concerns about a substantial lessening of competition. In order to be a constraint on market participants, entry must be likely in commercial terms. An economically rational firm will be unlikely to enter a market unless it has a reasonable prospect of achieving a satisfactory return on its investment, including allowance for any risks involved.
151. The Applicant submitted that there are a large number of publishers that have, or could obtain, access to the expertise and resources to compete with MediMedia.

However, when interviewed, MediMedia said that there is a history of contraction rather than expansion in the market. It said that overseas guides could enter but that they would be unlikely to see it as financially viable.

152. The Applicant submitted that publishers such as APN that publish medical publications, or software companies in the health area such as MedTech and Houston, or a company such as Atlantis Marketing that owns a database of GP names and addresses, could enter the market.

153. MedTech and Houston advised the Commission that they [] APN advised that it would be a difficult task to enter this market, because of the strong position of the incumbent, and that it would not enter unless it was invited to do so. It said that it had no plan to launch a guide in the market, but pointed out that it did have a good track record in start-up guides. Atlantis said that it []

154. Pharmac informed the Commission that in []

]

155. []

]

156. On the basis of this assessment, the Commission concludes that entry into the medicines information guides market is unlikely within the next two years. As a result of this conclusion, it is not necessary for the Commission to apply the “extent” and “timeliness” dimensions of the LET test.

Conclusion on Potential Competition

157. The Commission considers that potential competition is unlikely to constrain MediMedia from exercising market power by charging for the *NE Catalogue* and *MIMS*, or by increasing the charge to subscribers, or by reducing the quality of either product.

Countervailing Power

158. The potential for a firm to wield market power may be constrained by countervailing power in the hands of its customers. In some circumstances, it is possible that this constraint may be sufficient to eliminate concerns that a business acquisition may lead to a substantial lessening of competition.

159. Where a combined entity would face a purchaser or supplier with market power in a market affected by the acquisition, the Commission considers whether that situation is such as to constrain market participants to such an extent that competition is not substantially lessened. The Commission notes that the situation is somewhat more complex in this case as market power in one market (medicines information guide market) is argued to be constrained by buyer power in another market (advertising services market).

GPs

160. Because of the contract between MediMedia and MedTech, MediMedia could not exercise market power by charging GPs for *MIMS* until May 2006. In addition, the GP groups spoken to by the Commission advised that if MediMedia were to start charging for the *NE Catalogue*, it was likely that many GPs would choose not to pay, as happened in 1984, and would instead use *MIMS* to a greater degree or look for an alternative source of this information. This might, for some GPs, include using existing editions of *NE Catalogues* that they already owned for longer periods.

161. The GPs groups also advised that if there were a reduction in quality in the *NE Catalogue*, GPs would also be likely to switch to *MIMS* or look for other sources of the information. They advised the Commission that a change from the current format of the *NE Catalogue* to one more closely reflecting *MIMS*, that is, indexed by therapeutic area rather than by brand of medicine, would not be seen by them to be a reduction in quality.

162. The Commission therefore considers that the GPs, through their individual reactions to a price rise from zero, would as a group also provide a degree of countervailing power as evidenced by their current stance, and their behaviour in 1984.

163. The Commission also notes that a further condition of the contract between MediMedia and MedTech is that a decline in quality of *MIMS* would be a breach of contract that would enable MedTech to consider using another medicines information database, thus encouraging possible entry.

Pharmaceutical Companies

164. The pharmaceutical companies have countervailing power because of the dependence of the medicines information guides on advertising revenues from those companies. Only 20% of the publishers' revenue comes from subscriptions – the rest is from advertising.
165. In *NE Catalogue* and *MIMS*, the pharmaceutical companies mainly advertise funded prescription medicines, which amount to 70% of prescription medicines, and a small amount of unfunded medicines. Advertising in these medicines information guides together with the news and general information publications for GPs and other prescribers amounts to approximately [] of the companies' overall expenditure on advertising. The balance of their advertising spending is through the following channels:
- use of sales forces with representatives visiting GPs and specialists a number of times a year (e.g. Wyeth (NZ) Ltd – []);
 - use of direct mail, involving sending basic information or data sheets about products, or more promotional mailouts (e.g. with a prize draw to go to a conference);
 - sponsoring clinical papers;
 - sponsoring guest speakers at seminars and conferences; and
 - providing display stands at conferences.
166. Unfunded medicines are also marketed direct to consumers through advertisements on TV, in magazines and on billboards.
167. The Applicant and Adis advised the Commission that both the *NE Catalogue* and *MIMS* are funded by the advertising revenue, and that without this neither guide would exist. Even if GPs were to agree to pay a subscription instead of receiving guides for free, they would certainly not pay the level of subscription needed to replace the advertising revenue.
168. The pharmaceutical companies advised the Commission that advertising in the *NE Catalogue* and *MIMS* is important to them, as it is a proven way of reaching the target audience of prescribers at the time of prescribing. However, as noted above, the pharmaceutical companies advised the Commission that if the quality of the MediMedia guides were to decline post-acquisition, readership would decline and exposure and impact of their advertising would drop, so they would use alternative channels for their advertising. The pharmaceutical companies advised the Commission that a decline of users of 15% to 20% would cause them consider reducing their advertising. The pharmaceutical companies advised the Commission that a change from the current format of the *NE Catalogue* to one more closely

reflecting *MIMS*, that is, indexed by therapeutic area rather than by brand of medicine [], would not be seen by them to be a reduction in quality.

169. The Commission was also advised that if MediMedia were to start to charge the GPs for the *NE Catalogue* and *MIMS*, or reduce the quality or frequency of the publication, the pharmaceutical companies would react in a similar manner, as GPs would be expected to cease purchasing the guides. This contention receives support from the events of April 1984 when Adis started to charge GPs for the *NE Catalogue* and a significant number of GPs reacted by not paying the subscription. The pharmaceutical companies became concerned that their advertising in the publication was not reaching all GPs, and those GPs not receiving the updated versions would not receive any information about new medicines. They therefore put pressure on Adis to stop charging for the *NE Catalogue*, which it did from the December 1984 version.
170. As 3,404 of the total of 9,179 *NE Catalogues* supplied by Adis in 2003 were paid for by subscription, it is also necessary to consider whether the pharmaceutical companies would have sufficient countervailing power to prevent MediMedia exercising market power by increasing the subscription fee by 5% to 10%.
171. Subscriptions provide only 20% of the revenue earned by *NE Catalogue* with the balance being from advertising. Accordingly, the focus of the company is on the pharmaceutical companies and their key targets – the prescribers – rather than on earning revenue from subscribers.
172. Sixty percent of the subscribers are prescribers such as doctors and specialists in hospitals, specialists in private practice, dentists and midwives, and are therefore of considerable interest to the pharmaceutical companies. Hospitals in particular are very considerable users and prescribers of prescription drugs. They also have an alternative source of information in the *BNF*.
173. Pharmacies make up a further 22% of subscribers to *NE Catalogue*. Pharmaceutical companies also have an interest in pharmacies, which are large sellers of their products. Most pharmacies also subscribe to *Martindale* which provides detailed information on drugs and medicines used throughout the world for pharmacists. Pharmacists would therefore have an alternative source of medicines information. Accordingly, most of the subscribers to *NE Catalogue* would be in a position to cease their subscriptions and use alternative sources of medicines of information were MediMedia to increase the subscription fee by 5% to 10%.
174. The Commission considers that the pharmaceutical companies would react to a decline in readership amongst prescribers that subscribe to the *NE Catalogue* in the same way that they would react to a decline in readership amongst GPs that receive the *NE Catalogue* without charge.
175. The Commission is of the view that although the pharmaceutical companies might not be as concerned about the situation for subscribers to *NE Catalogue* that are not

prescribers, such as hospital libraries and resthomes (18% of subscribers), MediMedia would be unlikely to increase the subscription fee for this small group of subscribers only as they would be likely to terminate their subscriptions and subscribe for alternatives such as *BNF* and *Martindale*. It might also be difficult for the company to price discriminate in this way.

176. The Commission considers that the pharmaceutical companies have countervailing power that would prevent MediMedia from exercising market power by charging the GPs for the *NE Catalogue* and *MIMS*, by increasing the subscription fee for *NE Catalogue*, or by reducing their quality.

Conclusion on Countervailing Power

177. The Commission considers that the pharmaceutical companies would have considerable countervailing power sufficient to prevent MediMedia from exercising market power post-acquisition. GPs, through their individual reactions to a price rise from zero, would as a group also provide a degree of countervailing power. There may also be additional countervailing power provided through the conditions imposed by the agreements MediMedia and Adis have with the GP software companies.

Conclusion on the Medicines Information Guides Market

178. The Commission considers that it is unlikely that there would be a substantial lessening of competition in the medicines information guides market post-acquisition, despite the lack of existing competition and the high barrier to potential competition, as the countervailing power of the pharmaceutical companies and GPs together would be a sufficient constraint to prevent MediMedia from exercising market power.

The General Information Publications Market

Existing Competition

179. As outlined above, there are presently three competitors in the general information publications market: MediMedia; Adis; and RNZCGP.
180. The market shares for this market by advertising revenue are set out in Table 4.

Table 4
Market Shares in the General Information Publications Market
by Advertising Revenue

Company	Advertising Revenue 2nd qtr 2002 - 2nd qtr 2003	Market Share %
<i>NZGP</i> (Adis)	[]	[]
<i>NE Journal</i> (Adis)	[]	[]
<i>Doctor</i> (MediMedia)	[]	[]
Merged Entity	[]	[]
<i>NZFP</i> (RNZCGP)	[]	[]
Total	[]	[]

Source: New Zealand Medical Promotion Index – 5 year survey to 2003

181. At present, the three-firm concentration ratio in terms of advertising revenue is []%. Post-merger, the combined entity would have nearly all []% of the market, and the two-firm ratio would be 100%. This degree of aggregation falls outside the Commission's safe harbour guidelines. However, the use of the advertising revenue measure does not accurately measure the demand for the publications.
182. Table 5 shows the circulation for each of the publications in this market. The cross-readership of the publications is significant as virtually all practising GPs are supplied with all four publications, free of charge.

Table 5
Circulation of Publications
in General Information Publications Market

Publication	Circulation
<i>NZGP</i> (Adis)	[]
<i>NE Journal</i> (Adis)	[]
<i>Doctor</i> (MediMedia)	[]
<i>NZFP</i> (RNZCGP)	[]

183. In the counterfactual, MediMedia and Adis would continue to compete in this market with *Doctor* and *NZGP*. As discussed earlier, it is likely that []. Pharmaceutical companies advertise in both *Doctor* and *NZGP*, and competition between the two titles for both advertising business and readership appears strong.
184. *NZFP* has a [] market share by advertising revenue. RNZCGP told the Commission that it [] RNZCGP has also recently launched *GP Pulse*, a newsletter style magazine for its members. While *GP Pulse* does not currently have advertising, []
185. The Commission notes that while *NZFP* has a low market share via advertising revenue, it nonetheless has a proven circulation. Further, its new title, *GP Pulse*, is also likely to provide an alternative to *NZGP* and *Doctor*.
186. The Commission notes that a number of industry participants considered that the market may not be able to continue to support both *Doctor* and *NZGP* due to a general trend of pharmaceutical companies decreasing their spending in this type of print medium. Advertising revenue has decreased for both titles. *NZGP*'s total revenue from advertising [] Similarly, *Doctor*'s revenue fell from [] in 1999 to [] in 2003.
187. However, the Commission considers that while *NZGP* or *Doctor* could be discontinued in the future if declining advertising revenue trends were to continue, both publications are likely to continue over the relevant timeframe. Accordingly, MediMedia owning both *NZGP* and *Doctor*, which together account for a significant portion of the market, in the factual, would, in comparison with the counterfactual, result in some loss of competition.

Conclusion on Existing Competition

188. The Commission considers that, despite the loss of competition between *NZGP* and *Doctor*, RNZCGP's two publications would offer an alternative to *NZGP* and *Doctor* and would be likely to provide sufficient constraint on MediMedia.

Potential Competition

Barriers to Entry/Expansion

189. The Commission is of the view that the potential barriers to entry in the general information publications market are:

- access to relevant information;
- financial investment; and
- access to advertising revenue.

190. Each of these potential barriers to entry is discussed in detail below.

Access to Information

191. The Applicant submitted that the information published in *Doctor* and *NZGP* is prepared by interviewing opinion leaders and newsmakers in the health sector. It is combined with information on other non-medical topics commissioned from independent freelance writers, who also provide this service to other publications.

192. The Applicant submitted that information on clinical developments and news in the medical sector are readily available. Industry participants spoken to confirmed this. Accordingly, the Commission is satisfied that access to news information is not a barrier to entry.

Capital Investment

193. The Applicant submitted that the costs of production are not unusually high. It pointed to the fact that *Doctor* was launched in January 1989 in a four month period by two individuals with start-up capital of \$60,000.

194. An edition is prepared for publication by a designer with readily available computer design and page-making skills, under the direction of an editor responsible for the overall look and quality of the publication. The costs of skilled personnel and IT equipment are not particularly high.

195. The Applicant also submitted that accommodation could be as small as a single office.

196. The Commission accepts that capital costs involved in this market are not particularly high, and do not amount to a barrier to entry.

Access to Advertising Revenue

197. The Applicant submitted that the advertising revenue from pharmaceutical companies necessary to sustain an entrant in this market is accessible to any existing firm or new entrant able to persuade the advertiser that their product is of value.
198. GPs spoken to advised the Commission that they would read a new newspaper like *NZGP* and *Doctor*, or a journal, if it were of good quality, interesting, relevant and free of charge.
199. Pharmaceutical companies advised that they would only advertise in a new newspaper or journal if it were supplied to at least 80% of GPs, and had the characteristics of frequency, high quality, relevance, interest, and quality editorial. Some companies said that they would consider advertising in a publication that only covered certain geographic areas, such as Auckland only, if the advertising rates were cheaper than the incumbent. Others said they would not consider advertising in a regional publication.
200. Pharmaceutical companies and GPs were of the view that if the proposed acquisition were to occur, and MediMedia were to start charging GPs for the existing publications, a new entrant could succeed and obtain the necessary advertising. This would also be the case if readership declined as a result of MediMedia charging GPs for the publications.
201. The pharmaceutical companies advised the Commission that if the quality of the MediMedia guides declined, readership would decline and therefore exposure of their advertising would drop, so they would look for alternatives for their advertising. This would potentially include using a new entrant that could meet their requirements.
202. The Commission, as a result of the information received from industry participants set out above, is of the view that if the acquisition were to proceed and MediMedia were to exercise market power by charging for, or reducing the quality of, the general information publications, a new entrant would be able to obtain the advertising revenue required to enable it to produce a general information publication that could compete successfully with MediMedia.
203. The Commission therefore considers that access to advertising revenue would not be a barrier to entry.

Conclusion on Barriers to Entry

204. The Commission has considered the various factors relevant to the assessment of the entry barriers in the general information for GPs market. The Commission concludes that there are low barriers to entry in this market.

The “LET” Test

205. As stated above, the Applicant pointed to the fact that *Doctor* was launched in a four month period by two individuals with start-up capital of \$60,000. It said that there is no reason to think that the situation should be any different today for a new entrant. Any trade publisher or individual with the necessary knowledge and understanding, with access to medical information and a relevant distribution structure, could enter the market. It said the key factor is innovation and value to the pharmaceutical companies and readers.
206. Industry participants said that it would be easier to enter the general information market than the medicines information market.
207. The Commission considers that if entry with a publication as competitive as *Doctor* was possible at a time when the incumbent was not exercising market power, because of the low barriers to entry, entry would be likely, timely and of an extent sufficient to constrain MediMedia if it attempted to exercise market power by charging GPs for the publication, or reducing the quality of the publications.

Conclusion on Potential Competition

208. The Commission considers that the likelihood of potential competition would be sufficient to constrain MediMedia from exercising market power post-acquisition.

Countervailing Power

GPs

209. The GP groups spoken to by the Commission advised that if MediMedia post-acquisition started charging for the general information publications, it was likely that the GPs would choose not to take the publications. Pegasus, an Independent Practitioners Association in Christchurch, said that the publications were not essential, and that the GPs would stop receiving them. ProCare Health said that the information in the publications can be obtained from overseas. The Commission notes that the GPs would also have the alternatives of *NZFP* and *GP Pulse*.
210. The Commission therefore considers that the GPs, through their individual reactions to a price rise from zero, would as a group also provide a degree of countervailing power over any attempt by MediMedia to exercise market power.

Pharmaceutical Companies

211. It should be noted that, as with the medicines information guides, the publications in this market are funded by advertising revenue, and without this revenue, would not exist.

212. The pharmaceutical companies mainly advertise funded prescription medicines in the publications in this market, with a small amount of advertising of unfunded medicines. They also advertise through the channels set out in paragraphs 65.
213. The pharmaceutical companies advised the Commission that advertising in these publications is important as it is a proven way for them to reach their target audience of GPs.
214. As stated above, the pharmaceutical companies advised that if the proposed acquisition were to proceed and the quality of the MediMedia publications declined, readership would decline and exposure of their advertising would drop, so they would look for alternative channels for their advertising.
215. The Commission was also advised that if MediMedia started to charge the GPs for the publications, the pharmaceutical companies would react in a similar manner.
216. The Commission considers that the pharmaceutical companies have countervailing power that would prevent MediMedia from exercising market power by charging GPs for the general information publications, or by reducing the quality in either.

Conclusion on Countervailing Power in

217. The Commission considers that the pharmaceutical companies and the GPs would together have countervailing power sufficient to constrain MediMedia from exercising market power post-acquisition.

Conclusion on the General Information Publications Market

218. The Commission considers that it is unlikely that there would be a substantial lessening of competition in the general information publications market post-acquisition as the threat of potential competition, and the countervailing power of the pharmaceutical companies and GPs would be a sufficient constraint to prevent MediMedia from exercising market power.

The Advertising Services Market

Existing Competition

219. The issue with this market is whether MediMedia, post-acquisition, would be able to increase its advertising rates.
220. The promotional expenditures by pharmaceutical companies in the advertising services market are set out in Table 6.

Table 6
Expenditures in Advertising Services Market

Advertising Channel	Advertising Revenue 2nd qtr 2002 - 2nd qtr 2003
Publications	
<i>NE Catalogue</i> (Adis)	[]
<i>NE Journal</i> (Adis)	[]
<i>NZGP</i> (Adis)	[]
<i>MIMS</i> (MediMedia)	[]
<i>Doctor</i> (MediMedia)	[]
<i>Merged Entity</i>	[]
<i>NZFP</i> (RNZCGP)	[]
Other Channels	
Direct Mail	[]
Sales Forces	Not available
Sponsoring Clinical Papers	Not available
Sponsoring Guest Speakers at seminars/conferences	Not available
Display Stands at Conferences	Not available

Source: New Zealand Medical Promotion Index – 5 year survey to 2003

221. It should be noted that incomplete information precludes full market share assessment by channel. It is therefore not possible to accurately measure the degree of aggregation implied by the proposed acquisition. However, the lack of this information does not impact on the Commission’s ability to analyse existing competition in this market, as discussed in paragraphs 222 and 223.
222. CSL Limited (CSL), a pharmaceutical company, advised the Commission that [] of its total marketing budget was spent on advertising in medicines guides or general health news and information publications. Janssen-Cilag spent [] of its marketing budget in advertising in medicines guides, [] on direct mail and a further [] on conferences. Eli Lilly and Company (NZ) Ltd (“Eli Lilly”) spent only [] on advertising in medicines guides or general health news and information publications, preferring to spend a greater portion of its marketing budget on sales representatives, direct to consumer advertising, conferences and guest speakers.

223. As pharmaceutical companies have a number of channels through which to target GPs and specialists, and have indicated their ability and willingness to switch to other channels should market power be exercised by MediMedia post-acquisition, and spend a greater proportion of their marketing budgets on these alternative avenues, the Commission considers that they will provide an on-going constraint on MediMedia post-acquisition.

Conclusion on Existing Competition

224. The Commission considers that there would be aggregation in the advertising services market. However, the pharmaceutical companies also use other channels of advertising such as conferences and sales representatives and tend to allocate a greater proportion of their marketing budgets to these channels. These are likely to be an on-going constraint on MediMedia. The Commission therefore concludes that existing competition is likely to provide a constraint against the exercise of market power by MediMedia post-acquisition.

225. Although the Commission concludes that existing competition would be sufficient in itself to constrain MediMedia from exercising market power, it has, for completeness, considered whether potential competition and/or countervailing power would also provide sufficient constraint.

Potential Competition

Barriers to Entry/Expansion

226. The barriers to entry discussed in paragraphs 112 to 147 with respect to the medicines information guides market, and in paragraphs 189 to 204 with respect to the general information publications market, also apply to providing advertising services in those types of publications. Accordingly there are reasonably high barriers to entry to providing advertising services in medicine guides. However, the barriers to entry to providing advertising services in general information publications are low. Furthermore, the Commission is of the view that the barriers to entry to direct mail are low.

227. The costs of carrying out advertising through direct mail, operating a sales force, running conference, seminars or displays stands, or sponsoring clinical papers are not high enough to amount to barriers to entry into this market and there do not appear to be any other barriers.

228. Accordingly, the Commission concludes that the aggregation of all the barriers to entry or expansion results in overall low barriers to entry or expansion in this market.

“LET” Test

229. The discussion of the LET Test in paragraphs 148 to 157 with respect to the medicines information guides and in paragraphs 205 to 208 for the general information publications markets also applies to the advertising services market. Although the Commission concludes that entry in commercial terms into the medicines information guides market is unlikely within the next two years, it concludes that entry into the general information publications market is likely within the next two years. It is also of the view that pharmaceutical companies would expand their use of the other advertising channels if MediMedia exercised market power.
230. Accordingly the Commission considers that entry or expansion into the advertising services market would be likely and would be timely enough and sufficient in extent to constrain MediMedia from exercising market power in this market post-acquisition.

Conclusion on Potential Competition

231. The Commission considers that potential competition is likely to constrain MediMedia from exercising market power in this market post-acquisition.

Countervailing Power

232. The pharmaceutical companies advertise to GPs and specialists through the channels set out in paragraph 65. They also advertise directly to the consumer through television, magazines and newspapers and their websites. Although these channels are not included in this market, as they are not targeted at GPs, the aim of advertising in this way is to persuade consumers to request certain medicines from their GPs. Accordingly, GPs are likely to be indirectly influenced by these methods of advertising, and so they should be included in the possible channels of advertising pharmaceutical companies would use as alternatives to the publications that would be owned by MediMedia if the acquisition were to proceed.
233. As discussed above with respect to existing competition, the pharmaceutical companies advised the Commission that advertising in the medicines guides and general information publications for GPs such as *NE Catalogue*, *MIMS*, *NZGP* and *Doctor* is important as it is a proven way of reaching the target audience of GPs and specialists. However, all pharmaceutical companies except one spoken to said that if the rates for advertising in these publications increased by 5%, they would decrease the volume of advertising in them, and possibly fill the gap with increased use of other channels, particularly with direct mail.

234. Wyeth (NZ) Limited, for example, said that [] and if the advertising rates increased by 5%, it would have fewer advertisements in MediMedia publications and perhaps fill the gaps with direct mail. It was of the opinion that MediMedia could not increase the charges because it was aware that the pharmaceutical companies would use alternative channels for advertising.
235. CSL stated that if advertising charges increased by 5%, it would []
236. Merck Sharp & Dohme advised that if rates increased by 5%, it would decrease its advertising by [], and would come up with a placement schedule to fit. Janssen-Cilag also said that although the publications are very important, and it would be a radical step to not use them at all, it would decrease advertising volume in them as a reaction to such a rate increase. Janssen-Cilag was of the view that if other pharmaceutical companies also did this, it would have a real impact on MediMedia.
237. Eli Lilly was the []
238. The pharmaceutical companies also said that if MediMedia raised its advertising rates in any of its publications, such as the medicines guides, they could exert pressure on MediMedia by withdrawing their advertising from other MediMedia publications, or cease to purchase other products such as the database services.
239. MediMedia advised the Commission that it could not afford to upset the pharmaceutical companies by exercising market power in this type of way. It said that GlaxoSmithKline, for example, spent [] a year on advertising with MediMedia.
240. The Commission considers that the pharmaceutical companies have a considerable degree of countervailing power through their ability to expand their use of alternative marketing channels, that would prevent MediMedia from exercising market power post-acquisition.

Conclusion on the Advertising Services Market

241. The Commission considers that there is unlikely to be a substantial lessening of competition in the advertising services market as existing competition in the form of alternative channels of advertising, the threat of potential competition, and the countervailing power of the pharmaceutical companies would be a sufficient constraint to prevent MediMedia from exercising market power post-acquisition.

OVERALL CONCLUSION

242. The Commission has considered the probable nature and extent of competition that would exist in the following relevant markets:

- the national supply of medicines information guides to GPs and specialists (the medicines information guides market);
- the national supply of GP-specific news and general information publications (the general information publications market); and
- the national supply of GP and specialist targeted advertising services to pharmaceutical companies (the advertising services market)

243. The Commission considers that the appropriate counterfactual is the status quo except for []

244. In the factual there would be a [] The suppliers of medicines information guides to GPs and specialists would reduce from two to one. The suppliers of general information publications to GPs would reduce from three to two, with the only competitor to MediMedia being RNZCGP.

245. The Commission has considered the nature and extent of the contemplated lessening of competition in each of the relevant markets.

246. The Commission has also considered the nature and extent of the contemplated lessening of competition, in terms of the competitive constraints that would exist following the merger from the:

- constraint posed by existing competition;
- ease of entry by potential competitors; and
- countervailing power by pharmaceutical companies and others.

Medicines Information Guides Market

247. In the medicines information guides market the proposed acquisition would result in:

- all existing competition being eliminated; and
- potential competition being unlikely to constrain MediMedia from exercising market power; but
- the pharmaceutical companies having countervailing power sufficient to constrain MediMedia from exercising market power.

248. The Commission therefore considers that it is unlikely that there would be a substantial lessening of competition post-acquisition in the medicines information guides market.

General Information Publications Market

249. In the general information publications market the proposed acquisition would result in:

- RNZCGP's two publications being likely to constrain MediMedia from exercising market power;
- potential competition being likely to constrain MediMedia from exercising market power; and
- the pharmaceutical companies having countervailing power sufficient to constrain MediMedia from exercising market power.

250. The Commission therefore considers that it is unlikely that there would be a substantial lessening of competition post-acquisition in the general information publications market

Advertising Services Market

251. In the advertising services market the proposed acquisition would result in:

- existing competition being likely to constrain MediMedia from exercising market power;
- potential competition being likely to constrain MediMedia from exercising market power; and
- the pharmaceutical companies having countervailing power sufficient to constrain MediMedia from exercising market power.

252. The Commission therefore considers that it is unlikely that there would be a substantial lessening of competition post-acquisition in the advertising services market.

Conclusion

253. The Commission is satisfied that the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition, in the following markets:

- the medicines information guides market;
- the general information publications market; and
- the advertising services market.

DETERMINATION ON NOTICE OF CLEARANCE

254. Pursuant to section 66(3) (a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by MediMedia (NZ) Limited of the business, intellectual property, and assets of the New Zealand publications of Adis International Limited.

Dated this 18th day of December 2003

Peter JM Taylor
Division Chair
Commerce Commission