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COMMERCE COMMISSION

Decision No. 420

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

Television and Media Services Limited

and

Media Entertainment Group Limited

The Commission:	M J Belgrave (Chair) M N Berry P R Rebstock
Summary of Proposed Acquisition:	Television and Media Services Limited seeks clearance to acquire all the issued share capital of Media Entertainment Group Limited.
Determination:	Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition.
Date of Determination:	6 April 2001

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THE PROPOSAL

1. On 7 February 2001, the Commission registered a notice pursuant to section 66(1) of the Commerce Act 1986 (the Act) seeking clearance by Television and Media Services Ltd (TMS) to acquire all of the issued share capital of Media Entertainment Group Ltd (MEG). Both TMS and MEG are listed on the Australian Stock Exchange. Following the merger, it is proposed that MEG shares will be held by TMS and TMS will continue to be listed.

THE PROCEDURES

2. Section 66(3) of the Act requires the Commission either to clear, or to decline to clear, a notice given under section 66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period. Three extensions were sought by the Commission and agreed to by the applicant. Accordingly, a decision on the application is required by Friday, 6 April 2001.

3. The applicant sought confidentiality for the fact of the application, and a confidentiality order was made in respect of the fact of the application until Wednesday, 7 March 2001. The applicant also sought confidentiality for specific information contained in the notice, and a confidentiality order was made in respect of this information for a period of 20 working days from the Commission's determination of the notice. When the confidentiality order expires, the provisions of the Official Information Act 1982 will apply.

4. The Commission's determination is based on an investigation conducted by its staff. In the course of the investigation Commission staff obtained further information from the applicant, cinema exhibitors, advertising agencies, major advertisers, the Association of New Zealand Advertisers Inc, Communication Agencies Association of New Zealand and the Advertising Standards Authority Inc.

THE PARTIES

Television Media Services Limited (TMS)

5. TMS is a company listed on the Australian Stock Exchange. TMS was formerly known as Hoyts Entertainment Limited and was owned by cinema exhibitor Hoyts Corporation until its Australian Stock Exchange listing in 1987. TMS's largest shareholders are The Ten Group Limited and Publishing and Broadcasting Limited, with 11.61% and 11.46% respectively. Its market capitalisation is around $A208 million and its 1999 profit was $A15.2 million

6. TMS is a diversified media company whose main activities include cinema screen advertising, post production, television services, studio production services and field production services.

7. TMS's principal business units are Global Television, a television services body, and Val Morgan, a cinema advertiser. This application concentrates on TMS's Val Morgan business.

8. The Val Morgan business was founded in 1894 in Victoria and has grown into an international provider of both slide and film cinema advertising services. Val Morgan was purchased by the Hoyts Corporation and was sold into Hoyts Entertainment Limited (now TMS) in 1987. It commenced operations in New Zealand in 1990.

9. Within New Zealand, Val Morgan sells advertising in the Hoyts Cinemas (NZ) Ltd (Hoyts) circuit as well as many independent cinemas, totalling 109 screens nationally. Outside New Zealand, Val Morgan has operations in Australia, the United States, Chile, Peru, the United Arab Emirates and Argentina and has offices in the United Kingdom.

Media Entertainment Group Limited (MEG)

10. MEG is relatively new to the cinema advertising industry. MEG was a private company operating a location television and magazine publishing business until it secured the contract to provide cinema advertising in the Village cinema circuit in Australia in 1997. On the basis of this expansion, MEG secured a public share placement and listed on the ASX. It has subsequently entered into agreements to advertise in the Village/Force and Village/Rialto circuits in New Zealand, totalling 164 screens nationally. This business is conducted by MEG's wholly owned subsidiary Media Entertainment Group (New Zealand) Ltd (MEG NZ).

OTHER RELEVANT PARTIES

Screen Vistas

11. Screen Vistas Limited (Screen Vistas) is a locally owned business and was incorporated in 1993. Screen Vistas is based in Palmerston North and specialises in cinema advertising. It has agreements for [ ] screens throughout the country (from Queenstown to Tauranga), all independent cinemas, with a particular concentration in the Central North Island.

MARKET DEFINITION

Introduction

12. The purpose of defining a market is to provide a framework within which the competition implications of a business acquisition can be analysed. The relevant markets are those in which competition may be affected by the acquisition being considered, and in which the application of section 47(1) of the Act can be examined.

13. Section 3(1A) of the Act provides that:

> "... the term 'market' is a reference to 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."

14. Relevant principles relating to market definition are set out in *Telecom v Commerce Commission*[1] ("the AMPS A case") and in the *Business Acquisitions Guidelines*[2]. A brief outline of the principles follows.

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[1] *Telecom Corporation of New Zealand Ltd v Commerce Commission* (1991) 4 TCLR 473.

15. Markets are typically defined in relation to three dimensions: namely, product type, geographical extent, and functional level. A market encompasses products that are close substitutes in the eyes of buyers, and excludes all other products. The boundaries of the product and geographical markets are identified by considering the extent to which buyers are able to substitute other products, or across geographical regions, when they are given the incentive to do so by a change in the relative prices of the products concerned. A market is the smallest area of product and geographic space in which all such substitution possibilities are encompassed. It is in this space that a hypothetical, profit-maximising, monopoly supplier of the defined product could exert market power, because buyers, facing a rise in price, would have no close substitutes to which to turn.

16. A properly defined market includes products which are regarded by buyers or sellers as being not too different (the product dimension), and not too far away (the geographic dimension), and are therefore products over which the hypothetical monopolist would need to exercise control in order for it to be able to exert market power. A market defined in these terms is one within which a hypothetical monopolist would be in a position to impose, at the least, a "small yet significant and non-transitory increase in price" (*"ssnip"*), assuming that other terms of sale remain unchanged.

17. Markets are also defined by functional level (the functional dimension). Typically, production, distribution, and sale occur through a series of stages, with markets intervening between suppliers at one vertical stage and buyers at the next. Hence the functional market level affected by the application has to be determined as part of the market definition. For example, that between manufacturers and wholesalers might be called the manufacturing market while that between wholesalers and retailers is usually known as the wholesaling market.

Identifying Relevant Markets

18. To identify the markets relevant to the application, it is necessary to consider the business activities undertaken by the relevant firms and to assess whether, post-acquisition, dominance would, or would be likely to, result or be strengthened.

19. Thus the relevant market or markets should be defined so as best to expose the competitive forces at play. As stated in the AMPs A case:

> "The boundaries {of the market} should be drawn by reference to the conduct at issue, the terms of the relevant section or sections, and the policy of the statute. Some judgment is required, bearing in mind that "market" is an instrumental concept designed to clarify the sources and potential effects of market power that may be possessed by an enterprise."

The Markets Relevant to the Current Application

20. When considering previous applications involving the media, the Commission has concluded that, while there is some competition between the different media form, it has been appropriate for the purpose of competition analysis to utilise separate markets for each media form.[3] Further the Commission has broken down these markets into two separate product markets – that for the dissemination of news, information and entertainment, and that for the provision of advertising services.

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[2] Commerce Commission, *Business Acquisitions Guidelines*, 1999.

[3] Commerce Commission decisions: Decision 321 *Look Outdoor Ltd/Adshel Street Furniture Ltd/3M New Zealand Ltd*; Decision 329 *Independent Newspapers Ltd/Marlborough Express Newspapers Company Ltd*; Decision 395 *Independent News Auckland Ltd/Review Publishing Co Ltd.*

21. In the current application, the New Zealand activities of TMS (through Val Morgan) and MEG NZ have been described as providing cinema advertising services. Principal functions included in the provision of these services include:

- negotiating exclusive contractual arrangements with cinema exhibitors who, in effect are seeking to contract out the sale of advertising in their cinemas;
- selling of cinema advertising time to advertising agencies and individual advertisers;
- producing slide advertisements for individual advertisers who are usually local businesses; and
- scheduling and distribution of advertisements for individual cinemas.

22. Unlike advertising agencies, they do not produce film advertisements. Nor do they deal directly with major national advertisers (who utilise advertising agencies).

23. The critical function undertaken by providers of cinema advertising services is the selling of cinema advertising time, but as indicated above, this is only one element in the package they provide.

24. The applicant has argued that the appropriate product market for the analysis of the current application is that for:

> "…advertising time and space, including television and radio, newspapers and magazines, outdoor and cinema advertising, direct marketing, and new media."

25. This is the market used in a 1996 Australian case involving the Media Council[4].

26. The applicant has provided material to support its argument that cinema advertising competes strongly with other forms of advertising. It notes that the major national advertisers use film-based advertisements in cinemas which in many cases are the same advertisements which appear on television. Local firms who use slide advertisements in cinemas have the option of using classified directories, display advertisements in regional or local newspapers, outdoor advertising, direct marketing, local radio and to some extent local television.

27. The Commission has given careful consideration to the arguments put forward by the applicant on market definition. It accepts that the key function undertaken by the parties to the proposed acquisition is the sale of cinema advertising. Further it recognises that for most advertisers there is a significant degree of substitutability between cinema advertising and other forms of advertising. However in this instance and for the reasons set out below, the Commission does not propose to utilise the markets suggested by the applicants for the analysis of the current case.

- In the time available for the consideration of the current application, the Commission has not been able to conclude that the degree of substitutability between cinema advertising and other forms of advertising is such as to justify incorporating them within the one market.
- Given the conclusion the Commission has reached on this application using what might be regarded as a narrow market, it is not necessary to reach a final view on whether cinema advertising falls within a broader market. From the Commission's perspective, the adoption of narrow markets is the conservative

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[4] *Re Media Council of Australia & Ors (1996)* ATPR 41-497 at page 42,262.

approach. If there are no competition concerns within the narrow market, there are unlikely to be any in the broader market.

- The Commission has taken account of the constraints provided by other advertising forms in the competition analysis below.

28. Accordingly the Commission in this instance has defined the market by the functions undertaken by the parties to the application – that is, the market for the provision of cinema advertising services. These services are largely provided on a national basis. The Commission considers that the market is national in scope.

Conclusion on Market Definition

29. The Commission concludes that the relevant market is that for the provision of cinema advertising services in New Zealand (the cinema advertising services market).

COMPETITION ANALYSIS

Introduction

30. The competition analysis assesses competition in the relevant markets in order to determine whether the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of dominance.

The Dominance Test

31. Section 47(1) of the Commerce Act prohibits certain business acquisitions:

> "No person shall acquire assets of a business or shares if, as a result of the acquisition, -
>
> (a) That person or another person would be, or would be likely to be, in a dominant position in a market; or
>
> (b) That person's or another person's dominant position in a market would be, or would be likely to be, strengthened".

32. Section 3(9) of the Commerce Act states:

> "For the purposes of sections 47 and 48 of this Act, a person has … a dominant position in a market if that person as a supplier … of goods and services, is or are in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market and for the purposes of determining whether a person is … in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in a market regard shall be had to-
>
> (a) The share of the market, the technical knowledge, the access to materials or capital of that person or those persons:
>
> (b) The extent to which that person is … constrained by the conduct of competitors or potential competitors in that market:
>
> (c) The extent to which that person is … constrained by the conduct of suppliers or acquirers of goods or services in that market."

33. The test for dominance has been considered by the High Court. McGechan J stated:[5]

> "The test for 'dominance' is not a matter of prevailing economic theory, to be identified outside the statute.
>
> …

[5] *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC)

> Dominance includes a qualitative assessment of market power. It involves more than 'high' market power; more than mere ability to behave 'largely' independently of competitors; and more than power to effect 'appreciable' changes in terms of trading. It involves a *high degree of market control"*.

34. Both McGechan J and the Court of Appeal, which approved this test,[6] stated that a lower standard than "a high degree of market control" was unacceptable.[7] The Commission has acknowledged this test:[8]

> "A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint by competitor or customer reaction".

35. The Commission's Business Acquisitions Guidelines state:[9]

> "A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint by competitor {or} customer reaction.
>
> A person in a dominant position will be able to initiate and maintain an appreciable increase in price or reduction in supply, quality or degree of innovation, without suffering an adverse impact on profitability in the short term or long term. The Commission notes that it is not necessary to believe that a person will act in such a manner to establish that it is in a dominant position, it is sufficient for it to have that ability".

36. The role of the Commission in respect of an application for clearance of a business acquisition is prescribed by the Commerce Act. Where the Commission is satisfied that the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of a dominant position in a market, the Commission must give a clearance. Where the Commission is not satisfied, clearance is declined.

37. The dominance test is applied in the following competition analysis.

The Cinema Advertising Services Market

Background

38. Within the defined market, there are two principal areas where providers of cinema advertising services may compete with each other. These are for the acquisition of rights to advertise in the cinemas of individual exhibitors and for the sale of cinema advertising time to advertising agencies and individual advertisers.

39. Cinema advertising is purchased by advertisers in two forms:

- motion film advertisements (film advertisements), and
- slide advertisements.

40. All film advertising is produced and placed with cinema advertisers by advertising agencies as part of an overall campaign that usually encompasses many media. Cinema advertisers are not involved in the production of film advertising but simply arrange for its distribution. Cinema advertisers pay a commission to advertising agencies placing film advertisements with them.

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[6] *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA)

[7] *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC) and *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA)

[8] *Business Acquisition Guidelines*, Section 7

[9] *Business Acquisition Guidelines*, Section 7, page 21

41. By contrast, advertising agencies are rarely if ever involved in the preparation of slide advertising. This preparation is generally undertaken by cinema advertisers, though clients may contribute some or all of the artwork involved. Cinema advertisers also have their own marketing and sales forces that attract advertisers through direct marketing.

42. Cinema advertisers operate differently in respect of film advertising and slide advertising. As a rule film advertising is sold to national and regional advertisers and slide advertising is sold to local advertisers.

43. The differing cost structures of the two forms of cinema advertising restricts local advertisers to slide advertising. The application notes:

> "…a slide advertising campaign of 56 weeks on two screens will cost between $NZ7,000 and $NZ12,000 including production costs. This would be a typical slide campaign advertising a local business on a local duplex or multiplex cinema.
>
> A similar film campaign would cost around $NZ15,000 plus $NZ3,000 for a "kine transfer" (preparation for a cinema display) and sound mixing plus film production costs, which may range from $10,000 to millions of dollars in the case of large international campaigns. However, due to the high fixed costs of production and transfer, film advertising is always deployed far more widely than the two screens used in this example. A typical film campaign might consist of 100 screens for six months at a cost of around $NZ250,000 plus film production and transfer costs. Because of the high fixed costs of production, film campaigns are generally run in conjunction with television campaigns".

Market Concentration

44. An examination of market concentration gives an indication of whether a combined firm may be constrained by other participants, and thus of the extent to which it may be able to exercise market power.

45. The *Business Acquisitions Guidelines* specify certain "safe harbours" which can be used to assess the likely impact of a merger in terms of s 47 of the Act:[10]

> "In the Commission's view, a dominant position in a market is generally unlikely to be created or strengthened where, after the proposed acquisition, either of the following situations exist:
>
> - the merged entity (including any interconnected or associated persons) has less than in the order of a 40% share of the relevant market;
> - the merged entity (including any interconnected or associated persons) has less than in the order of a 60% share of the relevant market and faces competition from at least one other market participant having no less than in the order of a 15% market share."

46. These safe harbours recognise that both absolute levels of market share, and the distribution of market shares between the merged firm and its rivals, is relevant in considering the extent to which the rivals are able to provide a constraint over the merged firm. The *Business Acquisitions Guidelines* state further (at page 17) that:

> "Except in unusual circumstances, the Commission will not seek to intervene in business acquisitions which, given appropriate delineation of the relevant market and measurement of shares, fall within these safe harbours".

47. Although, in general, the higher the market share held by the merged firm, the greater the probability that dominance will be acquired or strengthened (as proscribed by s 47 of the Act), market share alone is not sufficient to establish a dominant position in a

[10] *Business Acquisition Guidelines*, Section 4, page 17

market. Other factors intrinsic to the market structure, such as the extent of rivalry within the market and constraints provided by near competitors and through market entry, also typically need to be considered and assessed.

48. The Commission has been provided with market share figures by the Advertising Standards Authority Inc. These figures are based on revenue earned for the year ending December 2000. This information is shown below in Table 1.

Table 1
Market Share in the Cinema Advertising Services Market

Company	**Market Share**
Val Morgan	[ ]
MEG NZ	[ ]
Merged Entity	[ ]
Screen Vistas	[ ]
Total	100%

49. The Commission notes that to some extent these market shares may overstate the current level of competition within the cinema advertising services market between Val Morgan and MEG NZ. This is because the rights to sell to particular exhibitors are usually exclusive and are for relatively long periods of time (currently [ ] years for Hoyts and [ ] years for Village/Force and Village/Rialto)]. Thus the competition for the acquisition of these rights occurs only infrequently.

50. There are 277 cinema screens in New Zealand. Screen Vistas has the lead agreements for [ ] screens (this equates to [ ]% of all cinema screens) although the Commission notes that it has sub-contracted the rights to provide film advertising to MEG NZ and Val Morgan in [ ] of these screens.

51. The data shown in Table 1, reveals that the merged entity's market share falls well outside the Commission's "safe harbours". However, as stated earlier, the fact that a proposed acquisition may lead to a market share falling outside these "safe harbours" does not necessarily mean that it will be likely to result in the acquisition or strengthening of a dominant position in a market. Additional factors must also be considered before a conclusion on dominance is reached. These factors are discussed below.

Constraints on Merged Entity

Constraint from Existing Competitor

52. The applicant faces only limited constraint from existing competition at present. The only other cinema advertiser is Screen Vistas. Screen Vista's market share (in terms of revenue) is [ ]%.

53. Screen Vistas predominantly operates in the provincial centres of New Zealand. Its coverage extends from Queenstown to Tauranga. Screen Vistas' core business is the production and placement of slide advertisements. Accordingly it deals almost exclusively with local advertisers.

54. Screen Vistas currently has agreements with [ ] independent cinemas. Peter McCormick, director of Screen Vistas, has advised the Commission that Screen Vistas'

main focus is the production and placement of slide advertising for local and regional businesses. Accordingly, he currently sub-contracts the rights to provide film advertising to Val Morgan and MEG NZ. [

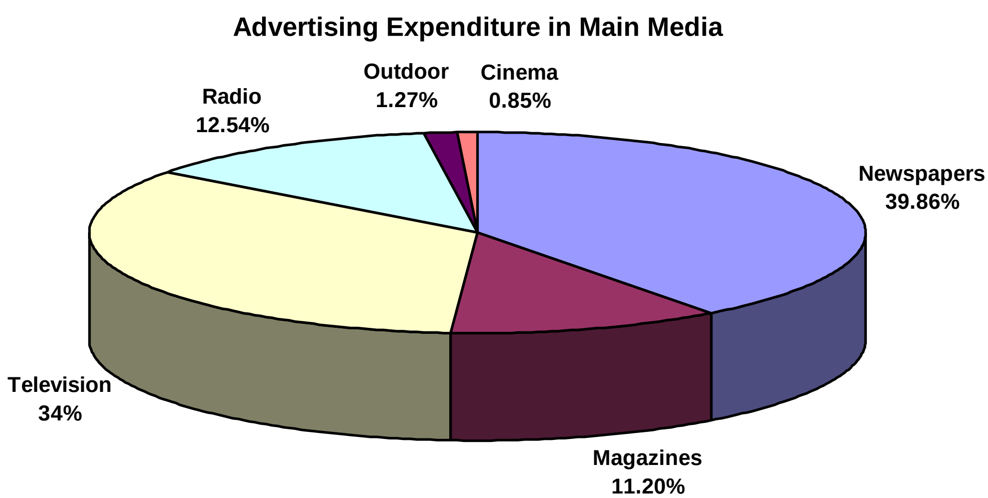
].

Constraint from Other Media and Countervailing Power of Advertisers and Advertising Agencies

55. While the Commission does not in this decision place other media (including television, radio, newspapers, magazines and outdoor/billboards) within the defined market, it nonetheless accepts that other media do place an important constraint on the providers of cinema advertising services.

56. The Commission notes that cinema advertising represented only 0.85% of the total advertising spend in the main media in New Zealand in 1999. In dollar terms of the $1.42 billion spend on advertising in New Zealand in 1999 only $12 million went to cinema advertising. Available figures include newspapers, magazines, television, radio, outdoor advertising and cinema advertising.

57. A graphic representation of the breakdown by media type of total advertising expenditure in 1999 is shown below:



58. The applicant has argued cinema advertising:

> "…rarely forms a large or essential part of a clients advertising campaign.
>
> As a result, any price increase above competitive levels by a cinema advertiser would immediately result in media buyers shifting their advertising to more cost-effective media. Even if all cinema screens were controlled by one cinema advertiser, that advertiser could not afford to raise prices without losing substantial business to other media".

59. This statement was tested in the market place. Advertising agencies expressed divergent views.

60. Some agencies disputed the validity of the applicant's assertion. They considered cinema advertising offers unique opportunities and advantages not offered by other

forms of media. In particular they argued that cinema advertising could not be readily substituted with other media because it offered unique advantages including:

- high impact;
- the ability to target niche audiences – in particular young people;
- a captive audience; and
- the ability to advertise in a specific location or alongside a particular movie.

61. However, other agencies endorsed the applicant's argument. They considered that they would have a degree of countervailing power given the choices of other media options available to them. These agencies concurred with the applicant's assertion that there is a high degree of substitutability between cinema advertising and other forms of media. They also agreed that any increase in the price of cinema advertising relative to the other media would result in a re-allocation of advertising expenditure away from cinema advertising to other forms of media. The general consensus amongst this group of agencies is that the merged entity would not be able to implement a price increase relative to other media without losing substantial sales.

62. The latter view was echoed by the majority of advertisers (including users of film and slide advertising), the Communication Agencies Association of New Zealand and the Advertising Standards Authority Inc.

63. The Commission considers that cinema advertising can offer advertisers some advantages over other media. However, the opportunities for niche marketing provided by cinema are not unique to the medium. While the Commission is not yet satisfied that advertising on other media is sufficiently substitutable for cinema advertising to put them in the same market, it considers that they will offer some constraint and give advertisers a degree of countervailing power against the merged entity.

Constraint from Countervailing Power of Exhibitors

64. Current competition for access to screens is limited by the fact that most screens are subject to long term exclusive contracts. Currently Val Morgan have an exclusive contract for the right to place cinema advertising with Hoyts cinemas (including independent cinemas managed by Hoyts pursuant to management contracts) that runs for [ ] years and expires in [ ]. MEG NZ have a similar exclusive contract with Village/Force and Village/Rialto cinemas (including Independent cinemas managed by Village pursuant to management contracts) that runs for a period of [ ] years and expires in [ ]. The proposed merger will therefore have little impact on competition for access to Hoyts and Village/Force and Village/Rialto screens in the short term.

65. In the long term when screen rights become available again the applicant has argued that the cinema exhibitors could easily remove them from the supply chain by:

> - "selling cinema advertising direct to the advertising agencies, as is the case with a number of exhibitors in the United States and was the case in Australia when Hoyts owned Val Morgan; or
> - effectively "sponsoring" new entry into the cinema advertising business, as was the case with Village's support for MEG in 1997 allowing MEG as a new entrant to the Australian market to rapidly acquire a 24% share of cinema screens".

66. The applicant suggests that since access to screens is controlled by the exhibitors, they are well placed to facilitate entry or enter themselves.

67. Joseph Moodabe, CEO of Village Force Cinemas Ltd was of the opinion [

] Tony Murray, CEO of Hoyts Cinemas Ltd (the parent of Hoyts Cinemas (NZ)) and Graham Burke, CEO of Village Roadshow Ltd (who own 50% of Village Force Cinemas Ltd in New Zealand), have both confirmed that they believe they will have countervailing power in relation to the merged entity. In particular they have confirmed that they do not consider there to be any major barriers to entry into the cinema advertising market; and that they could and would look at both of the options set out above in para 65, should the need arise when their respective contracts with Val Morgan and MEG NZ expire. In terms of sponsoring a new entrant, the most likely option would be to look to one of the major international cinema advertisers.

68. Berkeley Cinemas Limited (Berkeleys) currently have a contract with MEG NZ for cinema advertising services. Brian Eldridge, General Manager of Berkeleys,[11] expressed concern that if Val Morgan and MEG NZ were to merge it would leave him without a competitive alternative. While he agreed that barriers to entry in the market for cinema advertising services did not appear high, he said strategically it may be difficult for a new entrant to win contracts with the major advertising agencies and advertisers if they had to compete with a merged entity that would control access to the vast majority of cinema screens nationwide.

69. The majority of independent cinemas contacted have indicated that they have no objections to the proposed merger. All of the independent cinemas contacted have one year contracts with cinema advertisers. Most are comfortable that their niche market positions, which differentiate them from the multiplexes, will afford them a degree of power when negotiating their future contracts with the merged entity. Further, most independent cinemas’ advertising revenue represents a lesser percentage of their total revenue than is the case for the bigger chains. In some cases this is by design, given the preferences of their patrons.

70. Two independent cinemas expressed an objection to the merger. These exhibitors expressed the concern that the merged entity would be less inclined to deal with the independent cinemas. However, other independent cinemas felt that there is a high degree of interdependence between cinema advertisers and cinema exhibitors, including independent cinemas with their niche markets. They did not see the proposed merger altering this fact.

71. Given the above factors, the Commission concludes that exhibitors, in particular the Hoyts and Village cinema chains, will possess significant countervailing power in relation to the merged entity.

Barriers to Entry

72. The applicant submits that there are low barriers to entering the market for cinema advertising noting:

> “The only significant barrier to entry in the cinema advertising business is access to screens

[11] Berkeleys, have 13 screens located at Mission Bay, Takapuna and Whangaparoa. In addition they are currently constructing a 10 screen multiplex in Courtenay Place, Wellington, which should be completed by the end of 2001.

…

beyond the up front costs of securing a major contract with one of the major existing exhibitors…there are no real barriers".

73. The up front costs referred to by the applicant in this quotation are the amounts which must be bid to secure a contract with an exhibitor. It has not been suggested to the Commission that, in bidding for new contracts, a new entrant would be disadvantaged in comparison with other firms seeking an exhibitor's business.

74. The fundamental requirements of cinema advertising are:

- selling of cinema advertising time to advertising agencies and individual advertisers;
- scheduling and distribution of advertisements for individual cinemas; and
- producing slide advertisements for individual advertisers who are usually local businesses.

75. The Commission notes that currently there are 20 people employed by Val Morgan in New Zealand and 14 people by MEG. While these people are likely to be skilled in their work, these skills are unlikely to be in short supply.

76. Industry sources spoken to tend to suggest that barriers to entry to the market are low. Further, the only production function currently undertaken by cinema advertisers is in slides, which could be undertaken by the cinema or out-sourced to any graphic designer or advertising agency. The sale of slides could also be out-sourced or provided by any other company. In terms of the sale of film advertising the main requirement appears to be the need for a representative(s) to deal with the advertising agencies (predominantly based in Auckland and to a lesser extent Wellington) who place the national/film advertising.

77. The application states that a key rationale for the merger is the need to obtain the critical mass and relationships necessary to expand into the United States and Asia to compete with international organisations. It notes that:

"The international trend towards consolidation is primarily driven by:

- the need to deal with increasingly global and consolidated exhibitors on an international level;
- the need to service increasingly global advertisers on an international level; and
- the need for more efficient use of resources and greater economies of scale, particularly in the context of digitalisation."

78. The Commission accepts that it is possible that large international firms may have some advantages over local firms. A number of parties have suggested that the most likely new entrants into the New Zealand market are international firms. However, the Commission has concluded that the advantages available to these international firms are not such as to preclude the possibility of new entry by local firms, or the expansion in the market by Screen Vistas. [

]

79. The Commission considers that there is some potential for new entry into the market, and also for expansion in the market by Screen Vistas.

Conclusion on the Market for the Provision of Cinema Advertising Services in New Zealand

80. The proposed acquisition will result in an aggregation of market share in this market. However, the merged entity is likely to face constraint from other media and the countervailing power of advertising agencies and advertisers. The countervailing power of exhibitors, in particular, is likely to provide an effective constraint upon the behaviour of the merged entity.

81. Given these factors, the Commission is satisfied that the acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in the market for the provision of cinema advertising services in New Zealand.

OVERALL CONCLUSION

82. The Commission has considered the impact of the proposed acquisition in the market for the provision of cinema advertising services in New Zealand.

83. Having regard to the factors set out in section 3(9) of the Commerce Act, and all other relevant factors, the Commission is satisfied that the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

DETERMINATION ON NOTICE OF CLEARANCE

84. Accordingly, pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to Television and Media Services Limited to acquire all of the issued share capital of Media Entertainment Group Ltd.

Dated this 6th day of April 2001

____

M J Belgrave
Chair