



## COMMERCE COMMISSION

### Decision No. 445

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

**WILSON AND HORTON LIMITED**

**and**

**POWER PLANT PRODUCTIONS LIMITED**

- The Commission:** Paula Rebstock
- Summary of Application:** Wilson and Horton Limited seeks clearance to acquire the business assets of Power Plant Productions Limited relating to the Havelock North Village Press newspaper business.
- 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:** 07 December 2001

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## THE PROPOSAL

1. On 16 November 2001 Wilson and Horton Limited registered a notice with the Commission seeking clearance under s66 (1) of the Commerce Act 1986 for the proposed acquisition by Wilson & Horton Limited or any interconnected body corporate of Wilson & Horton Limited (Wilson & Horton) of those business assets of Powerplant Productions Limited relating to “The Havelock North Village Press” newspaper business (the Village Press).
2. The Village Press is a small circulation, specialised publication that targets consumers in the higher socio-economic Havelock North area, and selected areas in Napier and Taradale.

## THE PROCEDURES

3. 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 notice agree to a longer period. An extension of time was sought by the Commission and agreed to by the applicant. Accordingly, a decision on the application was required by 07 December 2001.
4. In its application, Wilson and Horton sought confidentiality for specific aspects of the application. A confidentiality order was made in respect of the information for a period of 20 working days from the Commission’s determination notice. When that order expires, the provisions of the Official Information Act 1982 will apply.
5. The Commission’s determination is based on an investigation conducted by staff.
6. The Commission’s approach is based on principles set out in the Commission’s *Practice Note 4*.<sup>1</sup>

## THE PARTIES

### Wilson and Horton Limited

7. Wilson & Horton Limited is 100% owned by Wilson & Horton Holdings Limited. Wilson & Horton Holdings Limited is currently 100% owned by Independent News & Media plc (INM), a Dublin-based media company.
8. The principal subsidiary undertakings in the Wilson & Horton Holdings Limited group are:
  - Wilson & Horton Limited;

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<sup>1</sup> 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.

- W&H Newspapers Limited;
  - W&H Print Limited;
  - W&H Specialist Publications Limited;
  - W&H Digital Limited; and
  - W&H Australia Pty Limited.
9. Wilson and Horton is a news and information company, and operates in four key segments: newspaper publishing (nine daily newspapers and 32 free community papers); new internet-based media; specialist publishing (magazines, directories, maps etc); and commercial printing. Wilson & Horton also has a 33.3% shareholding in The Radio Network, which is owned 66.67% by Australian Radio Network, of which APN owns 50%.
10. In Hawke’s Bay, Wilson & Horton publishes Hawke’s Bay Today, an afternoon pay newspaper that serves the whole of the Hawkes Bay region; the Central Hawke’s Bay Mail, a free weekly publication; and the Dannevirke Evening News, a pay daily publication. Wilson & Horton also has a 40% interest in the Wairoa Star, a pay twice-weekly publication; and publishes two community newspapers - the Napier Courier and the Hastings Leader, which are free weekly publications.

#### **Power Plant Productions Limited**

11. Powerplant Productions Limited publishes the Village Press, a free fortnightly publication circulated in Havelock North, Napier and Taradale. As the proposed acquisition relates to the assets of Powerplant Productions Limited relating to the Village Press only and not shares in Powerplant Productions Limited, other interests of Powerplant Productions Limited and its interconnected or associated companies, if any, are not considered further.

#### *The Village Press*

12. The Village Press is a small circulation, specialised publication that targets consumers in the higher socio-economic Havelock North area, and selected areas in Napier and Taradale.
13. As a niche fortnightly publication, [ ].

#### **Other Newspapers**

14. Several other newspapers operate in the Hawke’s Bay. The following companies are those that compete with the Village Press for the supply of news and/or print media advertising.

*The Napier Mail*

15. The Napier Mail is the only other independent community newspaper in the Hawkes Bay. It entered the market around thirteen months ago. It is delivered free to letter boxes in Napier each week and has a print run of [ ]. The Napier Mail is half owned by Paul Wilson of Napier and half owned by the Wairarapa Times Age, which prints the Napier Mail using its Masterton printing press.

*The Hawke's Bay Entertainer*

16. This was established two years ago and has a circulation of [ ] copies. The Hawkes Bay Entertainer is published by Circle Communications Limited of Hastings and targets the music and entertainment market. It is distributed free throughout Napier, Taradale, Hastings, Havelock North, and Central Hawke's Bay to places such as music shops, cafes, and bars. [ ]

*The Dominion*

17. The Dominion is owned by Independent Newspapers Limited (INL) and delivered to Hawke's Bay residents daily and is owned by INL, Wilson and Hortons strongest national competitor. The Dominion has a circulation of ?10,000? copies in the Hawke's Bay region.

*Hawke's Bay Rural Catalogue*

18. This monthly publication is owned and operated by Les Pillow, the founder of the Village Press. It is distributed free to those living in rural Hawke's Bay. It has a distribution of 6,300 copies.

**INDUSTRY BACKGROUND**

19. Newspapers commonly provide news information, entertainment and advertising. Revenue is sourced from the cover price (if any) and advertising, with advertisers attracted by the newspaper's targeted audience and circulation. The proportion of revenue derived from advertising and from the cover price is normally around 70:30, although this may vary.
20. The majority of daily newspapers in New Zealand are owned by two major publishers, INL and Wilson and Horton Ltd, with very few privately owned newspapers remaining in the country. In general, newspaper sales in most countries around the world, including New Zealand, are falling. In comparison, there has been a general increase in the number of community newspapers published in New Zealand.

**MARKET DEFINITION**

21. 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.*

22. For the purpose of competition analysis, a relevant market is the smallest space within which a hypothetical, profit-maximising, sole supplier of a good or service, not constrained by the threat of entry, could impose at least a small yet significant and non-transitory increase in price, assuming all other terms of sale remain constant (the ‘*ssnip* test’). For the purpose of determining relevant markets, the Commission will generally consider a *ssnip* to involve a five percent increase in price for a period of one year.
23. It is substitutability at competitive market prices which is relevant in defining markets. Where the Commission considers that prices in a given market are significantly different from competitive levels, it may be necessary for it to assess the effect of a *ssnip* imposed upon competitive price levels, rather than upon actual prices, in order to detect relevant substitutes.
24. The Commission will seek to define 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).
25. The Commission will seek to define relevant markets in a way that best assists the analysis of the competitive impact of the acquisition under consideration. A relevant market will ultimately be determined, in the words of the Act, as a matter of fact and commercial common sense.
26. Where markets are difficult to define precisely, the Commission will initially take a conservative approach. If the proposed acquisition can be cleared on the basis of a narrow market definition, it would also be cleared using a broader one. If the Commission is unable to clear the proposed acquisition on the basis of the narrower market, it will be necessary to review the arguments and evidence in relation to broader markets.
27. The applicant submits that the markets that will be affected by the proposed acquisition are:
  - the market for the provision of local news and information services in the print medium in the Hawke’s Bay; and
  - the market for the provision of advertising services in the print medium in Hawke’s Bay.

## Product Dimension

28. 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.
29. The Commission takes the view that the appropriate time period for assessing substitution possibilities is the longer term, but within the foreseeable future.<sup>2</sup> The Commission considers this to be a period of one year, which is the period customarily used internationally in applying the 'ssnip' test (see above) to determine market boundaries. The Commission will take into account recent, and likely future, changes in products, relative prices and production technology in the process of market definition.

### *Demand-side and Supply-side substitution*

30. 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.
31. Initially, markets are defined for each product supplied by two or more of the parties to an acquisition. Unequivocal substitutes are combined. For each initial market so defined, the Commission will examine whether the imposition of a snip would be likely to be profitable for the hypothetical monopolist. If it were, then all of the relevant substitutes must be incorporated in the market. If not, then the next most likely substitute good or service will be added to the initial market definition and the test repeated. This process continues until a combination of products is found which defines the product dimension of a relevant market, namely, the smallest combination of goods or services for which a snip would be profitable.
32. On the demand-side, the technical viability of one good or service as a substitute for another must be assessed. However, even where another product may technically be suitable as an alternative for the product in question, its price may be so much higher that it may be a poor substitute in an economic sense, at least for the great majority of buyers. In judging economic substitutability between products, the Commission will have regard to relative prices, quality and performance when assessing whether they are, in fact, close substitutes in the eyes of buyers.
33. 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

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<sup>2</sup> 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". See also *News Limited v Australian Rugby Football League Limited & Ors* (1996) ATPR at 41,687, where Burchett J stated: "Long term prospects that can be more or less clearly foreseen are, to that extent, a present reality, from the point of view of identifying the constraints upon commercial action. This fact emphasises the importance of the principle . . . that substitution possibilities in the longer run may be very significant for market delineation." Also *Re Tooth & Co Ltd v Tooheys Ltd* (1979) 39 FLR 1 emphasises longer run substitution possibilities.



investment in sunk costs, when they are given a profit incentive to do so by a small change in their relative prices.

34. The Commission considers demand side substitution to be strong in the markets relevant to the application. The Commission has previously recognised that there is a degree of substitutability between print and other forms of media, in particular the growth in news and information services available on television and the Internet (*Decision 329: Independent Newspapers Limited; Marlborough Express Newspaper Company Limited, 2 October 1998*).
35. Newspapers are known to compete with other forms of advertising services such as radio, regional TV, and the Internet. Industry participants confirm that there is a high degree of substitutability between print media and other forms of media such as radio advertising. There is evidence that when prices increase in one medium, demand for other mediums also increases. For example, when the two daily papers (The Herald Tribune and the Daily Telegraph) merged, advertising charges increased to reflect the increased distribution in both Napier and Hastings, and sales of radio advertising increased at the same time. However, this contributed to the establishment of the Napier Mail, as an alternative for small businesses who wanted to advertise in Napier only in the print medium and not pay the premium to advertise in both Napier and Hastings.
36. Despite the increasing substitutability between print and electronic media forms, the Commission is of the view that it is appropriate to define the different media outlets as principally complementary forms, rather than substitutes for each other in the same market. Although not treating them as falling within the same market, it is recognised that these other media outlets serve as a constraint in the market for the provision of advertising and news services in the print medium.
37. The Commission therefore concludes that for the purpose of assessing the competition implication of the proposed acquisition, the appropriate product markets are:
  - the market for the provision of local news and information services in the print medium; and
  - the market for the provision of advertising services in the print medium.

### **Geographic Extent**

38. The Commission will seek to define the geographical extent of a market to include all of the relevant, spatially dispersed, sources of supply to which buyers can turn should the prices of local sources of supply be raised. For each good or service combination, the overlapping geographic areas in which the parties operate are identified. These form initial markets to which a ssnip is applied. Additional geographic regions are added until the smallest area is determined within which the hypothetical monopolist could profitably impose a ssnip.
39. Generally, the higher the value of the product to be purchased, in absolute terms or relative to total buyer expenditure as appropriate, the more likely are buyers to travel and shop around for the best buy, and the wider the geographic extent of the market is likely to be.

40. Where transport costs are high relative to the final value of a product, a narrower geographic market is more likely to be appropriate. Where product perishability and other similar practical considerations limit the distance that a product may be transported, this may limit the geographic extent of the market. The timeliness of delivery from alternative geographic sources is similarly relevant.
41. Although buyers and sellers of a particular good or service may interact in markets that are apparently local or regional in extent, those markets may themselves overlap and interrelate so as to form a market covering a larger geographical area. In these situations, the larger market is likely to be the appropriate one for analysing the competitive effects of a business acquisition.
42. The applicant submitted that the markets for news provision and print media advertising are local.
43. The geographic extent of the markets affected by the proposed acquisition is the circulation area of *The Village Press*. The three principal towns in the geographic area are Hastings, Napier, and Havelock North.
44. Demand for advertising in the Village Press is driven by its effectiveness at targeting a local niche market, something that national advertising may be less effective at achieving.
45. Although the Village Press focuses on the Havelock North markets for news provision and advertising, it operates within the Hawke's Bay markets for news provision and advertising services. The Commission concludes that the geographic market is the Hawke's Bay region.

### **Functional Level**

46. The production, distribution and sale of a product typically occur through a series of functional levels – for example, the manufacturing/import level, the wholesale/distribution level and the retail level. It is often useful to identify the relevant functional level in describing a market, as a proposed business acquisition may affect one horizontal level, but not others.<sup>3</sup> Alternatively, some acquisitions, such as those involving businesses at different vertical levels, may raise issues related to vertical integration. Generally, the Commission will seek to identify separate relevant markets at each functional level affected by an acquisition and assess the impact of the acquisition on each.
47. The applicant submits that the proposed acquisition has no effect on the market for printing services. In the past, Commission decisions related to print media have considered the national market for commercial printing services. Because the Village Press does not own any printing assets this market is not considered as part of this investigation. Therefore, the functional level considered for these markets are:

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<sup>3</sup> *Telecom Corporation of New Zealand Ltd v Commerce Commission* (1991) 4 TCLR 473, 502 The High Court (Greig J, Shaw WJ, Prof M Brunt) noted: "If we ask what functional divisions are appropriate in any market definition exercise, the answer, ..., must be whatever will best expose the play of market forces, actual and potential, upon buyers and sellers. Wherever successive stages of production and distribution can be co-ordinated by market transactions, there is no difficulty: there will be a series of markets linking actual and potential buyers and sellers at each stage. And again, where pronounced efficiencies of vertical integration dictate that successive stages of production and distribution must be co-ordinated by internal managerial processes, there can be no market."

?? The supply of news information services; and

?? The supply of print media advertising.

### **Conclusion on Market Definition**

48. The Commission concludes that the relevant markets are:

- The supply of print media news services in the Hawke’s Bay; and
- The supply of print media advertising in the Hawke’s Bay.

## **COMPETITION ANALYSIS**

### **Substantially Lessening Competition**

49. Section 47 of the Act prohibits particular business acquisitions. It provides that:

A person must not acquire assets of a business or shares if the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market.

50. Section 2(1A) provides that substantial means “real or of substance”. Substantial is taken as meaning something more than insubstantial or nominal. It is a question of degree.<sup>4</sup>

What is required is a real lessening of competition that is not minimal. The lessening needs to be of such size, character and importance to make it worthy of consideration.<sup>5</sup>

51. Section 3(2) provides that references to the lessening of competition include references to the hindering or preventing of competition.<sup>6</sup>

52. While the Act defines the words “substantial” and “lessening” individually it is desirable to consider the phrase as a whole. For each relevant market, the Commission will assess:

- 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; and
- whether the contemplated lessening is substantial.<sup>7</sup>

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<sup>4</sup> *Commerce Commission v Port Nelson Ltd* (1995) 6 TCLR 406, 434; *Mobil Oil Corporation v The Queen in Right of NZ* 4/5/89, International Centre for Settlement of Investment Disputes, Washington DC, International Arbitral Tribunal ARB/87/2 (paras 8.2, 19, 20).

<sup>5</sup> *Dandy Power Equipment Ltd v Mercury Marina Pty Ltd* (1982) ATPR 40-315, 43-888; *South Yorkshire Transport Ltd v Monopolies & Mergers Commission* [ ] 1 All ER 289.

<sup>6</sup> For a discussion of the definition see *Commerce Commission v Port Nelson Ltd* supra n 6, 434.

<sup>7</sup> See *Dandy*, supra n 5, pp 43–887 to 43-888 and adopted in New Zealand: *ARA v Mutual Rental Cars* [ ] 2 NZLR 647; *Tru Tone Ltd v Festival Records Retail Marketing Ltd* [ ] 2 NZLR 352; *Fisher & Paykel Ltd v Commerce Commission* [ ] 2 NZLR 731; *Commerce Commission v Carter Holt Harvey* unreported, High Court, Auckland, CL 27/95, 18/4/00.

53. In interpreting the phrase “substantially lessening competition”, the Commission will take into account the explanatory memorandum to the Commerce Amendment Bill (No 2). The memorandum notes that:

*“Two of the 3 key prohibitions are strengthened to bring New Zealand into line with Australian competition law, which will facilitate a more economic approach to defining anti-competitive behaviour.”*

and, in relation to s47:

*“This proposed new threshold is the same as the threshold for these types of acquisitions in section 50 of the Trade Practices Act 1974 (Australia).”*

54. For the purposes of the analysis, the Commission takes the view that a lessening of competition and a strengthening of market power may be taken as being equivalent, since they are the two sides of the same coin. Hence, it uses the two terms interchangeably. Thus, in considering whether the acquisition would have, or would be likely to have, the effect of substantially lessening competition in a market, the Commission will take account of the scope for the exercise of market power, either unilaterally or through co-ordination between firms.
55. When the impact of enhanced market power is expected predominantly to be upon price, the anticipated price increase relative to what would otherwise have occurred in the market has to be both material, and able to be sustained for a period of at least two years, for the lessening, or likely lessening, of competition to be regarded as substantial. Similarly, when the impact of increased market power is felt in terms of the non-price dimensions of competition, these also have to be both material and able to be sustainable for at least two years for there to be a substantial lessening, or likely substantial lessening, of competition.

### **The Counterfactual**

56. The Commission uses a forward-looking, counterfactual, type of analysis in its assessment of business acquisitions, in which two future scenarios are postulated: that with the acquisition in question, and that in the absence of the acquisition (the counterfactual). The impact of the acquisition on competition can then be viewed as the difference between those two scenarios. It should be noted that the status quo cannot necessarily be assumed to continue in the absence of the acquisition, although that may often be the case. For example, in some instances a clearly developing trend may be evident in the market, in which case the appropriate counterfactual may be based on an extrapolation of that trend.
57. If Wilson and Horton had not made the bid to purchase the Village Press it may have been purchased by an independent operator, or possibly INL. However, this is a very uncertain scenario.
58. The present state of competition in a market can be referred to in order to illuminate the future state of the market where there is a range of possible scenarios should an acquisition not occur<sup>8</sup>. It is uncertain what changes, if any, there would be in the market

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<sup>8</sup> *Stirling Harbour Services Pty Ltd v Bunbury Port Authority*(2000) ATPR 41 at paras 113 &114.

if the proposed acquisition does not proceed. The Commission therefore proposes to use the status quo, that is the ownership of the Village Press by an independent operator, as the counterfactual.

### **Competition Analysis Principles**

59. The Act prohibits business acquisitions that would be likely to have the effect of substantially lessening competition in a market. The Commission makes this assessment against a counterfactual of what it considers would be likely to happen in the absence of the acquisition. In the present case the counterfactual is considered to be the status quo. A substantial lessening of competition is taken to be equivalent to a substantial increase in market power. A business acquisition can lead to an increase in market power by providing scope either for the combined entity to exercise such power unilaterally, or for the firms remaining in the market to co-ordinate their behaviour so as to exercise such power.
60. In broad terms, a substantial lessening of competition cannot arise from a business acquisition where there are sufficient competitive constraints upon the combined entity. The balance of this Decision considers and evaluates the constraints that might apply in the defined markets under the following headings:
- existing competition; and
  - potential competition from entry.

## **ANALYSIS OF EXISTING COMPETITION**

### **Introduction**

61. One consequence of a merger between competitors is that the number of firms competing in a market is reduced or, put another way, concentration is increased. This raises the possibility that competition in the market may be substantially lessened through the exercise of unilateral or coordinated market power. These are the subject of the analysis in this section.

### **Scope for Unilateral Market Power**

#### *Introduction*

62. An examination of concentration in a market post-acquisition can provide a useful guide to the constraints that market participants may place upon each other, including the combined entity. Both structural and behavioural factors have to be considered. However, concentration is only one of a number of factors to be considered in the assessment of competition in a market. Those other factors are considered in later sections, as noted above.
63. Market shares can be measured in terms of revenues, volumes of goods sold, production capacities or inputs (such as labour or capital) used. All measures may yield similar results in some cases. Where they do not, the Commission may, for the purposes of its assessment, adopt the measure that yields the highest level of market share for the

combined entity. The Commission considers that this will lead to an appropriately conservative assessment of concentration, and that the factors that lead to the other different market share results are more appropriately considered elsewhere during the assessment of the acquisition.<sup>9</sup>

64. In determining market shares, the Commission will take into account the existing participants (including ‘near entrants’), inter-firm relationships, and the level of imports. This is followed by an estimation of market shares and an evaluation of existing competition in the market. The print medium news provision market is considered first, followed by the print media advertising market.

## **THE HAWEK’S BAY PRINT MEDIA NEWS MARKET**

### *Existing Participants*

65. Competing providers of news services in the print medium include:
- metropolitan newspapers; and
  - provincial and community newspapers (cover charge and free).
66. Print media news is supplied by a variety of sources in the Hawke’s Bay, including one local daily newspaper, Hawke’s Bay Today, The Dominion, a Wellington Newspaper that has two reporters in Hawke’s Bay, and a variety of Community newspapers. Wilson and Horton currently owns the majority of newspapers supplying news to the Hawke’s Bay. The Village Press focuses on providing high local news content for Havelock North.

### *Inter-firm Relationships*

67. Companies that are part of the same corporate grouping, or that have similar strong relationships, cannot be relied upon to provide an effective competitive constraint to one another. Other less formal relationships between companies may also give rise to limitations on the extent of rivalry between them. Relationships between persons in the relevant market and other businesses may also affect rivalry in a market.
68. Many of the participants in this market are interconnected because they are owned by Wilson and Horton. Therefore, it is reasonable to aggregate their market presence in the competition analysis.

### *Market Shares*

69. Table 1 outlines the characteristics of, and circulation numbers for, the relevant newspapers in the market. Market share figures have not been calculated as it is difficult to determine quantitatively the share of the market that each participant has. However, it

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<sup>9</sup> For example, where market share measured in terms of capacity produces a significantly lower share of the market in the hands of participants than a measure in terms of sales volumes, the constraint on a combined entity from that unemployed capacity might be taken into account when identifying near entrants or the constraint from new market entry. In some cases, the model of market power being used may influence the choice as to which market share measure is used.

is possible to ascertain an idea of the size of the market participants by using circulation figures.

**Table 1: Characteristics of the Hawke’s Bay Print Media News Market**

<b>Newspaper</b>	<b>Owner</b>	<b>Characteristics</b>	<b>Circulation in Hawke’s Bay Region</b>
Hawke’s Bay Today	Wilson and Horton Ltd	Provincial Newspaper Evening Newspaper Cover charge: 90c	[ ] Daily
The Dominion	Independent Newspapers Ltd	Wellington Newspaper Morning Newspaper Cover charge 80c	[ ] (approx) Daily
The Napier Courier	Wilson and Horton Limited	Community newspaper Free	[ ] Weekly
The Napier Mail	Paul Wilson and Wairarapa Times Age Ltd	Community newspaper Free	[ ] Weekly
The Entertainer	Circle Communications Ltd	Distributed to bars, cafes, music venues etc. Free	[ ] Monthly
Hawke’s Bay Rural Catalogue	Les Pillow	Free	6,300 Monthly
The Hastings Leader	Wilson and Horton Limited	Community newspaper Free	[ ] Weekly
The Village Press	Power Plant Productions Ltd	Community newspaper Free	[ ] Fortnightly

*State of Existing Competition*

70. Although Wilson and Horton do have a substantial presence in the market, all the participants spoken to advise that the market for news provision is competitive and that this competition is unlikely to be affected by the proposed acquisition. Some saw that the proposed acquisition may in fact create a market expansion opportunity by creating demand for a new local paper. Free community papers face less commercial barriers than pay daily papers as readers do not have to pay to benefit from the paper. This helps to promote faster uptake of the paper.
71. Many companies other than Wilson and Horton were identified as being active in the market, including, The Napier Mail, The Dominion, The Entertainer, and The Hawke’s Bay Rural Catalogue. These are all providing news in the print medium.

*Conclusion – Unilateral Market Power*

72. Wilson and Horton will not gain unilateral market power in the Hawke’s Bay market for print media news by obtaining the Village Press.

**Scope for the Exercise of Coordinated Market Power**

*Introduction*

73. A business acquisition may lead to a change in market circumstances such that coordination between the remaining firms either is made more likely, or the effectiveness of pre-acquisition coordination is enhanced. Firms that would otherwise compete may attempt to coordinate their behaviour in order to exercise market power by restricting their joint output and raising price. In extreme cases, where all firms in the market are involved and coordination is particularly effective, they may be able to behave like a collective monopolist. Where not all firms are involved, and market share in the hands of the collaborators is reduced, coordinated market power becomes more difficult to exercise because of competition from the independent firms in the market.

74. When assessing the scope for coordination in the market during the consideration of a business acquisition, the Commission will evaluate the likely post-acquisition structural and behavioural characteristics of the relevant market or markets to test whether the potential for coordination would be materially enhanced by the acquisition. The intention is to assess the likelihood of certain types of behaviour occurring, and whether these would be likely to lead to a substantial lessening of competition.

75. “Collusion” involves firms in a market individually coming to a mutually profitable expectation or agreement over coordination. Both explicit and tacit forms of such behaviour between firms are included.

76. The structural and behavioural factors that are usually considered to be conducive to collusion are set out in the left-hand column Table 2. The significance of these is explained more fully in the Commission’s *Practice Note 4*. The right-hand column of the table then assesses the extent to which those factors are present, or are likely to be enhanced post-merger, in the exploration market. A high proportion of ‘yes’ responses would suggest that the market was particularly favourable to ‘collusion’; a high proportion of ‘no’ responses the reverse.



**TABLE 2**  
**Testing the Potential for ‘Collusion’ in the Hawke’s Bay Market for Print Media News Provision**

Factors conducive to collusion	Presence of factors in the market
High seller concentration	Moderate
Undifferentiated product/service	No
New entry slow	No
Lack of fringe competitors	No
Price inelastic demand curve	Difficult to gauge for news provision
Industry’s poor competition record	No
Presence of excess capacity	No
Presence of industry associations/fora	Yes – Some industry bodies

77. The assessment of the relevant conditions suggests that there are few characteristics in the market that are likely to be conducive to collusion. This situation is unlikely to be altered by the proposed acquisition.

*Conclusion – Co-ordinated Market Power*

78. It appears unlikely that the proposed acquisition would materially enhance the likelihood of co-ordinated market power in the Hawke’s Bay print media news market.

**Conclusion – Existing Competition**

79. The Commission considers that existing competition will alleviate any concerns of unilateral power being exercised by the merged entity.

80. Furthermore, the Commission considers that the scope for the exercise of co-ordinated market power would not be enhanced by the acquisition.

**CONSTRAINTS FROM MARKET ENTRY**

**Introduction**

81. 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.

82. Where barriers to entry are clearly low, it will not be necessary for the Commission to identify specific firms that might enter the market. In other cases, the Commission will seek to identify likely new entrants into the market.

83. The Commission will consider the history of past market entry as an indicator of the likelihood of future entry. The Commission is also mindful that entry often occurs on a relatively small scale, at least initially, and as such may not pose much of a competitive constraint on incumbents within the relevant time frame.

### **Barriers to Entry**

84. 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 height of barriers to entry into that market.
85. The Commission considers that, for the purpose of considering this issue, a barrier to entry is best defined as an additional or significantly increased cost or other disadvantage that a new entrant must bear as a condition of entry. In evaluating the barriers to entry into a market, the Commission will generally consider the broader 'entry conditions' that apply, and then go on to evaluate which of those constitute entry barriers.
86. It is the overall obstacle to entry posed by the aggregation of the various barriers that is relevant in determining whether entry is relatively easy or not, and therefore whether or not potential entry would prevent a substantial lessening of competition.
87. For entry to act as an antidote to a substantial lessening of competition stemming from a business acquisition, it must constrain the behaviour of the combined entity and others in the market.
88. The Commission has accepted on a number of occasions that there are no significant barriers to entry and expansion in respect of the market for print media news.
89. A community newspaper can be established with relative ease by anyone who has the experience in the industry, and/or the necessary skills, such as journalism ability. Staff who have previously worked for large daily publications are ideal candidates. Many such staff exist in the Hawke's Bay following the merger of the two daily papers. The Napier Mail was established by an former Wilson and Horton employee. Industry participants estimate that around \$35,000 would be needed to establish a community newspaper.
90. Technological developments have driven lower capital costs for establishing a community newspaper. Depending on the size and scope of the envisaged publication and its geographic location, a community newspaper can today be set up with a relatively small capital investment (e.g. computer, scanning and camera equipment). Digital photography has simplified desktop publishing, and printing and distribution can be readily contracted out, particularly with the advent of email. For a new community newspaper, a ready supply of contract printers are available, including Wairarapa Times and Putaruru Press (owned by INL).

### *Conclusion on Barriers to Entry*

91. The Commission concludes that there are not significant barriers to entry to deter expansion or new entry in the market for print media news.

### *The “LET” Test*

92. 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). If they are to act as a constraint on market participants following a business acquisition that might otherwise lead to a substantial lessening of competition in a market, entry must be relatively easy, or to put it another way, barriers to entry must be relatively low.

### *Likelihood of Entry*

93. 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.

94. Many parties were identified during the investigation as likely or potential entry into this market. INL is an obvious new entrant in respect of a new community newspaper in Hawkes Bay. As previously noted, there is strong potential for entry by individuals in the market. Investigations revealed that some are considering entry and/or expansion into the market.

### *Extent of Entry*

95. If entry is to constrain market participants, then the threat of entry must be at a level that is likely to cause market participants to react in a significant manner. The Commission will not consider entry that might occur only at relatively low volumes, or in localised areas, to represent a sufficient constraint to alleviate concerns about market power.

96. Extent of entry will largely depend on market conditions at any given time. Should conditions change so as to create attractive opportunities for entry there are many players that would consider entering the markets under consideration to a significant extent to constrain the merged entity.

### *Timeliness of Entry*

97. If it is effectively to constrain the exercise of market power to the extent necessary to alleviate concerns about a substantial lessening of competition, entry must be likely to occur before customers in the relevant market are detrimentally affected to a significant extent. Entry that constrains must be feasible within a reasonably short timeframe from the point at which market power is first exercised.

98. Given the necessary incentive, a new entrant could set up a community newspaper of its own at any time on the basis of its existing infrastructure in response to a hypothetical attempt by Wilson & Horton post-acquisition to raise prices or reduce output or quality.

### *Conclusion on the LET Test*

99. The Commission concludes that the various components of the LET test are satisfied. Therefore, the Commission concludes that there is the potential for new entry into this market at any time by a reasonable number of players.

### **Other Competitive Factors**

#### *Countervailing power*

100. Countervailing power is considered to be significant in this market, especially for large customers and advertising agencies. Businesses readily switch their commercial advertising between suppliers, whether of the same media or a different media. The relatively high ability to substitute advertising in the print media with other alternatives such as flyers and radio advertising helps promote countervailing power and acts as a constraint on the print news media to raise their prices or alter the quality of the service they provide.

### **Conclusions: The Supply of Print Media News in the Hawke's Bay**

101. The preceding analysis shows that the market for print media news provision in the Hawkes Bay is currently competitive, despite the position that Wilson and Horton has in the market. The market is also characterised by low barriers to entry and a number of fringe and potential competitors.

102. The Commission therefore concludes that the increase in market concentration that would result from the proposed acquisition would not have, nor would be likely to have, the effect of substantially lessening competition in the market for print news media in the Hawke's Bay..

### **THE HAWKE'S BAY PRINT MEDIA ADVERTISING MARKET**

103. In this fact situation the print media advertising market is closely correlated to the print media news market and therefore the competition issues in the print media news provision market apply to the print media advertising market, but with additional competitive pressures. Because no substantial lessening of competition concerns were found in the print media news market, the more competitive advertising market is not considered in such detail.

### **Existing Participants**

104. Competing providers of news services in the print medium include:

- Advertising Flyers;
- Magazines;
- Specialist and Industry Publications; and private trade party publications; and
- Metropolitan, provincial and community newspapers (cover charge and free).

*Advertising flyers*

105. Advertising flyers include pamphlets, circulars and brochures delivered direct to households or as inserts in newspapers. The Commission has previously accepted that flyers offer a relatively inexpensive and increasingly popular form of advertising in direct competition with newspaper advertisements. It is a form of advertising utilised by national and metropolitan businesses, small business and individuals. It was widely acknowledged during the investigation that flyers could be used in place of newspaper advertising, especially if the price of advertising increased or the effectiveness of the advertising declined.

*Magazines*

106. Magazine advertising is an important component of advertising expenditure, particularly due to the high quality reproduction that can be achieved. There are a wide range of magazines available in New Zealand within which an advertiser can advertise. While not perfectly substitutable for local advertising, national retailers in particular do use these to target niche markets.

*Specialist or industry publications*

107. There are an increasing number of specialist or industry publications available in the market (e.g. property, auto, boating, rural publications), all of which are a primary resource for consumers. It is also open to advertisers to group together to produce their own specialist or industry publication.

*Private party trade publications*

108. There are a wide range of private party trade publications available in the Hawke's Bay, such as Trade & Exchange and the Thursday Trader. These publications provide classified advertising for non-commercial and commercial advertisers, and again are a primary resource for consumers.

*Metropolitan, provincial and community newspapers*

109. Advertisers make their advertising decisions based on the readership and circulation of the various publications available. The Village Press, with its high local news and content and Havelock North circulation, attracts both local advertisers and those from further afield in the Hawke's Bay.

**Conclusion: The Print Media Advertising Market**

110. The market for print media advertising has stronger competitive pressures than the news provision market due to a larger number of participants and substitutes. 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 Hawke's Bay print media advertising market.

## **OVERALL CONCLUSION**

111. The Commission has considered the probable nature and extent of competition that would exist in the markets for print media news provision and advertising in the Hawke's Bay region. The Commission considers that the appropriate benchmark is the status quo, in which the market is characterised by effective competition from existing participants.

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

- existing competition; and
- potential competition from entry.

113. 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 markets for;

- The supply of print media news services in the Hawke's Bay; and
- The supply of print media advertising services in the Hawke's Bay.

**DETERMINATION ON NOTICE OF CLEARANCE**

114. Accordingly, pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition by Wilson and Horton Limited of up to 100% of the assets and interests associated with The Village Press.

Dated this 7th Day of December 2001

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Paula Rebstock  
Deputy Chair