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COMMERCE COMMISSION

Decision No. 664

Determination pursuant to the Commerce Act 1986 in the matter of an application for a merger transaction between:

MEDIA MONITORS PTY LIMITED

and

CHONG BUREAU LIMITED

The Commission:	Peter JM Taylor Denese Bates QC Gowan Pickering
Summary of Application:	The acquisition by Media Monitors Pty Limited of the business and assets of Chong Bureau 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:	19 February 2009

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THE PROPOSAL

1. On 22 January 2009, the Commission received a notice pursuant to s 66(1) of the Commerce Act 1986 (the Act). The notice sought clearance for the acquisition by Media Monitors Pty Limited (Media Monitors) of the business and assets of Chong Bureau Limited (Chong).

DECISION

2. The Commission considered that, post acquisition, the combined entity would be constrained by the presence of existing competitors, relatively low barriers to entry, and the ability of customers to self-supply their media monitoring requirements. Consequently, the Commission is satisfied that the proposed acquisition would be unlikely to result in a substantial lessening of competition in the relevant market.

ANALYTICAL FRAMEWORK

3. The Commission uses an analytical framework[1] for assessing a substantial lessening of competition in the context of an acquisition. The first step is to determine the relevant market or markets. To do this, the Commission identifies the areas of overlap between the acquirer and the target, and then considers what, if any, products and geographic regions, constitute relevant close substitutes from both a customer's and a supplier's point of view.

4. The Commission uses a forward-looking type of analysis to assess whether a lessening of competition is likely, so, an important subsequent step is to establish the appropriate hypothetical future with and without scenarios, defined as the situations expected:
    - with the acquisition in question (the factual); and
    - in the absence of the acquisition (the counterfactual).

5. The impact of the acquisition on competition is then viewed as the prospective difference in the extent of competition in the market between those two scenarios.

6. The Commission analyses the extent of competition in each relevant market for both the factual and counterfactual scenarios, in terms of:
    - existing competition - the degree to which existing competitors compete and their ability and incentives to expand production in the event that the combined entity raises prices;
    - potential competition – the ability of businesses to enter the market and thereafter expand, given an inducement to do so;
    - other competition factors, such as the countervailing market power of buyers - the combined entity may be constrained if purchasers were able to exert a substantial influence on the price, quality or terms of supply of a good or service;

[1] Commerce Commission, *Mergers and Acquisitions Guidelines,* January 2004.

- coordinated behaviour – whether the acquisition would enhance the ability of market participants to collude either tacitly or explicitly.

7. A comparison of the extent of competition in the relevant markets in both the factual and counterfactual scenarios enables the Commission to assess the probable extent of the lessening of competition under the proposed acquisition, and whether that contemplated lessening is likely to be substantial.

8. One consequence of a merger between competitors is that the number of businesses competing in a market is reduced, which raises the possibility that competition in the market might be lessened. However, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase (or reduction in quality) 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.

PARTIES

The Acquirer – Media Monitors

9. Media Monitors operates in Australia, New Zealand and in parts of Asia. In all these regions, it provides media monitoring services to businesses, government agencies and other organisations in these regions.

The Target – Chong

10. Chong also provides media monitoring services in New Zealand, under the brand name 'Chong Newztel Media_watch'.

11. Chong began as a press monitoring service in the 1950s. Gould Holdings Limited, a private investment company based in Christchurch, acquired Chong from its original owners in 2005.

INDUSTRY BACKGROUND

12. Media monitoring agencies, such as Media Monitors and Chong, monitor and review media sources for news articles that could be of interest to their customers. These media sources include metropolitan and regional newspapers, journals, magazines, news radio stations and television news broadcasts. More recently, media monitoring has been extended to include relevant news information published on the Internet.

13. Media monitoring agencies developed because it was, typically, too time consuming and inefficient for individual organisations to monitor the media themselves. Rather than do this, each customer provides specific search criteria to the monitoring agency, which the monitoring agency then uses to filter out relevant media articles for that customer. In turn, the end consumer pays a fee for the media items that they receive from their monitoring agency.

14. However, the entire media industry is undergoing rapid change. The Internet is transforming the way media content is being delivered. In particular, the amount of

media information that is readily available on the Internet has increased significantly in recent times and this process is expected to continue.

15. This process is having implications for the media monitoring industry, eroding many of the reasons for employing a dedicated media monitoring service. This is because once media content becomes available on the Internet, its ability to be monitored by anyone, whether a designated monitoring agency or an individual, greatly increases. In this respect, [ ] the demand for [ ] services has been decreasing in recent times.

MARKET DEFINITION

16. Both the Applicant and the Target provide media monitoring services to a wide range of customers. These services are provided on a national basis.

17. Media Monitors submitted that the proposed acquisition would result in overlap in respect of the national supply of media monitoring services, which involves the monitoring, collation, and provision of information to specific customers from publicly available news media sources such as print media, broadcast media, and the Internet.

18. Industry participants advised that the Internet was dramatically changing the way media content is delivered, with much of this content now being provided in a digital format. This greatly increases the ability to search the content for relevant information. Consequently, this has had an impact on the provision of media monitoring services.

19. Whereas in the past, broadcast monitoring and print monitoring may have been two quite distinct activities, the relationship between the two has become blurred. Radio and television stations now provide much of the relevant news content on the Internet, and traditional broadsheet newspapers also provide an electronic version. The monitoring agencies themselves have also adapted, with many providers now delivering their services via Internet portals.

20. The Commission notes that the expansion of the Internet and the availability of content on the Internet would mean that any distinction between media sources is likely to be limited. In this respect, it is likely that the provision of print, broadcast and Internet media monitoring would be included in the same product market.

21. Accordingly, for the purposes of this Application, the Commission considers the relevant market to be the national market for the provision of filtered print, broadcast and internet-based media information that is tailored to meet customer-specific interest (the media monitoring market).

FACTUAL / COUNTERFACTUAL

22. Media Monitors advised the rationale for the proposed acquisition was to build scale in New Zealand. Media Monitors advised that there would be some rationalisation, post acquisition, due to the resulting duplication between Media Monitors and Chong's current operations. Alternatively, if the proposed acquisition does not go ahead, Media Monitors would continue with its current operations.

23. Chong advised that if the proposed acquisition did not go ahead it would continue with its existing operations. [ ]

24. [ ].

25. [ ]

26. It follows that there is a difference between the factual and counterfactual scenarios. In the factual scenario, Media Monitors would acquire Chong while the counterfactual scenario would be the status quo. Therefore, in the factual scenario, there would be a reduction in the number of businesses competing in the media monitoring market.

COMPETITION ANALYSIS

27. The Commission must undertake a competition analysis to determine whether the difference between the factual and counterfactual scenarios indicates that a substantial lessening of competition would likely result from the proposed acquisition.

Existing Competitors in the Media Monitoring Market

28. Media Monitors and Chong are the two main providers of media monitoring services in New Zealand. Both companies promote themselves as providers of a comprehensive range of monitoring services based around three main aspects:

   - relevance;
   - accuracy; and
   - speed.

29. Both Media Monitors and Chong advised that the main selling points for their services were being eroded by the rapid changes in the industry, particularly around the amount of media content that is now freely available on the Internet. In this respect:

   - search software is readily available and anyone can use this to customise their media searches and filter out irrelevant media content;

- electronic searches can provide an adequate, and accurate, review of the relevant media content; and
- the Internet provides instant access to media content for all industry participants.

30. Both Media Monitors and Chong advised that, because of these developments, its customers are demanding fewer services and many customers are now finding the need for a comprehensive, independent media monitoring service less appealing. [ ].

31. In addition, the Applicant advised that there are several other media monitoring agencies that are actively competing for its customers. These include:

    - New Zealand Press Association's (NZPA) 'Newsquest' service, which provides a monitoring service with content from the NZPA newswire;
    - The Knowledge Basket, which provides a monitoring service from its electronic real time news media registrar and journal database; and
    - Meltwater News Limited (Meltwater), which specialises in electronic media monitoring and is prominent in Europe, North America and it is now expanding in both Australia and New Zealand.

32. On the whole, these competitors provide a more streamlined media monitoring service compared to the more traditional media clipping service provided by Media Monitors and Chong. However, this has not stopped numerous customers from switching away from Media Monitors and Chong, who both provided the Commission with examples of their customers switching to the likes of NZPA Newsquest, The Knowledge Basket and Meltwater.

33. NZPA Newsquest, The Knowledge Basket and Meltwater advised the Commission that there were no significant barriers to expanding their existing client base, if demanded. For example, the Commission notes that Meltwater has been particularly aggressive in seeking new customers and it is actively seeking additional staff to expand its operations in New Zealand.

34. In the Commission's view, these examples of switching would indicate that a "comprehensive" service in the traditional sense is not essential to be a viable competitor in this industry. While some customers may prefer a comprehensive offering, other customers clearly do not.

35. Several of the customers, who have recently switched, questioned the value added of a dedicated media monitoring service because, while a media monitoring service may be desirable, it was not essential. Further, a comprehensive service can be quite expensive, and it can be difficult to justify the expenditure for such a service when the companies themselves were increasingly able to satisfy much of their media monitoring requirements in-house, through self supply.

36. The Applicant also noted a number of other existing competitors, such as scoop.co.nz, NZX Limited, Lexis Nexis, and Factiva. Industry participants were generally dismissive of these companies as providers of media monitoring services. Nevertheless, certain customers mentioned that it was possible to use a combination

of these services, together with self monitoring, to achieve an adequate media monitoring service.

37. All industry participants acknowledged that the expansion of the Internet and the dramatic increase in the amount of media content that media companies now provided on their websites has significantly changed the media monitoring industry.

38. The Commission considers that, in the factual scenario, the combined entity would continue to be constrained by the presence of other media monitoring providers.

Potential Competition

39. The Applicant submitted that the barriers to enter in the media monitoring market are low and that, in the factual scenario, there would be nothing to impede entry into this market.

40. Industry participants advised that the necessary equipment and information technology to replicate the likes of Media Monitors and Chong was readily available. For example, while Meltwater and The Knowledge Basket have designed their own electronic search engines, other relatively sophisticated 'off the shelf' search software is readily available to any potential entrant.

41. In addition, the media monitoring industry was quite mature and there was little room to expand or be innovative in the supply of media monitoring services. The more innovative concepts, such as web portals as a means to connect with customers, have now become industry standard.

42. Nevertheless, industry participants advised that the two main conditions for entry were:

   - expertise in properly filtering raw information to meet customers specific requirements; and
   - access to customers.

43. Industry participants advised that the main grievances of customers were the supply of irrelevant articles and the non-supply of relevant articles. To reduce the chances of this occurring, media monitoring agencies have traditionally needed to physically review numerous articles and listened to all the main news broadcasts every day in order to filter out the relevant articles for each of their customers. This required a high level of expertise as, typically, this task was performed by an individual, who would take many months to build up an understanding of each client's individual requirements.

44. However, information technology has changed the way the articles are now reviewed. All articles are now electronically downloaded (or scanned) and then reviewed very quickly by search software for a customers pre-supplied keywords, with minimal need for the articles to be reviewed by the "naked eye".

45. Chong advised that, whereas it used to take many months to train a new staff member on the needs of its customers, it can now do this relevantly quickly. Other existing competitors, such as Meltwater and Knowledge Basket, operate with a minimal level of staff, relying solely on electronic search tools.

46. The Commission considers that the relevant search expertise is not a significant barrier to entry in this market.

47. Several industry participants questioned whether the barriers to entering this market were as low as the Applicant suggested. This was because media monitoring companies operate with economies of scale. For example, in most cases, a monitoring agency is required to monitor the same number of publications and broadcast stations, whether it has one customer or 500 customers. In other words, it was suggested that small scale entry is not possible in this market as an incumbent supplier would have a significant advantage over a greenfields entrant.

48. However, the Commission notes that any new entrant, in any industry, is typically faced with this dilemma. In its investigation, the Commission found numerous examples of customers switching to smaller competitors. This would suggest that any cost advantages that would accompany larger scale may not be sufficient to render smaller competitors, or a potential new entrant, from being unable to set prices low enough to compete with the more established providers, such as Media Monitors or Chong.

49. Firms such as Meltwater provide a service to monitor Internet information robotically using crawler type search programmes. The only barrier to the establishment of this kind of media monitoring business is the relatively low cost, acquisition or in-house development of the search engine, together with the development of a customer base.

50. Although the Commission found many examples of customers switching between Media Monitors and Chong, there were also many examples of customers switching from these providers to the likes of NZPA Newsquest, The Knowledge Basket and the newest entrant Meltwater. These included both large and small customers. This would indicate that there were minimal barriers to switching. The Commission considers that this switching behaviour would indicate that customers would be readily able to switch to a new entry, if given an incentive to do so, and that switching is a relatively common occurrence in this industry.

51. Further, industry participants advised that, although many customers were under contract, most contracts were of a short term nature, typically for one year. For example, Chong advised that it currently has [ ]. Again, this would indicate that the barriers to customers switching suppliers are relatively low.

52. The Commission considers that access to customers is not a significant barrier to entry in this market.

Other Competition Factors

53. The Applicant submitted that many organisations adequately satisfy their media monitoring needs themselves, via self monitoring. In the factual scenario, if the combined entity attempted to raise its prices (or reduce its quality), existing customers would have the ability to self monitor and this would act as a competitive constraint on the combined entity.

54. Several industry participants stated that for many customers self monitoring was simply not practical, hence the reason why a specific media monitoring agency was contracted to do the task.

55. In contrast, other industry participants advised the Commission that when faced with any increased costs for media monitoring services (or if a customer's budget for such services was reduced) self monitoring is a viable and cost effective alternative from many businesses. If necessary, self monitoring can also be combined with one of the other existing competitors or a research database. During its investigation, the Commission was made aware of many organisations doing this.

56. Media Monitors and Chong advised that they each have a [ ] price list [

] Rather, what separates one customer from another is the amount of keywords and the number of publications selected to be searched i.e. the more keywords selected, the higher number of articles relevant to the customer and therefore the higher the annual fee.

57. In this regard, the Commission notes that, while some customers may be more limited in their ability to self supply than others, given that there appears to be limited ability to price discriminate between customers, the ability to self supply or the threat to self supply is likely to act, to some degree, as a competitive threat on the combined entity, post acquisition.

58. Further, for those customers who are more readily able to satisfy their needs though self supply, any price increase by the combined entity would simply make the option of self monitoring more attractive.

59. In addition, it was widely considered that the amount of media content freely available (and therefore searchable) on the Internet is likely to increase in the short term, rather than decrease. In this respect, the constraint offered by self monitoring would also be likely to increase over time.

Competition Analysis: Conclusion

60. A consequence of any merger between competitors is that the number of businesses competing in a market is reduced, which raises the possibility that competition in the market is lessened. However, for the lessening, or likely lessening, of competition to be regarded as substantial, the anticipated price increase (or reduction in quality) 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.

61. In the Commission's view, this is unlikely to occur as the result of the proposed acquisition. The Commission is satisfied that the presence of existing competitors in the market, together with relatively low barriers to entry in this market and the ability of customers to self monitor their media monitoring requirements, would likely constrain the combined entity, post-acquisition.

62. Consequently, the Commission is satisfied that the proposed acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in any market.

DETERMINATION ON NOTICE OF CLEARANCE

63. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the acquisition by Media Monitors Pty Limited of the business and assets of Chong Bureau Limited.

Dated this 19th day of February 2009

Peter JM Taylor
Division Chair