



TRADE PRACTICES ACT 1974

UNDERTAKINGS TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

PURSUANT TO SECTION 87B

BY

HOYTS MULTI-PLEX CINEMAS PTY LIMITED ACN 006 564 585

AND

THE GREATER UNION ORGANISATION PTY LIMITED ACN 000 024 439

AND

BIRCH CARROLL & COYLE LIMITED ACN 009 659 643

AND

VILLAGE CINEMAS AUSTRALIA PTY LIMITED ACN 006 735 002

AND

ENTERTAINMENT OF THE FUTURE PTY LIMITED ACN 066 861 514

AND

VAL MORGAN AND CO (AUST) PTY LIMITED ACN 004 806 857

AND

MEDIA ENTERTAINMENT GROUP LIMITED ACN 007 290 539

AND

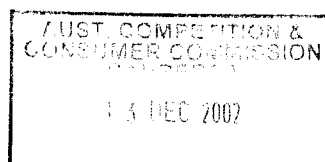
INDEPENDENT CINEMA ADVERTISING PTY LIMITED ACN 060 535 882

AND

VAL MORGAN HOLDINGS PTY LIMITED ACN 102 805 756

1. BACKGROUND

- 1.1 Hoyts, Greater Union and Village each operate, among other businesses, a chain of cinemas in Australia.
- 1.2 TMS is the owner of Val Morgan and MEG. MEG is the owner of ICA. ICA, Val Morgan and MEG operate cinema advertising businesses in which they:
- (i) acquire the right to exhibit cinema advertising in cinemas from cinema operators;
 - (ii) sell cinema advertising time to advertisers;
 - (iii) produce, or arrange for the production of, certain cinema advertising; and
 - (iv) schedule the cinema advertising for exhibition at the relevant cinemas.



- 1.3 TMS has experienced severe financial difficulties in operating the Val Morgan and MEG businesses, and wishes to sell these businesses to Val Morgan Holdings Pty Limited, a company owned by Hoyts, Greater Union and Village (**VMH**).
- 1.4 The Undertaking Parties wish to preserve the availability and continuity of cinema advertising and to transition the Val Morgan, MEG and ICA businesses to a financial basis that is viable over the longer term.
- 1.5 Val Morgan has ceased paying the Undertaking Exhibitors in respect of cinema advertising exhibited by the Undertaking Exhibitors. However, the Undertaking Exhibitors have continued to exhibit the advertising placed by Val Morgan.
- 1.6 If VMH acquires Val Morgan and MEG, then it will offer to acquire, and will acquire, the rights to provide cinema advertising from each of the Undertaking Exhibitors on the basis that the Undertaking Exhibitor receives 50% of the net advertising revenue. Each agreement with an Undertaking Exhibitor will operate retrospectively, effective from 1 October 2002.
- 1.7 The Commission has raised concerns under section 50 of the Act in relation to the effect that the acquisition of Val Morgan and MEG by VMH may have on competition in the cinema exhibition industry in Australia.
- 1.8 To address the Commission's competition concerns VMH, Hoyts, Greater Union, Village, ICA, Val Morgan and MEG have provided these Undertakings in relation to the acquisition by VMH of Val Morgan and MEG, and the operation of the cinema advertising business owned by ICA, Val Morgan and MEG.
- 1.9 The Commission agrees that the Undertakings offered under section 87B by the Undertaking Parties are sufficient to allay its concerns in relation to the acquisition by VMH of Val Morgan and MEG, and the operation of the cinema advertising business owned by ICA, Val Morgan and MEG.

2. DEFINITIONS

In these Undertakings, unless the context otherwise requires:

Act means the *Trade Practices Act 1974* (Cth).

Business Day means a day on which the major trading banks are open for business in Sydney, Melbourne and Canberra excluding a Saturday, Sunday or public holiday.

Commission means the Australian Competition and Consumer Commission.

Confidential Provisions means provisions of these Undertakings which are stated to be or marked confidential.

CPI means the Consumer Price Index (All Groups) weighted average of 8 capital cities as published by the Australian Bureau of Statistics.

Determination means a determination made by an independent expert in accordance with the Determination Principles following the notification of a Dispute between VMH, ICA, Val Morgan and/or MEG and an Independent Exhibitor in accordance with sub-clause 3.4.1 of these Undertakings.

Determination Principles means the principles for the determination of a Dispute set out in Schedule 1 to these Undertakings.

Dispute means a failure by VMH, ICA, Val Morgan and/or MEG and an Independent Exhibitor to reach agreement in relation to the terms on which VMH, ICA, Val Morgan and/or MEG will acquire the rights to exhibit cinema advertising and supply cinema advertising services under sub-clause 3.2(c) of these Undertakings.

Divestment Period is 18 months from the date on which these Undertakings commence.

Existing Agreement means an agreement between VMH, ICA, Val Morgan and/or MEG and an Independent Exhibitor in relation to the acquisition of rights to exhibit cinema advertising which was in force as at 13 December 2002.

Exiting Exhibitor has the meaning given in clause 3.1(a).

Force Majeure means any circumstance beyond the reasonable control of an Undertaking Party and, without limiting the generality of the foregoing, shall include:

- (a) any act of God;
- (b) acts or omissions by any governmental authority;
- (c) war, revolution or any other act against public order or authority;
- (d) industrial action or trade disputes of whatever nature;

- (e) the requirements of any law (including fiduciary duties of directors and any stock exchange listing rule);
- (f) any act of a third person other than an Undertaking Party or a Related Company of an Undertaking Party.

Greater Union means The Greater Union Organisation Pty Limited ACN 000 024 439 and Birch Carroll & Coyle Limited ACN 009 659 643.

Hoyts means Hoyts Multi-Plex Cinemas Pty Limited ACN 006 564 585.

ICA means Independent Cinema Advertising Pty Limited ACN 060 535 882.

Independent Exhibitor means a cinema exhibitor in which none of Hoyts, Greater Union nor Village holds an interest (whether by equity, partnership, joint venture or otherwise).

MEG means Media Entertainment Group Limited ACN 007 290 539.

Net Advertising Revenue means:

- (a) in relation to film advertising, the Revenue collected from advertisers minus the percentage commission paid to advertising agencies; and
- (b) in relation to slide advertising, the Revenue collected from advertisers minus the production costs set out in Confidential Schedule 2. The amounts charged for production costs for slide advertising may be increased but such increases may not, measured over a 12 month period, exceed the proportional increase in CPI applicable for that 12 month period.

Related Company has the meaning given to the term “Related Body Corporate” by s 4A of the Act.

Revenue means, for a particular exhibitor, all amounts charged to an advertiser for the screening of advertisements on that exhibitor’s screen.

term of these Undertakings means the period from commencement in accordance with clause 4.1 to cessation in accordance with clause 4.2.

TMS means Television & Media Services Limited ACN 004 160 249.

Undertaking Exhibitors means Hoyts, Greater Union and Village.

Undertaking Parties means each of VMH, Hoyts, Greater Union, Village, ICA, Val Morgan and MEG, and **Undertaking Party** is a reference to one of the Undertaking Parties.

Val Morgan means Val Morgan and Co (Aust) Pty Limited ACN 004 806 857.

VMH means Val Morgan Holdings Pty Limited ACN 102 805 756.

Village means Village Cinemas Australia Pty Limited ACN 006 735 002 and Entertainment Of The Future Pty Limited ACN 066 861 514.

Interpretation:

In these Undertakings, the singular includes the plural and vice versa.

A reference to “**these Undertakings**” is a reference to all the provisions of this document including all Schedules.

3. UNDERTAKINGS

3.1 Exit from VMH

- (a) Before the expiration of the Divestment Period, at least two of the Undertaking Exhibitors (each an **Exiting Exhibitor**) must sell or transfer their interests in VMH such that neither of the Exiting Exhibitors nor any of their Related Companies has an interest in any of:
 - (i) VMH;
 - (ii) ICA;
 - (iii) Val Morgan; or
 - (iv) MEG.
- (b) Each sale or transfer by an Exiting Exhibitor referred to in clause 3.1(a) must be made on an arm’s length basis.
- (c) If the sales or transfers referred to in clause 3.1(a) have not been completed within six months prior to the expiration of the Divestment Period, the Undertaking Exhibitors must proceed to compulsory sale under clause 12.14 of the Shareholders’ Agreement governing VMH as executed and provided to the Commission on or about the date of these Undertakings.

- (d) Once the purchaser(s) of the interests in VMH have been determined, but prior to the sale or transfer referred to in clause 3.1(a) taking place, the Undertaking Exhibitors will notify the Commission of the identity of the purchaser(s).

3.2 Undertaking to Independent Exhibitors

VMH, ICA, Val Morgan and MEG undertake that:

- (a) they will honour all Existing Agreements with Independent Exhibitors including those relating to the acquisition of rights to exhibit cinema advertising and/or the supply of cinema advertising services for the term of those agreements;
- (b) they will allow Independent Exhibitors to terminate their Existing Agreements without penalty by notice in writing given at any time during the first six months from the date that these Undertakings commence, provided that the Independent Exhibitor must continue to screen all advertising sold to advertisers in relation to the Independent Exhibitor's screens prior to the receipt of written notice, and will continue to receive payment in relation to that advertising, according to the minimum terms set out in clause 3.3 below;
- (c) in respect of:
 - (i) existing Independent Exhibitors, for the period following the expiry of Existing Agreements;
 - (ii) new Independent Exhibitors not party to any Existing Agreements, including Independent Exhibitors that have previously terminated Existing Agreements under paragraph (b) above; and
 - (iii) new cinema screens opened by existing Independent Exhibitors that are not covered by any Existing Agreements,

they will acquire from all Independent Exhibitors who wish to supply them the right to exhibit cinema advertising for the types of cinema advertising for which they acquire relevant rights from Undertaking Exhibitors, and will use their reasonable endeavours to supply those Independent Exhibitors with those types of cinema advertising services, either:

- (iv) subject to paragraph (d) below, on terms agreed between them and the Independent Exhibitor; or

- (v) if they are unable to reach agreement with the Independent Exhibitor, on terms determined according to the binding dispute resolution procedure set out in clause 3.4 of these Undertakings; and
- (d) whether or not any agreement has been concluded with an Independent Exhibitor or any dispute resolved, they will acquire the rights and use their reasonable endeavours to supply the services referred to in paragraph (c) above on:
 - (i) the minimum terms set out in clause 3.3 below; and
 - (ii) if more favourable, the terms upon which they acquire the rights to exhibit the relevant types of cinema advertising from, and supply the relevant types of cinema advertising services to, the Undertaking Exhibitors during the relevant period.
- (e) in making any offer to acquire from an Independent Exhibitor the rights and supply to an Independent Exhibitor the services referred to in paragraph (c) above, they will inform the Independent Exhibitor of any terms on which they acquire similar rights from, and supply similar services to, the Undertaking Exhibitors that are more favourable than the minimum terms set out in clause 3.3 below;
- (f) they will continue to schedule film advertising with exhibitors according to the principles applied by Val Morgan, MEG and ICA prior to their acquisition by VMH, and will allocate Net Advertising Revenue among exhibitors with whom film advertising is scheduled in accordance with clause 3.3(a)(i) below; and
- (g) the aggregate amount of Net Advertising Revenue in relation to film advertising received from advertisers for screening of advertisements on Independent Exhibitors' screens during each financial year ending 30 June that elapses during the term of these Undertakings as a proportion of total Net Advertising Revenue in relation to film advertising received by VMH, ICA, Val Morgan and MEG during the same period will be no less than the proportion applying in the financial year ending 30 June 2002. Provided that if any Independent Exhibitors choose to terminate their Existing Agreements in accordance with clause 3.2(b), or choose not to enter into a cinema advertising agreement after expiry of their Existing Agreements, the proportion for the financial year ending 30 June 2002 will be adjusted to take account of the removal of those Independent Exhibitors' screens for so long as those Independent Exhibitors do not have a cinema advertising agreement with VMH, ICA, Val Morgan or MEG.

3.3 Minimum Terms

For the purposes of paragraph 3.2(d) above, the minimum terms to be offered to Independent Exhibitors are the following:

- (a) **Share of Revenues:** each Independent Exhibitor will be entitled to the following proportion of the Net Advertising Revenue received by VMH, ICA, Val Morgan and MEG:
 - (i) in relation to film advertising, 50%, where the total Net Advertising Revenue received in respect of each film campaign will be allocated according to the number of times the advertisement is shown on each cinema screen, subject to the following weightings:
 - A. screens located in greater metropolitan areas of Sydney, Melbourne, Brisbane, Adelaide, Perth or Hobart will be given a weighting of 100%;
 - B. screens located in the regional centres of Geelong, Bendigo, Shepparton, Ballarat, Morewell, Bunbury, Canberra, Wollongong and environs, Newcastle and environs, Dubbo, Orange, Coffs Harbour, Bathurst, Wagga Wagga, Albury, Launceston, Darwin, Cairns, Townsville, the Gold Coast, the Central Coast and the Sunshine Coast will be given a weighting of 75%; and
 - C. all other areas will be given a weighting of 50%; and
 - (ii) in relation to slide advertising:
 - A. 50% until VMH has completed its review of slide advertising operations as set out in clause 3.6; and
 - B. thereafter, if VMH continues to acquire the rights to exhibit slide advertising from the Undertaking Exhibitors and provide slide advertising services to the Undertaking Exhibitors, the same proportion or such other proportion or terms as the Commission has consented to given that such terms remain as favourable as the terms upon which VMH, ICA, Val Morgan and MEG acquires those rights from the Undertaking Exhibitors.
- (b) **Minimum Term:** VMH, ICA, Val Morgan and MEG will not require or request that any Independent Exhibitor enter into any arrangement with a minimum term of more than 12

months, but will consider any request from an Independent Exhibitor for an arrangement with a longer term.

- (c) **Audit and Information:** the following terms apply to all arrangements with Independent Exhibitors, including Existing Agreements:
- (i) If requested by an Independent Exhibitor, VMH must within 60 days after the end of each half-year ended 30 June and 31 December, provide the Independent Exhibitor with a statement in writing identifying the Net Advertising Revenue received in respect of each of slide and film advertising and to which the Independent Exhibitor has a percentage right.
 - (ii) If requested by an Independent Exhibitor within 60 days of the receipt of the statement described in paragraph (i) above, VMH must provide the Independent Exhibitor with a certificate of VMH's current auditor to the effect that it has audited that statement and verifies the accuracy of the amounts received and to which the Independent Exhibitor has a percentage right.
 - (iii) If any such audit certificate reveals that the Independent Exhibitor has been underpaid or overpaid, any such underpayment or overpayment will be settled within 30 days of the date of issue of the audit certificate.
 - (iv) If the audit certificate reveals that the Independent Exhibitor has been underpaid then VMH will pay the costs of the audit. In all other cases, the Independent Exhibitor must pay the costs of the audit.
 - (v) VMH, ICA, Val Morgan and MEG will provide Independent Exhibitors with details of the amounts charged for production costs for slide advertising with the first payment advice provided after these Undertakings commence, and will provide, and agree that the Commission may provide, any Independent Exhibitor who so requests it with a copy of Confidential Schedule 2.

3.4 Dispute Resolution

- 3.4.1 In the event that either VMH, ICA, Val Morgan and/or MEG on the one hand and an Independent Exhibitor on the other fail to reach agreement in relation to the terms on which VMH, ICA, Val Morgan and/or MEG will acquire the right to exhibit cinema advertising from and supply cinema advertising services to the Independent Exhibitor following the expiration of an Existing Agreement, then the Independent Exhibitor may notify VMH, ICA, Val Morgan and/or MEG in writing that it considers that a Dispute in accordance with sub-clause 3.4 of these Undertakings has arisen. Written notification of

a Dispute must be given within 30 Business Days of the expiration of the Existing Agreement, or if there was no Existing Agreement relating to the relevant Independent Exhibitor or cinemas, within 30 Business Days of the initial request for VMH, ICA, Val Morgan and/or MEG to acquire the relevant cinema advertising rights and supply the relevant cinema advertising services.

- 3.4.2 Upon receipt of a written notification of a Dispute, VMH, ICA, Val Morgan and MEG agree to participate in a Determination of the Dispute in accordance with the Determination Principles contained in Schedule 1 to these Undertakings on condition that the party notifying the Dispute also agrees in writing to participate in a Determination of the Dispute in accordance with the Determination Principles.

3.5 Length of Cinema Advertising Contracts with Undertaking Exhibitors

VMH, ICA, Val Morgan and MEG will not enter into any arrangement to acquire the rights to exhibit cinema advertising from, or supply cinema advertising services to, any of the Undertaking Exhibitors that has a term ending more than 12 months after that Undertaking Exhibitor sells or transfers its interest in VMH.

3.6 Slide Advertising Review

- (a) VMH may conduct a review of the profitability of the slide advertising operations of Val Morgan, MEG and ICA. If the review is conducted it will commence within 6 months of the commencement of these Undertakings and VMH will inform the Commission in writing of the outcome of the review within 12 months of the commencement of these Undertakings, stating whether VMH will:
- (i) continue to acquire from Undertaking Exhibitors and Independent Exhibitors the right to supply slide cinema advertising (and use its reasonable endeavours to supply such advertising) in accordance with clause 3.2 on the terms set out in clause 3.3(a)(ii)(A), being a 50% proportion of Net Advertising Revenue; or
 - (ii) seek to vary (including, without limitation, by closing the slide advertising businesses of ICA, Val Morgan and MEG), with the Commission's consent, the terms on which it continues to acquire from Undertaking Exhibitors and Independent Exhibitors the right to supply slide cinema advertising (and use its reasonable endeavours to supply such advertising).
- (b) If VMH seeks to vary the terms on which it continues to acquire from Undertaking Exhibitors and Independent Exhibitors the right to supply slide cinema advertising (and use its reasonable endeavours to supply such advertising), then VMH will inform the

Commission in writing of the new terms on which it is prepared to continue to acquire such rights and supply such advertising and the reasons for the proposed variation. The Commission agrees to consider any such request for a variation under this clause 3.6 promptly and in good faith. VMH acknowledges that the Commission may consult with interested parties in relation to any proposed variation. These Undertakings will be amended to reflect any variation consented to by the Commission.

4. COMMENCEMENT AND DURATION OF UNDERTAKINGS

4.1 Commencement of Undertakings

These Undertakings commence on the date on which the latest of the following events occurs:

- (a) their execution by Hoyts, Greater Union, Village, VMH, ICA, Val Morgan and MEG;
- (b) their acceptance by the Commission; and
- (c) the completion of the acquisition of Val Morgan and MEG by VMH.

4.2 Cessation of Undertakings

These Undertakings cease on the date on which the latest of the following events occurs:

- (a) at least two of the Undertaking Exhibitors have sold or transferred their interests in VMH in accordance with clause 3.1 of these Undertakings; and
- (b) the term of any cinema advertising arrangements entered into with at least two Undertaking Exhibitors before their exit from VMH has expired.

5. PROCUREMENT UNDERTAKING

- 5.1 Where an obligation under these Undertakings would require ICA, Val Morgan, MEG, VMH or a Related Company of any of the preceding entities to perform or refrain from any action, each of Hoyts, Greater Union and Village will procure the conduct of the relevant entity or Related Company.

6. ANCILLARY MATTERS

6.1 Variation

- (a) If an Undertaking Party is unable to comply with its obligations in these Undertakings, or believes it is necessary to seek some modification due to changed circumstances, then the Undertaking Parties and the Commission agree that they will review these Undertakings and negotiate in good faith the variation or revocation of all or any of the Undertakings in light of such circumstances having regard to the need to maintain competition in the cinema exhibition and advertising industries in Australia.
- (b) On or prior to 31 March 2003 VMH and the Commission will consult as to the classification of screens between the categories in clauses 3.3(a)(i) and if VMH and the Commission decide it is appropriate to add any locations to the categories in clauses 3.3(a)(i)(A) or (B), these Undertakings will be amended accordingly. At the conclusion of each 6 month period after 31 March 2003 during the term of the Undertakings, VMH and the Commission will consult as to the addition of locations to the categories in clauses 3.3(a)(i)(A) or (B) if any request has been made to VMH or the Commission by an Independent Exhibitor for a different classification of their screens during that 6 month period. If following consultation VMH and the Commission decide it is appropriate to make any variation, these Undertakings will be varied accordingly.
- (c) The Undertaking Parties agree that the Commission will consult with Independent Exhibitors regarding any proposed variation or revocation, and will provide the Commission with any information requested by the Commission in order to ensure such consultation is effective.

6.2 Information

- (a) In the event of notification of a Dispute in accordance with clause 3.4.1, VMH, ICA, Val Morgan and/or MEG will, as soon as practical, notify the Commission in writing of the fact of the Dispute, the names of the parties to the Dispute and the nature of the Dispute and provide the Commission with a copy of the written notification of a Dispute. Upon the making of a Determination under the Determination Principles or any agreed resolution of the Dispute, VMH, ICA, Val Morgan and/or MEG will, as soon as practical, provide the Commission with a copy of the Determination or written notice of the agreed resolution. The Commission has the right to contact the party notifying the dispute, or any other person, for further information without notifying the Undertaking Parties.

- (b) VMH will provide the Commission with details of the terms on which it acquires rights to exhibit cinema advertising from and supply cinema advertising services to the Undertaking Exhibitors within five Business Days of:
 - (i) the commencement of these Undertakings; and
 - (ii) any changes to these terms.
- (c) By 31 March 2003, VMH will provide the Commission with:
 - (i) a statement setting out the aggregate amount of Net Advertising Revenue in relation to film advertising received from advertisers for screening of advertisements on Independent Exhibitors' screens during the financial year to 30 June 2002 expressed as a proportion of the total Net Advertising Revenue in relation to film advertising received by VMH, ICA, Val Morgan and MEG during the financial year to 30 June 2002; and
 - (ii) a certificate of VMH's current auditor to the effect that it has audited the statement referred to in paragraph (i) above and verifies the accuracy of the amounts set out in that statement.
- (d) On the occurrence of any event which under clause 4.2 of these Undertakings would result in the cessation of these Undertakings, the Undertaking Parties agree to notify the Commission as soon as practicable after the event comes to the notice of the Undertaking Parties and to provide the Commission with such additional information about the event which the Undertaking Parties are able to supply and which is reasonably necessary for the Commission to satisfy itself that such an event has taken place.
- (e) The Commission may at any time during the term of these Undertakings request information from the Undertaking Parties that the Commission reasonably requires for the purposes of monitoring these Undertakings. The Undertaking Parties will comply with any such request within 10 Business Days of receipt or such other period of time as may be agreed to by the Commission.

6.3 Force Majeure

- (a) If one or more of the Undertaking Parties is prevented from performing any obligation under these Undertakings due to Force Majeure and if the relevant Undertaking Parties have used all reasonable diligence and employed all reasonable means to remedy or abate the Force Majeure as expeditiously as possible, then the relevant Undertaking Parties will not be liable for the failure to perform any such obligation during the presence of, and to the extent of, the Force Majeure.
- (b) If one or more Undertaking Parties is by reason of Force Majeure, in accordance with paragraph (a) above, unable to perform any obligation under these Undertakings, then the relevant Undertaking Parties will notify the Commission in writing within three Business Days specifying:
 - (i) the cause and extent of non-performance;
 - (ii) the date of commencement of Force Majeure;
 - (iii) the means proposed and adopted to remedy or abate the Force Majeure.

6.4 Acknowledgments

- (a) The Undertaking Parties acknowledge that, with the exception of Confidential Schedule 2, the Commission will make these undertakings available for public inspection and that the Commission may, from time to time, publicly refer to these undertakings.
- (b) The Undertaking Parties have provided these Undertakings in the acknowledgment by the Commission that, subject to paragraph (c) below, it will keep Confidential Schedule 2 of these Undertakings confidential and will not disclose Confidential Schedule 2 to any party other than an Independent Exhibitor without the prior consent of each of the Undertaking Parties.
- (c) The Undertaking Parties acknowledge that, if the Commission is required by law to provide any person with:
 - (i) a copy of these Undertakings in their entirety including Confidential Provisions;
or
 - (ii) a copy of any part of these Undertakings including Confidential Provisions,

it may do so without the consent of the Undertaking Parties save that the Commission must notify the Undertaking Parties of the details of any such requirement as soon as practicable after the Commission becomes aware of any such requirement and a minimum of three Business Days prior to providing any copy of these Undertakings or part of these Undertakings including Confidential Provisions.

- (d) These Undertakings, including all Confidential Provisions, will become publicly available in their entirety when these Undertakings cease to be of effect in accordance with clause 4.2.

6.5 Compliance Reporting

- (a) Within 45 days of each half-year ending 30 June and 31 December, the Undertaking Parties will provide the Commission with financial statements for that period prepared in accordance with generally accepted Australian Accounting Standards consistently applied.
- (b) The financial statements referred to in paragraph (a) above will separately state:
 - (i) the amount of revenue received by VMH, ICA, MEG and Val Morgan for the report period, split between film and slide revenue;
 - (ii) the amount of revenue paid to each of Hoyts, Greater Union, Village and their Related Companies by VMH, ICA, MEG and Val Morgan in each month of the report period, split between film and slide revenue;
 - (iii) the aggregate amount of revenue paid to Independent Exhibitors by VMH, ICA, MEG and Val Morgan in each month of the report period, split between film and slide revenue;
 - (iv) the aggregate amount of Net Advertising Revenue in relation to film advertising received from advertisers for screening of advertisements on Independent Exhibitors' screens expressed as a proportion of the total Net Advertising Revenue in relation to film advertising received by VMH, ICA, Val Morgan and MEG during the report period;
 - (v) details of any agreements negotiated between the Undertaking Parties and Independent Exhibitors that differ from the minimum terms and conditions provided in clause 3.3 of these Undertakings; and

- (vi) the basis and results for the determination of Net Advertising Revenue and its allocation to both the Undertaking Exhibitors and Independent Exhibitors in accordance with this Undertaking.

6.6 VMH Shareholdings

The Undertaking Parties warrant that as at the date of these Undertakings each of Hoyts Multi-Plex Cinemas Pty Limited, The Greater Union Organisation Pty Limited and Village Cinemas Australia Pty Limited:

- (a) owns one third of the issued share capital in VMH; and
- (b) is a party to the Shareholders' Agreement governing VMH.

7. NO DEROGATION

The Undertaking Parties acknowledge that these Undertakings in no way derogate from the rights and remedies available to any other person arising from the proposed acquisition and conduct to which these Undertakings relate.

SIGNED by KIRK SENIOR

as authorised signatory for **VAL MORGAN
HOLDINGS PTY LIMITED** in the presence of

CASSIE O'ROURKE

Cassie O'Rourke

Signature of witness

K Senior

Signature of Kirk Senior
Director

DATED: 13 DECEMBER 2002

SIGNED by PAUL JOHNSON

as authorised signatory for **HOYTS MULTI-
PLEX CINEMAS PTY LIMITED** in the
presence of CASSIE O'ROURKE

Cassie O'Rourke

Signature of witness

Paul Johnson
Signature of Paul Johnson
Director

DATED: 12 DECEMBER 2002

SIGNED by DAVID SEARGEANT

as authorised signatory for **THE GREATER
UNION ORGANISATION PTY LIMITED** in the
presence of CASSIE O'ROURKE

Cassie O'Rourke

Signature of witness

David Seargeant
Signature of David Seargeant
Director

SIGNED by DAVID SEARGEANT

as authorised signatory for **BIRCH CARROLL
& COYLE LIMITED** in the presence of
CASSIE O'ROURKE

Cassie O'Rourke

Signature of witness

David Seargeant
Signature of David Seargeant
Director

DATED: 12 DECEMBER 2002

COR

SIGNED by KIRK SENIOR ^{as authorised signatory}
~~as authorised signatory~~ ^{under power of} for ~~VILLAGE CINEMAS~~ ^{attorney}
~~ROADSHOW LIMITED~~ ^{AUSTRALIA PTY LIMITED} in the presence of
CASSIE O'ROURKE

Cassie O'Rourke

Signature of witness

K. Senior
Signature of Kirk Senior
~~Chief Financial Officer~~
Chief Financial Officer COR

SIGNED by KIRK SENIOR ^{under power of}
~~as authorised signatory~~ ^{attorney} for ENTERTAINMENT
OF THE FUTURE PTY LIMITED in the
presence of CASSIE O'ROURKE

Cassie O'Rourke

Signature of witness

K. Senior
Signature of Kirk Senior
~~Chief Financial Officer~~

DATED: 13 DECEMBER 2002

SIGNED by TERRY SAVAGE
as authorised signatory for VAL MORGAN
AND CO (AUST) PTY LIMITED in the presence
of CASSIE O'ROURKE

Cassie O'Rourke

Signature of witness

Terry Savage
Signature of Terry Savage
Director

SIGNED by TERRY SAVAGE
as authorised signatory for MEDIA
ENTERTAINMENT GROUP LIMITED in the
presence of CASSIE O'ROURKE

Cassie O'Rourke

Signature of witness

Terry Savage
Signature of Terry Savage
Director

SIGNED by TERRY SAVAGE

as authorised signatory for **INDEPENDENT**

CINEMA ADVERTISING PTY LIMITED in the

presence of CASSIE O'ROURKE

Cassie O'Rourke

Signature of witness

Terry Savage

Signature of Terry Savage
Director

DATED: 12 DECEMBER 2002

ACCEPTED BY THE AUSTRALIAN

COMPETITION AND CONSUMER

COMMISSION:

Allan Fels

Signature of Professor Allan Fels
Chairman

DATED: 13 DECEMBER 2002

SCHEDULE 1

Determination Principles

1. Within 7 Business Days of the notification of a Dispute under clause 3.4 of these Undertakings, VMH, ICA, Val Morgan and/or MEG and the Independent Exhibitor will appoint a properly qualified independent expert by agreement. Failing agreement on the expert, the expert will be a person selected by the President of the Institute of Chartered Accountants in Australia and agreed to by the Commission.
2. Within 20 Business Days of the notification of the Dispute, the particulars of the Dispute shall be submitted in writing to the expert by the party who notified the Dispute, together with all matters that that party considers relevant to the cause and resolution of the Dispute. Material submitted to the expert shall be copied to the other party to the Dispute. The other party to the Dispute shall be allowed a further 10 Business Days from receipt of the notifying party's material to put its own material to the expert in relation to the Dispute.
3. The expert may request information, assistance or cooperation reasonably relevant to the Dispute from any party to the Dispute, and all parties must comply with any such request. Independent Exhibitors party to a dispute will have access to all of the information to which the expert has access in relation to the dispute.
4. The expert may hear a dispute brought on behalf of a class of Independent Exhibitors, and may combine any similar disputes into a single Determination relevant to a class of Independent Exhibitors.
5. The expert shall have power to determine all matters relevant to the Dispute, including the terms and conditions on which VMH, ICA, Val Morgan and/or MEG will acquire the right to exhibit cinema advertising from and supply cinema advertising services to the Independent Exhibitor. The expert must determine the Dispute in accordance with the terms set out in sub-clause 3.2(c), (d) and (f) of these Undertakings.
6. The expert may make a Determination which operates retrospectively from no earlier than the later of:
 - (a) the commencement of these Undertakings; and

- (b) the expiry of any Existing Agreement with an Independent Exhibitor or, if there is no Existing Agreement with the Independent Exhibitor, the date on which VMH, ICA, Val Morgan and/or MEG first acquired the right to exhibit cinema advertising from and supply cinema advertising services to the Independent Exhibitor,

and in the event that the terms and conditions on which the right to exhibit cinema advertising, or cinema advertising services, have been supplied and acquired differ from the terms and conditions in the retrospective Determination, then the determination may provide for the difference to be accounted for by the party who benefited from the difference to the other party.

7. For the avoidance of any doubt, nothing in these Determination Principles allows an expert to vary the terms of an Existing Agreement or make a Determination which provides for a party to account for any difference between the terms and conditions in a retrospective Determination and the terms and conditions in an Existing Agreement.
8. The expert must act as an expert and not as an arbitrator and the provisions of the Commercial Arbitration Act shall have no application to the expert's Determination.
9. The expert may apportion the costs of the expert between the parties to the Dispute in his or her discretion. If the expert makes no determination as to costs, VMH, ICA, Val Morgan and/or MEG will bear one half of the costs of the expert, the Independent Exhibitor will bear the other half of those costs. In any case, the parties will bear their own costs.
10. Unless otherwise agreed by the parties to the Dispute, the expert must make a Determination in relation to the Dispute within 40 Business Days of the notification of the Dispute.
11. VMH, ICA, Val Morgan and/or MEG and the Independent Exhibitor undertake to abide by the Determination of the expert, and to acquire and supply, respectively, the right to exhibit cinema advertising, and to supply and acquire, respectively, cinema advertising services, in accordance with the terms of the determination.
12. The Determination is to be confidential to the parties to the Dispute, and all information and other material obtained by a party to a Dispute in the course of the resolution of the Dispute through a Determination shall also be confidential, and must not be used for any purpose other than the resolution of the Dispute through a Determination.

13. A party to a Dispute notified under clause 3.4 of these Undertakings must not commence Court proceedings relating to the Dispute, except in relation to compliance with, or the enforcement of, a Determination made by the expert.

CONFIDENTIAL SCHEDULE 2

The contents of this schedule are Confidential and will remain so until the expiry of the Undertakings.

Expiry of the Undertakings will occur when 2 Undertaking Exhibitors divest their stake in the Cinema Advertising Joint Venture AND the cinema advertising contracts existing between Val Morgan and the divesting exhibitors expire.