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BY EMAIL

Dear Simon

"The Hobbit" Movie - Commerce Act Advice

1. You have asked us to summarise our advice on whether the Commerce Act 1986 prevents the producers of "The Hobbit" movie from negotiating with the Media Entertainment & Arts Alliance union (the **MEAA**) on conditions of engagement of New Zealand actors on that production.
2. If the actors were to be hired as **employees**, no Commerce Act issues would arise. This is because section 44(1)(f) of the Commerce Act excludes its application "*to the entering into of a contract, arrangement or arriving at an understanding in so far as it contains a provision that relates to the remuneration, conditions of employment, hours of work, or working conditions of employees*".
3. If the actors were to be hired as **independent contractors**, section 30 of the Commerce Act does prohibit competitors from agreeing on the price at which they will provide services in a market. Issues may arise under section 30 with union negotiated conditions of engagement for independent contractor actors which include provisions relating to payment for acting services, to the extent the actors are in competition with one another. However, there are two exceptions that may apply:
 - 3.1 The "recommendations as to price" exception in section 32, which allows associations of more than 50 people to make recommendations as to prices for services. On the basis that the MEAA has more than 50 members, the MEAA could negotiate with the producers on the recommended price for acting services provided by independent contractor actors on "The Hobbit", and then the MEAA could recommend that its members who are independent contractors provide their services for that price. However, the recommendation cannot be mandatory in any way. Actors would have to remain free to provide their services for higher or lower prices than those recommended, and would need to enter into individual contracts with the producers setting out their conditions of engagement.
 - 3.2 The joint venture exception in section 31, which excludes from section 30 agreements that relate to the joint supply of services by the parties to a joint venture in pursuance of that joint venture. This would require the establishment of a joint venture falling within the requirements of section 31 to which the independent contractor actors would be party.

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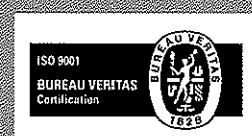
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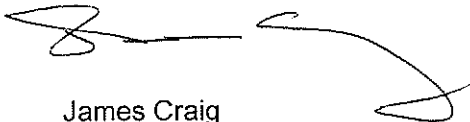
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4. So, in summary, the Commerce Act does not absolutely prevent the producers from negotiating with the MEAA on conditions of engagement of New Zealand actors on "The Hobbit". No breach of the Commerce Act would arise if the actors are engaged as employees. If they are engaged as independent contractors, the position is more complex under the Commerce Act, but there are still options going forward.

Yours sincerely



James Craig
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