28 June 2016

The Commerce Commission
PO Box 2351
WELLINGTON 6140

Dear Sir/Madam,

<u>Submission on Proposed Merger of Fairfax & NZME (APN) Businesses in New Zealand</u>

It is requested that all of this submission be kept confidential.

Position statement: I strongly oppose this merger.

Interests statement: I do not own or have or represent a financial interest in any media, broadcasting, advertising, entertainment, sports or news service or business.

I want to make the following points in opposing the merger.

1. Print is still a significant sized business. Despite the growth of more and more digital channels, print retains some unique and special advantages for advertisers and consumers. These advertisers and consumers have a right to freedom of choice and some competition between print businesses. The proposed merger will effectively remove competition. This will allow the one remaining company to over-charge or impose onerous conditions or contracts upon print advertisers.

2. Agreeing this merger and what is driving it, is not a sufficient reason to allow a duopoly to become a monopoly.

3. In many countries, the existing duopoly would never have been allowed on the grounds of restriction of competition. Therefore Fairfax and NZME/APN already have and enjoy a privileged market position. This duopoly will already be very strongly restricting new entrants to the business, a situation the Commerce Commission should never have allowed in the first place.

4. Claims by Fairfax and NZME/APN that they already face huge and growing competition from the likes of large digital companies like Google and Facebook are misleading and must be treated with scepticism and caution. The big difference is that Fairfax and NZME are original content providers, while Google and Facebook are not. This was admitted by a senior Fairfax executive when she said the following.

   Boucher commented that in New Zealand "the digital world is now defined by Google for search, Facebook for social, and *Stuff* for content", adding that "usage is the ultimate engagement metric" (The Newspaper Works, 2015). Sinead Boucher is Fairfax Media's executive editor.

   Fairfax and NZME are still operating a large print business each, while Facebook and Google are not and never have been. This is summarised in the table below.

	Fairfax	NZME	Google	Facebook	YouTube	Other internet sites
Print business?	yes	yes	No	no	no	no
Original content provider?	yes	yes	No	no	no	Usually not
Digital site?	yes	yes	Yes	yes	yes	yes
Content host? (content provided by others)	partly	partly	Yes	yes	yes	yes

I will argue that companies that are original content providers will always have a viable business, even though different means/channels of reaching audiences may be invented or come in or out of favour. In other words, content will always triumph over the means of reach. Evidence for this is as follows:

a) The Hollywood film making business has existed since at least 1920. It still exists today, despite massive changes in the channels or means of audience reach, because content always triumphs over channel. In fact, the invention of new channels (TV, cable, satellite, VCR, DVD, on-line and on-demand) has only served to enhance and hugely increase the value of original content. I cannot prove that this has probably also happened with the news content produced by both NZME and Fairfax, but I suspect it has happened.

b) Rupert Murdoch has sold his interest in SkyTV. Yet SkyTV was hugely profitable for him over many years. Why did he sell? Loss of monopoly. One suspects it is because Sky is only a distribution channel of original content made by others. It faces a sudden surge of very increased competition from new channels (some free or lower cost such as online sources) that it can't control. In this new situation, the owners of original content will become indifferent to the channel of distribution, they will license their content to whoever pays the most or provides the largest audience.

c) Content hosts (which is what Google search, Facebook, YouTube and most others are) are actually quite vulnerable businesses. Because they only host content, they don't own it or control it. It will only take some new digital model to appear (such as allowing the content owners to receive full payment or more payment for their content), then the content will shift away, leading to a possible collapse of the business model that they use now.

5. The parties of the proposed merger may try to present a picture that their businesses face a future of dramatic shrinkage to become very small businesses (or even non-existent), but this must be treated with scepticism and caution. It is noted that Murdoch (News Corporation) interests now own 15% of APN (a recent purchase). Murdoch is a very highly informed businessman and will not be buying something that does not have a future.

6. The Commerce Commission must also consider the multiple geographic markets involved in this proposed merger. Although it is convenient to consider NZ as just one single market, each city or region in NZ is another market. Therefore there are up to 26 markets if one

counts each NZ city. Or 12 to 18 regions when looked at from that point of view. The merger of the two businesses will again severely reduce, if not eliminate competition, at the city or regional level.

7. There is a market for news, specifically news in print accompanied by a matching website. The two parties of the proposed merger are probably the largest employers of news journalists in NZ. The public, businesses, politicians, non-government organisations (NGO), the civil service, and others, are all buyers of news. They have a right to choice and a market that is vibrant and competitive. The existing situation, where the merger parties have virtually a duopoly in the news market of print (matched with websites) would not be tolerated in many other western democracies on the grounds of extremely reduced competition and very great difficulties created for new entrants to the market.

8. Although the electronic media have been operating in the news market since the 1920's (radio) and 1960's (television) their coverage and treatment of news has evolved to suit their market and the medium itself. The result is often a focus on the (short) news of the hour or of the moment, often only a few sentences and in the case of television, whatever is visually engaging or has been visually recorded, even if its overall newsworthiness is actually quite low. For example, news that a truck that has overturned gets included in the TV news because somebody recorded it from their phone-camera. In contrast, the print media (with matching websites) operated by the proposed merger parties provide a much greater focus on complete stories, news in-depth, current affairs, investigative journalism and interpretive stories. So I call the news businesses of the merger parties 'long-form news'.

9. The long-form news plays a very important part in the operation of a healthy democracy. It is important to note that the press is the only industry given special protection and mention in the United States Constitution. Schools in the USA teach that their democracy rests on 4 pillars: the Congress, the Supreme Court, the presidency and the press. Western democracies owe some of their progress and prosperity to the principle of freedom of the press. The press helps keep governments honest and politicians to account.

10. If the proposed merger is allowed, this will concentrate power over the long-form news in the hands of one company. This potentially could mean just one owner. Where there are no rivals or alternatives in long-form news, abuse of the market position is likely to result. Advertisers (some of whom may be reliant on print and cannot use other non-print forms due to the nature of their business) are likely to encounter abuse of market position sooner or later.

11. If the merger is allowed, one company will be very dominant in long-form news. This will allow abuse of that position by an owner or by politicians seeking shelter or protection from unflattering news coverage.

    The owner of the proposed merger may also have their own political agenda and use the near-monopoly to advance that agenda and discredit rival or alternative parties, politicians or viewpoints. Therefore, this proposed merger will be damaging to New Zealand's democratic process. Commentators elsewhere have also raised this very important issue.

12. The long-form news is also a very important part of the legal and justice system in a healthy democracy. The electronic media (or those media primarily serving sport or entertainment markets) generally do not or cannot meet the public and/or businesses needs for long-form news coverage of multi-week court hearings, for example. Or the complete coverage of a complex story (eg Parliamentary hearings) that may have important legal or social consequences for businesses or the public.

13. The merger parties may claim that large digital companies overseas (such as Google, Facebook, etc) are largely to blame for the declining advertising revenue at their print with-website business. I claim that a significant part of the blame rests with these two companies themselves. They have run down the quality of their content in publications to the point that many readers don't have the respect for newspapers they once had. Evidence in support of this is that despite the digital revolution, a large number of magazines have maintained their circulations and been largely untouched by the revolution. They have done this because they have maintained the quality of their content.

14. It is suggested that the management of the proposed merger companies are still catching up with the digital revolution. Their busiest websites get a huge number of visitors (daily, weekly) but I suggest they have still to master the best technique of matching advertisers to this large number of users. I believe they eventually will master the technique and at that point their advertising revenue will rise and their business model will stabilise, if not make some kind of recovery. So it is best that the Commerce Commission does not allow the merger.

Therefore, for the multiple reasons above, especially for the fact that it will severely limit competition, the Commerce Commission must prohibit this merger.

Yours sincerely,