

FAIRFAX / NZME

RESPONSE TO SUBMISSIONS

29 JULY 2016

INTRODUCTION

1. NZME Limited¹ ("**NZME**") and Fairfax NZ Limited ("**Fairfax**") have had the opportunity to review the public submissions to the Commerce Commission ("**Commission**") in response to the Commission's Statement of Preliminary Issues dated 14 June 2016 ("**SOPI**") in relation to the Fairfax / NZME application (the "**Application**") seeking approval to merge the New Zealand operations of NZME and Fairfax (the "**Transaction**").
2. Fairfax and NZME's responses and observations in relation to the submissions and the key points contained in them are set out below. Appendix Two also contains an overview of the recent *Reuters Institute Digital News Report 2016* and *The Pew Research Center State of the News Media 2016* report that reinforce the acceleration of the trends identified in the Application.

SUMMARY

3. The Commission received 49 submissions in total. Once duplicated submissions from a single person / economic entity are removed, there are fewer than 40.² This is a low number of submissions on a high-profile transaction involving media.³
4. All the submissions were from competitors, journalists, or academics / public policy lobby groups. That is unusual when measured, for example, against the range of submissions received by the Commission on its last high profile authorisation.⁴ It is however not surprising. In traditional competition analysis, if competitors are opposing, it is often an indicator that the merger will be pro-competitive,⁵ as the merged entity is potentially expected to provide a better offering to customers (in this case, consumers and advertisers).
5. Many of the objections are premised on allegations of "monopoly" without any analysis of competition to support that assertion (as it is not borne out on any analysis of the number or nature of competitors). Many take a subjective, and arguably paternalistic (as opposed to consumer driven) view of what is a "valuable" news / information service. The objectors complain the merged entity will produce less of what they want to see news / information services delivering. The Commission, which is interested in evidence-based analysis and decision-making, should treat those views with considerable scepticism.

¹ Wilson & Horton Limited was renamed NZME Limited following its demerger from APN.

² 14 of the submissions need to be de-duplicated; Deb Wright from North South MultiMedia signed off on submissions for six publications; the *Ashburton Guardian* made two submissions, submissions were made on behalf of Metros Publishing Group and the *Metropol* magazine that Metros Publishing Group publishes; D R Neben has made an individual submission and also one on behalf of Times House Publishing; and the Waiuku Publishing Limited made submissions on behalf of *The Post Newspaper Franklin* and the *Post Newspaper*.

³ Compare this to approximately 80 initial individual submissions made in respect of the Air NZ/Qantas authorisation application ("**Air NZ**"). (See <http://www.comcom.govt.nz/business-competition/anti-competitive-practices/anti-competitive-practices-authorisations-register/airnewzealandqantas/>). Compare also to approximately 114 responses to the Commission's request for feedback on the swaps investigation (Commerce Commission "Consumer Issues 2015" at 33. Accessed here: <http://www.comcom.govt.nz/dmsdocument/13722>.)

⁴ *Air NZ*, see footnote 3 above. There submissions were made by a range of parties including lay customers; competing airlines; airports; government representatives such as the Minister of Tourism; the Dunedin City Council; and others.

⁵ See paragraph 13.

6. In particular, the fears that there will be a reduction in "valuable" journalism raise no independent concern in the clearance framework if existing competition in the provision of news / information from other digital sources, broadcasters, and print publishers will continue to drive the parties to deliver a competitive product in terms of price and quality post-Transaction. If the authorisation framework applies, allegations of reduction in "valuable" journalism should be robustly tested against the facts, and if they cannot be properly evidenced then they should be given little weight as unquantified, subjective "detriments" that will be outweighed by robust quantified benefits.
7. The submissions seek to make this a hard case; not due to the competitive effects analysis, which is straight-forward, but because of the myriad of different perceptions in society about the role of the media. In that context the Commission should remain focussed on the statutory competition law framework, and leave the protection of what is "valuable" news / information for the market to resolve through the incentives on the parties, operating in a two-sided market, to produce content that is appealing to consumers given that is essential to their advertising funded business model. If there are broader public policy issues outside the competition law framework, those are best addressed through other policy tools, eg foreign ownership issues under the Overseas Investment Act, and "public good" broadcasting via state-owned media and public funding of the media more generally.
8. On the traditional competitive effects analysis, the submissions made no significant points to undermine the key premises of the Application, namely:
 - (a) A number of broadcasters compete with print media in the production of national news / information, including through its dissemination online via websites and mobile apps that are very similar in look and feel to the parties' (for example, a number of submissions characterise the merger as a "5 to 4" in national news / information, given the strong presence of TVNZ, RNZ, and Mediaworks). The parties' product offering will continue to be judged by reference to the quality and content of those offerings as well as the multitude of other publishers online and in print in New Zealand;
 - (b) There are low barriers to entry and expansion in online and local print publishing; and
 - (c) Advertisers will not be negatively affected by either price increases⁶ (they will simply switch more spend out of traditional print or to other online alternatives if prices increase) or a reduction in the range or quality of offering as a result of the Transaction (again, they would simply switch to other alternatives). The lack of any submission by any advertiser reinforces this point.
9. In conclusion, in light of the lack of submissions by suppliers or customers - on either side of the two-sided market - and NERA's analysis on the updated industry figures, which showed that even the hypothetical modelling does not show a price increase over 5% in relation to any area of overlap, the Commission should find that a clearance is appropriate in this case. There is no basis to believe a substantial lessening of competition is likely to arise in any relevant market. And even if the Commission were to proceed to consider an authorisation, the benefits clearly outweigh the (limited, if any) detriments.

OVERVIEW OF SUBMISSIONS

10. The Commission has received a range of submissions on the Transaction, and as set out above, many of those submissions relate to issues that fall outside the scope of the

⁶ Only Star Media and Horton Media articulated an argument in this respect. A brief response to the Star Media submission is at Appendix Three and the response to Horton Media is at section (J) below.

competition framework of the Commerce Act 1986 ("**Commerce Act**"). These issues are not relevant to the substantial lessening of competition analysis and are, at best, only tangentially relevant to the authorisation process (as unquantified subjective "detriments"). These include:

- (a) "Fourth Estate" issues;
- (b) A subjective assessment of what is "valuable" news / information content;
- (c) Plurality of media ownership;
- (d) Foreign ownership of media; and
- (e) Reduction in employment of journalists by the merged entity.

11. There are strong commercial reasons why the merged entity would be incentivised to maintain the quality and quantity of its news / information content (as outlined in the Application⁷ and in this response). It is important that the Commission remain focussed on the issues that fall within the scope of the Commerce Act framework and not on the tangential arguments referred to above. For example:

- (a) "Fourth Estate", subjective quality judgments, and plurality of media ownership are all assessments that hinge on public policy preference (which is not something that is appropriately addressed through a competition / economic quantification process). To the extent that the Government has a policy preference for certain types of conduct over others, or for a certain number of media platforms, it can, and does, deal with those through existing public policy instruments such as RNZ, Māori TV, NZ on Air, Parliament TV, Te Māngai Pāho (including Māori Radio), National Pacific Radio Trust, TVNZ etc;
- (b) Foreign ownership of New Zealand business is dealt with under the separate foreign ownership regime under the Overseas Investment Act 2005;⁸ and
- (c) To the extent that the Transaction results in any reduction in the employment of journalists (with any such reductions forming only a small proportion of the total estimated synergies - see paragraph 38 below), any such reductions are a cost-saving efficiency and, therefore, either pro-competitive or a public benefit under the Commerce Act framework.

12. Accordingly, we deal in Part 1 of this response with the small number of competition points arising from the submissions. In Part 2, we address some of the "soft" points, that are not strictly relevant to the competitive effects analysis, but may provide submitters with comfort on points they have raised in their submissions which appear to be of concern to them in the broader market context.

⁷ See 14.4 to 14.9, 14.27, 14.32, and 14.43 of the Application.

⁸ Several submissions referred to the possibility of the merged entity coming under undesirable foreign ownership. That possibility is not an issue that the Commission needs to consider in the context of this process. New Zealand has a separate foreign ownership regime under the Overseas Investment Act 2005. Given the revenue of the merged entity (which would fall within the "significant business asset" test), if an overseas person sought to acquire more than 25% of the merged entity an application would need to be made to the Overseas Investment Office ("OIO") for the OIO to consider the character, business acumen, and financial commitment of that person, before that person could acquire the business.

PART 1: COMPETITIVE EFFECTS ANALYSIS**(A) No submissions from Advertisers**

13. There were no submissions in opposition to the Transaction from advertising customers, who are the primary source of revenue for Fairfax and NZME's operations (being []% and []% of Fairfax's and NZME's revenue respectively). The majority of submissions were from competitors (with some competitors submitting multiple times), or from journalists / journalist groups. Those are not groupings that represent "consumers" when considering the objective of the Commerce Act - which is the "long-term benefit of consumers". As has been noted in the US: "competitor complaints about a proposed transaction may indicate to the agencies that the merger is pro-competitive".⁹
14. Given the highly competitive New Zealand advertising market, it is not surprising that there were no submissions in opposition from advertisers. Advertisers are aware of the range of advertising options open to them, which they can and do switch between, for example print, digital, TV, radio, billboard, cinema, etc, and that the providers of these various advertising media options (e.g. Google, Facebook, TVNZ, MediaWorks, Trade Me, Allied Press, Bauer, APN Outdoor,¹⁰ oOh! Media, Val Morgan, etc) compete vigorously with each other for advertising expenditure. In the context of those numerous different advertising channels, media advertising buyers in New Zealand have already commented on the benefits to advertising customers from media consolidation, for example:¹¹

Given how quickly the New Zealand media environment is evolving, I strongly believe (and have done so for some time) that the recent consolidation of certain media groups has a great deal to offer to both brands and agencies.

...

The consolidation of media provides an opportunity for collaboration across multiple channels to reach consumers. Highlighting the increased scope of integrated partnership solutions, Mediaworks demonstrated its multi-channel capabilities with shows such as The Block and X Factor NZ to provide advertisers with an integrated media group.

Consolidation is also affecting how assets are deployed within an organisation group. For example, following APN's acquisition of The Radio Network (TRN), the organisation invested in a new multimedia studio to improve its delivery of content across its various channels.

At the same time, it also re-structured the print and digital sales team to provide an integrated approach across all relevant platforms.

I believe we are likely to see more of this type of activity throughout the industry as organisations work harder to promote their channel offerings to the market.

15. The significant ongoing competitive constraint on the merged entity is reflected in the quantitative analysis conducted by NERA, which demonstrates that, even if the relevant advertising market is restricted to just print and digital advertising options, existing competition will be sufficient to constrain the merged entity so that no substantial lessening of competition will occur and, therefore, that the Transaction can, and should, be cleared.

⁹ Ilene Gotts (ed). "The Merger Review Process. A Step-by-Step Guide to Federal Merger Review" (2nd Ed). (2001) at 204.

¹⁰ APN Outdoor is not part of NZME.

¹¹ Scott Keddie "The good news on media consolidation" (19 September 2014) Communication Agencies Association New Zealand. Accessed here: <http://caanz.co.nz/industry-voice/the-good-news-on-media-consolidation/>.

(B) No concerns in respect of New Zealand news / information

16. A number of the submissions characterised the Transaction as being a "5 to 4" transaction in respect of "significant rivals with comparable daily news audience reach and scope"¹² in the provision of New Zealand news / information, with the other significant national rivals being:
- (a) TVNZ;
 - (b) MediaWorks' Newshub; and
 - (c) RNZ.
17. Even if one were to exclude the range of other New Zealand print and digital news / information competitors referred to in the Application (such as Allied Press, NBR, Bauer's *The Listener*, etc), the vigorous competition from TVNZ, Newshub, and RNZ will continue to place significant competitive constraint on the merged entity in the provision of New Zealand news / information and the battle for audience attention.
18. As noted in the Application, media convergence has led to direct head-to-head competition between Fairfax / NZME and TVNZ, Newshub, and RNZ. While those publishers / broadcasters may have traditionally been focussed on different media platforms to Fairfax and NZME, now that each has made the decision to transition into multimedia news / information businesses with a focus on delivering online news / information platforms, those entities are significant and direct competitors to Fairfax and NZME. The fact that content is inevitably digitised (be that digital video, audio, pictures, or text) means that these competitors can deploy their content across their various media channels with ease, including online websites and mobile apps. For example:
- (a) TVNZ has invested heavily in its One News Now online news / information service^{13,14}.

"ONN is a direct response to how people are consuming media, utilising TVNZ's considerable resources and credibility to deliver up-to-the-minute news as it breaks, wherever and whenever Kiwis want it... We're clear leaders on air, and want to see this translate across into digital."
 - (b) MediaWorks has combined its digital / TV / radio "Newshub" newsroom to be a direct competitor to the digital offerings of NZME and Fairfax,¹⁵ "with a strong emphasis on digital, servicing web, mobile devices and social media".¹⁶ Even since the Application, on 7 June 2016, MediaWorks has announced further new product developments that emphasise its transition from being a TV broadcaster to an online news / information provider - including the launch of an online digital video news feature to replace its midday TV bulletin.¹⁷

¹² For example, Coalition for Better Broadcasting submission.

¹³ TVNZ *Annual Report, Financial Year 2015* (2015). Accessed here: http://www.parliament.nz/resource/minz/51DBHOH_PAP66276_1/2709a35caac09b75442a36f8fcfb4195d6ba05fa

¹⁴ "TVNZ launches ONE News Now" (6 July 2015) TVNZ. Accessed here: <https://www.tvnz.co.nz/one-news/entertainment/tvz-launches-one-news-now-q00163>.

¹⁵ Bill Ralston "Hold the homepage" (4 March 2016) New Zealand Listener. Accessed here: <http://www.listener.co.nz/current-affairs/media/hold-the-homepage/>.

¹⁶ "Newshub launches Monday 1 February" MediaWorks (21 January 2016). Accessed here: <http://www.mediaworks.co.nz/NEWSHUB-LAUNCHES-MONDAY-1-FEBRUARY/tabid/1602/articleID/4611/Default.aspx>.

¹⁷ "Newshub announces daily digital video news features 'Newshub Explains'" (7 June 2016) MediaWorks. Accessed here: <http://www.mediaworks.co.nz/NEWSHUB-ANNOUNCES-DAILY-DIGITAL-VIDEO-NEWS-FEATURES-NEWSHUB-EXPLAINS/tabid/1602/articleID/4650/Default.aspx>.

Newshub is pleased to announce an upcoming daily digital video series, Newshub Explains, as part of Newshub's on-going focus on digital news content.

Launching Monday 18th July, the series will see a number of features produced each weekday by a dedicated Newshub team, providing context, background and explanation of the day's news, issues and major events, tailored to audience interests.

Newshub Explains will be available to the millions of people that access Newshub content every week across the service's app, website and social platforms.

...

"In this case we are developing and further investing in our digital news content, connecting our award-winning reporters with audiences in a new way, reinforcing our 24/7 news service, and providing a new way for Kiwis to find information on the platforms they're utilising most often."

- (c) RNZ has embarked on a recent transition from being a radio broadcaster to being a "multi-media broadcaster",¹⁸ with a project of "build[ing] a team of digital media specialists at Radio New Zealand and to use the web to showcase the best of our journalism online".¹⁹ Since the Application, on 14 July 2016, RNZ has announced significant changes to its news / information website to make it more attractive to consumers.²⁰
19. The direct competitive constraint from those entities in the provision of news / information is only going to grow in the future, with each of TVNZ's, MediaWorks' and RNZ's focus on digital news / information platforms comparatively recent and, therefore, still very much in their growth stages (namely, a July 2015 launch for TVNZ's One News Now, a February 2016 launch for Newshub, and RNZ's role as a multimedia platform provider confirmed by the March 2016 Radio New Zealand Amendment Bill). These competitors already command significant audiences through their traditional channels, and it is inevitable that their presence in those traditional channels will lead to further growth in their digital channels as they increase their focus on their online websites and mobile apps.
20. These three competitors, and others, are well positioned to continue to grow in the provision of New Zealand news / information delivered through multiple channels, including online, given they have sizeable newsrooms, and journalists around New Zealand. For example:
- (a) RNZ has major Wellington and Auckland newsrooms, as well as eight other newsrooms around the country, including a political press team based at Parliament;
- (b) TVNZ has offices in Auckland, Rotorua, Wellington, Christchurch and Dunedin, and it has a number of reporters, presenters and producers split between Auckland, Wellington, Christchurch and Dunedin (including to produce content for One News, One News Now, Seven Sharp, Breakfast, Fair Go, Sunday, Maraë, Q&A, Te Karere, Tagata Pasifika, etc); and

¹⁸ Amy Adams "Bill ensures ongoing success for RNZ" (press release, 30 March 2016). Accessed here: <https://www.beehive.govt.nz/release/bill-ensures-ongoing-success-rnz>.

¹⁹ Radio New Zealand Annual Report 2014-2015. Accessed here: http://www.radionz.co.nz/assets/cms_uploads/000/000/074/RNZ_Annual_Report_2015.pdf.

²⁰ Glen Scanlon "Sneak peek: the rnz.co.nz website is changing" (14 July 2016) RNZ. Accessed here: <http://www.radionz.co.nz/news/on-the-inside/308676/our-website-is-changing>.

- (c) MediaWorks's Newshub has a number of reporters, presenters, and producers split between newsrooms in Auckland, Wellington, and Christchurch, and a Dunedin bureau (including to produce content for the Newshub TV bulletins, Newshub radio bulletins, Newshub online, Story, The Nation, Paul Henry, The Hui).
21. This increasing competition across digital news information platforms is reflected in the results of the 2016 Canon Media Awards where TVNZ and RNZ won a number of high-profile digital news / information awards, with RNZ commenting that "Our success tonight marks further progress in RNZ's transition from a traditional radio broadcaster to a successful multi-platform media organisation".²¹ The awards won by TVNZ and RNZ include:
- (a) RNZ's website The Wireless being named best website;
- (b) Toby Manhire and Toby Morris winning the best opinion general writing section for their weekly column on rnz.co.nz; and
- (c) TVNZ winning Best News Website or App for One News Now.
22. Anyone that has an interest in news will be aware that these competitors are "significant rivals with comparable daily news audience reach and scope".²²
- (a) Almost 1 million New Zealanders are watching the TV 6pm news bulletins each day for news / information (700,800 people watch TV One News daily, and 217,700 people watch TV3's Newshub daily),²³
- (b) 564,000 people listen to RNZ on the radio weekly,²⁴ and 2,149,800 listen to MediaWork's radio stations weekly (which broadcast Newshub's radio bulletins), including 251,000 people that listen to MediaWorks' Radio Live;²⁵ and
- (c) 776,000 people visited TVNZ.co.nz in June 2016, 496,000 people visited Newshub.co.nz, and 342,000 people visited radionz.co.nz.²⁶

²¹ "The Wireless wins top website award" (20 May 2016) RNZ. Accessed here: <http://www.radionz.co.nz/news/national/304389/the-wireless-wins-top-website-award>.

Similarly, Māori TV's Board Chair has announced that Māori TV will have increasing focus across multiple platforms:

Mrs te Heuheu says the next three years will be particularly important as Māori Television upgrades its transmission to High Definition and embed its multiplatform and audience growth strategies. "Māori Television has a key role to play in contributing to the number of Māori language speakers and in promoting and protecting te reo Māori. This is best achieved through the transmission of entertaining and engaging content delivered across multiple platforms.

See: "Whetu Fala appointed to Māori Television Board" (press release, 28 June 2016) Scoop. Accessed here: <http://www.scoop.co.nz/stories/BU1606/S00853/whetu-fala-appointed-to-maori-television-board.htm>.

²¹ Commerce Commission, Decision No. 561, *Fairfax New Zealand Limited / Times Media Group Limited* (14 October 2005) at [140].

²² Paragraph 4.7 of the Coalition for Better Broadcasting submission.

²³ Aged 5+ based on 5 week average from 29/05/16 to 02/07/16.

²⁴ Weekly cumulative audience; data from "Audience Research" (2016) RNZ. Accessed here: <http://www.radionz.co.nz/about/audience-research>.

²⁵ Total NZ Commercial Radio - Survey 1 2016. Cumulative Audience (000's) by Demographic, Mon-Sun 12mn-12mn. (21 July 2016) GfK Accessed at: https://www.gfk.com/fileadmin/user_upload/dyna_content/NZ/Documents/Survey_Summary_Reports/2016/S1/GfK_External_Summary_Report_Total_NZ_Survey_1_2016.pdf.

²⁶ Source: Nielsen Online Ratings (June 2016).

23. There will continue to be competition for the production of news and information, via these "significant rivals", as well as from independently owned daily and community newspapers, and other smaller news / information print publications and websites referred to in the Application (for example, 199,000 read *The Listener* each week,²⁷ and 247,000 people read *North & South* each month).²⁸
24. The above demonstrates that the merged entity will clearly continue to face significant, and growing, competitive constraint in the provision of New Zealand news / information and the battle for audience attention.
25. In a two-sided market, where the merged entity needs to attract an audience in order to attract advertising expenditure, this competition will ensure that the merged entity remains incentivised to deliver high quality New Zealand news / information content to consumers (see further at paragraph 32 below).

(C) No concerns in respect of local news/information

26. As outlined in the clearance Application, the regional coverage of Fairfax and NZME's newsrooms, other than Auckland, is almost entirely complementary. There are no cities / regions where there is head-to-head competition between any Fairfax and NZME paid daily print publications.
27. Outside of Auckland, to the extent that Fairfax and NZME both have journalistic coverage in the same region producing local news / information content that is typically because one, or the other, has either a community newspaper or contracted freelance journalist in that region. In those regions:
- (a) In almost all circumstances, the combined entity would continue to face existing independent competitors that have their own journalists in those regions who produce local news / information content. For example, as illustrated in Appendix One, other independent print publications cover almost the entirety of New Zealand; and / or
- (b) As the Commission has previously observed, there are no material barriers to entry / expansion for a new competitor to produce local news / information content. For example in assessing the *Times Media* application the Commission noted: "the Commission agrees with the Applicant that 'Local Matters' could expand in the face of quality deterioration or advertising price increases".²⁹
28. These dynamics are reflected in Fairfax's internal documents where it notes in respect of local news / information content that:³⁰

[]

29. The merged entity will continue to face significant actual and potential competitive constraint in the provision of local news / information and the battle for audience attention. Again, in a two-sided market, where the merged entity will need to retain and attract an audience in order to attract advertising expenditure, this will ensure that the merged entity remains incentivised to deliver high quality local news / information content to consumers (see further at paragraphs 49 to 57 below).

²⁷ "New Zealand Listener" Bauer Media Group. Accessed here: <http://www.bauermedia.co.nz/brands/new-zealand-listener/>.

²⁸ "North & South" Bauer Media Group. Accessed here: <http://www.bauermedia.co.nz/brands/north-south?page=0&node=5510&module=5516&pageSize=0&items=0&paging=true>.

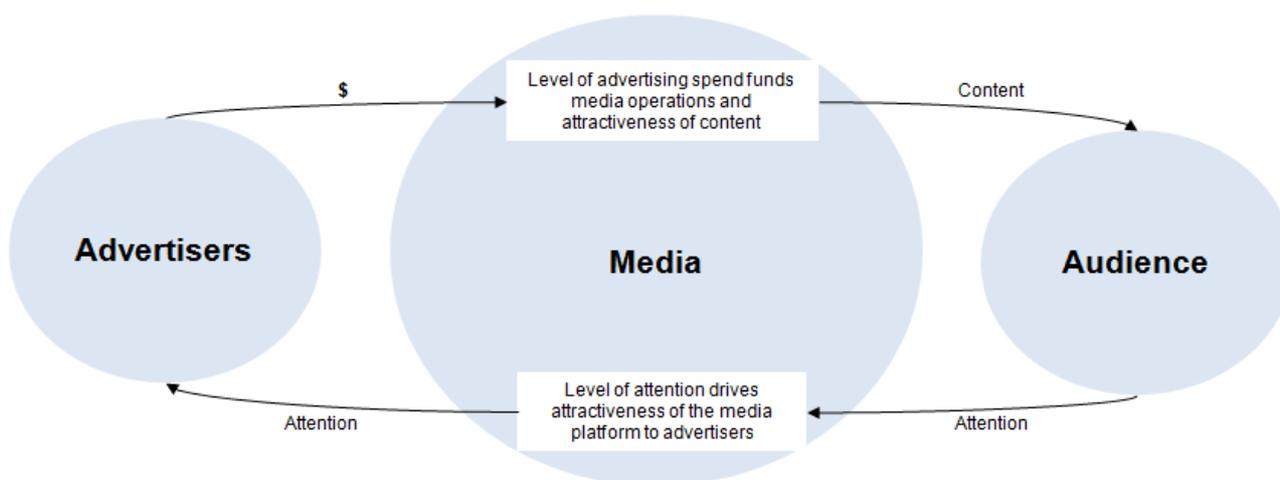
²⁹ Commerce Commission, Decision No. 561, *Fairfax New Zealand Limited / Times Media Group Limited* (14 October 2005) at [140].

³⁰ []

(D) Incentives remain to invest in quality and diverse content

- 30. Several submissions allege that the merged entity would reduce the quality of its content - in particular, that the synergies and efficiencies referred to in the Application would be achieved through reducing the quality of the merged entity's product.
- 31. Those submissions misunderstood the reality of the markets that the merged entity would compete in, as:
 - (a) there are significant competing alternatives in the production and dissemination of New Zealand news / information (see paragraphs 16 to 22 above);
 - (b) there are significant competing alternatives in the production and dissemination of local news / information (see paragraphs 26 to 29 above); and
 - (c) the merged entity would operate in 'two-sided' markets, which means it would need to continue to create attractive quality content, and maximise the accessibility of that content, in order to retain and attract audience attention, which in turn attracts the advertisers that would provide the revenue that underpins the operations of the merged entity. The nature of this relationship between quality content and revenue is represented in **Figure 1** below.

Figure 1 - The Media Industry as a Two-Sided Market



- 32. The number of readers on a platform is directly proportionate to the value of the platform to advertisers. Readers drive revenue. More readers drive more revenue. This means there will continue to be a strong incentive to avoid doing anything that risks losing readers - including decreasing the quality of the content offered on that platform. As in any market, quality is determined by reference to consumer preferences; and delivering what consumers want is precisely what platforms need to do in order to attract advertisers.
- 33. The merged entity will simply not risk doing anything that might reduce the attractiveness, range, or reach of its product. It would simply drive consumers to TVNZ, RNZ, Newshub, *The Guardian*, *The Daily Mail*, CNN, BBC, *The New York Times*, and / or the plethora of local / regional competitors etc, and reduce its revenue. That would be economically irrational. This was noted in the E tū submission:

If quality falls too much, the consumers will notice and they will begin to think the product is not worth having. Shoddy work will turn off the customers.

34. The economic incentives on the merged entity will be to combine the journalists in order to:
- (a) deliver compelling local, New Zealand and international news / information;
 - (b) cover breaking New Zealand news;
 - (c) cover the widest achievable number of issues / stories, by removing any current duplication of coverage between them and using those freed-up resources to expand the range of content available to the merged group's publications and platforms; and
 - (d) deliver a greater range of opinions / views.
35. This means that the merged entity will continue to have strong economic incentives to deliver quality news / information content to New Zealanders. These economic incentives will be reinforced by the journalists' own drivers including their:
- (a) professional journalistic competitiveness within the organisation (as referred to in the E tū submission); and
 - (b) professionalism and vocational aspirations - both Fairfax and NZME employ highly professional journalists who are self-driven to deliver the very best stories they can, who treat journalism as a vocation / passion, and who work hard to champion the communities they serve in, hold the powerful and elected to account, and uncover "exclusive" stories.
36. The importance of continuing to deliver high quality content to the commercial imperatives of these businesses is demonstrated by the significant emphasis on, and investment in, quality made by Fairfax and NZME. For example:
- (a) All journalists within both Fairfax and NZME (from community, regional and metropolitan journalists to visual journalists and editors) receive ongoing training to ensure that they produce high quality journalism meeting a prescribed standard. This standard is adhered to across all platforms and is required at every level of the editorial operation. All Fairfax and NZME journalists are also required to adhere to the standards of high quality journalism set out in their respective editorial codes of ethics / charters (see further at paragraphs 93 to 99 below);
 - (b) Fairfax has a "Quality First" training programme which sees journalists assessed on a regular basis to ensure high standards of journalism, ethics, and fairness are reflected in writing, interviewing and reporting, and holds regular media law training sessions to update journalists on the relevant legal environment;
 - (c) NZME has recently expanded its journalist training programme to extend beyond the traditional areas of journalism, such as copy editing and libel law, to include multi-media skills such as video, data journalism, and enhanced writing techniques;
 - (d) Fairfax has full-time journalism coaches throughout the country working one-on-one with individual journalists as / when specific needs are identified by the journalist and / or their editor. These journalism coaches also run regular training and writing workshops, which are mandatory for all journalists;

- (e) NZME has a fulltime editorial training manager who develops training programmes, and works with the editorial teams, to deliver ongoing professional development on a weekly basis; and
 - (f) Fairfax and NZME both have editorial guidelines and policies in place to ensure that journalistic standards are met, and checks and balances are in place. Newsroom leaders are focussed on ensuring that quality journalism is produced, and they work closely with staff to provide guidance.
37. In an industry that has operated under significant cost pressures for a long time, the fact that Fairfax and NZME continue to make these investments in journalistic training, enhanced investigative resources, and high quality journalism demonstrates the commercial importance of delivering quality content to consumers in a two-sided market (see further information on these investments at paragraph 40 below).
38. These incentives underscore the fact that it would not make commercial sense for the merged entity to achieve synergies and efficiencies if it were at the expense of producing quality journalism, or at the expense of reducing the coverage of its journalism. []
39. Further, in the context of discussing quality, one submission noted that "our collective consumer preferences incentivise media companies to under-provide this kind of ['hard news'] content in favour of tabloid infotainment/'clickbait'".³¹ Fairfax and NZME's response to that is:
- (a) To the extent that is true, those consumer preferences will not be altered by the merger (they are the same in the Factual and Counterfactual). Therefore, in the context of a two-sided market, media businesses will be incentivised to cater to those preferences accordingly - ie Fairfax / NZME and the merged entity will have the same incentives to produce the same nature of content in both the Factual and Counterfactual.
 - (b) It is not the role of the Commission to be the arbiter of different consumers' (or academics' or other commentators') subjective views of what is "quality" journalism. In assessing quality from the perspective of consumers, it must be assumed that consumers will prefer to view content that they see as quality content, on relevant dimensions (eg interesting, accurate, topical, trustworthy and relevant). This is particularly so in the context of the Internet where consumers have an almost limitless amount of content to choose from to attract their "views" / "dwell time". In the two-sided market, the merged entity will continue to be commercially incentivised to produce as much quality content as possible to attract consumer attention and, therefore, advertiser revenue.
 - (c) To the extent that there is a public policy preference for certain types of content over others (which is not something that is appropriately addressed through a competition / economic quantification process), the Government can, and does, deal with those through existing public policy instruments such as RNZ, Māori TV, NZ on Air, Parliament TV, Te Māngai Pāho (including Māori Radio), National Pacific Radio Trust, etc.
40. In any event, both Fairfax and NZME research show that there continues to be consumer appetite for both 'hard news' and infotainment, as evidenced by both parties' recent investments in 'hard news'. For example:

³¹ Paragraph 2.5 of the Coalition for Better Broadcasting submission.

- (a) the February 2016 announcement that Fairfax had hired award-winning investigative journalists Paula Penfold, Eugene Bingham and Toby Longbottom. Their brief is to produce the highest quality investigative journalism possible, with a commitment to quality over quantity (their first story was filed after 6 months of work). Fairfax's editor Sinead Boucher observed at that time:³²

Their flair for hard-hitting investigative journalism and innovative storytelling will be a real asset to our audiences and I am thrilled they have chosen to join forces with us.

...

We know that our audiences have a deep need and appetite for journalism that is thought-provoking, serious and in-depth. They expect us to hold the powerful to account and champion the causes that matter to New Zealanders, and we are committed to doing so.

- (b) the November 2015 announcement that NZME had launched a new data-journalism website:³³

The New Zealand Herald today launches its new data-journalism website Insights – a further demonstration of its commitment to in-depth journalism and new forms of storytelling.

...

The world we live in means there is no shortage of data. By using technology and investing in specialist skills over the past 12 months, the Herald has been able to report on stories in a much more interesting and compelling way via the use of data and statistics. It's resulting in high standards of in-depth analysis and enabling us to explain issues in a way that is easier to understand and for our audience to appreciate their significance.

- (c) since moving into its new newsroom in Auckland in December 2015, NZME has established a specialised investigative journalism unit comprising 10 journalists, led by investigations editor Jared Savage.

41. Other competitors also recognise the importance of investing in quality journalism to attract audiences and remain commercially viable, for example as noted by the CEO of Bauer Media Group (publisher of *North & South*, *The Listener* and *Metro*) in May 2016:³⁴

At Bauer Media we have always had a passionate focus on quality journalism and the critical role it plays in New Zealand society", Dykzeul said. "This passion is shared by our editors and all our very talented teams. As we clearly face uncertain times in print journalism, Bauer's passion and commitment to journalism will continue to grow.

42. The Transaction will not alter or diminish those incentives. The merged entity will have the same economic incentives to deliver quality news / information content to New Zealanders, and will be better placed to do so. Indeed, the ability to better allocate resources across both breaking news and in-depth investigations is seen as a key

³² Ellen Read "Fairfax Media hires Paula Penfold, Eugene Bingham, Toby Longbottom" (29 February 2016) Stuff. Accessed here: <http://www.stuff.co.nz/business/77374359/Fairfax-Media-hires-Paula-Penfold-Eugene-Bingham-Toby-Longbottom>.

³³ "Herald capitalises on success of its data-journalism" (NZME press release, 9 November 2015) Scoop. Accessed here: <http://www.scoop.co.nz/stories/BU1511/S00259/herald-capitalises-on-success-of-its-data-journalism.htm>.

³⁴ "Bauer Media Group Gets the Scoop at the Canon Media Award" (Bauer press release, 23 May 2016) Scoop. Accessed here: <http://www.scoop.co.nz/stories/BU1605/S00683/bauer-media-group-gets-the-scoop-at-the-canon-media-awards.htm>.

commercial driver for the Transaction, given it will enable the merged entity to attract a greater audience to its platforms. For example, while some submitters speculated that the two Parliamentary press teams would be reduced to one, in the context of a two-sided market where the merged entity will want to maximise its audience reach and engagement, it seems likely (while no decisions have been made) that the merged entity would want to harness the combined attractiveness and capacity of a number of senior political journalists (who are a major audience drawcard) to deploy some for day-to-day reporting (as they are today) and others to engage in more investigative political reporting. Reflective of this, when NZME integrated its radio and publishing newsrooms, it retained separate radio and publishing political newsrooms, with separate political editors who have the freedom and independence to follow up on their own stories.

43. Some submitters raised concerns that the merged entity would be at risk of political bias in its publications. This concern is also misconceived.
44. The same competitive dynamics described above also mean that the merged entity will continue to have economic incentives to include as many views as possible in its publications.
45. The in-market behaviour of both NZME and Fairfax to date demonstrates that there would be no economic incentive for the merged entity to adopt a political bias, or to reduce the diversity of views carried through its publications / platforms. Neither entity is associated with having a particular political bias today. Not only do the parties' respective ethics codes forbid adopting any bias (see further at paragraphs 93 and 99 below), the same commercial incentives to maintain political neutrality and carry diverse content will continue into the future.
46. In the context of a two-sided market, the adoption of a political bias would simply result in consumers that disagree with that bias switching to any of the alternative news / information sources available, eroding audience levels and ultimately advertising revenue. Similarly, a reduction in diversity would inevitably erode audience levels by not catering to consumers that value a diverse range of content and opinion.
47. The value of diversity to the businesses can be seen in the following:
 - (a) in 2012 Fairfax launched Stuff Nation, which provides a platform for consumer-generated content and opinion to be published on stuff.co.nz;³⁵
 - (b) Fairfax will imminently launch a new comment channel across stuff.co.nz that will encourage and seek a wide and diverse range of opinions (Fairfax has advertised for a new national "Comment Editor" for that channel);³⁶ and
 - (c) both Fairfax's and NZME's mastheads contain a wide diversity of editorial views and columnist opinions. By way of example, *The New Zealand Herald* and *Herald on Sunday* have different editors and regularly take opposing views on the same issues and topics. Editorial independence is championed throughout both the Fairfax and NZME businesses.
48. These developments demonstrate the commercial incentives on a media platform to include as diverse and plural range of views as possible. The economic incentives of the merged entity will be to cater to the interests of as many New Zealand consumers as possible, including by covering niche and special interest topics and including a range of opinions / views.

³⁵ Sinead Boucher "Welcome to Stuff Nation" (17 September 2012) Stuff. Accessed here: <http://www.stuff.co.nz/national/blogs/from-the-newsroom/7677775/Welcome-to-Stuff-Nation>.

³⁶ Fairfax "Comment Editor" job advertisement. Trade Me. <http://www.trademe.co.nz/jobs/marketing-media-communications/journalism/listing-1128407782.htm>

(E) No change to the incentives to produce quality local content

49. Several submissions expressed concern that, after the Transaction, the merged entity would reduce the quality / quantity of its local content. Most of these submissions were from competing community or regional newspapers. The submission begs the question why that would not be seen as an opportunity by those submitters to attract more readers away from the merged entity's publications.
50. In any event, the argument does not reflect the reality of the markets that the merged entity will compete in. In particular, [].
51. Both Fairfax's and NZME's respective business models rely on strong local journalism to attract large and diverse local audiences to their local papers and websites in order to attract advertising revenue, and the same incentives will remain on the merged entity post-Transaction. This suggests the real concern of the competitors may be that the merged entity will produce better quality local content, not worse, and will be a more effective competitor in the market(s) in which they compete.
52. Either way, there are few regional areas where the Transaction could make any difference:
- (a) in almost all local overlap areas, the combined entity would continue to face existing competitors that have their own journalists in that region; and
 - (b) there are no material barriers for a new competitor to enter, or expand, into producing local / regional news / information content in a particular region.³⁷

(F) No change to the constraints on introducing a paywall

53. Several submissions suggested that the Transaction would enable the merged entity to introduce a paywall where no ability existed before. Others submitted that the applicants should each implement paywalls on their respective websites instead of pursuing the Transaction.
54. The applicants have already addressed the issue of paywalls in the Application. In summary:
- (a) In the online world it is difficult, and counterproductive, for online news / information sites to implement paywalls and charge for content where content of the same or similar nature or quality is easily accessible through other online sources or through social media platforms (rather than through a provider's website / platform).
 - (b) Other than for specialist publications and / or investigative content (in the nature of market reports, scientific, or academic articles), which are typically in-depth business-focussed publications (for example *The Economist*), the potential revenue that can be derived from a paywall will not displace the lost advertising revenue and lost audience data (which further undermines potential advertising revenues). As *The Economist* itself has noted:³⁸

What can newspapers do to save themselves, besides finding billionaire owners able to withstand years of losses? For most of them, one possible saviour, getting readers to pay for online news,

³⁷ Commerce Commission, Decision No. 561, *Fairfax New Zealand Limited / Times Media Group Limited* (14 October 2005) at [140].

³⁸ "Up against the paywall" (21 November 2015) *The Economist*. Accessed here: <http://www.economist.com/news/business/21678799-many-publishers-still-see-little-alternative-continual-cutbacks-up-against-paywall>.

has not worked well. Two years after introducing a paywall for the *Sun*, its biggest British title, News Corp said last month that it would be scrapped. "Metered" paywalls, which let readers see a few free articles before asking for payment have worked at some large and prominent papers like the *New York Times*, and specialist ones like the *Financial Times* (which pioneered the idea). But for most general-interest papers people tend to read the freebies, then leave. Mr Chisholm says a typical American personal-computer user spends just 228 seconds on each visit to a news site.

- (c) It is not only lost advertising revenue that prevents the implementation of paywalls in today's market environment; consumers worldwide demonstrate a significant unwillingness to pay for online news / information content. The *Reuters Institute Digital News Report 2016* noted the striking unwillingness of consumers to pay for online general news / information content. For example, in Australia, Reuters has observed:³⁹

Many Australian publishers operate paywalls but after initial success have struggled to increase the number of digital subscribers beyond loyal users.

55. The economics underpinning these constraints on implementing paywalls has been described as follows:⁴⁰

I have no — none, nada, zilch — faith that consumer pennies and dollars, however they are scrounged — via paywalls or micropayments or charity — will replace the billions advertisers have spent to support news. I say this not out of a lack of faith in my fellow news user but instead because of three fundamentals of media economics.

First is the impact of abundance on any market. When presses were expensive and few could afford to own them, newspaper proprietors held pricing power of their product, content. That, of course, is no more. Abundance leads the price of both content and advertising to fall toward zero. That is not good time to try to charge more when those around you are charging less — not unless you have something uniquely wonderful that can't be copied.

Second is the pricing paradox of information. Because we in journalism fancy ourselves storytellers, we conflated our value with that of novelists, filmmakers, and TV producers. They can all sell their stories, why can't we? Well, they all sell a unique product: creativity. We don't. The best of journalism is information rich, but information — once it is shared — is quickly commodified. In a free and modern society, no one can own information. I've long said that information doesn't necessarily want to be free, but journalists want to free information.

And that leads to the third law: Competition drives prices down. The more competition, the lower prices will go. See law #1: We have endless competition. So even if 10 or 20 or 100 publishers banded together to erect a paywall around themselves, there will always — always — be a spoiler willing to sell the same information (see law #2) for less or nothing.

56. [].

57. Accordingly, it is not competition between Fairfax and NZME that determines whether or not their websites can implement paywalls; rather, it is:

- (a) the need for online news / information providers to attract consumer attention to their content, via social media and other intermediated platforms, in a digital world where there is almost limitless competition for consumers' attention (and

³⁹ Reuters Institute, "Reuters Institute Digital News Report 2016" (2016) at 79.

⁴⁰ Jeff Jarvis "As Advertising Crumbles, Paywalls Will Not Come to the Rescue of the News Business" (2 October 2015) Observer. Accessed here: <http://observer.com/2015/10/as-advertising-crumbles-paywalls-will-not-come-to-the-rescue-of-the-news-business/>.

therefore almost limitless competition for advertisers' expenditure) - including a number of other significant competitors offering international, New Zealand, and local / regional news information (such as TVNZ, RNZ, Newshub, *The Guardian*, *The Daily Mail*, CNN, BBC, *The New York Times*, and / or the plethora of local / regional competitors);

- (b) consumers' willingness to pay for general news / information content in the context of that significant competition; and
- (c) the impact on advertising revenues from the introduction of any paywall and, therefore, the inevitable, and significant, reduction in audience.

(G) The merged entity will offer lower advertising pricing and bundles

58. Several of the submissions from NZME's / Fairfax's competitors raised concerns that the merged entity would lower print advertising prices to advertisers (alleged to be "predatory pricing").
59. The starting point under the Commerce Act is that lower prices are presumptively pro-competitive. They are an outcome that the Commerce Act is intended to achieve. Lower prices can only be a concern under the Commerce Act where they remove competing firms from the market, or deter entry, and the firm that has charged the low prices can then recoup losses by charging prices above competitive levels.
60. There is no reason to think that the Transaction will give rise to a material risk of price reductions of advertising designed to remove competitors, with a view to subsequent recoupment. Nor is there any reason to think that recoupment by charging supra-competitive prices would be possible even if a handful of newspaper publishers were to exit the market. There are too many other options available to advertisers, and barriers to entry / expansion are too low, for this to be a viable, or commercially rational, strategy.
61. Reinforcing this point is:
- (a) the fact that print advertising prices and revenues continue to fall in New Zealand, despite there not being any regions where there is material head-to-head competition between paid daily print newspaper competitors. The reduction in print advertising pricing has been a result of the significant, and ever-increasing, competition from digital media. It is not competition between print titles that is the key competitive constraint on print advertising prices. It is the range of alternative advertising options available to advertisers, such as digital, TV, radio, billboard, cinema, etc. This will not change as a result of the Transaction.
 - (b) the []; and
 - (c) [].
62. Those competitive constraints will remain, regardless of the merger. The merged entity will continue to be a price taker.
63. Some submissions, in particular from South Island print competitors, raised concerns that the merged entity would be able to offer advertising customers a bundle of print, online, and radio advertising at predatory prices.
64. The starting point is, again, that if purchasers prefer such bundles, any increase in the availability of such bundles, or any reduction in price, is pro-competitive. Moreover, NZME already is able to offer an advertising bundle spanning print, online, and radio

advertising in many parts of the North Island, and there has been no evidence of those bundles materially affecting competition in any of those areas.

65. Finally, there is nothing to stop these print competitors from partnering with other radio providers (eg MediaWorks), to offer their own competing bundle to advertisers. For example, Allied Press and MediaWorks could partner together in Otago to offer a cross-media print, digital, radio and TV advertising bundle.

(H) No change to the incentives to offer news syndication

66. Some submitters expressed concern about the possible loss of access to news syndication services from NZME. Allied Press thought that the merged entity would cease syndication to Allied Press because stuff.co.nz has an audience in Otago and Southland.

67. This is not a credible concern. Both NZME and Fairfax already engage in news syndication because it makes commercial sense, and will continue to do so:

- (a) It provides them with additional content to show to consumers (ie it grows audience), including by receiving local content from third party providers that they would not otherwise have access to.
- (b) It is an additional revenue stream for content that has already been produced, so that additional revenue has a zero incremental cost. The economics of this has been described as follows:⁴¹

Of course, we all know how freely we can fling stories about on the web, but second copy value — and cost — has an evolving business model implication, as the news industry looks for new pillars of support. That business model implication is syndication.

...

The principle here is devilishly simple — but has not been well enough applied. It's been described from the inception of the Internet: the second copy is free (or really close to free). It's also part of a basic Newsnomics law, Law #9: Apply the 10% Rule. Let technology do the value multiplication, not expensive-to-hire-and-feed humans.

Every syndication dollar earned is another dollar that doesn't have to be wrung out of highly competitive advertising markets. Importantly, the syndication dollars derive from what journalism organizations do best: create high-quality content. The big notion: create better-than-good-enough content, the kind of stuff that is beginning to flood the web. It's another way to affirm worth: the more companies that want to use your content, the clearer the value proposition in the digital world.

So what's old is new again. In addition, syndication offers the potential of selling beyond traditional media that may offer significant new revenues. For local news companies, established for more than a hundred years or a few months, it's a destination-plus model. It's not about readers coming to your site; it's about getting people to read your content —and get paid for it. It's also — witness the Politico model — a way to enable an ad network, related to syndicated content. In fact, I can envision a range of locally oriented sites — from the Yelps, Open Tables and Zillows to government sites to niche mom's and family sites and beyond — that may find use for various kinds of content. The first step for would-be syndicators:

⁴¹ Ken Doctor "The Newsnomics of new news syndication" (11 March 2010) Nieman. Accessed here: <http://www.niemanlab.org/2010/03/the-newsonomics-of-new-news-syndication/>.

inventory and categorize what you have, and talk to would-be customers about what they might want to use.

Some have said that in the digital world, news companies need to think of themselves both as creators and aggregators, doing what they do best and linking to the rest. Let's amend that: creators, aggregators, and syndicators, doing what they do best, licensing with zest and linking to the rest.

68. The merged entity will be aware that there are low barriers to entry / expansion for others to provide news syndication services (so if they do not pick up this additional revenue at zero incremental cost, others will). Actual examples of other syndication models include:

(a) AAP established NZ Newswire in New Zealand in 2011 with ten journalists to provide.⁴²

an independent and cost-effective multimedia news and information service available to all publishers and broadcasters in New Zealand and the Pacific.

New Zealand Newswire (NZN) is owned and operated by Australian Associated Press. Its New Zealand team of journalists are passionate about the country, ensuring they fairly and accurately report events and issues of interest to New Zealanders.

(b) Content Ltd was established in mid-2008 by two Wellington-based journalists, Jonathan Underhill and Patrick Smellie, to provide a business news / information wire service (under the brand name BusinessDesk). BusinessDesk now has six journalists across Auckland and Wellington;⁴³ and

(c) NewsRoom operates as a news agency and news release service.⁴⁴

Our team of experienced editors and credentialed journalists follow a "no spin" editorial policy to deliver a reliable source of accurate news and information.

In addition to publishing press & media releases NewsRoom's content is supplemented by generating its own agency stories and publishing featured content from trusted sources.

69. A newswire service can readily grow from a small team of journalists (or even a single journalist) to a larger newsroom (as demand requires), or even as a co-operative of freelance journalists. Given the immediate availability of breaking news / information online, such a service could readily grow from having journalists monitor the developments on competing platforms (including aggregated news / information services such as scoop.co.nz) to then generate their own journalistic content.

70. As TVNZ, RNZ, and Newshub have also invested in converged newsrooms / multi-platform offerings, the range of alternative sources of written New Zealand news / information content has increased. For example, Fairfax already has an agreement to use RNZ content on stuff.co.nz,⁴⁵ and RNZ could readily enter into additional agreements to distribute its news service to other media outlets if it so wished. There would be nothing to prevent, say, Allied Press or Westport News entering into a new

⁴² "New Zealand Newswire" AAP Newswire. Accessed here: <http://www.aapnewswire.com.au/NZNewswire>. AAP is 47% owned by Fairfax, 45% owned by News Corp, and 8% owned by Seven West. AAP operates wholly independently of Fairfax.

⁴³ "FAQ's" BusinessDesk. Accessed here: <http://businessdesk.co.nz/FAQ.aspx>.

⁴⁴ Newsroom home page. Accessed here: <http://www.newsroom.co.nz/>.

⁴⁵ Ellen Read "RNZ audio and video to play on Stuff" (28 July 2016) Stuff. Accessed here: <http://www.stuff.co.nz/business/82563532/fairfax-rnz-sign-content-sharing-deal>.

syndication arrangement with TVNZ's One News Now, RNZ, or Newshub, if it were not satisfied with the news syndication terms being offered by the merged entity. There would be incentives for both, say, Westport News and Newshub to enter into such an arrangement as it would provide Newshub with West Coast content (where it may not have its own journalists) while also providing Westport News with access to national news content.

71. Similarly, as illustrated in Appendix One, other (non-NZME and non-Fairfax) print publications cover almost the entirety of New Zealand. There would be nothing to prevent these other print publications entering into their own content syndication arrangements with one another if they considered it useful to have access to content from other regions.
72. Finally, that these incentives are not affected by the mere fact that the syndication is notionally "assisting" a competitor, is further evidenced by:
- (a) NZME's syndication of content to Allied Press (and vice versa) despite also competing, via nzherald.co.nz and newstalkzb.co.nz, with odt.co.nz for online audience;
 - (b) Fairfax's syndication of content to Sun Media (and vice versa) despite also competing, via stuff.co.nz, with sunlive.co.nz for online audience;
 - (c) Fairfax's and TVNZ's video content sharing arrangement despite stuff.co.nz and tvnz.co.nz competing for online audience;⁴⁶
 - (d) Fairfax's and RNZ's audio and video content sharing arrangement despite stuff.co.nz and radionz.co.nz competing for online audience;⁴⁷
 - (e) Fairfax's current practice of making all of its video news content available to any other media platform free via the "embed" function on stuff.co.nz. So, for example, if Allied Press saw a video on stuff.co.nz that it wanted to show its audience, it can embed that video on its own odt.co.nz website for no cost;
 - (f) Jeremy Rees' (Fairfax's national community titles editor) June 2016 presentation at the Community Newspaper Association conference in Rotorua where he outlined to the independent community newspaper publishers in attendance that Fairfax would like to enter into arrangement with independent publications to:
 - (i) provide local independent publishers with access to Fairfax shared content;
 - (ii) share local independent publishers' content on Fairfax's platforms, such as stuff.co.nz and Neighbourly; and
 - (iii) co-operate on any local journalism arrangements to strengthen local journalism; and
 - (g) The fact that when the New Zealand Press Association news wire service ceased in 2011, both Fairfax and NZME (APN as it was) established their own independent news wire services (Fairfax New Zealand News and APNZ respectively).

⁴⁶ Ellen Read "Stuff and TVNZ to share One News videos" (2 May 2016) Stuff. Accessed here: <http://www.stuff.co.nz/business/79519436/Stuff-and-TVNZ-to-share-One-News-videos>.

⁴⁷ Ellen Read "RNZ audio and video to play on Stuff" (28 July 2016) Stuff. Accessed here: <http://www.stuff.co.nz/business/82563532/fairfax-rnz-sign-content-sharing-deal>.

(I) No change to the incentives to participate in Newsworks NZ

73. Submissions from NZME's / Fairfax's competitors also expressed concern that the merged entity would withdraw from the National Advertising Bureau ("**NAB**") (called Newsworks NZ), thereby limiting the ability of those competitors to participate in national print advertising offers.
74. Again, this concern displays a misunderstanding of the economic incentives on NZME and Fairfax and, therefore, the merged entity. Newsworks NZ operates as a commercial entity of the Newspaper Publishers' Association ("**NPA**"), and performs two main functions:
- (a) A media booking service for print campaigns, including to make booking a nationwide newspaper advertising campaign easier for advertisers. To do this, it takes bookings on behalf of a number of (primarily) paid print mastheads around New Zealand,⁴⁸ including NZME's and Fairfax's respective paid mastheads, as well as *Otago Daily Times*, *Whakatane Beacon*, *The Gisborne Herald*, *The Wairoa Star*, *Wairarapa Times-Age*, *Westport News*, *Greymouth Star*, *Hokitika Guardian*, *Ashburton Guardian*, and *Oamaru Mail*.⁴⁹
 - (b) Advocating for the ongoing relevance of print newspaper advertising, to attract advertisers to purchase advertising in print newspapers instead of in the range of alternative advertising options available. This includes training media planners and buyers on purchasing print newspaper advertising.
75. The incentives on the merged entity to participate in Newsworks NZ do not change:
- (a) There is currently no material level of paid daily print masthead circulation overlap in any of the major / medium sized cities in New Zealand. Paid dailies are the focus of Newsworks' service (major national advertisers do not tend to run a national advertising campaign in print through community papers). So the Transaction does not change anything - there is only one party that offers advertising in paid dailies across New Zealand and that is Newsworks NZ. Fairfax is not a substitute for the Newsworks service, it is a participant in it (as is NZME);
 - (b) To the extent that Fairfax and NZME currently participate in Newsworks NZ to cater to advertising customers that prefer to purchase nationwide print campaigns across paid print mastheads through one transaction / booking agency, the merged entity would still need to participate in Newsworks NZ to cater to those advertisers' preferences;
 - (c) Demonstrating that Fairfax and NZME are incentivised to work together with other advertisers where that best meets the preferences of advertisers is the recent formation of KPEX with TVNZ and MediaWorks, and the growing number of media businesses being added to that KPEX platform (for example, NBR, Choice TV, and Tangible Media joined KPEX in July 2016);⁵⁰ and
 - (d) To the extent that Fairfax and NZME currently participate in Newsworks NZ because it advocates for the use of print newspaper advertising to drive sales of print advertising inventory, the merged entity will still want that advocacy to continue post-Transaction.
76. In short, the merged entity would not have any incentive to:

⁴⁸ "Titles, Rates and Specs" Newsworks. Accessed at: <http://www.newsworks.nz/titles-rates-specs/>.

⁴⁹ Oamaru Mail is a free weekly.

⁵⁰ Damien Venuto "Choice TV, NBR and Tangible Media join the KPEX party" (27 July 2016) StopPress. Accessed here: <http://stoppress.co.nz/news/choice-tv-nbr-and-tangible-media-join-kpex-party>.

- (a) make the process of booking print advertising more difficult for customers that prefer to purchase nationwide print campaigns through one transaction / booking agency; or
- (b) undermine the perception of value in print advertising in the minds of advertising customers.

77. Furthermore, even if the merged entity were to withdraw from Newsworks NZ, to the extent that there were still customers that preferred to purchase nationwide print campaigns through one transaction / booking agency, it is inevitable that an alternative print booking agency would emerge. For example, a media buying agency would identify the "gap" and step in to offer that service to customers by making bookings across the range of mastheads on behalf of customers (there would be no barriers to prevent such an agency emerging - in fact there are already numerous media buying agencies across New Zealand who could and would immediately fill that space).

(J) Competition for Auckland advertising

78. A submission from Horton Media contends that the Transaction would result in a lessening of competitive alternatives for advertisers in Auckland due to NZME's *The New Zealand Herald* and Fairfax's Auckland community newspapers coming under common ownership.

79. This is not correct as a matter of competitive effects analysis. The argument appears to be crafted to suit a particular divestment agenda.

- (a) NERA's analysis of pricing and advertisers demonstrates that *The New Zealand Herald* and Fairfax's Auckland community newspapers are not each other's closest advertising competitors.
- (b) The Commission has previously recognised the low barriers to entry and expansion in community newspapers and the range of alternatives available to advertisers instead of advertising in community newspapers, including flyers and online options.⁵¹
- (c) The Horton Media submission discounts all the other (non-NZME and non-Fairfax) community and print publications in the Auckland region, which are many and varied, but inconveniently undermine the argument Horton Media is seeking to advance:
 - (i) *The Devonport Flagstaff, Mahurangi Matters, Hibiscus Matters, Pohutukawa Coast Times, Botany and Ormiston Times, Howick and Pakuranga Times,*⁵² *The Post (Waiuku), Waiheke Gulf News, Helensville News;*
 - (ii) the significant number of ethnic / foreign language community newspapers. Indeed, "Auckland is one of the world's most culturally diverse cities with the fourth most foreign-born population... With 39 per cent of its population born overseas."⁵³ This has manifested itself

⁵¹ Decision No. 561. *Fairfax New Zealand Ltd / Time Media Group Ltd.* (14 October 2005).

⁵² Fairfax owns 50% of Times Media, which operates *Botany and Ormiston Times* and *Howick and Pakuranga Times*, but Times Media is run independently from Fairfax.

⁵³ Lincoln Tan "Auckland more diverse than London or New York" (17 January 2016) New Zealand Herald. Accessed here: http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11575305.

in the numerous ethnic and foreign language newspapers published in Auckland (and many other parts of New Zealand):⁵⁴

As an alternative to mainstream media, a great range of Asian media outlets has developed over recent decades. An enumeration in 2006 identified 15 Chinese and 12 Korean newspapers and magazines in Auckland, as well as nine Indian, three Filipino and four Japanese print media in New Zealand, mostly Auckland-based. More recent data comprehensively documenting the number of media is difficult to find, but one source notes that for the Chinese at the national level there are 'multiple print publications ranging from monthly to six days a week'.

For example, *The Epoch Times* is estimated to have a circulation of 12,000, *Mandarin Pages* 10,000, *The Chinese Herald* 10,000,⁵⁵ *Sunday Sisa* 5,000,⁵⁶ and *Indian Weekender* 15,000.⁵⁷ These ethnic / foreign language community newspapers are sophisticated competitors that publish rate cards, actively seek advertising expenditure, and have significant circulation and readership - for example, the *Indian Weekender*.⁵⁸

Of the 15,000 copies that are printed every issue, 5000 are delivered directly into homes, the rest picked up from strategic locations. An average Indian household size of four or more takes the readership of the *Indian Weekender* to over 60,000 every week.

What better channel than the new, colourful and engaging *Indian Weekender* to reach one of the most well educated and high earning ethnic groups in New Zealand's biggest metropolis?

There are specialist marketing agencies that work with advertisers to place advertising across these ethnic / foreign language community newspapers (for example, Asiaworks works with Asian ethnic media in New Zealand, including 8 Chinese newspapers, 12 Korean newspapers and 8 Indian newspapers, as well as a number of magazines, TV and radio stations, and websites).⁵⁹

- (iii) the 15+ free community magazines that are published across Auckland (for example, *Ellerslie Magazine*, *Verve*, the *Te Atatu Views*, *Ponsonby News*, *The Hobson*, *Channel*, *Our West*, *The Fringe*, *The Onehunga Community News*, *EastLife*,⁶⁰ *Mairangi Bay Village News*, *The Westerly*).

80. Horton Media raised specific concerns in respect of real estate advertising customers, including a surprising argument that Bauer's Property Press is not a substitute for *The New Zealand Herald* or Fairfax's Auckland community newspapers in real estate advertising.

⁵⁴ "The evolving Asian 'ethnoscapes' of Auckland" Asia NZ. Accessed here: <http://www.asianz.org.nz/reports/report/asian-auckland-the-multiple-meanings-of-diversity/the-evolving-asian-ethnoscapes-of-auckland/>.

⁵⁵ Fairfax estimates.

⁵⁶ "Ethnic Media Channels" Connect2Sport. Accessed here: <http://connect2sport.org.nz/ethnic-media-channels/>.

⁵⁷ Indian Weekender media kit. Accessed here: <http://www.indianweekender.co.nz/Attachments/IWMediaKit.pdf>.

⁵⁸ Indian Weekender media kit. Accessed here: <http://www.indianweekender.co.nz/Attachments/IWMediaKit.pdf>.

⁵⁹ See "Asian Media" asiaworks. Accessed here: <http://www.asiaworks.co.nz/media.html>.

⁶⁰ EastLife home page. Accessed here: <http://www.eastlife.co.nz/>. Published by Times Newspapers Limited, which Fairfax has a 50% shareholding in.

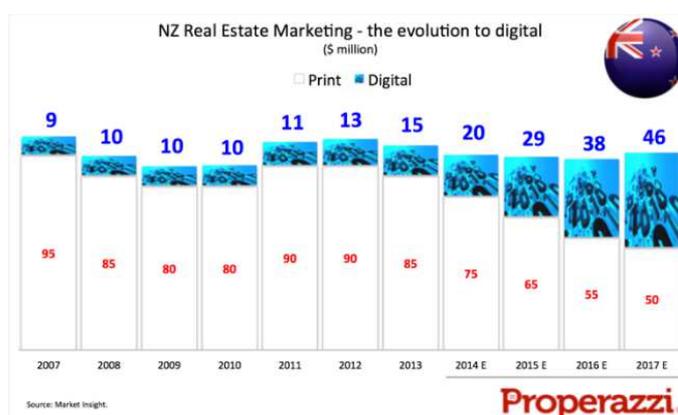
81. Again this is simply not correct. Real estate advertising customers have a range of alternative options, which give them significant countervailing power in negotiations with newspaper publishers, including:

- (a) Online options: such as realestate.co.nz and Trade Me Property. As noted on Barfoot & Thompson's website.⁶¹

Upgrading your online presence is the most effective way to get your property to the right people at the right time. Featuring your property on key websites increases views, enquires and activity at open homes, so it is well worth the investment.

Estimates from 2014 demonstrate the significant extent of switching to digital advertising alternatives by real estate advertisers in New Zealand, as set out in Figure 2 below.

Figure 2 - Switching of NZ real estate advertising from print to digital



Source: Properazzi.⁶²

- (b) Bauer's Property Press. Bauer describes *Property Press* as "the pre-eminent print medium for real estate for sale in New Zealand".⁶³ Bauer has five *Property Press* titles covering Auckland, namely North Shore, Central Auckland, East Auckland, South Auckland, and Franklin (in addition to nine other titles around New Zealand). There is no credence to Horton Media's assertion that *Property Press* cannot cover the outer suburban areas of Auckland - the entry of Bauer's recent *Property Press Franklin* title is evidence that it can. In addition, Fairfax has provided the Commission with data demonstrating the significant degree of substitution between community newspapers and *Property Press*. The reach of *Property Press* is reflected in the prominence it receives on Barfoot & Thompson's website discussing marketing options.⁶⁴

We publish hundreds of pages of property advertising every week - because it works.

Like the *Property Press*, which most buyers will pick up and browse over their morning coffee. Or the property guides that get delivered

⁶¹ "Online advertising" Barfoot & Thompson. Accessed here: <https://www.barfoot.co.nz/sell/marketing/digital-marketing/advertising>.

⁶² "The real estate industry's transition to digital marketing" Properazzi. Accessed here: <http://properazzi.co.nz/insights/the-real-estate-industrys-transition-to-digital-marketing>.

⁶³ "About Bauer: Management Team" Bauer Media Group. Accessed here: <http://www.bauermedia.co.nz/discover/about-bauer/management-team/>.

⁶⁴ "Our marketing options" Barfoot & Thompson. Accessed here: <https://www.barfoot.co.nz/sell/marketing/options>.

inside your local and national newspapers. Smaller, more local publications can also work really well.

- (c) LOOK Media real estate, and other specialist property publications: LOOK Media is "a full colour gloss property publication, home delivered fortnightly to households in Ponsonby, Grey Lynn, St Marys Bay, Herne Bay, Freemans Bay, Point Chevalier, Mt Eden, Eden Tce, Mt Albert, Sandringham and available outside participating real estate agents offices and inside local Ponsonby supermarkets."⁶⁵ As noted by a Barfoot & Thompson manager in respect of LOOK Media:⁶⁶

We have had a lot of very positive feedback about your publication, with visitors to our New Bond St listing quoting LOOK. I heard a similar story from our office at Pt Chevalier.

LOOK Media could readily expand to other suburbs of Auckland if opportunities were to arise.

There are also real estate advertising publications and websites that target specific ethnic communities in Auckland, for example:

- (i) The Property Journal, marketed as the "only Korean-language property newspaper in Auckland";⁶⁷
- (ii) Property Overview, marketed as "Auckland's leading Chinese language property publication for residential and commercial real estate and allied services";⁶⁸ and
- (iii) HouGarden.com, marketed as "the largest property portal in New Zealand targeting the Chinese-speaking market".⁶⁹

The presence of these alternative print publications demonstrates the range of options available to real estate advertising customers, and the lack of any barriers to entry or expansion.

- (d) Direct flyers, and other direct options, including flyer materials that are formatted to look like newsletter updates, eg Barfoot & Thompson's *Royal Oak Property News*. Barfoot & Thompson's website also refers to the range of alternative marketing options available:⁷⁰

Many people want to buy their next home in their existing neighbourhood, or surrounding suburbs. That's why so many of our customers tell us that property signs and window displays are still so useful. Similarly, flyers dropped into letterboxes are a great way of attracting interested locals to your open homes.

- (e) Self publication / sponsoring new entry: Given the substantial sums that real estate agencies spend on advertising, they would be readily able to sponsor the entry of a new community publication or property advertising publication if they were not satisfied with their existing competitive alternatives. For

⁶⁵ "LOOK Property" LOOKMedia. Accessed here: <http://www.lookmedia.co.nz/lookproperty>.

⁶⁶ "What others are saying" LOOK Media. Accessed here: <http://www.lookmedia.co.nz/testimonials>.

⁶⁷ "The Property Journal" LinkedIn. Accessed here: <https://nz.linkedin.com/in/the-property-journal-aa0ba593>.

⁶⁸ Property Overview home page. Accessed here: <http://propertyoverview.co.nz/>.

⁶⁹ "About Us" HouGarden. Accessed here: <http://about.hougarden.com/about-us/>.

⁷⁰ "Our marketing options" Barfoot & Thompson. Accessed here: <https://www.barfoot.co.nz/sell/marketing/options>.

example, PMP has a specialist "Real Estate Services" team to assist real estate advertisers in developing their own real estate advertising publications:⁷¹

Real Estate Services

The PMP Maxum team have great knowledge of the real estate industry which ensures that you have the best possible personal and property marketing hitting the streets. PMP Maxum's design team always ensure that your marketing material is looking at its best by managing and maintaining up to date corporate brand standards.

PMP Maxum's Real Estate Services Include End to End Solutions for:

- Magazines
- Tabloids
- Posters
- Flyers
- Promo Cards
- Business cards.

The ease of self-publication is evidenced by Real Estate Network Limited's publication of the *The Realtor* (print and online) publication in Christchurch.⁷² Real Estate Network Limited is a co-operative company representing approximately 95% of real estate agents in Christchurch.⁷³

82. The crux of the Horton Media submission is that the Commission should require divestment (presumably to Horton Media) of Fairfax's Auckland community newspapers or *The New Zealand Herald*. Requiring that divestment would not only not be justified on the basis of any valid competition concerns, but would result in synergies achieved in Auckland print being lost and higher costs being passed on to customers.

PART 1 SUMMARY

83. In summary, a number of conclusions on the relevant competition analysis can be drawn from the discussion on the submissions above.
84. In respect of market definition:
- (a) The submissions confirm the two-sided nature of the market.
 - (b) Some submissions suggest that the market on the consumer side should be subdivided into New Zealand news / information and local news / information content. Fairfax and NZME do not consider that this accurately reflects the way in which media organisations compete for attention across different categories.

However, even if the Transaction is analysed on this basis there is no competition concern, because:

⁷¹ "Real Estate Services" PMP (NZ) Limited. Accessed here: <http://pmp.co.nz/our-services-solutions/real-estate-services/real-estate-services/real-estate-services>.

⁷² Realtor Magazine online. Accessed here: <http://111.65.226.35/virtualpa8/ebook/index.html>.

⁷³ Real Estate Network Limited uses PMP for printing *The Realtor*.

- (i) In respect of New Zealand news / information, the merged entity will continue to be constrained by the significant (and currently growing and diversifying) national rivals TVNZ, MediaWorks' Newshub, and RNZ (and many others), as well as by the incentive to retain readers in order to attract advertising revenue, as a function of the two-sided market;
 - (ii) In respect of local news / information, the merged entity will continue to be constrained by the plethora of community papers, the low barriers to entry / expansion, and, again, by the realities of the two-sided market.
 - (c) Some submissions suggest that the market on the consumer side should be subdivided into channel-based markets, for example print and online news / information. This is not consistent with market evidence, which suggests that there is substitution on both the supply side and the demand side. In that context, it is inappropriate to subdivide content markets by reference to the medium used.
85. In respect of the competitive effects of the Transaction, none of the submissions identify any reason to expect the Transaction to result in reduced constraints on the merged entity in terms of price and quality, having regard to:
- (a) the two-sided nature of the market;
 - (b) the number of competitors in a crowded industry, with multiple substitutes (some close, some less so) available in both consumer and advertising markets;
 - (c) the need for the merged entity to continue to work with other publishers, or via a media buying agency, to cater to advertisers that prefer to purchase nationwide print campaigns through one transaction; and
 - (d) low barriers to entry and expansion in online news / information and regional print publishing.

PART 2: OTHER CONCERNS RAISED BY SUBMITTERS**(A) Plurality of news / information**

86. Several submissions raised concerns that the Transaction will reduce plurality of media views. However, for all the reasons set out above:
- (a) the merged entity will have economic incentives to retain a diversity of views within its publications;
 - (b) it will continue to compete with other sources of news / information; and
 - (c) in any event, plurality as a policy goal (in terms of having a "desired" number of different media organisations) is not something that is appropriately addressed through a competition / economic quantification process. Again, to the extent Government has a public policy preference for plurality, it can, and does, deal with those through existing public policy instruments, such as RNZ, Māori TV, and its ownership of TVNZ.
87. Reinforcing this view is the recent report from The Pew Research Centre, the *State of the News Media 2016* that demonstrates the increasingly diverse range of options that consumers use to access news / information and, therefore, the significant plurality of views available to consumers.⁷⁴

A January 2016 Pew Research Center survey found that just 5% of U.S. adults who had learned about the presidential election in the past week named print newspapers as their "most helpful" source – trailing nearly every other category by wide margins, including cable, local and national TV, radio, social media and news websites.

(B) Digital-first newsrooms and local content

88. Submissions also suggested that the recent moves to digital-first newsrooms have reduced the editorial independence of regional and local newsrooms (e.g. Gavin Ellis and Rod Oram). These do not reflect the way that modern media businesses operate, and that each of the businesses have operated since making the transition to digital-first newsrooms.
89. For example, NZME has different editors for all of its regional daily and community newspapers. These editors are responsible for all the local content decisions across all channels, including the digital home pages for the regional and community mastheads. NZME's local editors have broad editorial mandates for their mastheads and are champions of local issues.
90. Furthermore, within Fairfax:
- (a) The recent editorial restructure gives the local editors complete end-to-end responsibility for the local audience across all channels and platforms (both print and digital), instead of just having editorial responsibility for one print publication. The restructure has strengthened local editorial independence and local decision-making over the local content that is produced both for the local print publication as well as the local content that ends up online (stuff.co.nz). This means that instead of having a centralised digital team making the editorial decisions for a digital audience on stuff.co.nz, these decisions remain the responsibility of local editors. For example, the job description for the role of Fairfax's "Editor - Manawatu Region" states:

⁷⁴ Pew Research Center "State of the News Media 2016" (2016) at 5.

As Editor of Manawatu, you will be responsible for the editorial direction and production of local content for digital and print products. You will play a key leadership role in the Manawatu community and act as an ambassador for Fairfax in the region. You will meet regularly with key figures in the community and maintain strong relationships with the people of Manawatu. You will display a high level of competence and involvement in social media, including Neighbourly and other third parties, and understand how best to use it within your newsroom to drive community and audience engagement.

- (b) The restructure has not prioritised a national website (stuff.co.nz) over regional newspapers; it has prioritised an audience (a local audience) over a product (a print masthead or a website):
 - (i) Journalists are tasked with serving needs of their local audiences / communities on any platform, not just the print newspaper.
 - (ii) Local editors are required, and expected, to drive original local / topical initiatives independent of the rest of the Fairfax group. This means making decisions that are targeted at their own local audiences and championing issues that are important locally. There is no national agenda or directive that they are required to follow.
- (c) The role of the editors-in-chief is simply to provide ongoing support to regional editors by acting as a mentor and sounding board. The regional editor, however, makes content decisions independent of the editor-in-chief and makes decisions about their own staffing, rosters, training and any new content initiatives.

91. Each of Fairfax and NZME have structured themselves in this way to encourage local and regional editorial decision making on journalistic content and opinion, in both their print and online publications, because it is the best way to deliver consumers the content that they want and, therefore, to attract an audience, which in turn attracts advertising revenue. The depth and quantity of local content is regarded as critical to retaining local print audiences and attracting a broad digital audience, and the focus on producing a range of local content is reflected in the variety of headlines across the various Fairfax and NZME digital mastheads as set out in Figures 3 and 4 below:

Figure 3 - Top featured regional stories on stuff.co.nz on 28 July 2016



Source: www.stuff.co.nz on 28 July 2016.

Figure 4 - Top featured regional stories on nzherald.co.nz on 28 July 2016



Source: www.nzherald.co.nz on 28 July 2016.

92. The same incentives to promote local and regional editorial, content, and opinion will continue post-Transaction. The parties are of the view that this structure will drive higher quality local content, which will force the competitors in those markets to improve the quality of their offerings, to the benefit of consumers and advertisers.

(C) Journalistic Conduct Charter

93. A submission from journalist Rod Oram called for the merged entity to commit to a "Charter of Conduct" relating to its editorial decisions, editorial influence, how it guarantees plurality, how it deals with complaints, etc.⁷⁵
94. Both NZME and Fairfax already have such charters in place (prior to its de-merger NZME operated under the "*APN News & Media: Editorial Code Of Ethics*", and now it has its own NZME Editorial Code of Ethics). This is because the competitive environment that they operate in, and will continue to operate in, demands high journalistic standards in order to attract audience attention and, therefore, to attract advertiser expenditure. As noted in the Fairfax Media New Zealand Journalism Charter:

The continued success of Fairfax Media depends on providing present and future readers of all its outlets with high-quality journalism that they trust and value.

95. These existing charters include, for example in the Fairfax charter, commitments for editors and journalists to:
- Maintain a fierce independence free from political or commercial influences;
 - Report without fear or favour on events of public interest everywhere;
 - Commit themselves to the highest standards of accuracy and ethical behaviour;
 - Act with integrity;
 - Support company and industry codes endorsing high standards of conduct, and;
 - Stand up for and are part of the communities they serve.

Our editors and journalists regard freedom of expression as a right and pledge to defend it against any threat that might undermine our independence, freedom and right to publish.

⁷⁵ The submission also makes suggestions such as disclosure of revenue, etc, but these would not be appropriate for a listed company.

...

Editorial staff will avoid prominent activity in partisan public causes that compromise or might be seen to compromise the journalist and/or their organisation.

Editors agree to publish fair and reasonable accounts of any Press Council decisions involving their publications as soon as practicable.

96. The NZME Code of Ethics includes similar commitments, with the principal responsibility being to "maintain the highest ethical standard in our journalism while balancing the right of the individual with the public's right to know".
97. Copies of both the Fairfax and NZME charters / codes of ethics are available online at the following links:
- (a) Fairfax Charter (incl. Code of Ethics) - <http://www.fairfaxmedia.co.nz/pressroom/NZ/fairfax-media-new-zealand-journalism-charter>
 - (b) Fairfax Code of Conduct - <http://www.fairfaxmedia.co.nz/Investors/corporate-governance>
 - (c) NZME Code of Conduct and Ethics - http://www.nzme.co.nz/img/misc/NZME_Code%20of%20Conduct%20%20Ethics-2.pdf
 - (d) NZME Editorial Code of Ethics - http://www.nzme.co.nz/img/misc/NZME_Editorial%20Code%20of%20Ethics.pdf
98. The merged entity will have the same economic incentives as each of Fairfax and NZME do today to commit to these ethical standards of balance, accuracy, independence, integrity, and adherence to Press Council decisions. Deviating from these values would erode the audience's trust and confidence in the merged entity's publications / platforms, which would inevitably erode audience attention as those consumers switch to TVNZ, RNZ, Newshub, Allied Press, NBR, *The Guardian*, *The Daily Mail*, CNN, BBC, *The New York Times*, etc, and, therefore, consequently a reduction in advertising revenue.
99. Both Fairfax and NZME are also committed to compliance with New Zealand privacy laws, and are committed to ensuring any personal information collected in the course of their journalistic activities complies with the New Zealand Press Council ("NZPC") principles. Both have, and comply with, privacy and data management policies to ensure compliance with the law and expected standards of conduct. The merged entity will also comply with the law and retain the same incentives to ensure its conduct meets audience / customer expectations.
- (D) Independence of The New Zealand Press Council**
100. One submission suggested that the ability of the NZPC to adjudicate disputes impartially would be compromised as the merged entity would fund a greater proportion of the NZPC's operations than NZME and Fairfax each respectively do today.
101. There is no validity to that concern. Independence is driven from the structure of the organisation and the individuals involved in its administration and decision-making.

102. Independence is at the core of the NZPC's function.⁷⁶

The main objective of the New Zealand Press Council, established as an industry self-regulatory body in 1972, is to provide the public with an **independent** forum for resolving complaints involving the newspapers, magazines and the websites of such publications and other digital media. The Council is also concerned with promoting media freedom and maintaining the press in accordance with the highest professional standards. [Emphasis added]

103. The NZPC's council includes:

- (a) a retired High Court Judge (Hon Sir John Hansen);
- (b) a independent lawyer, and a number of independent consultants, representing the public's interests; and
- (c) a number of independent journalists representing the journalistic profession.

104. The Press Council operates a public good function and any attempt to erode its powers is highly likely to be negatively reported in the media. Similarly, any failure to comply with its rulings will be met with the same sanction.⁷⁷ Any deviation would inevitably erode the audience's trust and confidence in the merged entity's publications / platforms and, therefore, ultimately the merged entity's revenue (as well as likely resulting in some form of alternative regulation).

(E) The merger provides the step-change for these organisations

105. Several submissions questioned how the Transaction will enable the merged entity to remain viable in the face of the significant decline in print readership and the significant online competition from Google, Facebook, and other large international online competitors.

106. In short, both Fairfax and NZME see this Transaction as providing them with the step-change that they require to better compete in the battle against global players for digital advertising expenditure in order to continue to fund quality New Zealand-focused journalism and opinion news / information content. This can be achieved by:

- (a) More efficiently allocating the combined journalistic resources across breaking news and in-depth investigations, and mainstream and minority interests / sports, to generate greater audience attention and engagement from those journalists and, therefore, greater advertising returns;
- (b) Reducing unnecessarily duplicative resources [];
- (c) Investing in new technological innovations and process improvements. Media is an industry that is increasingly requiring greater and greater levels of technological investment to remain at the leading edge - in particular to compete in the face of the significant technological expenditure and developments of the global giants such as Google and Facebook. A combined entity will be better placed to spread the costs of such investment across a larger organisation and to improve the returns from such investment, and have more options for the way in which those technologies and process innovations are deployed; and

⁷⁶ "Statement of Principles" New Zealand Press Council. Accessed here: <http://www.presscouncil.org.nz/principles>.

⁷⁷ Indeed, NZME and Fairfax each already respectively provide a significant proportion of the NZPC's funding, and both always abide by, and comply with, NZPC decisions that they disagree with (see <http://www.presscouncil.org.nz/rulings> for recent examples).

(d) Creating a digital advertising alternative that is sufficiently attractive to advertisers to win advertising expenditure. More than 50% of online agency advertising expenditure in New Zealand is now being placed with Google and Facebook alone.⁷⁸ It is evident, that advertisers require a more compelling advertising alternative from other online competitors (such as media companies) in order to win back some of that market share from Google and Facebook. The Transaction, through the achievable synergies and efficiencies, enables the parties to reach a scale that:

(i) engages sufficient consumers in New Zealand-focussed platforms and content; and

(ii) has access to sufficient consumer data analytics

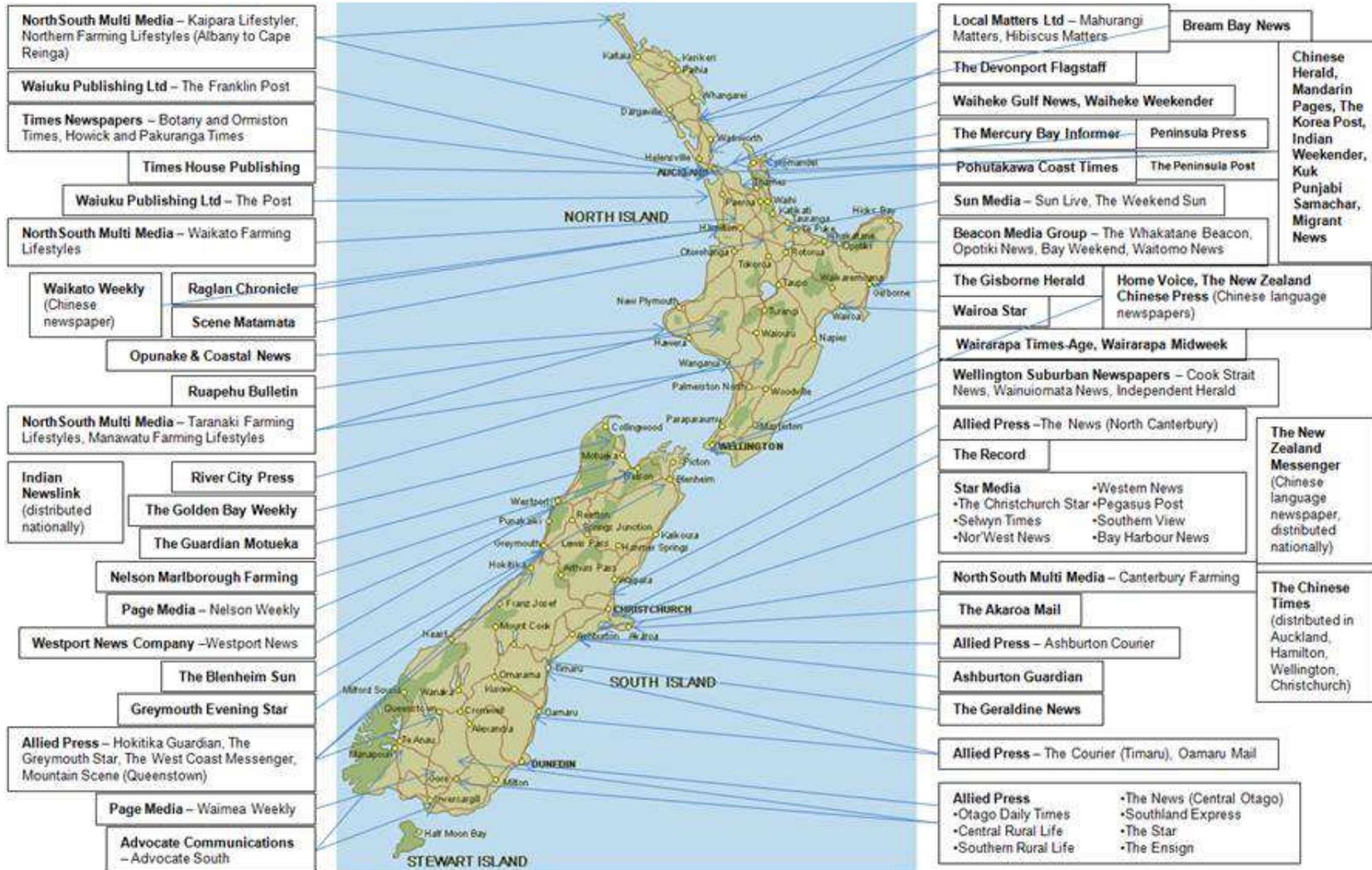
to appeal to advertisers in a way that better offers a viable and meaningful competitive alternative to Google and Facebook for digital advertising expenditure.

107. For these reasons, the Transaction will give Fairfax and NZME together, in the face of the significant decline in print readership and the significant online competition from Google/Facebook, a much stronger chance to compete for digital advertising revenue, which is going to be the critical funder of New Zealand journalism going into the future. Fairfax and NZME both believe that the Transaction provides a sustainable journalistic model for their entities that will ensure they can continue to fund New Zealand national, local, and regional journalism.

108. Without the Transaction, Fairfax and NZME's divided efforts are predicted to result in more digital advertising revenue moving offshore, which will in turn, necessitate further reductions to local editorial resource and further risk the attractiveness of the platforms to advertisers, which itself could result in further digital advertising revenue moving offshore. As such, Fairfax and NZME see the Counterfactual as involving reductions in journalistic quantity and quality, not the Factual.

⁷⁸ Standard Media Index ("SMI") Financial Booking Data at 4 April 2016.

Appendix One - Nationwide distribution of independent regional and community print newspapers



PUBLIC VERSION

Appendix Two - Key themes identified in the 2016 Pew and Reuters reports

Since the Application, 2016 versions of two reports that were referred to in the Application have been released. These are:

- *The Reuters Institute Digital News Report 2016*; and
- *The Pew Research Center State of the News Media 2016*.

Both of these reports include findings that reinforce the acceleration of the trends identified in the Application, in particular:

1. The significant growth of news / information that is accessed by consumers via social networks. Reuters: "the biggest change in digital media has been the growth of news accessed via social media sites like Facebook, Twitter, Instagram, and Snapchat." The Reuters report suggests that 46% of people in the US use social media as a news / information source, almost doubling since 2013.
2. The significant move to news / information consumption via smartphones: Reuters: "We have reached the mobile tipping point with a publisher like the BBC reporting that around 70% of traffic now comes from mobile devices."
3. The readership / circulation of printed newspapers has again declined significantly:
 - (a) Reuters: "Across our 26 countries, we see a common picture of job losses, cost-cutting, and missed targets as falling print revenues combine with the brutal economics of digital in a perfect storm. Almost everywhere we see the further adoption of online platforms and devices for news – largely as a supplement to broadcast but often at the expense of print."
 - (b) Pew: "Print newspapers, to be sure, have a core audience and subscriber base that the industry hopes will buy enough time to help ease the digital transition. But recent data suggests the hourglass may be nearing empty: A January 2016 Pew Research Center survey found that just 5% of U.S. adults who had learned about the presidential election in the past week named print newspapers as their "most helpful" source – trailing nearly every other category by wide margins, including cable, local and national TV, radio, social media and news websites."
4. The reversal of digital paywalls by general news / information providers, and the reluctance of most consumers to pay for general news / information online (as discussed at paragraph 54(c) above).
5. The increasing competition in domestic markets from overseas news / information providers: Pew: "US web traffic coming to dailymail.co.uk or theguardian.com (measured in terms of unique visitors) would place them within the top five US-based newspapers by web traffic."
6. The fact that a small number of large global technology companies "continue to dominate" digital advertising revenue, with five technology companies accounting for 65% of total digital advertising revenue in the US, and Facebook alone accounting for 30% of US digital display advertising revenue, and those large firms' advertising share increasing again from last year.

Appendix Three - Response to Star Media submission

Star Media is a competitor to Fairfax in a region where there is no overlap with any NZME print publication. It is primarily a regionally focussed newspaper.

The main points in response to Star Media's key submissions are as follows:

1. *"NZMEFF share" of major media is 66% by EBITDA:* The selection of "major media companies" is entirely subjective; only a small selection of media is included. This provides no useful indication of any relevant share of anything.
2. The parties are *"not material players in the digital advertising market"*. This is incorrect and materially misleading. It is also not clear what competition point this is addressing.
3. *"Overseas market trends do not apply", Australia and New Zealand "are unique"*. A 2009 quote from APN is used to support this proposition. It has no validity in 2016.
4. *The parties "are not new media businesses and cannot be assessed against markets in which they do not effectively operate"*. New Zealand law does not prevent the parties from expanding into online news / information, and they have done so. There is no prohibition on "old media" businesses from being "new media businesses" and no reports or commentary that indicate the (false) dichotomy suggested makes any useful contribution to the competitive effects analysis.
5. *In the national advertising market, there is no substitution between print and online as advertising agencies set their spend for each distribution channel.* The data simply does not bear out this statement, nor is it supported by the parties' experience in market, or international trends. Star Media is also a primarily regional competitor, so it is not clear how much recent experience they have to draw on in making these assertions.
6. *In the local/regional advertising market, print is converged with radio.* There is strong evidence that in local and smaller regional areas print advertising is converged with all other forms of advertising, including flyers, outdoor, online, and radio. The merger will not change that dynamic. The selection of radio as the only constraint in this converged market, but not online (with the "exception of TradeMe", but for some reason only for classifieds, despite TradeMe being a significant provider of digital advertising through its banner ads) appears to be designed to isolate possible merger effects without reflecting actual market behaviour.
7. *Fairfax makes agreements that exclude The Star.* These passages are redacted but (a) given the context appears to be events, it is unsurprising that Fairfax would ask for exclusivity in the promotion of the events that it is also investing in; and (b) the competition described is between *The Star* and *The Mail*, so the merger changes nothing in that dynamic.
8. *The Star has higher circulation but Fairfax has a "dominant position" despite having an inferior product.* It is not clear what is alleged here, but the surrounding narrative suggests that Fairfax currently gains a higher share of advertising revenues than *The Star*. If so, *The Star* should consider whether it has its product / price mix right.
9. *The increase in concentration will enable the merged business to increase pricing by bundling radio and papers and "we will be further at the mercy of their market power"*. Both radio and newspaper products of the parties are subject to intense competition in the Christchurch area today and so will not be able to be anti-competitively bundled post-Transaction.