

**Cross submission by NZME and Fairfax
on
TVNZ's submission dated 14 September 2016 and
MediaWorks' submission dated 30 September 2016**

Introduction

1. NZME Limited ("**NZME**") and Fairfax NZ Limited ("**Fairfax**") have reviewed the submissions by TVNZ and MediaWorks to the Commerce Commission ("**Commission**") in response to the Commission's 14 June 2016 Statement of Preliminary Issues ("**SOPI**") relating to the Fairfax / NZME application (the "**Application**") seeking approval to merge the New Zealand operations of NZME and Fairfax (the "**Transaction**").

Executive summary

2. TVNZ and MediaWorks agree with a number of key and fundamental premises of NZME and Fairfax's original application, which are:
 - (a) NZME and Fairfax, in their digital-first configurations, both have as their core business the online delivery of news / information.
 - (b) TVNZ and MediaWorks compete with NZME and Fairfax in the production of that content and distribution of it online.
 - (c) Both TVNZ and MediaWorks are substantial businesses with substantial reach:
 - (i) TVNZ describes itself as the country's leading free-to-view video content provider, highlighting that it reaches 2.2 million New Zealanders every day and 3.7 million every month via its main broad channels (TVNZ1 and TVNZ2) as well as its TVNZ OnDemand and 1 News Now online services;
 - (ii) MediaWorks describes itself as New Zealand's largest independent cross-platform media company, reaching 3.7m Kiwis and providing news and entertainment content across TV, radio and digital properties, including Newshub, which it describes as "New Zealand's only 24/7 TV, radio and digital news service".
 - (d) These different characterisations by two major providers of news / information demonstrate the cross-platform and multimedia nature of the online distribution of news / information, in which NZME and Fairfax must compete. Different media businesses bring different strengths and weaknesses to that competition but each provides New Zealanders with news / information and distributes it online. Given the scale of these businesses it cannot sensibly be said that if there were a profitable market opportunity, those businesses (and others) would not exploit it.
3. The two primary issues that TVNZ and MediaWorks raised were:
 - (a) Market definition - each wanted the Commission to define a product market more narrowly to encompass only New Zealand news (and in MediaWorks' case also an online-only New Zealand news market).
 - (b) The Counterfactual - MediaWorks was concerned that it would not be able to merge with one of NZME or Fairfax if the Transaction proceeded. TVNZ asserted that the business case to make the investment required to develop online news / information capability is related to the size of the audience reach

of the platform. It also noted that it and RNZ have content deals with Fairfax for audio and video content. Although much is redacted, it appears to suggest it may retrench its online news offering if the Transaction were to proceed.

4. In respect of those points:

- (a) As the Commission is aware, market definition is the starting point, not the end point, of a competitive effects analysis. NERA has provided a supporting paper explaining why economic analysis supports market definitions that include both digital / online and print media together, as adopted in the Application.
- (b) In any event, the evidence is that, as a matter of fact, digital / online news production is the engine for print news production in both parties' businesses, and that there is a substantial quantity of user self-generated and independently generated news that consumers access from outside the competitive set of NZME, Fairfax, TVNZ, MediaWorks and RNZ, that is curated and / or distributed by users themselves and by large media platforms like Google and Facebook and Twitter (with more than 50% of web users now using social media for news consumption each week).¹ Those are the competitive dynamics that prevent any substantial lessening of competition arising in the production of news / information.
- (c) MediaWorks' proposed counterfactual is as a matter of fact unlikely. Any merger with NZME would itself likely require attention from the Commission due to overlaps in radio assets, and the available synergies would logically be limited in the case of a MediaWorks / NZME merger, and even lower in the case of a merger with Fairfax. The Commission has before it the most efficiency-enhancing merger opportunity in the form of the NZME / Fairfax Transaction.
- (d) TVNZ's counterfactual is more difficult to understand. It is premised on Fairfax and NZME having a large audience reach in news / information. But TVNZ reaches 3.7m New Zealanders every month. It lacks credibility to suggest that business planning takes only the current reach of the news / information sites into account when considering digital investment opportunities. TVNZ would rationally consider the profitability of the market opportunity (ie if the merged entity raised prices or reduced quality) and its ability to fill that gap.

Fairfax and NZME's view remains that with TVNZ's substantial digital reach it would make the investment if the merged entity created a market opportunity by delivering a low quality or high priced service post-Transaction. The vast evidence of recent investments in the digital space, including by TVNZ, MediaWorks, RNZ, The Spinoff, Bauer Media's new New Zealand digital platforms, the creation of New Zealand-focussed content by the likes of The Guardian and Vice Media, and the proposed Jennings / Murphy website, etc, demonstrate that further entry and expansion is likely post-Transaction.

5. Substantial in-market evidence and data from the most recent SMI figures support the proposition in the original Application that the production of news / information in New Zealand and its distribution online is intensely competitive. NZME and Fairfax provide in this cross submission further real and current examples of why the range of market participants and near entrants is much wider than the TVNZ and MediaWorks submissions seek to suggest.

¹ Mark Sweney "Facebook's rise as news source hits publishers' revenues" (15 June 2016) The Guardian. Accessed at: <https://www.theguardian.com/media/2016/jun/15/facebook-news-publishers-reuters-institute-for-the-study-of-journalism>.

6. Finally, MediaWorks and Covec, on behalf of TVNZ, raise concerns about plurality. The number and nature of competitors distributing news / information of itself does not support such concerns. NZME and Fairfax provide further information in this regard, including reference to a recent Ofcom report that provides further explanation of the sources of plurality of opinions.

Market definition

7. Both the TVNZ submission and MediaWorks submission contain much discussion on approaches to market definition. In summary:
- (a) both TVNZ and MediaWorks say there is a single national advertising market for the supply of advertising over various platforms, including digital, print and all other platforms;
 - (b) MediaWorks says there is a national market for the delivery of New Zealand news over digital platforms; and
 - (c) TVNZ says there is a national market for the delivery of New Zealand news over various platforms, including digital, print, TV and radio.

TVNZ also filed a report from Covec Economic Consultants ("**Covec**"). A separate report from NERA, **attached**, addresses the inaccuracies and erroneous conclusions in that Covec report.

8. In respect of 7(a), as noted in the Application (paragraph 12.24), Fairfax and NZME agree with this approach to market definition on the advertiser side due to the significant substitutability between different media - both by advertisers and all manner of media providers. Neither TVNZ² nor MediaWorks questions the highly competitive nature of the New Zealand advertising market, in which the plethora of advertising providers compete against one other, including global giants such as Google and Facebook, and the many other media alternatives such as TV, radio, magazines, billboards, cinema, flyers, etc.
9. Indeed, significant evidence has been provided to the Commission throughout its process that advertisers have no concerns about the Transaction due to the significant range of competing alternatives (including the submission to the Commission from the Communications Agencies Association of New Zealand ("**CAANZ**")). Given those submissions from the actual purchasers of advertising, in this cross submission we only deal with:
- (a) the importance of the competition in the advertising market to the news / information market, due to the two-sided nature of those markets (which has been ignored in the TVNZ and MediaWorks submissions); and
 - (b) MediaWorks' suggestion that the merged entity will somehow have "market power" in the national advertising market (see further at 19 to 31 below).
10. In respect of 7(b) and 7(c), neither TVNZ nor MediaWorks provides a cogent explanation for the market definitions that they advocate. In particular, MediaWorks advocates for an online-only news / information market arguing that online news enjoys certain "unique attributes", such as the ability to "use images and video as well as long-form text and analysis" and the ability to reach audience throughout the day. This is not an appropriate basis on which to define a market - indeed almost all media these days is delivered digitally and available throughout the day, for example, radio, TV, and text is

² Putting aside the Covec report that accompanied the TVNZ submission which is inconsistent with, and contrary to, the TVNZ submission in a number of places.

all accessed online and consumers switch between those media at a touch of an App on their smartphones or click of a mouse on their computers.

11. The most important consideration in considering market definition is substitution, and (a) in a converged digital environment any distinction between different media from both a consumer and supplier perspective has rapidly fallen away, and (b) the significant decline in print consumption demonstrates the substitutability between digital and traditional media. Indeed:

(a) the Commission treats online media as a strong competitive constraint to traditional media. For example in *Bauer / APN*:³

We have determined that the proposed acquisition is unlikely to substantially lessen competition in this way because if, post-acquisition, Bauer attempted to increase prices, sufficient consumers would switch to other substitutes, including in particular online provision of similar content.

(b) the Australian Competition and Consumer Commission ("**ACCC**") recently cleared a newspaper merger on the basis that the many different types of media compete with each other in the provision of news / information:⁴

"[T]he ACCC concluded that overall, a sufficient range of news choices would remain available to Western Australians, with competing online options including Fairfax's WAtoday and ABC online, as well as TV and radio news."

(c) the TVNZ submission notes "[t]he core product in all cases, however, regardless of delivery platform, has been news and information".⁵

12. TVNZ's main submission in respect of market definition is that there is a separate market for New Zealand news / information, as distinct from international news / information, on the basis that consumers consider New Zealand news to be important. As a result, TVNZ postulates that the competitive constraint on Fairfax and NZME in its narrowly defined market is limited to TVNZ, MediaWorks, and RNZ.

13. Fairfax and NZME agree that New Zealanders highly value New Zealand news / information content. However, the narrow definition of news / information providers simply does not fit with the way these markets work in practice or with relevant legal guidance for market definition:

(a) It ignores the significant range of other providers of New Zealand news / information, including Bauer (discussed further at 41 to 46 below), NBR, *Otago Daily Times*, Sun Media, Scoop, The Spinoff, and the numerous ethnic media sources, etc;

(b) It focuses solely on demand-side substitutability, incorrectly asserting "market definition is heavily focussed on consumer preferences",⁶ when the High Court has stated that supply side substitution is an equally relevant factor in the market definition exercise.⁷

³ New Zealand Commerce Commission, *Bauer Media Group (NZ) LP / APN Specialist Publications NZ Limited* [2014] NZCC 1 at [61].

⁴ Australian Competition and Consumer Commission Informal Review: *Seven West Media Limited - proposed acquisition of The Sunday Times publication and website from News Limited* (15 September 2016). Accessed at <http://registers.accc.gov.au/content/index.phtml/itemId/1198464/fromItemId/751046>.

⁵ TVNZ Submission at [4.7].

⁶ At [5.4].

⁷ *Commerce Commission v Air New Zealand Limited* HC AK CIV-2008-404-008352 [24 August 2011] at [139].

We see no reason to consider one type of substitution as relevant under s 3(1A) but not another... In the current two-stage inquiry it is an important factor. **A purposive approach to market definition militates particularly strongly, in these circumstances, in favour of considering supply side substitution as an aspect of market definition.** Accordingly, both types of substitution will be considered. [Emphasis added]

- (c) The focus on demand-side substitutability also ignores the Commission's approach that "near entrants" also need to be treated as within the market.⁸

A properly defined market... will also include those suppliers currently in production who are likely, in the event of such a snip, to shift promptly to offer a suitable alternative product even though they do not do so currently. These have been referred to by the Commission as "near entrants".

As noted in the Application, quoting the Reuters Institute Digital News Report, there are a number of near entrants that ought to be treated as exerting significant competitive constraint on Fairfax and NZME to ensure standards are maintained.⁹

the Daily Mail, the Guardian, the New York Times, the BBC, and CNN are engaged in a battle for English speaking audiences in the US, UK, Australia, and elsewhere...

... as companies pursue such global ambitions, they will need to localise content, a factor that has led the Guardian to establish newsrooms and separate editions for its US and Australian editions.

In reality, evidence of entry and expansion in New Zealand and similar markets shows there are minimal barriers to entry / expansion for global news / information providers to increase their provision of New Zealand news / information should market opportunities arise. Australian experience (discussed further at 37 below) demonstrates just how real, credible, and near such competitive threats are. Ignoring the competitive constraint from overseas competitors is also inconsistent with statements TVNZ has made elsewhere about the competitive environment that it operates in:¹⁰

Tactically TVNZ will need to continue competing with other local media players however the strategic reality is that we will increasingly be competing with global online players.

...while TVNZ is performing well relative to domestic media competitors, the competition for viewer eyeballs and advertising dollars is increasingly being driven by global scale players" (TVNZ, 2015).

- (d) The approach also fails to properly reflect the effect of two-sided markets, and the extent to which a competitor on one side of a media platform (eg the advertising side) can constrain the parties' conduct in the other (eg the news / information side).

⁸ See for example: New Zealand Commerce Commission *Medical Waste Group Limited / San-I-Pak (NZ) Limited* (16 March 2000) at [61].

⁹ Reuters Institute Digital News Report 2015.

¹⁰ See:

- TVNZ *Annual Report, Financial Year 2015* (2015). Accessed at: http://www.parliament.nz/resource/minz/51DBHOH_PAP66276_1/2709a35caac09b75442a36f8fcb4195d6ba05fa.
- Merja Myllylahti, *JMAD New Zealand Media Ownership Report 2015* (1 December 2015) JMAD. Accessed at: http://www.aut.ac.nz/data/assets/pdf_file/0011/608366/JMAD-2015-Report.pdf.

TVNZ and MediaWorks have sought to discount the notion of Google and Facebook as competitors to Fairfax and NZME by characterising the global media platforms as content aggregators rather than content distributors. However, the nature of two-sided markets means that the competitive constraint from Google and Facebook for advertising places competitive constraint on Fairfax and NZME in the provision of New Zealand news / information. This is a dynamic that has recently been confirmed by the ACCC in approving a print and online news media merger.¹¹

The ACCC also considered that, in the face of growing competition from alternative advertising opportunities, the need for SWM to maintain readership levels in order to ensure advertising revenues would constrain SWM and likely limit its ability to increase prices to consumers or decrease quality as a result of the proposed acquisition.

14. In any event, market definition is just the starting point for analysis, not the end point. As the High Court has previously observed, it is "important to recognise that market definition is a tool for competition analysis rather than an end in itself... defining the market in [one] way should not lead to any underestimation of the potential substitutability and level of constraint on market participants in the narrowly defined market."¹²
15. Regardless of how the Commission wishes to define the market, the reality is that the merged Fairfax / NZME entity, just like TVNZ and MediaWorks, will be subject to significant competitive constraint that will require it to supply high quality news / information to New Zealanders. If the merged entity does not deliver high quality news / information:
 - (a) TVNZ, MediaWorks, RNZ, Bauer, Allied Press, NBR, etc will further grow their audience at the merged entity's expense;
 - (b) Google, Facebook, Trade Me, MediaWorks, RNZ, Bauer, Allied Press, NBR, etc will further grow their advertising revenue at the merged entity's expense; and / or
 - (c) *The Daily Mail*, *The Guardian*, *The Huffington Post*, BuzzFeed, Vice Media, or others will "spy a gap" in the provision of news / information in New Zealand and enter or expand further to take further audience and advertising revenue at the merged entity's expense.
16. The market realities dictate that there is simply no way in which the merged entity could increase prices above competitive levels, or reduce quality, post-Transaction without harming its own financial position and viability.

Market dynamics

17. In summary, TVNZ's and MediaWorks' assertions in respect of market dynamics appear to be:
 - (a) The current news / information market in New Zealand is highly competitive with vigorous competition between TVNZ, MediaWorks, RNZ, NZME, and Fairfax (see paragraphs 4.2 of the MediaWorks submission and paragraph 6.13 of the TVNZ submission);
 - (b) The merged entity will have a large digital audience, which will mean it:

¹¹ Above n 4.

¹² *Brambles New Zealand Ltd v Commerce Commission* (2003) 10 TCLR 868 (HC) at [137].

- (i) (according to MediaWorks) has "market power" in the national advertising market;
- (ii) (according to TVNZ) has "incumbency benefits" due to there being a disparity in audience reach;
- (c) The entry costs in providing online news / information content is high and that significant investment in online delivery capability is required, so there are, and will be, only five providers in New Zealand - TVNZ, MediaWorks, RNZ, NZME, and Fairfax.

The highly competitive nature of the markets at present

18. In respect of 17(a), Fairfax and NZME agree with TVNZ and MediaWorks that they operate in a highly competitive news / information market in New Zealand. As outlined at paragraph 15 above, those significant constraints include:
- (a) New Zealand-based media entities, such as TVNZ, MediaWorks, RNZ, Bauer, Allied Press, NBR, etc;
 - (b) the very real threat of entry and expansion further into the production of New Zealand news / information content by the likes of *The Daily Mail*, *The Guardian*, *The Huffington Post*, BuzzFeed, Vice Media, or others; and
 - (c) the significant competitive constraint in the advertising market, including from global giants such as Google and Facebook, to maintain readership levels in order to obtain advertising revenues.

The markets will continue to be highly competitive post-merger

19. In respect of 17(b), TVNZ and MediaWorks' submissions are incorrect and ignore the realities of the market dynamics. Firstly, both the TVNZ and MediaWorks submissions overstate the additional online audience that the merged entity would achieve as a result of the merger. As the Commission is aware, more than two-thirds of the readers of Fairfax and NZME's websites read both Stuff.co.nz and nzherald.co.nz, meaning that in terms of incremental online reach, the Transaction would not create a "vast disparity between audience reach", as contended by TVNZ and MediaWorks.
20. Secondly, in a digital environment, the size of an entity's current digital audience is an exceptionally ephemeral source of market position. Audiences follow quality / attractive content. Alternative news platforms, such as TVNZ and MediaWorks, are never more than a mouse click or finger swipe away.
21. The number of audience visits, and duration of audience visits, is simply a function of the volume and quality of the content. As Paul Thompson, the CEO of RNZ, said in 2014 when signalling RNZ's pivot towards digital platforms:¹³
- But in a world where the audience has more choice than ever before their attention will always shift to those media sources which best meet their needs.
- In effect the audience will call the shots, not us, and the first thing they will shoot is any content which is sub-standard.
22. This ephemeral nature of readership / audience has been recognised by the Commission previously in media mergers:¹⁴

¹³ "RNZ takes a global look at digital age" (12 May 2014) RNZ. Accessed at <http://www.radionz.co.nz/news/national/244137/rnz-takes-a-global-look-at-digital-age>.

Pharmaceutical companies and GPs were of the view that if the proposed acquisition were to occur, and MediMedia were to start charging GPs for the existing publications, a new entrant could succeed and obtain the necessary advertising. This would also be the case if readership declined as a result of MediMedia charging GPs for the publications.

The pharmaceutical companies advised the Commission that if the quality of the MediMedia guides declined, readership would decline and therefore exposure of their advertising would drop, so they would look for alternatives for their advertising. This would potentially include using a new entrant that could meet their requirements.

The Commission, as a result of the information received from industry participants set out above, is of the view that if the acquisition were to proceed and MediMedia were to exercise market power by charging for, or reducing the quality of, the general information publications, a new entrant would be able to obtain the advertising revenue required to enable it to produce a general information publication that could compete successfully with MediMedia.

The Commission therefore considers that access to advertising revenue would not be a barrier to entry.

23. If TVNZ and MediaWorks wish to grow their digital audience further, they simply need to continue to produce attractive content that engages New Zealanders. As the Commission has noted, there is no incumbency benefit in having an audience.
24. Indeed, the fact that TVNZ and MediaWorks, as the nation's largest FTA TV broadcasters, or RNZ (as the publicly funded broadcaster), do not already have the largest digital audience is itself unusual by international standards. In comparable overseas English-speaking jurisdictions, including the UK, Australia, Canada, and Ireland, in all cases it is one of the FTA broadcasters that does in fact have the largest digital audience.¹⁵
25. Fairfax and NZME expect that the fact that neither TVNZ or MediaWorks (or RNZ) occupy that position currently is simply due to a lack of focus on the digital channel by those entities in previous years. Indeed, TVNZ did historically have a larger digital audience than stuff.co.nz before making a strategic decision to move away from online news in 2003 when it closed its nzzoom website. At that time nzzoom was second in New Zealand in the provision of online news / information:¹⁶
- Nzoom is ranked second among New Zealand online news services in measures of unique users per month, behind the New Zealand Herald's website, nzherald.co.nz.
26. More recently, in the last year, each of TVNZ, MediaWorks, and RNZ have made significant new investment in their online news / information presence to leverage off their strengths in the provision of news / information in the broadcasting space. Those media entities are achieving significant audience growth in New Zealand:
- (a) **TVNZ:** TVNZ launched One News Now in July 2015, and has invested heavily in its One News Now online news / information service:^{17 18}

¹⁴ New Zealand Commerce Commission Decision No. 516. *MediMedia (NZ) Limited / Adis International Limited* (18 December 2003) at [200] to [203].

¹⁵ Further information of the position of those broadcasters in those jurisdictions is set out in **Appendix One**.

¹⁶ Peter Griffin "Back to basics on TVNZ's website" (15 May 2003) NZ Herald. Accessed at: http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=3502023.

¹⁷ TVNZ *Annual Report, Financial Year 2015* (2015). Accessed at: http://www.parliament.nz/resource/minz/51DBHOH_PAP66276_1/2709a35caac09b75442a36f8fcfb4195d6ba05fa

¹⁸ "TVNZ launches ONE News Now" (6 July 2015) TVNZ. Accessed at: <https://www.tvnz.co.nz/one-news/entertainment/tvzn-launches-one-news-now-q00163>.

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.

As recently as September 2016 the CEO of TVNZ, Kevin Kenrick, has said:¹⁹

We're seeing mobile devices driving huge growth in online video consumption with TVNZ OnDemand and ONE News Now delivering an average of 10 million video streams per month.

In this context, The Spinoff's Duncan Grieve noted in an article about TVNZ last week, entitled "*TVNZ has found the internet - and the rest of our media should maybe start worrying*", that:²⁰

In much the same way as their analogue-era building has been stripped and reconfigured to resemble a sleek digital spacestation, TVNZ as an organisation is today presenting itself to New Zealand as a dynamic multi-media enterprise, better equipped than anyone else to complete the big media pivot without falling flat on their face. Shockingly, based on today's very impressive presentation, they may be right...

... It's a big rebrand! And probably overdue. And, like pretty much every one of these many major pieces, it seems absolutely the right move from a business perspective. Like RNZ, TVNZ is a publicly-owned media organisation which came late to the pivot party. But on today's evidence they're using the muscle of their dominant position to move as assuredly as any of our Big Media.

- (b) **MediaWorks:** MediaWorks combined its digital / TV / radio newsroom in 2015 to be a direct competitor to the digital offerings of NZME and Fairfax,²¹ including launching its new multiplatform news / information brand "Newshub" in February 2016.²² Newshub has achieved significant audience growth since its launch in February 2016 - in the 5 months from March to August 2016, MediaWorks' Newshub website grew by 34% in terms of Unique Audience (from 420,000 to 564,000), and 76% in terms of page views (from 2,607,000 to 4,599,000), as noted in **Figures One** and **Two** below:

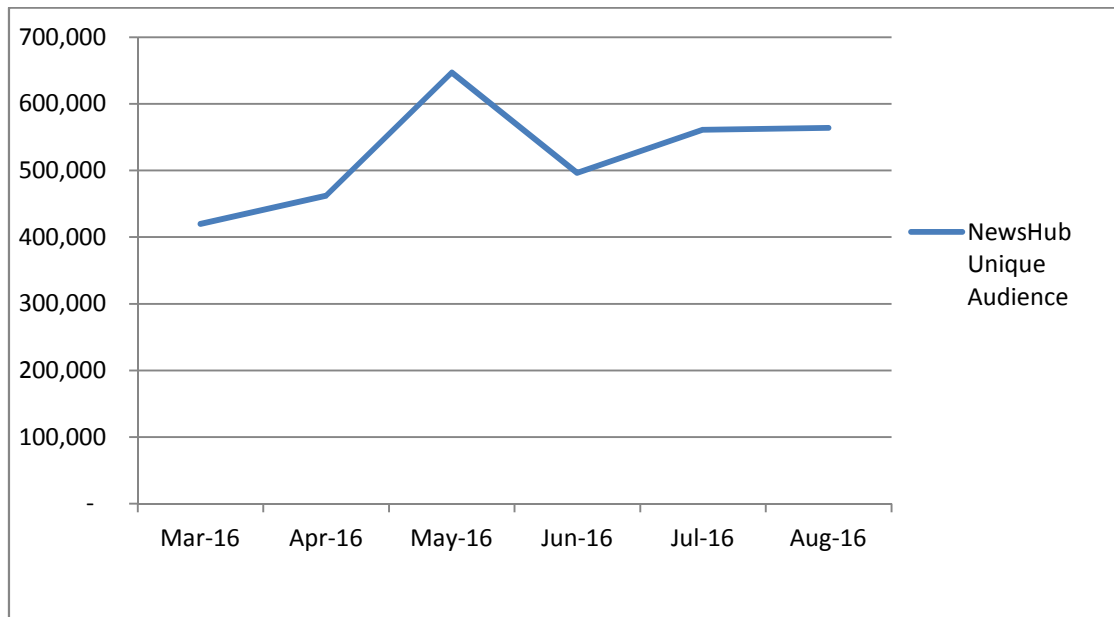
¹⁹ Tom Pullar-Strecker "Audience gain fails to compensate TVNZ for weaker advertising market" (26 August 2016) Stuff. Accessed at: <http://www.stuff.co.nz/business/industries/83615417/audience-gain-fails-to-compensate-tvnz-for-weaker-advertising-market>.

²⁰ Duncan Grieve "TVNZ has found the internet - and the rest of our media should maybe start worrying" (3 October 2016) The Spinoff. Accessed at: <http://thespinoff.co.nz/media/03-10-2016/tvz-has-found-the-internet-and-the-rest-of-our-media-should-maybe-start-worrying/>.

²¹ Bill Ralston "Hold the homepage" (4 March 2016) New Zealand Listener. Accessed at: <http://www.listener.co.nz/current-affairs/media/hold-the-homepage/>.

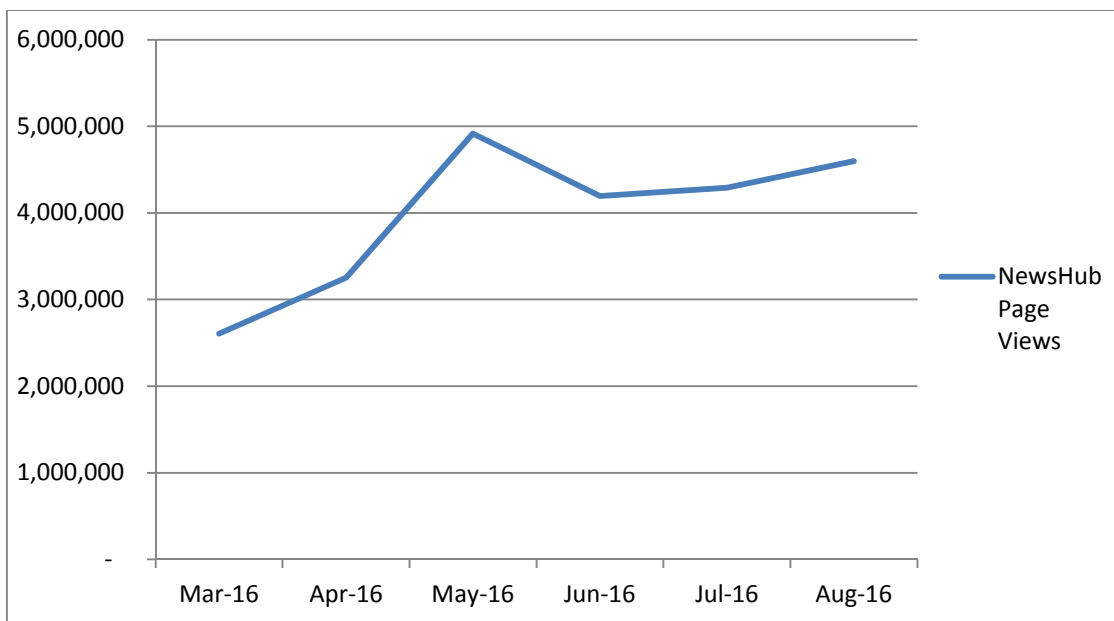
²² "Newshub launches Monday 1 February" MediaWorks (21 January 2016). Accessed at: <http://www.mediaworks.co.nz/NEWSHUB-LAUNCHES-MONDAY-1-FEBRUARY/tabid/1602/articleID/4611/Default.aspx>.

Figure One - Newshub Unique Audience March to August 2016



Source: Nielsen Online Ratings 2016.

Figure Two - Newshub Unique Page Views March to August 2016



Source: Nielsen Online Ratings 2016.

As recently as September 2016, when MediaWorks appointed the former Australian editor for BBC News as its new head of digital news, MediaWorks referred to: "the strong growth Newshub has shown in the digital space since launch".²³

²³ "Newshub announces new head of digital" (16 September 2016) Newshub. Accessed at: <http://www.Newshub.co.nz/business/Newshub-announces-new-head-of-digital-2016091613>.

MediaWorks is not a greenfield entrant struggling to gain brand awareness or scale. It is a long established media outlet, with pervasive reach across various platforms. MediaWorks' own submission speaks well to this point:

MediaWorks TV, Radio and Digital (MediaWorks) are together New Zealand's largest independent cross-platform media company, reaching 3.7 million Kiwis and providing news and entertainment content across TV, radio and digital properties. MediaWorks TV operates two free to air channels, TV3 and Edge TV, and is a joint-venture owner of free-to-air channel Bravo. MediaWorks Radio is New Zealand's number one network nationwide, with 2.14 million listeners tuning in every week across its nine commercial radio stations. Our entertainment and news brands are household names including Newshub, The Rock, More FM, The Edge, Mai FM, George FM and RadioLIVE. MediaWorks' network of digital platforms includes a news website, entertainment and music websites, and an audio-visual on-demand service. MediaWorks' news and current affairs service Newshub is New Zealand's only 24/7 TV, radio and digital news service, providing the latest news and in-depth analysis, with TV and radio news bulletins and a dedicated app and website – as well as fuelling news content across programmes such as the Paul Henry show.

- (c) **RNZ:** RNZ has embarked on a recent transition from being a radio broadcaster to being a "multi-media broadcaster",²⁴ 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".²⁵ RNZ CEO, Paul Thompson, said in 2014 when signalling RNZ's pivot towards digital platforms:

Radio, television and newspapers are merging into digital devices that are always switched on.

The future of content delivery is multi-media, multi-platform, personalised, mobile and social.

To stay relevant and continue our mission of serving the public, and to maintain and grow our audience, we must become and are becoming a multimedia organisation.

Since the Application, on 14 July 2016, RNZ has announced significant changes to its news / information website to make it more attractive to consumers.²⁶

27. Despite the significant growth in, and focus on, the provision of news / information from RNZ, the MediaWorks submission misleadingly does not refer to the competitive constraint from RNZ once - erroneously referring to just TVNZ, MediaWorks, NZME, and Fairfax as "the four commercial players (who are in the National Market for Online News)". That would be the equivalent of saying that the BBC is not a competitor in the provision of news / information in the UK - ie, a nonsense.
28. This artificially narrow approach to the market also ignores the significant number of other competitors and competitive constraints in the market, including:
- (a) Bauer Media Group, *Otago Daily Times*, NBR, Sun Media in the Bay of Plenty (with Sun Media describing its Sun Live website as "the 4th most read news

²⁴ Amy Adams "Bill ensures ongoing success for RNZ" (press release, 30 March 2016). Accessed at: <https://www.beehive.govt.nz/release/bill-ensures-ongoing-success-rnz>.

²⁵ Radio New Zealand *Annual Report 2014-2015*. Accessed at: http://www.radionz.co.nz/assets/cms_uploads/000/000/074/RNZ_Annual_Report_2015.pdf.

²⁶ Glen Scanlon "Sneak peek: the rnz.co.nz website is changing" (14 July 2016) RNZ. Accessed at: <http://www.radionz.co.nz/news/on-the-inside/308676/our-website-is-changing>.

site in the country"),²⁷ The Spinoff ("with a loyal audience of over 350,000 monthly users"),²⁸ and the numerous news syndication providers, such as NZ Newswire, Content Ltd (BusinessDesk), Scoop, and NewsRoom, that provide New Zealand news / information content to a number of news platforms including Yahoo News NZ and Google News NZ, and many others.

- (b) The ease with which consumers can "unbundle" their news / information consumption, for example by receiving business focussed news from NBR / interest.co.nz, sports news from The Spinoff, political news from Hive News, etc. In a world where consumers increasingly access their news / information content via social media, topic specific publications compete through the quality of specific content without the need to have their own popular platform/homepage. As noted in the Application, this is predicted to lead to a situation where news / information providers' brands become of secondary importance to their ability produce quality content on an ongoing basis.²⁹

In July of this year Michael Wolff wrote an article for the MIT Technology Review in which he imagines a future where "There is no New York Times, there are just New York Times articles". In other words, social media's dominance in mobile leads to a scenario where the majority of the audience reading New York Times content never visit its website or buy a copy of the newspaper.

- (c) International competitors that are expanding in New Zealand, or could expand almost overnight, such as *The Daily Mail*, *The Guardian*, *Huffington Post*, BuzzFeed, Vice Media etc (as evidenced by the Australian experience - see para 37, and the fact The Guardian and Vice Media, for example, already have New Zealand-based journalistic resource to produce New Zealand-focussed content); and
- (d) The significant competitive constraint from other advertising providers (including Google and Facebook) in the provision of news / information content due to the two-sided nature of the market (as noted at paragraph 12 above).

TVNZ and MediaWorks materially understate the extent of competition in the market(s) that the merged entity will operate in.

29. When viewed through the proper lens of:

- (a) audience size being ephemeral and wholly dependent on producing quality content at attractive (in this market typically free) prices; and
- (b) Fairfax and NZME operating in markets with significant actual competitors, near entrants, and significant competitive constraint from Google and Facebook that extends into both sides of the market,

the suggestion that the merged entity could somehow have "market power" in the national advertising market, or some other problematic incumbency benefits, is demonstrably false.

30. Indeed, one need only look at each of Fairfax and NZME's share of digital advertising expenditure in New Zealand, which has decreased again since the time of the

²⁷ Sun Media "The Eastern Bay now has a dedicated, local news site – free to access, constantly updated 24/7 and accessible anywhere." Accessed at: http://www.ebopchamber.co.nz/sites/default/files/docs/attachments/sunlive_eastern_bay.pdf.

²⁸ "About" The Spinoff. Accessed at: <http://thespinoff.co.nz/about-contact/>.

²⁹ Nick Baughan "Do Facebook, Twitter and Google offer news publishers salvation?" (15 September 2015) The Guardian. Accessed at: <http://www.theguardian.com/media-network/2015/sep/15/facebook-twitter-google-apple-news-publishers-instant-articles>.

Application in favour of Google and Facebook, to realise there is no prospect of the merged entity having such market power or incumbency benefits - see **Figure Three** below.

*Figure Three - SMI Online agency digital spend (Year to August 2016)*³⁰

	Digital Advertising Revenue: Year to August 2016	Share of Digital Advertising Revenue
NZME	16,036,308	5.5%
Fairfax	15,791,665	5.4%
Merged entity	31,827,973	10.9%
Google, Inc.	111,682,069	38.3%
Facebook, Inc.	50,063,567	17.2%
Agency Trading Desk	25,269,698	8.7%
TVNZ	8,863,896	3.0%
Trade Me	8,858,284	3.0%
MediaWorks	4,374,417	1.5%
Beyond International	1,588,245	0.5%
MetService	3,846,200	1.3%
Microsoft Corporation	2,992,175	1.0%
VeNA	1,751,141	0.6%
Yahoo!7 Pty Ltd.	4,836,162	1.7%
Bauer Media Group	1,902,025	0.7%
Others	21,818,851	11.6%
TOTAL	291,696,000	100.0%

Source: Standard Media Index ("**SMI**") Financial Booking Data.

31. As noted at paragraph 9 above, the fact that advertisers are not concerned by the Transaction, and in fact CAANZ has submitted to the Commission supporting the Transaction, demonstrates that MediaWorks' assertion of market power concerns in the national advertising market has no basis.

Entry and expansion is a significant competitive constraint

32. In respect of 17(c), both TVNZ and MediaWorks materially misrepresent the competitive dynamics in the markets, in suggesting that there are barriers to entry / expansion that mean there are, and will be, only TVNZ, MediaWorks, RNZ, NZME, and Fairfax as providers of news / information in New Zealand.

³⁰ This SMI data is the best available measure of digital advertising share. For completeness, the NZME and Fairfax note that the SMI data does not include all agency expenditure (and, therefore, it does not reflect total agency expenditure on digital advertising).

33. In support of this, TVNZ asserts that "significant investment in online delivery capability is... required to provide an online source" and that "a digital arms race is developing". This is demonstrably not true:

- (a) Firstly, it ignores the significant number of large media organisations around the world that are using 'off the shelf' online publishing platforms like WordPress, including *The New York Observer*,³¹ *The Herald Sun (Australia)*,³² *Metro UK*,³³ and *The San Francisco Examiner*.³⁴ Indeed, the sophistication, layout, and functionality of websites like thespinoff.co.nz, interest.co.nz, scoop.co.nz, stoppress.co.nz, Māori TV's news website, and so on, suggests that large scale is not required to create a successful and attractive online offering.
- (b) Secondly, even if it could be said that there is any such "digital arms race", it is one in which new runners can quickly play catch-up. For example, despite only being in its comparatively nascent digital news / information platform phase, in May the TVNZ website One News Now won the award for Best News Site or App at the Canon Media Awards. RNZ's website was also one of the three finalists for that award. Similarly, the three finalists for website of the year (RNZ, The Spinoff and The Wireless) did not include Fairfax or NZME. Indeed, Bauer Media NZ, in contrast to TVNZ's assertion, recognises that there is not necessarily any kind of 'first mover' advantage in the online space, with its head of digital, Michael Fuyala (formerly of NZME), suggesting that Bauer Media NZ's comparatively late pivot into digital is an advantage:

So does Fuyala believe that Bauer can catch up to the likes of NZME and Fairfax, both of which have introduced a slew of changes in the last year?

"We're extremely optimistic about our digital business," he says. "We've got a team of around 70 digital experts, developers, user-experience professionals, digital marketers and audience development guys."

And in some ways, he sees starting later as something of an advantage.

"The ways things are built today is very different from the way things were built ten or 15 years ago. And this actually gives us some advantages in terms of being the latest to market, in that we've got a lot of flexibility in the way we can build. We can be very agile. We can learn a lot about where others have failed, and avoid that in our building."

34. Both submissions also overstate the barriers to begin supplying news in New Zealand. Contrary to the TVNZ submission, there is no "requirement for staff and facilities across the country" in order to provide a "New Zealand-wide news service".³⁵ Indeed, neither Fairfax nor NZME currently have staff and facilities across the country, and yet TVNZ's submission suggests they both currently supply news New Zealand-wide.

35. As noted at paragraph 28(a) above, there are a number of news syndication providers in New Zealand, and other (non-NZME and non-Fairfax) print publications that cover

³¹ WordPress "Showcase: The New York Observer". Accessed at: <https://wordpress.org/showcase/the-new-york-observer/>.

³² WordPress "Showcase: The Herald Sun". Accessed at: <https://wordpress.org/showcase/the-herald-sun/>.

³³ WordPress "Showcase: Metro UK". Accessed at: <https://wordpress.org/showcase/metro-uk/>.

³⁴ WordPress "Showcase: The San Francisco Examiner". Accessed at: <https://wordpress.org/showcase/the-san-francisco-examiner/>.

³⁵ At [5.9].

almost the entirety of New Zealand (as has also been noted to the Commission).³⁶ There is nothing to prevent a new digital news / information entrant from partnering with the news syndication providers or these other print publications if they wanted additional access from other regions for their platform. As noted previously to the Commission, the merged entity will still have the same incentives to syndicate news content to other news / information platforms - as will TVNZ, MediaWorks, *Otago Daily Times*, etc. News syndication would be an additional revenue stream for content that has already been produced, so that additional revenue has a zero incremental cost. Indeed, it has been said:³⁷

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.

36. While the figures are redacted, it also appears that MediaWorks materially overstates the costs of operating a newsroom for a new entrant, by referencing the costs of its own Newshub Newsrooms, which employ 200 people across Auckland, Wellington, Christchurch, and Dunedin.
37. Fairfax and NZME would not expect a new entrant to start on day one with 200 journalists, and newsrooms capable of producing TV and radio broadcast bulletins. Nor is such extent of entry necessary to place significant competitive constraint on the merged entity. Fairfax's experience in Australia from the entry of *Guardian Australia* (entered 2013) and *Daily Mail Australia* (2014) demonstrates this. Both *Daily Mail Australia* and *Guardian Australia* had climbed into the top five positions of the Australian Nielsen Digital Ratings (Monthly) rankings by May 2016.³⁸ These companies have achieved considerable audience growth and success in Australia by pairing their known international brands and content with key Australian journalists in comparatively smaller Australian newsrooms:

- (a) **Guardian Australia:** *Guardian Australia* has commented on its success in its first three years as follows:³⁹

In just three years, Guardian Australia has built a new, independent and distinctive media voice in Australia.

...

It was a startup, with all the crazy work hours and improvisations that entailed, but it offered the irresistible prospect of telling stories that were not always being told.

No endeavour can always run perfectly, but we have grown and expanded across the country and I believe we are succeeding in our most important aims. We've reported scoops that have dominated the national debate, including the revelation that Australia spied on the former Indonesian president and his wife. We've provided fearless and factual coverage of politics, have revealed and documented the reality of offshore detention on Manus Island and Nauru, and have led the national discussion on Indigenous issues

³⁶ Fairfax / NZME response to Submissions on the Statement of Preliminary Issues (29 July 2016) at [71].

³⁷ Ken Doctor "The Newsonomics of new news syndication" (11 March 2010) Nieman. Accessed at: <http://www.niemanlab.org/2010/03/the-newsonomics-of-new-news-syndication/>.

³⁸ Miranda Ward "Daily Mail Australia and The Guardian reach the top five Nielsen news rankings" (27 June 2016) Mumbrella. Accessed at: <https://mumbrella.com.au/daily-mail-australia-guardian-reach-top-five-nielsen-news-rankings-376578>.

³⁹ Lenore Taylor "Guardian Australia has made a difference - with your help, it can do more" (3 August 2016) Guardian Australia. Accessed at: <https://www.theguardian.com/media/2016/aug/04/guardian-australia-has-made-a-difference-with-your-help-it-can-do-more>.

and the environment, including the impact of climate change on the Great Barrier Reef.

And as the world confronts new political and economic uncertainties, we have the incredible depth of international coverage and commentary from the Guardian UK and US and from Guardian correspondents around the globe. Guardian Australia is run as a separate company and operates its own Australia-focused newsroom, but it is also part of the Guardian's 24-hour global news operation, helping to cover breaking international stories in all parts of the world.

- (b) **Daily Mail Australia**.⁴⁰ *Daily Mail Australia's* growth has been described as follows:

Sitting in Daily Mail Australia's offices high above the Sydney CBD, the conversation naturally turns to the June Nielsen news rankings released this week. Both Daily Mail Australia's editor Luke McIlveen and managing director Peter Holder are pleased with the site's performance, which remained the fourth most-read news site in Australia with a unique audience of 2,710,000. Both of the media veterans noted that aside from the impressive ranking, they were pleased with the year-on-year comparisons. "The really pleasing part is the diminishing gap between us and the top three. We're 22,000 unique audience behind the ABC News websites – that's one or two good stories. Last month it was [a gap of] about 170,000 so that really proves we're getting some great traction in the Australian market," said McIlveen.

"That was something that we saw in May too. If you look at everything, like dwell time and the percentage growth, it's significantly up across every aspect of the business – which is great when you're a startup. I've only been here since February, so it comes down to the team that's been here since inception, but that growth is very heartwarming and encouraging. The potential remains enormous," enthused Holder.

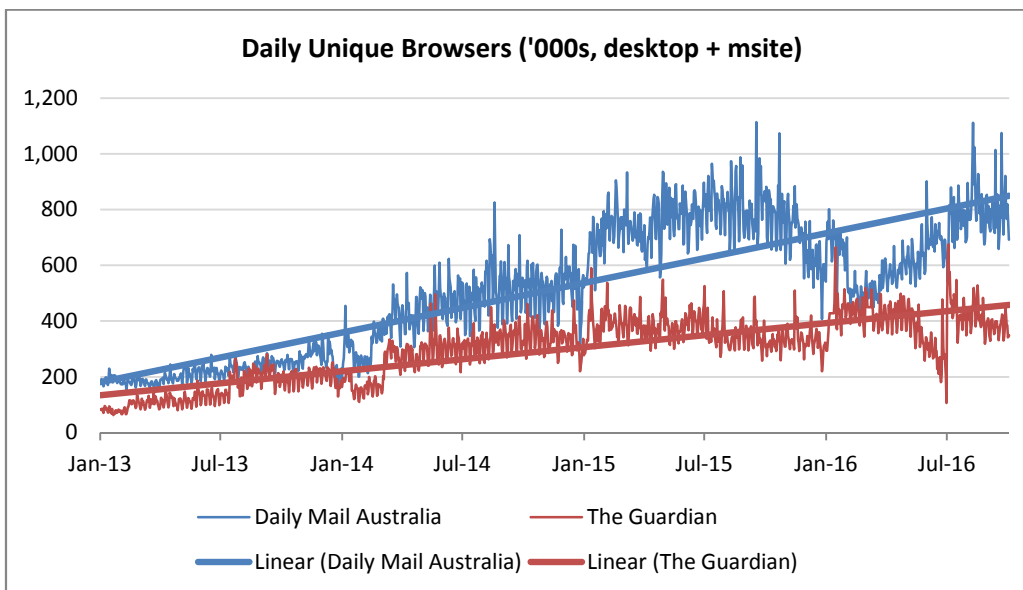
It's pretty clear that Holder and McIlveen want to get the site to number one, but neither would volunteer a firm timeline when we asked. "There's no time limit, there's no date. I've been in this position before, and rather than focus on being on top you really have to work out what it is you need to get there, and set up the teams and the infrastructure," McIlveen wryly noted.

In Fairfax's experience in Australia, these new entrants - such as *Daily Mail Australia*, *Guardian Australia*, and *Huffington Post Australia*, are [].

These same international competitors are only a few editorial hires away from entering New Zealand in earnest. **Figures Four** and **Five** below show the strong growth in both daily unique browsers and daily page impressions achieved by *Daily Mail Australia* and *Guardian Australia*.

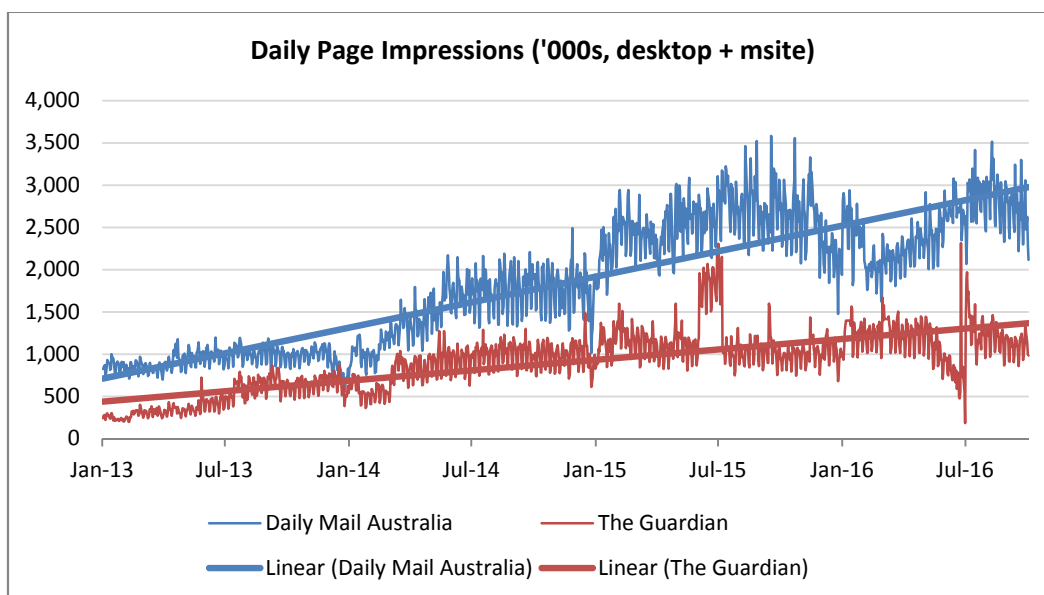
⁴⁰ "Making Daily Mail Australia the first stop for Aussie news readers" (27 July 2015) Mediaweek. Accessed at: <http://www.mediaweek.com.au/making-daily-mail-australia-the-first-stop-for-aussie-news-readers/>.

Figure Four - Nielsen Australia Daily Unique Browsers - Daily Mail and The Guardian



Source: Nielsen.

Figure Five - Nielsen Australia Daily Page Impressions - Daily Mail and The Guardian



Source: Nielsen.

38. Indeed, *The Guardian* already uses New Zealand-based freelance journalistic resources to create New Zealand-focussed content, see **Figure Six** below by way of example, and Vice Media is increasing its focus on creating New Zealand content noting it has "dramatically expanded our local [New Zealand] editorial team".⁴¹

⁴¹ Damien Venuto "Vice throws more weight behind Kiwi arm" Stop Press (28 April 2016). Accessed at: <http://stoppress.co.nz/features/vice-grows>.

Figure Six - Example of the Guardian's use of freelance journalistic resource in New Zealand

The screenshot shows the Guardian website's profile for Eleanor Ainge Roy. The profile includes a bio stating she is a journalist and writer based in Dunedin, New Zealand, who freelances for The Guardian and various New Zealand magazines and newspapers. Below the bio, there are two rows of article cards. The first row, dated October 2016, features two articles: 'New Zealand child poverty a source of deep concern, says UN' (dated 7 Oct 2016) and 'Fuzz in an elevator: New Zealand police revamp viral dance from the ground up' (dated 5 Oct 2016). The second row, dated September 2016, features four articles: 'Former New Zealand PM Helen Clark expected to battle on for UN top job' (dated 30 Sep 2016, 98 comments), 'Births led by midwives rather than doctors linked to greater risks - NZ study' (dated 28 Sep 2016), 'Angry French hitchhiker charged with stealing sleeping bag in New Zealand' (dated 23 Sep 2016), and 'The coffin club: elderly New Zealanders building their own caskets' (dated 22 Sep 2016). Below these are four more article cards: 'Cat flap: taxidermist defends selling handbag made from dead ginger tomcat' (dated 22 Sep 2016, 471 comments), 'New Zealand kea, the world's only alpine parrot, faces extinction' (dated 21 Sep 2016, 218 comments), 'French hitchhiker 'goes berserk' in New Zealand after four days stuck without a lift' (dated 20 Sep 2016), and 'Samoa hit by hail storm so rare residents thought it was a hoax' (dated 19 Sep 2016).

39. In a similar vein, in August 2016 it was announced that *The New York Times* is planning on expanding to Canada and Australia as part of the paper's "three-year \$50 million push to grow its readership outside the United States". It has been reported that *The New York Times* has already begun recruiting journalists to work in its Canadian and Australian newsrooms.⁴²
40. These near entrants both:
- place significant constraint on Fairfax and NZME, due to the very real and credible threat of new entry; and
 - demonstrate that TVNZ's and MediaWorks' submissions about the barriers to entry to creating digital news / information content cannot be given credence.
41. Another good example from the New Zealand context is the case of Bauer Media Group. As the Commission will be aware, Bauer Media Group is a European-based global media company with revenues in FY2015 of EUR 2.316 billion, including EUR 122 million through its digital division, which "maintained its upward trajectory and achieved year-on-year growth of 16.2 percent".⁴³

⁴² Joseph Lichterman "Report: The New York Times is expanding to Australia and Canada" (23 August 2016) NiemanLab. Accessed at: <http://www.niemanlab.org/2016/08/report-the-new-york-times-is-expanding-to-australia-and-canada/>.

⁴³ "Bauer Media Group reports increased worldwide sales in 2015" (press release, 23 September 2016) Bauer Media Group. Accessed at: <https://www.bauermedia.co.uk/newsroom/press/bauer-media-group-reports-increased-worldwide-sales-in-2015>.

42. In February 2015 Bauer Media, at a global level, announced a significant pivot towards the provision of digital content, namely:⁴⁴

... a repositioning of its digital businesses under one global umbrella: Bauer Xcel Media.

Bauer Xcel Media, will have a focused digital vision serving 130 million users worldwide. An accelerated growth plan which will leverage the scale of Bauer's unique brands spanning connected TV, radio, digital and print. This will be backed by a substantial drive to acquire the best digital talent across the globe.

Led by Andreas Schoo, Executive Board member of the Bauer Media Group / Bauer Xcel Media, Markus Huessmann and Sven-Olof Reimers the Bauer Xcel Media COOs, this new global umbrella brand for Bauer's digital businesses is one of the world's fastest growing digital media companies with offices in New York, Hamburg, London, Sydney/Melbourne, Auckland and Warsaw.

43. Since that time, Bauer Media NZ has undertaken a number of initiatives leveraging its team of journalists from its range of magazine titles to launch several new news / information digital platforms in New Zealand. For example, in November 2015 it launched a revamped *Women's Weekly* website:⁴⁵

The new digital lifestyle brand will be positioned as mass premium and draw on the deep, broad content archives of market market-leading brands such as *Next*, *Good Health Choices*, and relevant features from *North & South* and the *New Zealand Listener*

...

It's a huge product for us for two reasons" says Fuyala [Bauer's head of digital]. "Firstly, the new site is backed by six editorial teams, collectively an enormously influential and respected group when it comes to keeping New Zealanders informed on things that matter. Secondly, it fills a clear gap around intelligent online media for New Zealand women, with a broad and thoughtful content mix ranging from real stories on our greatest local talent to royalty, breaking news, social issues and trusted advice on health, style, career, parenting and relationships."

Until recent years, Bauer (as well as other publishers) have given priority to print by delaying the process of publishing magazine-based content online. However, Fuyala says this won't be the case when it comes to *Women's Weekly*.

He says the timing of publishing online content, which may have appeared in print at first, will be determined on a case-by-case basis.

"It's about relevance," he says. "If something is topical and it's being discussed in the media, then we will publish that content online. But if it isn't time sensitive, then we might hold off on publishing the content for a while."

44. Bauer Media NZ has noted the significant success of its new platforms, both in attracting audience and advertisers, for example:⁴⁶

⁴⁴ "Bauer Media Group reorganises digital businesses into one global division: Bauer Xcel Media" (press release, 5 February 2015) Bauer Media Group. Accessed at: <http://resources.emartin.net/blog/docs/Bauer-MG-Xcel-MD2837120.pdf>.

⁴⁵ Damien Venuto "Bauer set to splash out \$1.2 million on marketing revamped digital properties" (14 May 2015) StopPress. Accessed at: <http://stoppress.co.nz/news/bauer-story>; and Damien Venuto "A new digital trinket: Bauer's Michael Fuyala on the launch of *Women's Weekly*" (6 November 2015) StopPress. Accessed at: <http://stoppress.co.nz/news/bauer-launches-womens-weekly>.

⁴⁶ Above n 45.

"In 12 months, we've gone from zero to half a million visitors a month and as we chase down half a million more we couldn't be more excited and optimistic about our digital business."

...

Since its launch, the Women's Weekly site has already run campaigns for Zierra, Procter and Gamble, Tatua, Silver Fern Farms and other brands.

"Often when we have content-led campaigns in the food, home and fashion verticals, we'll use WomansDay.co.nz and WomensWeekly.co.nz to amplify the reach of those campaigns," says Fuyala.

45. In this context, Bauer Media NZ's head of digital has said "we couldn't be more excited and optimistic about our digital business".⁴⁷ Indeed []. Reflecting this:
- (a) on 7 September 2016, Bauer began advertising for a Digital Editor - Current Affairs in respect of a "new digital brand within Bauer Media's growing digital product set and a chance to build a meaningful new digital media brand for New Zealand".⁴⁸
 - (b) on 14 September 2016 Bauer began advertising for a Sub-editor "to work on a dynamic new premium weekly publication".⁴⁹
46. These job advertisements demonstrate that Bauer is planning new print and online publications, and further illustrate that there are no material barriers to expansion in the provision of online content for other media companies in New Zealand.
47. Other examples from Australia and New Zealand that demonstrate that entry and expansion in the provision of news / information is viable include:
- (a) the increasing popularity of niche offerings such as The Spinoff;
 - (b) the proposed new news / information website from Tim Murphy, ex-chief editor of the New Zealand Herald, and Mark Jennings, ex-head of news at TV3:⁵⁰

We'll cover sport, entertainment, and some business but we won't pretend to be the NBR or a sports site either. We think it will be a working newsroom that also calls on good people who want to contribute to it.

[]
 - (c) the recent entry of new mastheads in Australia:
 - (i) In late 2013 online masthead *The New Daily* launched in Australia, backed by three Australian industry superannuation funds.⁵¹ It has "1.4 million readers and growing".⁵²

⁴⁷ Damien Venuto "Bauer set to splash out \$1.2 million on marketing revamped digital properties" (14 May 2015) StopPress. Accessed at: <http://stoppress.co.nz/news/bauer-story>.

⁴⁸ "Applicant Login" Bauer Media. Accessed at: <http://careers.bauer-media.com.au/cw/en/job/493021/digital-editor-current-affairs>.

⁴⁹ Bauer Media Group advertisement for a sub-editor position (14 September 2016) Seek. Accessed at: <https://www.seek.co.nz/job/31831450>.

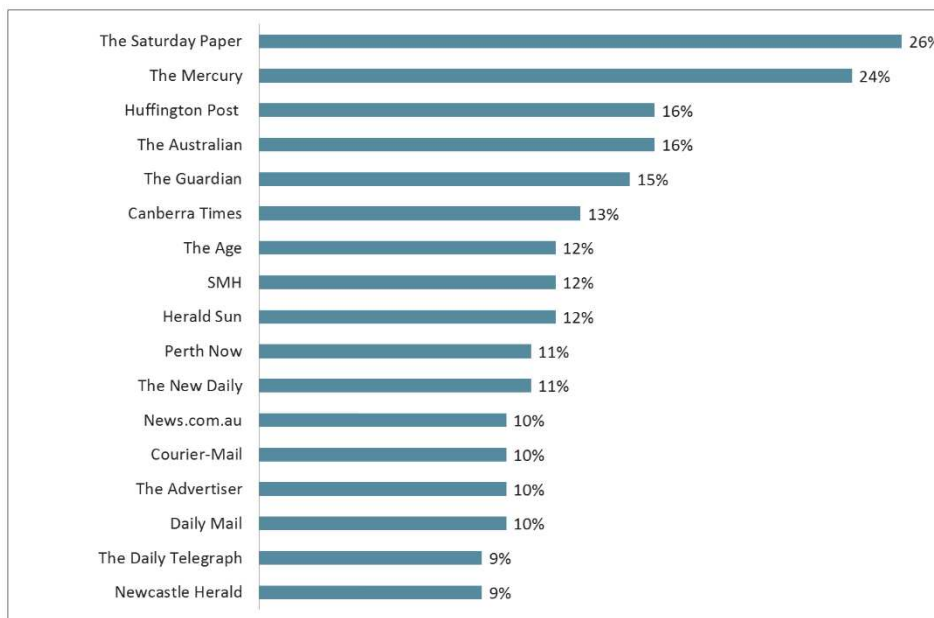
⁵⁰ Chelsea Armitage "Murphy and Jennings to launch news site" (26 May 2016) National Business Review. Accessed here: <https://www.nbr.co.nz/article/murphy-and-jennings-launch-news-site-ca-p-189536>.

⁵¹ Peter Ryan "The New Daily emerges as an online media player, with backing from industry superannuation funds" (13 November 2013) ABC News. Accessed at: <http://www.abc.net.au/news/2013-11-13/new-daily-launches/5087940>.

⁵² The New Daily homepage. Accessed at: <http://thenewdaily.com.au/>.

- (ii) In 2014, *The Saturday Paper* launched in Australia as a weekly print publication. It now also has online, app and tablet offerings.⁵³ Roy Morgan Research in August 2016 found that *The Saturday Paper* has the highest level of audience engagement among Australian news websites - see **Figure Seven** below:⁵⁴

Figure Seven - Audience Engagement among Australian news websites



48. These examples of entry and expansion further illustrate the vigorous competition that the merged entity will continue to face post-Transaction.

Plurality

49. The MediaWorks submission and the Covec Report made reference to media plurality. The Covec Report referred to that issue as relating to the "contest of ideas" between competing news teams, and MediaWorks said that the Transaction would reduce "the number of viewpoints that are available to the audience". The MediaWorks submission also raised the suggestion that "relationships with commercial organisations can have a significant impact on a media player's advertising revenues".
50. As Fairfax and NZME have already commented on this issue in their response to the submissions on the Statement of Preliminary Issues,⁵⁵ they do not propose to respond extensively to this point again. It suffices to note:

- (a) The discussion above outlining the significant number of alternative media platforms that will continue to compete against the merged entity, including TVNZ, MediaWorks, RNZ, *Otago Daily Times*, Bauer Media, NBR, etc, demonstrate that there will continue to be a significant number of alternative media outlets commenting on news / information issues;

⁵³ "About" The Saturday Paper. Accessed at: <https://www.thesaturdaypaper.com.au/about>.

⁵⁴ Zoe Samios "The Saturday Paper boasts most engaged audience, according to Roy Morgan Research" (17 August 2016) Mumbrella. Accessed at: <https://mumbrella.com.au/saturday-paper-boasts-engaged-audience-according-roy-morgan-research-388771>.

⁵⁵ At [86] and [87].

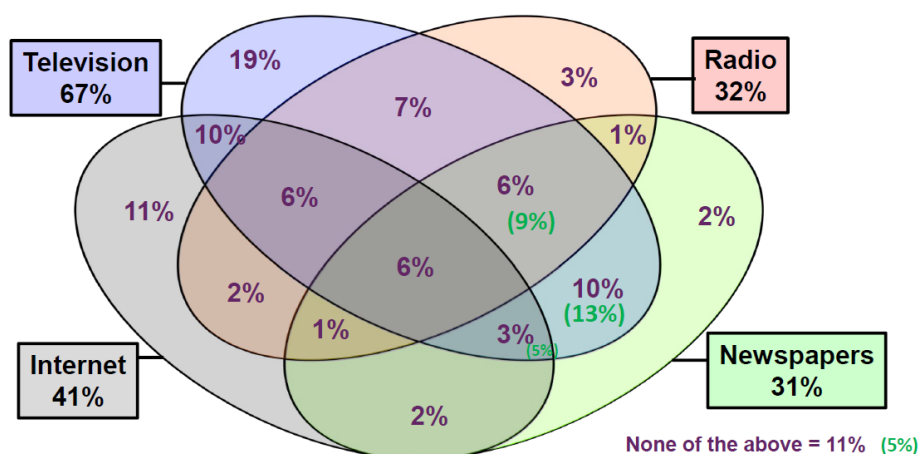
- (b) The merged entity will have economic incentives to retain a diversity of views and opinions in its publications. []:

[]

As this response suggests, and as Fairfax and NZME have also previously identified, due to journalistic standards, codes of ethic, journalist rivalry, and as a matter of attracting as large an audience as possible, the "contest of ideas" occurs both within organisations and outside organisations. 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 decisions within both Fairfax and NZME are made wholly independently of commercial management, and editorial independence is championed throughout both businesses. The merged entity would be comprised of individual journalists, each possessing different views and opinions, and each competing for reader attention and prominence. It is incorrect to suggest that the merged entity would speak with one voice, or that management would seek to direct those voices.

- (c) It is also not the case (as appears to be being suggested by MediaWorks), that newsrooms are open to being influenced by advertisers. []
- (d) In any event, and as accepted by TVNZ, the merged entity would continue to compete with a number of other sources of news / information. Fairfax and NZME have previously submitted to the Commission Nielsen data on 'multi-sourcing' of news / information, which shows the high degree of overlap between consumers sourcing TV, daily papers, magazines, radio and Internet content. Fairfax and NZME also provide as **Annex One** a 2015 report by Ofcom entitled "*News Consumption in the UK 2015*", which similarly depicts the high overlap between use of various media platforms, with only 2% of people solely reading print newspapers in 2015. This depiction is set out at **Figure Eight** below.

Figure Eight - Make up of news consumption by four main platforms



Q3a) Which of the following do you use for news nowadays?
 Base: All adults 16+ (2921), 2014 (2731)

Source: Ofcom, News Consumption in the UK 2015, p 9.

- (e) 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.

51. TVNZ also made reference (at [4.8] of its submission) to June 2016 research conducted by its Green Room (a community panel of TVNZ viewers). If anything, Fairfax and NZME are of the view that this research is supportive of their position, because very similar numbers of people obtain news from TV sources as they do from online sources, suggesting the range of viable options available to consumers of news / information. TVNZ notes that "83% of those surveyed get news from websites such as stuff.co.nz and [sic] herald.co.nz while 78% get news from television."⁵⁶
52. Substantial numbers of those surveyed also used international news sources. Over a third used the BBC, over half used CNN, nearly two-thirds used *The Guardian* and *The Daily Mail*, and nearly three-quarters used *The New York Times* and the *Sydney Morning Herald*.

The counterfactual

53. As a final point, Fairfax and NZME note that the MediaWorks submission suggests that in addition to the status quo, there are several other possible counterfactual scenarios, including the acquisition of Fairfax or NZME by TVNZ, or the acquisition of (or merger with) Fairfax or NZME by MediaWorks.
54. Fairfax and NZME are seeking to enter into the Transaction because there are a number of synergies to be gained from the merger of their businesses. For example, rationalisation of their print assets would enable Fairfax and NZME to extend the lifespan of their respective print publications, [].
55. Fairfax and NZME have already provided the Commission with their views on the likely state of affairs if the Transaction did not go ahead. []. []. MediaWorks' counterfactual suggestions are mere assertions and cannot be considered likely.

⁵⁶ TVNZ Submission at [4.8(a)].

APPENDIX ONE

The position of broadcasters in providing digital news / information overseas

Introduction

1. As noted at paragraph 24, the fact that one of TVNZ and MediaWorks, as the nation's largest FTA TV broadcasters, or RNZ (as the publicly funded broadcaster), does not already have the largest digital audience is itself unusual by international standards.
2. This appendix provides, by way of case study, an overview of the positions of broadcasters in four countries that are arguably the most similar culturally to New Zealand (in terms of being English-speaking, etc), namely the United Kingdom, Australia, Canada, and Ireland.

United Kingdom - BBC











3. The British Broadcasting Corporation ("**BBC**") was founded in 1922 as a radio broadcaster, moving into regularly scheduled TV services in the 1930s.⁵⁷
4. After several tentative and early forays into the online space in the early 1990s, the bbc.co.uk and BBC News Online sites were formally launched in 1997.
5. In 2015, the BBC was overwhelmingly the number one media publisher in online news in the UK, with 18,918,000,000 desktop and mobile page views. The next-largest media publisher in online news in the UK was MSN, with 5,644,000,000 desktop and mobile page views.⁵⁸

⁵⁷ "History of the BBC" BBC. Accessed at: <http://www.bbc.co.uk/historyofthebbc/>.

⁵⁸ Joseph Schwartz "Top U.K. Media Publishers and Publications - Ranked for 2015" (8 February 2016) Digital Vision. Accessed at: <https://www.similarweb.com/blog/index-top-u-k-media-publishers-and-publications-of-2015>.

Figure One - Top 10 online media publishers in the UK in 2015

Top 10 Media Publishers

Rank	Publisher	Combined Page-Views
1	 British Broadcasting Corporation	18,918,000,000
2	 MSN	5,644,000,000
3	 DMG Media	4,183,000,000
4	 Trinity Mirror	2,384,000,000
5	 Guardian Media Group	2,121,000,000
6	 Telegraph Media Group	1,932,000,000
7	 Sky plc	1,751,000,000
8	 Axel Springer SE	1,626,000,000
9	 Wirtualna Polska SA	1,617,000,000
10	 NewsNow Publishing, Ltd.	1,293,000,000


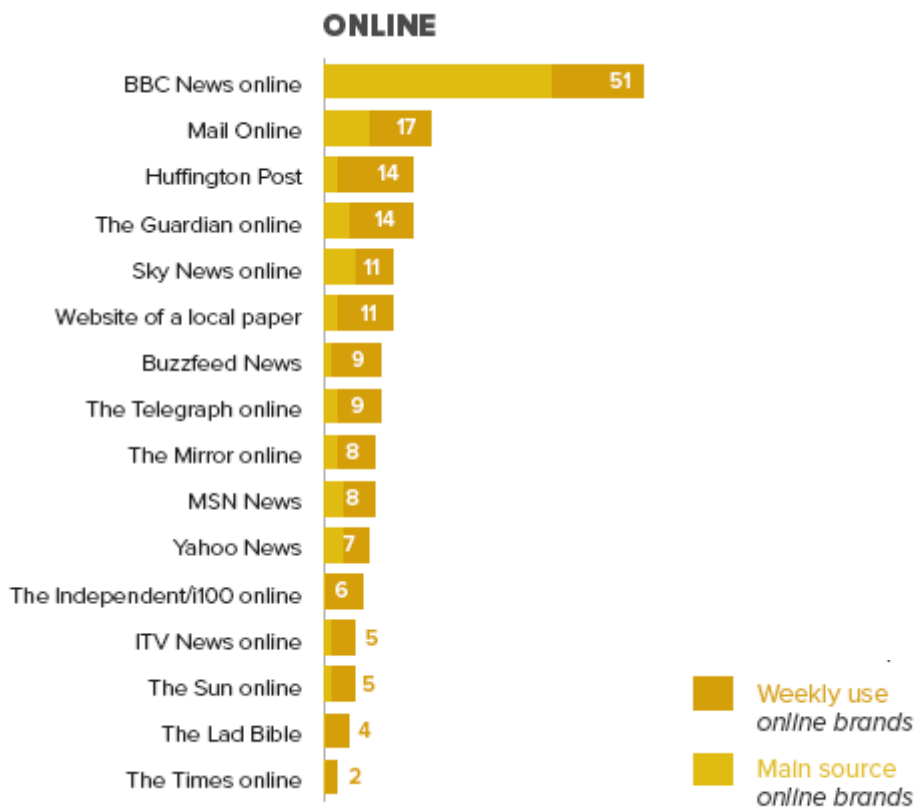
U.K. Desktop & Mobile Data Jan-Dec 2015 Data By 

Figure Two - Top Online News / Information Brands in the UK in 2015⁵⁹



⁵⁹ Reuters Institute Digital News Report 2016.

6. In figures calculated between April and June 2016, BBC Online (including mobile) reached approximately 51.6% of the total UK population (25.6 million people) each week, equating to 62.2% of the total online population.⁶⁰

Australia - ABC

7. The Australian Broadcasting Corporation ("**ABC**") was nationalised by the Australian Government in 1932 by the Australian Broadcasting Commission Act.
8. In 1995, ABC Online went live on the Internet at www.abc.net.au. Throughout the 2000s, ABC continued to use emerging digital technologies, such as podcasting, vodcasting, video-on-demand and streaming.
9. In April 2015 ABC announced a new strategy to significantly increase its investment in the provision of digital news / information:

The ABC will aggressively pursue a digital expansion over the next three years, spending significantly more on online and mobile news with the aim of reaching 40% of Australians by 2017.

The ABC's head of news, Kate Torney, outlined what she called the "brave" plan by the public broadcaster to propel the ABC into the digital era in a major speech at the University of Queensland on Wednesday evening.

"In news we will lift our investment in our online and mobile services by approximately 40% over the next three years," Torney said.

"Today, the ABC reaches 27% of the nation's digital audience – most of that is through news. Our target is to reach 40% by 2017. To do that, we have set an aggressive growth plan and ABC News is aiming for monthly increases of 2.5%.

10. More recently, in March 2016, ABC TV announced changes to its leadership structure that put programming focus on digital and high quality offerings. The Director of Television said the reorganisation "would ensure a platform-agnostic approach to reaching audiences and put emphasis on creating centres of excellence within key production areas".⁶¹
11. Today, the ABC offers: its chief news website, abc.net.au; the free internet TV service iView; a range of apps for smartphones and tablets; ABC News and Current Affairs online; and ABC Open, which publishes and broadcasts user generated content made by regional Australians.⁶²
12. On average, 7.4 million domestic and international users visited ABC Online each week in 2014/15, a 24% increase from 2013/14. The total number of visits also increased by 39%, to an average of 18.7 million per week.⁶³ 572,600 people also used the ABC flagship news app monthly in 2015. This represented a 15% increase on 2013/14.
13. As of August 2016, ABC was ranked by Nielsen as the #1 online news / information provider in Australia, with a unique audience of 6.5 million Australians (or 33% of the active online population).⁶⁴

⁶⁰ *BBC Audience Information Data Tables (document 1) April - June 2015* at p 10. Accessed at: http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/accountability/pdf/summary_audience_information_april_june_2015.pdf.

⁶¹ "ABC TV puts programming focus on digital and quality" (press release, 24 March 2016) ABC. Accessed at: <https://tv.press.abc.net.au/abc-tv-puts-programming-focus-on-digital-and-quality#>.

⁶² "ABC at a glance" ABC. Accessed at: <http://about.abc.net.au/who-we-are/abc-fast-facts/>.

⁶³ *ABC Annual Report* at 30. Accessed at: http://about.abc.net.au/wp-content/uploads/2015/10/2014-15_Annual_Report.pdf.

⁶⁴ "July a record for ABC News" (press release, 30 August 2016) ABC. Accessed at: <http://about.abc.net.au/press-releases/july-a-record-for-abc-news/>.

ABC News achieved its highest-ever unique audience result in July, at 6.5 million Australians, or 33% of the active online population. Its unique audience was up 30% on the previous month.

For the first time, ABC News was ranked #1 in the news and information category, according to Nielsen Digital Ratings (Monthly), the endorsed digital audience measurement currency.

The total ABC audience was also the highest recorded under DRM at 9.1 million Australians, or 46% of the active online population.

...

Director of News Gaven Morris said: "ABC News is proud to have achieved the No 1 spot in the Nielsen news rankings. Our online and mobile audiences are as important to ABC News as our television viewers and radio listeners, and it's gratifying to see they value the services we provide.

"Australians have a huge appetite for high-quality news and current affairs, as well as for the in-depth analysis that makes sense of events and provides context. Their desire for independent, trusted journalism is just as great on digital platforms as on broadcast platforms.

"We're exploring ideas for how we will continue to improve our digital coverage and services."

Canada - CBC / Radio-Canada

14. CBC / Radio-Canada is Canada's national public broadcaster, with a traditional presence in radio and TV broadcasting. It was founded in 1936 as Canada's national public radio broadcaster,⁶⁵ and expanded into TV broadcasting in the 1950s.⁶⁶ While CBC / Radio-Canada launched its online news / information presence in 1995,⁶⁷ it was not until 2009 CBC / Radio-Canada began an initial "transformation from a television and radio broadcaster with an Internet presence, to an integrated content provider that leverages television, radio and the Web."
15. Then in June 2014 CBC / Radio-Canada launched a new initiative, called "Strategy 2020: A space for us all" to be "more digital, more local and more ambitious in our Canadian programming" - this has resulted in CBC / Radio-Canada focussing on "stories not platforms".⁶⁸
16. CBC / Radio-Canada's *CBC News Online* is the most popular digital news / information platform in Canada - see **Figure Three** below.

⁶⁵ "Our History" CBC Radio-Canada. Accessed at: <http://www.cbc.radio-canada.ca/en/explore/our-history/>.

⁶⁶ Ibid.

⁶⁷ "CBC News wins big at Digital Publishing Awards" (9 June 2016) CBC News. Accessed at: <http://www.cbc.ca/news/canada/cbc-wins-digital-publishing-awards-1.3626878>.

⁶⁸ "CBC/Radio Canada: Canada's Public Space" (February 2016). Accessed at: <http://www.cbc-radio-canada.ca/files/cbcr/documents/strategy2020/public-space-jan2016-long-version.pdf>.

Figure Three - Top Online News / Information Brands in Canada in 2015⁶⁹



17. Furthermore, at Canada's most recent Digital Publishing Awards in June 2012, CBC / Radio-Canada's online news service won a number of awards, including:⁷⁰
- Digital Publication of the Year;
 - The award for Best Editorial Package;
 - The award for Best News Coverage of a Single Topic or Event; and
 - The award for Best Online-Only Short Feature.
18. CBC / Radio-Canada's Senior Director of Digital News noted:

I'm particularly proud of the Digital Publication of the Year Award. It's a fitting tribute on a year of milestones that included record-breaking digital audiences to our election coverage and local news, ground-breaking investigative journalism and the best online foreign reporting of any news outlet in Canada.

Ireland - RTÉ

19. RTÉ (Raidió Teilifís Éireann) is Ireland's national public-service media organisation. RTÉ's radio service began on 1 January 1926, while television broadcasts began on 31 December 1961. RTÉ launched its online news service in 1999.⁷¹ In 2012 RTÉ launched a new division, RTÉ Digital, to be responsible for leading RTÉ's overall digital strategy.⁷² In the same year RTÉ created a single centralised news desk.⁷³

This involved the integration of the three main RTÉ production systems: iNews, Radioman and Digital/Publishing. This enabled the establishment of a multi-

⁶⁹ Reuters Institute Digital News Report 2016.

⁷⁰ "CBC News wins big at Digital Publishing Awards" (9 June 2016) CBC News. Accessed at: <http://www.cbc.ca/news/canada/cbc-wins-digital-publishing-awards-1.3626878>.

⁷¹ "RTÉ Online launch news service" (2 March 1999) RTÉ. Accessed at: <http://www.rte.ie/news/1999/0201/420-news/>.

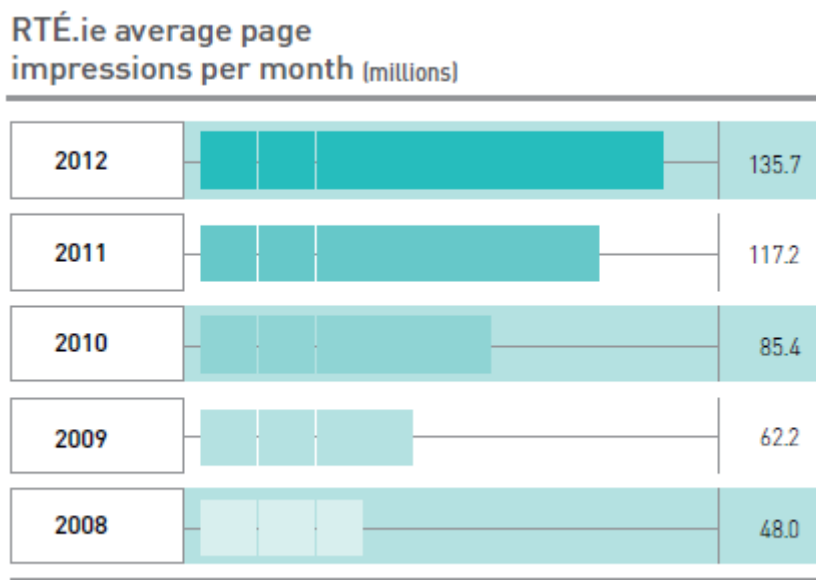
⁷² caroline Stephens "Check out our release today launching RTÉ Digital" (21 May 2012) RTÉ Digital Blog. Accessed at: <http://digitalblog.rte.ie/2012/05/21/check-out-our-release-today-launching-rte-digital/>.

⁷³ RTÉ Annual Report and Group Financial Statements 2012. Accessed at: <http://static.rasset.ie/documents/about/2012-english-annual-report-for-the-web.pdf>.

media desk of journalists and the creation of the Centralised News Desk, which operates across all RTÉ radio, television, online and mobile platforms.

- 20. RTÉ's average page impressions increased almost three-fold between 2008 and 2012, as set out in **Figure Four** below.

Figure Four - RTÉ's average page impressions per month⁷⁴



Source: RTÉ

- 21. RTÉ is the largest provider of online news / information in Ireland:

Reach of RTÉ's digital news platforms:

In 2015, RTÉ .ie, Ireland's number one media site attracted an average of 5.5 million unique browsers per month. With the majority of people accessing RTÉ's online services via mobile and tablet, now over 80% of RTÉ's online traffic is now on mobile devices, a significant change in the last number of years, with more people accessing breaking news and analysis on the move. RTÉ's news app RTÉ News Now, the number one news app in Ireland with 1.5 million downloads to date, had 176,000 downloads in 2015 and following a refresh of the app in August, page views increased by 31% between August and December 2015.⁷⁵

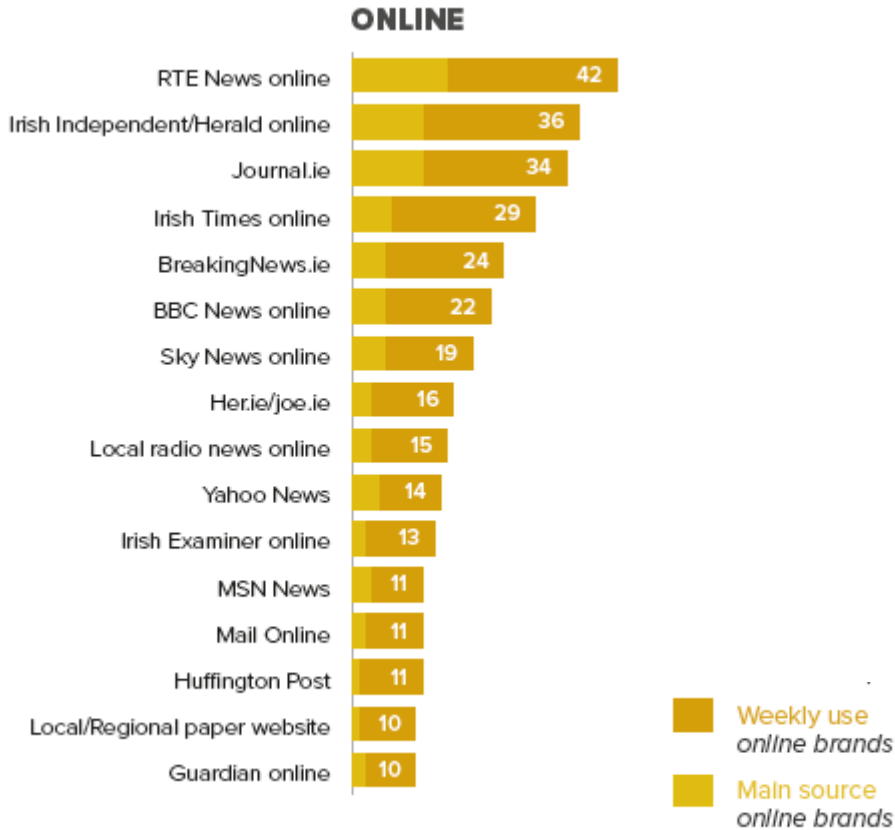
RTÉ.ie is the number one multi-media news site in Ireland and the fourth highest ranking site in Ireland, behind Google, Facebook and YouTube.⁷⁶

⁷⁴ Ibid.

⁷⁵ "RTÉ online in 2015" (press release, 28 January 2016) RTÉ. Accessed at: <http://www.rte.ie/about/en/press-office/press-releases/2016/0128/763652-rte-online-in-2016/>.

⁷⁶ Joanne Walsh "RTÉ.ie is Ireland's No. 1 multi-media news site, according to the latest TGI Research data" (press release, 26 November 2015). Accessed at: <http://digitalmediasales.rte.ie/news/rte-ie-is-irelands-no-1-multi-media-news-site-according-to-the-latest-tgi-research-data-2015/>.

Figure Five - Top Online News / Information Brands in Ireland⁷⁷



⁷⁷ Reuters Institute Digital News Report 2016.