

## Notification of Conference

### NZME and Fairfax's application for authorisation

**Tuesday 29 November 2016**

The purpose of this notification is to confirm that the Commission will hold a conference to consider matters relating to NZME Limited and Fairfax New Zealand Limited's application for authorisation.

#### Background

On 27 May 2016, the Commerce Commission registered an application from NZME and Fairfax seeking authorisation to merge their New Zealand businesses.

The Commission received a number of submissions relating to NZME and Fairfax's application and, on 8 November 2016, the Commission released its Draft Determination on the matter.<sup>1</sup>

Section 69B of the Commerce Act 1986 provides that the Commission may determine to hold a conference prior to making a final determination. The Commission considers that it is appropriate to hold a conference with interested parties on this matter.

The Commission is due to make a final determination on NZME and Fairfax's application on or before 15 March 2017.

#### Date, time and place of conference

The conference will be held at **Level 9, 44 The Terrace, Wellington** on **Tuesday 6 December and Wednesday 7 December 2016. The morning of Thursday 8 December 2016 will be held in reserve for a further session if required.**

The conference will start at **9.30am each day**, with a lunch break and breaks for morning and afternoon tea; these will not be catered by the Commission.

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<sup>1</sup> The Draft Determination and all submissions relating to NZME and Fairfax's application can be found at <http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/authorisations/merger-authorisation-register/nzme-limited-and-fairfax-new-zealand-limited/>

## **Purpose and agenda of the conference**

The purpose of the conference is to assist the Commission in making a final determination on the application. The broad topics the Commission wishes to address at the Conference are set out in the agenda in Attachment A. A more specific list of topics will be released shortly.

The Conference will allow:

- the Commission to test its preliminary views with interested parties;
- the Commission to test the submissions of interested parties on the Draft Determination; and
- interested parties and experts to answer any questions addressed to them by the Commission.

## **Conference procedure**

During the conference, each topic will be introduced by the Commission. Members of the Commission and Commission staff will ask specific questions of parties and experts. There will **not** be an opportunity for parties in attendance to speak to their submissions in general.

The Commission may choose to direct some questions to experts. These questions will be clearly signalled as being for expert opinion and all experts will be asked to comment sequentially on those questions, without reference to the parties. Parties may then be provided with an opportunity to comment on the experts' opinions, once all experts have commented.

Parties may only ask questions of the Commission for the purpose of clarifying a question. No party will have the right to cross-examine the Commission or any other party during the proceedings.

## **Attendance of experts at the conference**

The Commission expects that all experts that have been advising parties will be available at the conference to respond to the Commission's questions and that experts attending the conference appear as experts in their fields rather than as an advocate for any particular party.

The Commission expects experts to follow the guidance provided in the Code of Conduct for expert witnesses contained in the High Court Rules. A copy of the Code of Conduct is attached as Attachment B. Experts are requested to confirm in writing before the conference that they are appearing as experts and agree to follow the guidance in the Code.

## **Confidentiality**

The Commission's expectation is that confidential material should be kept to a minimum during the conference in order to maintain as transparent a process as is possible.

Attendance at any closed confidential session would be limited to Commission members, Commission staff, the party presenting the confidential information, and counsel and/or experts who have provided the Commission with undertakings not to reveal the confidential information to any other party, including the persons instructing the experts.

#### **Other administrative matters**

The conference will be recorded and a stenographer will also provide a transcript of the conference. A transcript of the day's discussion will be made available on the Commission's website as soon as is practicable.

All persons are asked to register their intention to attend the conference. Please provide the names and position of those people who wish to attend to [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) by **12 noon Friday 2 December 2016**. Please note that limited seating is available so the number of attendees at the conference may have to be restricted.

#### **Commission contact**

Please contact Tania Pringle at the Commission if you have any questions or comments regarding the conference:

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**29 November 2016**  
**Competition Branch**  
**Commerce Commission**

## Attachment A: Indicative agenda for conference

<b>Tuesday 6 December 2016 –NZME / Fairfax Authorisation Conference Wellington</b>			
<b>Start time</b>	<b>Session Topic</b>	<b>Indicative time</b>	<b>Participants</b>
9:30am	Opening remarks	5 minutes	All participants
9:35am	Competition assessment – reader markets	1.5 hours	All participants
11:05am	Morning tea	15 minutes	
11:20am	Competition assessment – advertising markets	1 hour 10 minutes	All participants
12:30pm	Lunch	1 hour	
1:30pm	Current state of the industry and future developments	2 hours	All participants
3:30pm	Afternoon tea	15 minutes	
3:45pm	Current state of the industry and future developments – impact on Commission’s analysis	1.5 hours	All participants

<b>Wednesday 7 December 2016 – NZME / Fairfax Authorisation Conference Wellington</b>			
<b>Start time</b>	<b>Session Topic</b>	<b>Indicative time</b>	<b>Participants</b>
9:30am	Opening remarks	5 minutes	All participants
9:35am	Plurality – internal	1.5 hours	All participants
11:05am	Morning tea	15 minutes	
11:20am	Plurality – external	1.5 hours	All participants
12.50pm	Lunch	1 hour	
1:50pm	Counterfactual and quantified benefits	1.5 hours	<b>Closed session NZME</b>
3:20pm	Afternoon tea	15 minutes	
3:35pm	Counterfactual and quantified benefits	1.5 hours	<b>Closed session Fairfax</b>
5:05pm	Extra time if required	Up to 30 minutes	

<b>Thursday 8 December 2016 – NZME / Fairfax Authorisation Conference Wellington – morning reserved if required</b>			
<b>Start time</b>	<b>Session Topic</b>	<b>Indicative time</b>	<b>Participants</b>

**Attachment B: Code of Conduct for expert witness****High Court Rules  
Schedule 4  
Code of conduct for expert witnesses**

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**Duty to the court**

1. An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise.
2. An expert witness is not an advocate for the party who engages the witness.

**Evidence of expert witness**

3. In any evidence given by an expert witness, the expert witness must—
  - (a) acknowledge that the expert witness has read this code of conduct and agrees to comply with it:
  - (b) state the expert witness' qualifications as an expert:
  - (c) state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise:
  - (d) state the facts and assumptions on which the opinions of the expert witness are based:
  - (e) state the reasons for the opinions given by the expert witness:
  - (f) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness:
  - (g) describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.
4. If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.
5. If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

**Duty to confer**

6. An expert witness must comply with any direction of the court to—
  - (a) confer with another expert witness:
  - (b) try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses:
  - (c) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.
7. In conferring with another expert witness, the expert witness must exercise independent and professional judgment, and must not act on the instructions or directions of any person to withhold or avoid agreement.