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New Zealand Political Studies Association submission on the Commerce Commission's intention to decline authorization for the proposed NZME-Fairfax merger due to the substantial reduction in competition this would cause

Introduction

The New Zealand Political Studies Association (NZPSA), the professional body for those working in academic political research, supports the Commerce Commission's intention to decline authorization for the proposed NZME-Fairfax merger. The present document supplements the previous NZPSA submission and includes new evidence that we would like considered.

1. The NZPSA supports the Commerce Commission's finding that the proposed merger would reduce competition for premium digital advertising, national online news, Sunday newspapers and community newspapers, and result in an unprecedented concentration of daily newspaper ownership that research suggests is likely to reduce media quality.
2. Furthermore, we support the Commission's concerns about the loss of plurality and diverse media voices and the detrimental effect this will have on the public interest. As the Commerce Commission has established, important detriments which can be considered include wider costs to society that may not be quantifiable (*Air New Zealand v Commerce Commission* (No 6), 2004; Commerce Commission, 2013, p. 14). In the present case these detriments include reductions in the quality of news and reductions in media plurality as community and Sunday newspapers are closed and the number of journalists reduced (Commerce Commission, 2016, p. 17). The wide range of benefits to the public that should be considered has previously been established legally (*Telecom Corporation of New Zealand Ltd v Commerce Commission*, 1991, pp. 527-536).

3. NZME and Fairfax have suggested that the Commerce Commission has taken an overly-broad interpretation of the Commerce Act by taking account of intangible factors in its draft decision to decline the merger and argue that such concerns are more properly dealt with by public policy. However, there is nothing in the Act that specifies that only strictly quantifiable criteria can be considered (and indeed this would be impossible in modelling counter-factual scenarios). Moreover, there is compelling evidence that the factual scenario would see an unprecedented concentration of editorial power and leave the consumer with a narrower choice. As such, the Commerce Commission cannot legitimately take account of the NZME-Fairfax financial challenges in its deliberations. Given that the news media fulfil a critical civic function, supporting a robust and independent press and protecting editorial independence and news quality are public policy issues that the government should address. However, that in no way obviates the legitimacy and correctness of the Commerce Commission ruling blocking the proposed merger. Allowing a merger to go ahead when it would create such an unprecedented level of market concentration and probably weaken or wipe out the smaller newspaper competitors, and other independent media such as radio stations, would not be consistent with the Commerce Act.
4. The remaining independent newspaper companies argued that the combined company might make access to national news and news about regions of New Zealand where NZME-Fairfax papers are published prohibitively expensive for other media companies (Commerce Commission, 2016, p. 117). We agree that this is a risk and also note that the current situation where NZME prints papers under contract in the upper North Island for Fairfax makes printing costs more transparent than would be the case if NZME and Fairfax merged. With fewer external customers, the remaining companies buying printing services from NZME might get worse terms than currently. In other words, having Fairfax as a major NZME print customer has resulted in some welcome unbundling of printing costs, and resulted in a more competitive market.
5. NZME and Fairfax have argued that the merged company will have incentives to act rationally by selling news to smaller media companies (Commerce Commission, 2016, p. 118). This positive view may not be justified in light of the collapse of NZPA and past cooperative measures such as newspapers buying newsprint collectively. Shared distribution and purchasing newsprint together, which have been identified as important ways of cutting costs (Commerce Commission, 2016, p. 132), and are sometimes done by competing newspapers overseas, could be achieved without NZME and Fairfax merging.
6. There have been recent comments that Fairfax provides unique opinion and analytical articles free on its websites, sometimes days before these are printed and that this is undermining newspaper sales (Online comments, 2016). This comment could also be applied to the content in the *New Zealand Herald*. In other countries unique content is pay walled as premium content that is distinct from straight news reporting, and for which people pay a subscription to gain unrestricted access. It is not clear that the digital first, free access, strategy of the proposed NZME-Fairfax company is the best way of maximizing profitability.

Independent newspapers seem to be better at protecting their revenue base than those owned by NZME and Fairfax (du Fresne, 2016).

7. Since the *Wairarapa Times-Age* was sold in 2016 by NZME the newspaper has employed two more staff (Radio New Zealand, 2016). There are advantages in having media companies with a wide range of managers who are close to local markets and have different views on how to maximize profitability. Less concentration of ownership, rather than the proposed merger, may result in more jobs in journalism and a better deal for consumers.
8. Fairfax has argued that some of its titles may not survive if the merger does not take place (Pullar-Strecker, 2016). However, in recent years smaller daily papers (*Levin Chronicle*, *Oamaru Mail*, etc) have sometimes been converted to free community papers that publish once or twice a week. The *Marlborough Express's* competitors have commented that the *Express's* continuation as a daily paper has been under review for some time (Etu, 2016). Indeed, the *Express* was once a twice weekly newspaper and reductions in the frequency of some newspapers seems a valid strategy for survival.
9. NZPSA Members living in the Waikato believe that the Commission has understated the amount of competition between the *Waikato Times* and *New Zealand Herald* in the Hamilton market for advertising (the *Herald* has a regular Hamilton insert section) and readers. The *Dominion Post* is no longer available in the Hamilton Public Library or Waikato University Library due to Fairfax distribution decisions. Access to the *New Zealand Herald* may become similarly restricted in an attempt to boost the *Waikato Times* if the merger takes place.

Conclusion

The New Zealand Political Studies Association therefore supports the Commerce Commission's intention to decline the proposed media merger because of its likely negative effect on competition and democracy in New Zealand.

For further information contact:

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References

Air New Zealand v Commerce Commission (No 6). (2004). Trade and competition law reports, 11, 347-435.

Commerce Commission. (2013). Authorisation guidelines. Wellington: Commerce Commission. Retrieved from file://galaxy.its.waikato.ac.nz/HOME/My%20Documents/media/Final-Authorisation-Guidelines-24-July-2013.pdf

Commerce Commission. (2016). Draft Determination: NZME Limited and Fairfax New Zealand Limited. Wellington: Commerce Commission

du Fresne, K. (2016, 11 November). Will newspapers become the new craft breweries. Retrieved from <http://karldufresne.blogspot.co.nz/2016/06/will-newspapers-become-new-craft.html>

Etu. (2016). Submission: Application for authorization of a merger between NZME and Fairfax. Wellington: Etu. Retrieved from http://www.etu.nz/article.php?group_id=1063

Online comments. (2016, 9 November). Preventing a media merger would imperil journalism. Press. Retrieved from <http://www.stuff.co.nz/business/opinion-analysis/86230976/preventing-a-media-merger-would-imperil-journalism>

Pullar-Strecker, T. (2016, 11 November). Fairfax boss says newspapers under threat from myopic NZ competition watchdog. Dominion Post. Retrieved from <http://www.stuff.co.nz/business/industries/86356130/fairfax-boss-says-newspapers-under-threat-from-myopic-nz-competition-watchdog>

Radio New Zealand. (2016). Independent publishers question mega-merger. Wellington: Radio New Zealand. Retrieved from <http://www.radionz.co.nz/national/programmes/mediawatch/audio/201811971/independent-publishers-question-mega-merger>

Telecom Corporation of New Zealand Ltd v Commerce Commission. (1991). Trade and competition law reports, 4, 473-536.