

**ANONYMOUS SUBMISSION REGARDING THE MERGER APPLICATION
OF NZME AND FAIRFAX (13-02-2017)**

CONTENTS PAGE

Introduction	2
Executive summary	3
Section 1: Competitive landscape for New Zealand journalism.....	5
1.1 News production	5
1.2 Audience reach	6
Section 2: Defining the Applicants' primary competitive market	8
2.1 Competitive relationship with Facebook: consumer market.....	9
2.2 Competitive relationship with Facebook: advertiser market.....	10
2.3 Competitive relationship with Google: consumer & advertiser markets	11
2.4 Competitive relationship with other New Zealand publishers.....	12
2.5 The continued importance of print.....	14
Section 3: Editorial independence and plurality	16
3.1 The limits of the New Zealand Press Council	16
3.2 The limits of editorial charters	18
3.3 The limits of the Overseas Investment Office	20
3.4 The limits of editorial independence via market forces	21
3.5 The risk of hostile takeover due to weak economic performance	22
3.6 The limits of internal plurality.....	23
Section 4: Facebook as a source of publisher revenue.....	28
4.1 Scenario A: News content hosted by publishers.....	28
4.2 Scenario B: News content hosted by Facebook	29
Section 5: Business model challenges	29
5.1 The failed economics of digital advertising for publishers.....	29
5.2 Absence of clear strategy to overcome revenue problems	31
5.3 Potential impact of merger on business model innovation.....	33
Section 6: Collaborative opportunities to improve financial sustainability.....	36
6.1 Structures to enable collaborative reporting.....	37
6.2 A collaborative approach to business model innovation	38
6.3 Collaborative technology projects	39
6.4 Expanding existing collaborative initiatives with digital advertising	40
6.5 Other opportunities to collaborate	41
6.6 The importance of equitable collaboration	42

Introduction

Although I am opposed to the merger, I have considerable respect for the Applicants. Both Fairfax and NZME are home to many passionate and intelligent people who are working hard to create quality journalism within an extremely challenging environment. Despite my reservations, I empathise with the Applicants' position and understand the market pressures that have compelled them to pursue a merger of their operations.

I am hopeful that the Applicants will find a solution to the challenges faced by the journalism community. However, I believe that a solution can and should be pursued through collaborative initiatives across the entire industry, rather than through the corporate consolidation of its two largest players. Regardless of the outcome determined by the Commerce Commission, the Applicants have my best wishes in their pursuit of a sustainable business model.

My submission focuses on key claims made by the Applicants during the Commerce Commission's conference in December 2016. I have used an evidence-based approach to evaluate factual claims, while using inductive reasoning to explore possible future implications. I have also outlined collaborative strategies that would allow the Applicants to achieve synergies outlined within their application, without merging all of their operations into a single ownership structure.

If anybody wishes to request further information regarding my submission, please do so via the Commerce Commission, at: contact@comcom.govt.nz

Executive summary

Section 1: Competitive landscape for New Zealand journalism

- The Applicants already have a dominant market position in both the production of news and audience share.
- In the production of news, the merged entity would have approximately four times as many journalists as any local competitor.
- In regards to audience share, the merged entity would reach a website audience four times larger than any local competitor. Levels of engagement per user would be approximately four times higher.

Section 2: Defining the Applicants' primary competitive market

- The Applicants' primary competitive market consists of other New Zealand news organisations, which is a market they already dominate.
- A merger would further consolidate the dominance of the Applicants, enhancing their competitive advantage over other online publishers.
- Facebook and Google are not primary competitors, and offer substantially different products to both consumers and advertisers.
- Print continues to be a primary market for the Applicants, and should be an important component of competition analysis. Meanwhile, digital products account for only 12% of all revenue.

Section 3: Editorial independence and plurality

- Editorial protections outlined by the Applicants are not immutable. It is impossible to guarantee that policies and practices embraced today will be upheld in the future.
- The Press Council is a self-regulatory body based on voluntary compliance, with limited enforcement mechanisms. It does not have the capacity to ensure editorial independence in perpetuity.
- Editorial charters are only as strong as the owners and leadership teams who enforce them. Changes in ownership and leadership could undermine editorial independence in the future.
- The Overseas Investment Office has limited regulatory power, and cannot be relied upon to prevent new overseas owners from exerting editorial influence over the merged entity.
- Market forces and commercial incentives would not be sufficient to uphold editorial independence within the merged entity. Instead, market forces would be distorted to the point where existing checks on editorial independence would be undermined.
- If the merged entity continued to experience poor economic performance, it would increase the risk of hostile takeover by a buyer seeking to exert editorial influence.
- Arguments regarding internal plurality overlook the many ways in which editorial plurality and media diversity could be undermined by a merger.

Section 4: Facebook as a source of publisher revenue

- Facebook actively provides online publishers with a range of mechanisms by which they can derive revenue.
- Every time that an article is read via Facebook, it results in a direct revenue stream for online publishers.

Section 5: Business model challenges

- The Applicants continue to focus on online advertising as their primary source of digital revenue. However, market data suggests they cannot achieve financial sustainability by pursuing this strategy.
- The Applicants have not presented any strategy that would allow them to overcome their revenue problems, and urgently need to prioritise the adoption of new business models.
- The merger could have a negative impact on business model innovation, due to the diseconomies of scale experienced within large organisations.
- A merger would result in significant resources being focused on the restructuring proposed by the applicants. This risks diverting resources away from the important task of business model innovation.

Section 6: Collaborative opportunities to improve financial sustainability

- The challenges outlined within the Applicants' merger application are shared by the entire New Zealand journalism industry.
- Many of the synergies desired by the Applicants can be achieved through collaboration with the wider journalism industry, without the need for corporate consolidation.
- Many collaborative strategies would result in benefits that exceed those of a merger. Additionally, these benefits would extend across the wider media industry, instead of accruing to its two most dominant competitors.
- Some key collaborative opportunities include:
 - Collaborative reporting partnerships, emulating the former NZPA
 - An 'innovation task force' to evaluate new business models
 - Partnerships to develop shared technology infrastructure
 - Expansion of existing collaboration within digital advertising
 - Consolidate ownership and management of print infrastructure
 - Consolidate ownership and management of office space
- If the Commission declines the merger, it is not an 'end game' for the Applicants. Instead, it could catalyse the beginning of broader collaborative partnerships that improve the sustainability of New Zealand journalism as a whole.

Section 1: Competitive landscape for New Zealand journalism

The Applicants have asserted that the market for New Zealand journalism is highly competitive, making reference to television, radio, blogs and new digital outlets such as The Spinoff.

When Fairfax was asked whether they see *NZME* as their main competitor, Ms Boucher responded: *“Not at all, we absolutely don’t.”*¹

Furthermore, Ms Keene made the statement that: *“Competition is alive and well in the production and dissemination of news.”*²

A range of evidence, however, reinforces the Commission’s original conclusion that *NZME* and Fairfax are primary competitors in regards to the volume of news produced and size of audience reached in print and online.

The evidence in the following sections shows there are no journalism outlets that are close to achieving true competitiveness with either Applicant. If approved, a merger would have a negative impact on consumer welfare by significantly reducing competition in the production of original news content.

1.1 News production

In regards to the production of original news content, the Applicants are the strongest competitors in the New Zealand market. Combined, they have a nationwide network of 1,200 journalists³ who produce news content within communities throughout New Zealand, with a total workforce of approximately 3,000⁴ (including administration and production staff).

There are no news organisations that come close to matching this capacity for producing original news content within the New Zealand market. The following figures compare the newsroom size of the Applicants’ nearest competitors:⁵

- Radio New Zealand has a total of 270 staff, including administration and production teams.⁶
- MediaWorks has 200 staff within its newsroom, including production teams.⁷
- TVNZ hasn’t publicised the total number of journalists within its newsroom. However, it is likely to be comparable to MediaWorks.⁸

¹ NZME Fairfax Merger, Commerce Commission Conference Transcript, 6 December, page 7.

² Ibid, 7 December, page 31.

³ Media merger hopefuls make their pitch (07-12-16_RNZ):

<http://www.radionz.co.nz/national/programmes/mediawatch/audio/201826805/media-merger-hopefuls-make-their-pitch>

⁴ Fairfax NZME could consider legal challenge to merger’s early ‘no’ from Commerce Commission (09-11-16_Staff):

<http://www.stuff.co.nz/business/86113185/fairfax-nzme-merger-gets-draft-rejection-from-commerce-commission>

⁵ These figures were derived from publically available sources. The Commission may wish to ask each news organisation for updated figures regarding the current size of their newsrooms.

⁶ Newsreaders and producers could go at Radio New Zealand (17-11-15_Staff):

<http://www.stuff.co.nz/business/74115370/Newsreaders-and-producers-could-go-at-Radio-New-Zealand>

⁷ MediaWorks moves to single newsroom (09-12-14_Staff):

<http://www.stuff.co.nz/business/industries/63965648/mediaworks-moves-to-single-newsroom>

⁸ The Commission may wish to ask MediaWorks to confirm the size of their newsroom.

In regards to digital-only news outlets in New Zealand, none are meaningful competitors in the production of original news content. Instead, digital-only outlets are predominantly focused on the production of commentary and analysis, with occasional investigative pieces.

The Applicants referred to The Spinoff as being one of their strongest emerging competitors. Although The Spinoff has achieved an impressive audience of 400,000 visitors,⁹ its advertising revenue currently sustains a team of 13 staff (including part-time employees).¹⁰

If we extrapolate The Spinoff's existing operations to an audience of 2.5 million, its advertising revenue might sustain a newsroom of approximately 80 staff.¹¹ Consequently, even if The Spinoff achieved the same online audience as the Applicants, their capacity to produce original news content would not be competitive with that of the Applicants.

The Applicants also have a powerful structural advantage over emerging digital outlets, due to their broader revenue base. Most significantly, the Applicants derive the majority of their income from print revenue. As Mr Tong stated during the conference, 85% of Fairfax's revenue is still derived from print newspapers.¹² By comparison, only 12% of Fairfax's revenue comes from digital sources.¹³ For NZME, the figure is also 12%.¹⁴

Consequently, the Applicants' production of online news content is heavily subsidised by their traditional revenue streams in print. Even under extremely optimistic audience scenarios, their digital-only competitors would not have the capacity to create news production teams that directly compete with the breadth of original reporting produced by the Applicants.

When it comes to the production of original news content, NZME and Fairfax are the only meaningful competitors in New Zealand. If the merger were approved, consumers would not have access to any substitutes matching the depth and breadth of local news journalism created by the Applicants.

1.2 Audience reach

With regard to the dissemination of news, the Commission has already completed a thorough analysis highlighting the disparity in audience size between the Applicants and other New Zealand news organisations. In print, the Applicants have a 90% share of the New Zealand market.¹⁵ Online, the Applicants reach a website audience four times larger than any of their nearest competitors.¹⁶

⁹ The end of comments on The Spinoff (14-07-16_The Spinoff):

<http://thespinoff.co.nz/media/14-07-2016/the-end-of-comments-on-the-spinoff/>

¹⁰ The Spinoff, About Us page: <http://thespinoff.co.nz/about-contact/>

¹¹ This estimate assumes that the ratio between revenue earned and staff employed remains consistent.

¹² NZME Fairfax Merger, Commerce Commission Conference Transcript, 6 December, page 57.

¹³ Fairfax reports large falls in NZ earnings (10-08-16_NZ Herald):

http://m.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11690975

¹⁴ New Zealand Media Ownership 2016 (01-12-16_Merja Myllylahti):

http://www.aut.ac.nz/_data/assets/pdf_file/0019/704053/JMAD-Report-2016.pdf

¹⁵ Commerce Commission Draft Determination, 8 November 2016, page 9.

¹⁶ Ibid.

In addition to reaching a larger website audience, the Applicants have an audience that is much more engaged than their competitors. Publically available statistics at alexa.com provide the following estimates for user engagement during the month of January 2017: ¹⁷

- stuff.co.nz
 - Daily time on site: 6 min, 44 sec
 - Page views per visitor: 3.45
- nzherald.co.nz
 - Daily time on site: 6 min, 54 sec
 - Page views per visitor: 3.55
- tvnz.co.nz (including non-news content)
 - Daily time on site: 3 min, 15 sec
 - Page views per visitor: 2.62
- newshub.co.nz
 - Daily time on site: 3 min, 07 sec
 - Page views per visitor: 1.64
- thespinoff.co.nz
 - Daily time on site: 3 min, 03 sec
 - Page views per visitor: 1.50

- NZME2 (merged entity): ¹⁸
 - Daily time on sites: 13 min, 38 sec
 - Page views per visitor: 7

Stuff has already achieved audience engagement that is 207% higher than its nearest competitor, while NZ Herald is 212% higher.¹⁹ A merged entity would likely achieve audience engagement levels that are 419% higher than any other competing news organisation.

Consequently, the merged entity would be able to earn higher levels of revenue per unique visitor, enhancing their competitive advantage over other news organisations. This would enable the Applicants to further entrench their deep structural advantage in the production of original news content, making it more difficult for other news outlets to compete.

¹⁷ The Commission may wish to ask the Applicants and their competitors to provide exact statistics regarding engagement, so that it can evaluate the disparity regarding audience size and engagement more precisely.

¹⁸ This estimate assumes that engagement levels remain the same following a merger.

¹⁹ Based on estimates of time spent reading from www.alexa.com

Section 2: Defining the Applicants' primary competitive market

When considering the merger application, the primary competitive market that the Applicants operate in needs to be evaluated. Within competition analysis, businesses are deemed to be competitors when they operate in similar markets and offer similar products. Competitors only create meaningful constraints when they are offering comparable substitutes.

The Applicants have portrayed Facebook and Google as their primary competitors. For example, Mr Currie asserted:

“Facebook, it’s a phenomenal beast, and it is absolutely 100 per cent our major competitor.”²⁰

However, the evidence suggests that this is not the case. While there is competitive overlap within some markets, such as digital advertising, there are key differences in the products that each company offers to both consumers and advertisers. As such, the ability of Facebook and Google to provide a comprehensive competitive constraint against a merged entity is limited in scope.

Furthermore, digital advertising is not the primary market within which the Applicants compete in. As outlined in Section 1.1, NZME and Fairfax derive only 12% of their income from digital revenue. Furthermore, as outlined within Section 5.1, it is unlikely that digital advertising will ever reach levels where it becomes their primary income stream. As such, the Commission should be sceptical of arguments that try to frame digital advertising as the primary market for competitive analysis.

To achieve financial sustainability, the Applicants will need to embrace emerging business models that are specific to online publishers, such as online memberships and subscriptions. The experience of overseas news organisations suggests that these will be primary areas of revenue growth (see Section 6.2). In the context of these emerging business models, competition with Facebook and Google will be irrelevant. Instead, it will be New Zealand news organisations who constitute the primary competitors in the market for reader revenue.

As pointed out within Section 1.1 and 1.2, the Applicants already possess significant competitive advantages over other New Zealand news organisations in the areas of news production and audience share. If a merger were approved, it is likely that it would further entrench their advantage within this primary competitive market.

²⁰ NZME Fairfax Merger, Commerce Commission Conference Transcript, 6 December, page 28

2.1 Competitive relationship with Facebook: consumer market

Although the Applicants have attempted to frame Facebook as their biggest competitor, there are distinct differences that should be evaluated. Facebook operates within a starkly different competitive market to the Applicants, from the perspective of both consumers and advertisers.

Firstly, the consumer-facing product of Facebook is significantly more complex than the product offered by the Applicants. The primary purpose of Facebook is to enable social communication across a user's social network, which is undertaken through the sharing of personal posts, photos, videos, live streaming, instant messages and video calls. Furthermore, Facebook is the leading platform through which people invite each other to public and private events, interact with 'pages' related to topics and brands they 'like', and create discussion groups focused on study, work or personal interests.

The dissemination of news is only one feature that Facebook offers its users, and is not the primary reason that people engage with the website. News dissemination is also not the primary driver of audience growth. Instead, Facebook has achieved the highest level of user engagement of any website in the world by providing a diverse breadth of social communication, not available on any other platform. From a consumer's perspective, the websites and mobile apps of news organisations are not a substitute product for Facebook.

Facebook also does not create news content, therefore is not a substitute product for the original reporting created by the Applicants. Rather, Facebook is a complementary product that offers consumers a novel method to access and share content created by news organisations. The Applicants' research shows that the proportion of news consumption that occurs within Facebook is only 15%.²¹ Additionally, all news consumption that occurs within Facebook directly results in online publishers increasing their own audience metrics. As outlined within Section 2, publishers also generate advertising revenue every time a user reads a news article via Facebook.

The Applicants have also portrayed Facebook as an entity that takes audience and revenue that would otherwise belong to them. This viewpoint does not align with the evidence. The reason that Facebook is attracting greater audience share is due to its success as the world's largest social media platform. It is not taking audience or advertising revenue that would otherwise belong to news organisations. Instead, Facebook has actually helped the Applicants grow their audience to historically high levels, and actively provides mechanisms by which online publishers can generate new advertising revenue from every page view.

²¹ Submission: *Factual Submission by NZME and Fairfax on the Commerce Commission's Draft Determination Dated 8 November 2016*, page 41.

2.2 Competitive relationship with Facebook: advertiser market

From an advertiser's perspective, Facebook offers advertising products that are distinctly different from the offerings of online publishers. One of the primary forms of Facebook advertising is the 'Sponsored Post.' These units of advertising are unique in that they appear natively alongside other social media posts from a user's friends and connections. Sponsored Posts are also flexible in regards to the format, which can include videos, event promotions, sign-up forms and offers. Advertisers can also create more direct engagement by redirecting consumers to their own branded spaces within Facebook, facilitating two-way engagement and specialised promotions.

Another key point of differentiation is the comprehensive user data offered to advertisers, which allows them to target consumers with a level of granular precision that news organisations can't achieve. Facebook has been able to develop its large consumer dataset because its users are providing troves of personally identifiable data, via ongoing interaction with the platform's many features and services. Interaction with news stories is only one of the many diverse data points collected, dwarfed by the wide range of other user interactions that occur within Facebook. A small selection of the characteristics that Facebook can target includes: location, age, gender, relationship status, language, interests, purchase behaviour, purchase intent, life events, website browsing history, household composition, political affinity, income, workplace industry and more.²²

Meanwhile, news organisations only have access to a limited handful of individual data points, with much more limited scope. The key advantage of Facebook is that their platform is ubiquitous in nature, providing a wide range of ongoing opportunities to collect their users' data. This includes all engagement and social communication that occurs within the platform, as well as the data that users actively share when identifying their 'likes' and interests. All of this data is also personally identifiable, because Facebook requires users to login while using the service.

On the other hand, readers generally access online news content without creating an account or being logged in, and can therefore only be targeted with less accurate techniques. These techniques include making demographic assumptions based on online browsing data (derived from 'cookies'). Data from cookies is often triangulated with aggregated third-party data from online marketing companies, but this additional data is not comparable with the scope of consumer targeting that can be achieved by Facebook.

Even when online publishers do have their readers login via an account, the scope of personal data that can be collected is much narrower than Facebook due to the comparatively limited functionality of a news website. During the sign-up process, online publishers can ask readers to provide personally identifiable data such as name, age and gender. However, unlike Facebook, there aren't active incentives for users to provide an ongoing stream of

²²All of Facebook's Ad Targeting Options in One Epic Infographic (25-10-16_WordStream): <http://www.wordstream.com/blog/ws/2016/06/27/facebook-ad-targeting-options-infographic>

detailed personal data. Instead, the main source of ongoing data collection would be in the form of reading habits, which results in more limited targeting opportunities to advertisers.

To put it bluntly, Facebook is in a completely different league to online publishers. The Applicants will never have direct access to the breadth of data that Facebook has achieved, and cannot offer advertisers the same level of granular targeting. Even if the Applicants merge, they would not meaningfully improve their competitiveness against Facebook's digital advertising. However, as explored within Section 2.4, a merger would allow the Applicants to gain a significant competitive advantage over the advertising products of their competitors within the New Zealand media industry.

2.3 Competitive relationship with Google: consumer & advertiser markets

As with Facebook, Google offers consumers a wide range of products and services that are completely different to those offered by online publishers. The most recognisable consumer product is their search engine, but Google also provides an email service, website browser, mobile operating system, hosting services and more. The *Google News* aggregator service is one product that does have some overlap with the Applicants.²³ However, all of the top sources of news that appear within this aggregator are publications owned by the Applicants. Whenever an article is clicked the user is redirected to the publishers website, generating audience traffic and advertising revenue.

Google also offers advertisers a wide range of products different to those of online publishers. One of the most well known, Google AdWords,²⁴ delivers contextual advertising alongside search results. This type of targeting, inferring real-time consumer intent from search queries, is not achievable within publisher websites. Another major advertising product is Google AdSense,²⁵ which assists publishers by sourcing advertising inventory under a revenue-sharing arrangement, netting the publisher 68% of all income generated.²⁶ All of Google's advertising products provide advertisers with a superior level of consumer targeting, tapping into the more comprehensive breadth of user data available to Google via its many online services. Similar to Facebook, this consumer data is being collected by Google at a scale that New Zealand publishers are not able to compete with.

The evidence outlined within this section so far, suggests that neither Google nor Facebook are primary competitors within consumer or advertiser markets. This limited competitive overlap, combined with the low proportion of income that the Applicants derive from digital advertising, suggests that the Commission should not use Google or Facebook as the primary focus of their competitive analysis.

²³ Google News homepage: news.google.com

²⁴ Google AdWords: adwords.google.com

²⁵ Google AdSense: www.google.com/adsense

²⁶ AdSense Help, AdSense revenue share: <https://support.google.com/adsense/answer/180195?hl=en>

2.4 Competitive relationship with other New Zealand publishers

If the Applicants are analysed according to the nature of their consumer and advertising products, it becomes clear that their closest competitors are other New Zealand publishers. Consequently, this is the primary market within which direct competition occurs. If a merger were to be approved, this is also the market where the most detrimental impact on competition would occur.

From a consumer perspective, news organisations such as Fairfax, NZME, TVNZ and MediaWorks are all competing within the same marketplace. As evident within their websites, their unique product offering is primarily focused on providing original New Zealand news content, while using a variety of platforms to deliver these stories to an audience.

Even when consumers discover news articles via Facebook or Google, the primary competitive marketplace exists between publishers who are seeking to increase their audience share relative to other publishers within these platforms. Furthermore, there is a distinct marketplace for New Zealand content that is not a substitute for content available from global publishers. Consequently, the key competitive constraint on the creation of quality New Zealand news content derives from other New Zealand publishers.

Moving forward, the most promising emerging business models for publishers are strategies based on reader revenue. As explored within Section 6.2, this is the area most likely to experience significant growth and has the highest potential to turnaround the revenue crisis currently being experienced by the news industry. Consequently, the Commission is correct to evaluate the potential impact that a merger could have on the competitive landscape for online reader revenue, as well as the ability to raise prices higher than current market conditions would allow.

In the past, leaders at Fairfax²⁷ and NZME²⁸ have made numerous public statements emphasising their belief that a paywall is inevitable, and in 2012 were considering a single paywall across the NZ Herald and Stuff websites.²⁹ Market analysts have also highlighted that competitive restraints would make it difficult for either Applicant to launch a paywall, if the other held back.³⁰ Meanwhile, NZME publically stated its intention to launch a paywall several times between 2012 and 2015,³¹ naming specific launch dates on several

²⁷ Paywall on Fairfax websites in NZ 'a matter of time' (06-06-13_TVNZ One News):

<http://www.tvnz.co.nz/technology-news/paywall-fairfax-websites-in-nz-matter-time-5457434>

²⁸ Paywall inevitable – Herald boss (10-09-12_NBR):

<https://www.nbr.co.nz/article/paywall-inevitable-%E2%80%93-herald-boss-ck-127364>

²⁹ APN boss: Herald, Stuff could share single paywall (29-11-12_NBR):

<https://www.nbr.co.nz/opinion/apn-boss-herald-stuff-could-share-single-paywall>

³⁰ Fairfax NZ has no paywall plans for news (14-11-14_Stuff):

<http://www.stuff.co.nz/business/industries/63200873/fairfax-nz-has-no-paywall-plans-for-news>

³¹ Paywall inevitable – Herald boss (10-09-12_NBR):

<https://www.nbr.co.nz/article/paywall-inevitable-%E2%80%93-herald-boss-ck-127364>

-and-

Pay wall plan on track, says APN chief (13-02-15_NZ Herald):

http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11401063

-and-

NZME pushes ahead with subscription plan as parent APN disappoints (20-08-2015_Stuff):

<http://www.stuff.co.nz/business/71290424/NZME-pushes-ahead-with-subscription-plan-as-parent-APN-disappoints>

occasions. However, NZME's leadership had also expressed fears that launching a paywall would result in audience share being lost to Fairfax.³² It wasn't until February 2016 that NZME stated that paywalls were "probably not" imminent.³³

It is highly likely that NZME has delayed its paywall due to the fear that audience share would be lost to Fairfax. Further, their postponement of paywall plans directly coincided with preparations for NZME to merge with Fairfax. Considering that executive leadership at Fairfax has previously expressed a belief that cartels are 'good',³⁴ it makes sense to scrutinise the implications of what could happen if the merged entity took full advantage of its dominant market power in the provision of original news content.

In regards to advertising products, New Zealand publishers also offer the most comparable substitutes to those offered by the Applicants. Specifically, New Zealand publishers offer a range of similar formats such as: homepage takeovers, banner placements, native advertising, pre-roll video advertising, and advertising units embedded within the body of articles.

Studies have also found that premium publishing environments are a distinct advertising market, producing favourable outcomes for advertisers.³⁵ Of particular importance, this type of premium advertising is seen as a key differentiating factor that could help publishers overcome the lack of consumer data available to them. The Applicants themselves have portrayed their own premium advertising environments as an important selling point to advertisers. For example, Fairfax promotes advertising within the Dominion Post as "a premium channel to reach a high-end audience."³⁶

A merger would also combine the online consumer databases of both Fairfax and NZME, increasing their ability to target advertising to online readers. Gaining access to this consolidated consumer data would provide a significant competitive advantage over smaller New Zealand publications, especially considering that the merged entity would almost reach the entire New Zealand news audience.

A merger would further magnify the disparity that already exists relative to the Applicants' competitors, particularly compared to small publishers who have smaller audiences and less comprehensive consumer data. It is likely that advertisers would develop a preference for the merged entity due to its more comprehensive reader data, which could result in a reprioritisation of advertising budgets. This could make it even more difficult for smaller

³² No prize for being first with paywall - APN (06-06-13_Stuff):

<http://www.stuff.co.nz/business/industries/8764035/No-prize-for-being-first-with-paywall-APN>

³³ NZME float off the table, owner sees potential for more partnerships with Fairfax (25-02-2016_Stuff):

<http://www.stuff.co.nz/business/industries/77253298/NZME-float-off-the-table-owner-sees-potential-for-more-partnerships-with-Fairfax>

³⁴ Future Tense: Fairfax's Simon Tong on bloody noses, the fallacy of clickbait and the benefits of scale (30-06-15:

StopPress): <http://stoppress.co.nz/features/future-tense-simon-tong-bloody-noses-fallacy-clickbait-and-benefits-scale>

³⁵ Ads on 'Premium' Websites Prove More Effective, comScore Says (14-07-16_Wall Street Journal):

<https://www.wsj.com/articles/ads-on-premium-websites-prove-more-effective-comscore-says-1468501203>

³⁶ Fairfax Media Brands, Wellington: <http://advertise.fairfaxmedia.co.nz/wellington/>

competitors to generate revenue from online advertising, further undermining the financial viability of competing publishers.

The examples explored within this section highlight how the Applicants' primary competitors are other New Zealand publishers, a market within which they already dominate. A merger would further entrench this dominance, by creating a range of competitive advantages that accrue to the Applicants.

Thankfully, a merger is not the only solution available, nor is it the most efficient. Instead, the Applicants should be encouraged to pursue a range of collaborative strategies that would benefit the Applicants as well as the wider journalism industry (see Section 6).

2.5 The continued importance of print

The Applicants have claimed that print is not a relevant market to analyse, and have encouraged the Commission to instead focus on digital revenue. Of particular concern, the Applicants have made some incorrect claims that greatly underestimate the ongoing reach and importance of print. For example, within their submission on the draft determination, the Applicants made the following claim:

"Only 13% of New Zealanders get their news from print."³⁷

This false claim was repeated several times throughout the conference:

Mr Tong: *"So our own analysis of our audience has shown that 13% of our audience are getting their news from their newspaper."³⁸*

Ms Boucher: *"The reality is print is only 13% of our audience."³⁹*

Mr Currie: *"Only 13% of New Zealanders are using the newspaper as a primary source of news."⁴⁰*

However, the Applicants have misquoted their own study. The study actually asked respondents to estimate the proportion of news they get from various sources.⁴¹ The correct statistic reveals that for an average consumer, a 13% proportion of their individual news consumption occurs via print newspapers. Due to limitations of the data presented, we can't tell whether this means a 13% proportion of time spent reading, or of the number of articles read. Additionally, if the survey was conducted online, it is likely that newspaper consumption is underrepresented.⁴²

³⁷ Submission: Summary of key points in response to concerns identified in the Executive Summary of the Draft Determination, page 3.

³⁸ NZME Fairfax Merger, Commerce Commission Conference Transcript, 6 December, page 12.

³⁹ Ibid, 7 December, page 40.

⁴⁰ Ibid, page 35.

⁴¹ The full survey question was "In a typical week, what proportion of your news do you get from [the following sources]?", Source: Summary of Key Points in Response to Concerns Identified in the Executive Summary of the Draft Determination, page 3.

⁴² The Applicants have not provided information about the methodology or the sample size. The Commission may wish to ask for these details.

The graph presented also makes it impossible to ascertain the exact proportion of New Zealanders who actually do read a print newspaper. One interpretation could be that 100% of consumers read newspapers, but only for 13% of their overall news consumption. Equally, the data could be interpreted as meaning only 13% of people read newspapers, for 100% of their news consumption. Both of these extremes are highly unlikely, but the data does not allow us to know the actual figure. The survey also has other methodological limitations. For example, it is highly unlikely that respondents maintained accurate records of all news consumed during the prior week.

The Commission may wish to ask the Applicants to clarify the exact proportion of New Zealanders who read their print newspapers, using more robust data sources such as circulation statistics. In New Zealand, Nielsen found that 67% of news consumers read a print newspaper (in 2014).⁴³ In the USA, the Pew Research Centre found that 83% of all consumers read print newspapers (in 2015).⁴⁴ In Australia, NewsMediaWorks found that 76% of all consumers read print newspapers (in 2016).⁴⁵ Each of these figures suggest that the number of New Zealanders who read print newspapers is much higher than 13%, and likely within the 65-85% range.

Regardless of the exact audience reached via print, newspapers are still the primary source of income for each of the Applicants. For Fairfax, 85% of revenue derives from print, while the figure is 60% for NZME.⁴⁶ As noted earlier, only 12% of revenue comes from digital sources. Consequently, it is clear that print provides the vast majority of income funding their journalism. The Applicants also have the largest journalism teams in New Zealand, which are funded almost entirely through print revenue (see Section 1.1).

The Applicants' claim that their dominant market share within print is a "meaningless statistic"⁴⁷ should be further scrutinised. It is also misleading for the Applicants to claim that print newspapers are "an insufficiently differentiated product to merit its own market definition."⁴⁸ Instead, the print market is currently the only market that supports the financial sustainability of journalism created by the Applicants, and should remain a core component of the Commission's analysis.

⁴³ Application: Fairfax New Zealand Limited/ Wilson & Horton Limited, Notice Seeking Authorisation or Clearance of a Business Acquisition Pursuant to S 67(1) of the Commerce Act (27 May 2016), page 61.

⁴⁴ Newspapers: Fact Sheet (15-06-16_Pew Research Centre):
<http://www.journalism.org/2016/06/15/newspapers-fact-sheet/>

⁴⁵ The Works Q3 – Print (01-12-16_NewsMediaWorks):
<http://newsmediaworks.com.au/the-works-q3-print/>

⁴⁶ NZME Fairfax Merger, Commerce Commission Conference Transcript, 6 December, page 57.

⁴⁷ Submission: Factual Submission by NZME and Fairfax on the Commerce Commission's Draft Determination Dated 8 November 2016, page 3.

⁴⁸ Ibid.

Section 3: Editorial independence and plurality

NZME and Fairfax have asserted that their editorial policies and codes of conduct will ensure their ongoing editorial independence. The Applicants appear genuine in their desire to uphold editorial independence, and this section is not intended to question or undermine the intent of their statements.

However, it is important to highlight that editorial policies, charters and company constitutions are not immutable, nor are external bodies such as the New Zealand Press Council. Furthermore, all media organisations operate within a challenging market that is experiencing a period of intense change and uncertainty. It is impossible to guarantee that policies and practices embraced today will be upheld in the future.

As this section explores, none of the editorial safeguards outlined by the Applicants are infallible, and many have inherent structural weaknesses. There are multiple scenarios by which the editorial independence of the merged entity could be undermined, either by future changes in ownership or via a new direction taken by internal leadership.

3.1 The limits of the New Zealand Press Council

During the conference, Ms Keene asserted that their proposed deed poll would guarantee an ongoing commitment to editorial independence via compliance with the New Zealand Press Council:

“The deed poll would actually make it compulsory and irrevocable to both remain a member, keep a charter and to continue to fund the Press Council [...] The charter arrangements then do require owners don’t exert influence.”⁴⁹

Despite the best intentions of the Applicants, it is not correct to claim that the deed poll is ‘irrevocable’. Most importantly, the deed poll is not a legal instrument with robust enforcement mechanisms. It is conceivable that a future owner of the merged entity could revoke the deed, or simply refrain from adherence, without facing any regulatory form of disciplinary action.

Even if the merged entity did continue its commitment to the Press Council in perpetuity, the regulatory body relies on voluntary compliance and has limited enforcement mechanisms. When a member breaches the Principles of the Press Council, it is required to publish the adjudication outcome and provide a right of reply.⁵⁰ There are no other punishments such as monetary compensation.⁵¹

⁴⁹ NZME Fairfax Merger, Commerce Commission Conference Transcript, 7 December, page 27.

⁵⁰ New Zealand Press Council Statement of Principles: <http://www.presscouncil.org.nz/principles>

⁵¹ Ibid

The Press Council also expressly upholds the right of a publication to “adopt a forthright stance or to advocate on any issue⁵².” This is an important protection to uphold editorial freedom. However, this provision is most effective when applied to a diverse media marketplace containing competing media organisations under different ownership structures.

A merged entity would have an extremely dominant market share regarding the production of original news content. If it chose to advocate on a particular issue, a right explicitly protected by the Press Council, it would result in their chosen viewpoint having dominance within our media landscape. This could have a significant impact on our democratic process.

The Press Council also highlights that: “Editors have the ultimate responsibility for what appears in their publications, and for adherence to the standards of ethical journalism which the Council upholds. In dealing with complaints, the Council seeks the co-operation of editors and publishers.”⁵³ This highlights how the enforcement regime is based on voluntary compliance, and could be undermined if future leadership within the merged entity took a hostile approach to the regulatory body.

The Press Council also relies on complaints from the public, in order to instigate their investigative process. The Council does not pro-actively evaluate adherence to its Principles, and it is conceivable that some abuses of editorial power may go unreported. Additionally, a member of the public cannot complain about abuses of editorial influence if it is not aware of such abuses occurring. For example, if a media owner gave confidential instructions to its senior leadership regarding editorial content, this would be outside the reach of the Press Council’s oversight.

The Press Council is also a self-regulatory body entirely funded by industry, and members can shape its structure and regulatory focus. Further, organisational constitutions and practices can be changed if a suitable threshold of governing members is achieved when voting on new amendments or resolutions.

With these points in mind, it is easy to see how the structure and mission of the Council could change over time. Additionally, a merged entity with an extremely dominant market share would have strong influence over any changes that may occur to the body.

The points explored above are not intended to cast doubt on the intentions of the Applicants. Instead, they highlight a handful of scenarios where good intentions could be undermined by factors outside the control of current leadership.

⁵² New Zealand Press Council Statement of Principles: <http://www.presscouncil.org.nz/principles>

⁵³ Ibid

3.2 The limits of editorial charters

At several points during the conference, the Applicants highlighted that their editorial charters protect the independence of their news organisations.

For example, Ms Boucher asserted that Fairfax's editorial charter:

“Protects journalists from any kind of commercial influence or political influence on us.”⁵⁴

Ms Boucher also emphasised that:

“Every single day I see stories on our publications that I personally disagree with [...] We only monitor them to the things that are about our standards and our code of conduct and ethics.”⁵⁵

It was encouraging to hear about each company's commitment to editorial independence, as well as the policies and practices that support this. However, editorial policies require determined leadership with an ongoing strength of character to ensure they are maintained. Rather than 'protect' journalists from commercial and political influence, editorial charters provide a framework of policies that people can take guidance from when faced with commercial and political pressure. It is the leadership team and journalists who turn policies into reality, while also having the power to undermine them.

On the second day of the conference, Mr Hywood highlighted an important example of when Fairfax's editorial charter was threatened by a shareholder:

“We had an example some years ago where Australia's wealthiest woman, Gina Rinehart, became a 15 per cent shareholder in the business. One of the requirements of being a board member of Fairfax is that you do sign up to a charter of editorial independence.

Mrs Rinehart would not do that and therefore she was not allowed to join the board, even though she was a 15 per cent shareholder. And, obviously, with considerable economic leverage across the country as being, I think at that stage, the world's wealthiest woman, with assets in excess of \$20 billion.”⁵⁶

As reported at the time, Ms Rinehart also put pressure on Fairfax to provide greater editorial coverage of arguments made by sceptics of climate change.⁵⁷ Rinehart's forceful tactics were compared to the approach of Rupert Murdoch, who has successfully exerted his political influence over publications he owns, through a number of well-documented techniques.⁵⁸

⁵⁴ NZME Fairfax Merger, Commerce Commission Conference Transcript, 6 December, page 35.

⁵⁵ Ibid, 7 December, page 8.

⁵⁶ NZME Fairfax Merger, Commerce Commission Conference Transcript, 7 December, pages 8-9.

⁵⁷ Gina Rinehart threatens to sell stake in Fairfax unless given editorial influence (26-06-12_The Telegraph): <http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/australia/9355965/Gina-Rinehart-threatens-to-sell-stake-in-Fairfax-unless-given-editorial-influence.html>

⁵⁸ Gina Rinehart and Rupert Murdoch: a study of power in the media (16-02-12_The Conversation): <https://theconversation.com/gina-rinehart-and-rupert-murdoch-a-study-of-power-in-the-media-5394>

The fact that Fairfax resisted this pressure is an excellent example of the strong character embodied within its current leadership team. Mr Hywood and the board members who took a stand deserve to be commended on the lengths they went to uphold the integrity of their editorial charter.

However, there are some additional details of this saga that are worth highlighting. Most importantly, Rinehart threatened to immediately sell her entire stake in Fairfax unless her demands were met.⁵⁹ Although she didn't follow through on her ultimatum, the mere threat prompted the share price of Fairfax to drop to record lows.⁶⁰ Several analysts speculated that if she actually had sold her stake then the price would have dropped further, paving the way for her to make a hostile takeover bid of Fairfax.⁶¹

If Rinehart had made a hostile takeover bid, then she would have had the power to appoint new members to the board, and could have made changes to the charter of editorial independence. A company's constitution and charter are entirely reliant on the goodwill and value-alignment of its shareholders, who can collectively change the constitution and policies that govern a news organisation. Owners and directors also have the ultimate power to determine policies for hiring and firing staff, including editorial appointments.

While the Rinehart example does highlight the commendable strength of the board in 2012, it does not guarantee that Fairfax would be immune from this threat in the future. Fairfax was in a much stronger financial position in 2012, and its economic strength provided it with a far more robust ability to fend off the actions of hostile shareholders.

If Fairfax were confronted with a hostile shareholder in the future, maintaining strong leadership to uphold editorial values would be considerably more challenging. With revenues declining and print assets being devalued, it is reasonable to envision a scenario where Fairfax could be tempted to give in to the demands of a dominant shareholder, especially if it guaranteed survival or provided financial gain. As highlighted within Section 3.5, a merged entity would face an acute risk of ongoing financial uncertainty and the potential for a hostile takeover.

Another important point is that the merged entity would have a separate ownership structure to Fairfax, as well as a different editorial charter. The precedent set by Fairfax in Australia would not directly apply to the merged entity, which would have different owners, different board members and different editorial leaders. Furthermore, the merged entity would be operating within a considerably different market, within an unpredictable media landscape experiencing an ongoing state of flux.

⁵⁹ Gina Rinehart threatens exit over Fairfax editorial control (26-06-12_The Guardian): <https://www.theguardian.com/world/2012/jun/26/gina-rinehart-threatens-exit-fairfax>

⁶⁰ Ibid.

⁶¹ Gina Rinehart threatens to sell stake in Fairfax unless given editorial influence (26-06-12_The Telegraph): <http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/australia/9355965/Gina-Rinehart-threatens-to-sell-stake-in-Fairfax-unless-given-editorial-influence.html>

Rupert Murdoch provides a vivid case study of what happens when a change in ownership has resulted in charters of editorial independence being ignored. Prior to his purchase of The Times and The Sunday Times, Murdoch made commitments to protect and uphold editorial independence, so that he could avoid scrutiny from the UK Competition and Markets Authority.⁶² It is well documented that he ignored these commitments after the sale was approved and exerted considerable influence over the editors of these publications.⁶³

The Commission is justified in taking a cautious approach when evaluating the weaknesses of editorial charters and policies, and should maintain confidence in the preliminary assessments made within its Draft Determination.

3.3 The limits of the Overseas Investment Office

The Applicants have proposed that the Overseas Investment Office (OIO) would be a significant check to prevent a foreign buyer from gaining editorial influence over the merged entity.

As Ms Keene asserted:

“One key protection that we see that is in place already in the backdrop is the Overseas Investment Office approval process for acquisitions by foreign entities of material assets or shares, and so we would see a large stake in this merged entity being subject, likely subject, to that regime if it were a foreign person, and of course the Overseas Investment Office has a very wide public interest test and ministerial approval process such that government ministers can just say no if they are concerned by that foreign ownership or influence.”

[...]

“the Foreign Investment Office looks at that and it will consider the personality, the characteristics and the attributes of the new owners of the business. [...] they ask about the character of people who are going to be leading the business into the future, and then they apply a very wide public interest test, of which economic considerations are only one factor of many, and then move to a recommendation to the Minister involved and then the Minister can either agree or disagree with the recommendation.”⁶⁴

Although the OIO does provide some level of protection, it is quite limited in scope, particularly in regards to media acquisitions. Most importantly, it is not possible to predict the future intent of a politically motivated buyer, especially if they were to publically profess their commitment to editorial independence.

⁶² Forget charters of editorial independence -- they don't work (20-06-12_Crikey):

<https://www.crikey.com.au/2012/06/20/forget-charters-of-editorial-independence-they-dont-work/>

⁶³ Ibid.

⁶⁴ NZME Fairfax Merger, Commerce Commission Conference Transcript, 7 December, page 26.

Furthermore, it is uncertain how the OIO would actively enforce any requirements it might place on the buyer with regard to editorial independence. Not only is it extremely difficult to identify overt editorial interference, but the OIO does not have any experience with this particular type of monitoring and enforcement.

A further point to consider is that the OIO approval process involves significant Ministerial discretion, with the Minister deciding whether an investment should be approved or declined. If an overseas investor did seek to acquire a significant proportion of the merged entity, then the future of New Zealand's largest network of media assets would be vulnerable to the risk of political interference.

Another obvious limitation is that the OIO only relates to ownership undertaken by foreign investors. There are no government regulatory bodies that could enforce requirements for editorial independence if the owner was a New Zealand citizen.

As highlighted recently within media reports by both Fairfax and NZME, there are loopholes within our immigration process that allow overseas investors to become naturalised citizens without meeting the usual residency requirements.⁶⁵ This allows certain high-wealth individuals to bypass the Overseas Investment Office, and purchase assets that would otherwise be subject to high levels of scrutiny and public benefit tests.

3.4 The limits of editorial independence via market forces

At one point during the conference, Mr Hywood asserted his belief that market forces are able to uphold editorial independence:

“If you don’t exercise editorial independence, your audience won’t come to you. If your audience doesn’t come to you, you can’t have an audience that attracts advertisers. So in a sense, it’s a virtuous cycle. So it’s not just a matter of principle, it’s a matter of commercial necessity that we do that.”

⁶⁶

Although the claim is well intentioned, it requires further scrutiny. Firstly, it is extremely difficult for audiences to know when editorial independence has been compromised. News consumers simply do not have access to complete information about the range of factors that influence each story. Editorial processes are complex, and include a variety of factors that shape which topics are prioritised and how they are covered. Without access to this information, audiences are at a huge disadvantage when trying to identify verifiable examples of improper editorial practices.

⁶⁵ Revealed: How Peter Thiel got New Zealand citizenship (01-02-17_NZ Herald):

http://www.nzherald.co.nz/matt-nippert/news/article.cfm?a_id=644&objectid=11790034

⁶⁶ NZME Fairfax Merger, Commerce Commission Conference Transcript, 7 December, page 4.

Hywood's claim also overlooks the fact that a merged entity would be extremely dominant as the primary source of original news reporting within New Zealand. This means that consumers would have a lack of viable alternatives for comprehensive coverage of local and national stories. If a reader was dissatisfied enough to abandon the merged entity, they would end up shutting themselves off from New Zealand's largest source of original journalism content. It is unlikely that many consumers would make such a drastic choice.

Even if a reader had the willpower and determination to avoid visiting the merged entity's publications (print or online), the reader would not be able to avoid its editorial influence. Competing journalism outlets in New Zealand are heavily reliant on reporting undertaken by the nationwide network of publications owned by the Applicants. Consequently, if the editorial independence of the merged entity were compromised, then it would have a flow-on effect to coverage within other publications.

Mr Hywood's claim, however, seems more appropriate within the Australian market. Australia is home to a much more robust level of competition between a range of local and national publishers. If a consumer is unhappy, many markets contain editorial alternatives that the reader can switch to. Furthermore, because there are often alternative sources of news, it is easier for consumers to identify bias by comparing multiple versions of the same story produced by competing news organisations.

Mr Hywood's claim would also be slightly more valid if the logic was applied to the duopoly that currently exists within the New Zealand market. Under existing market conditions, it is easier for audiences to identify potential examples of editorial bias by comparing original reporting from competing news organisations. Furthermore, the current duopoly provides consumers with at least one other major source of original reporting if they are dissatisfied with the other Applicant.

If the Commission were to approve the merger, then it would distort market forces to the point where any competitive checks and balances on editorial independence that currently exist are significantly reduced.

3.5 The risk of hostile takeover due to weak economic performance

Mr Hywood pointed out that news organisations are vulnerable to hostile takeovers if their commercial performance is weak:

*"The issue is that weaker entities are more prone to takeover because they're fundamentally cheaper and you can buy into substantial media assets very cheaply to leverage the sort of social and political influence I'm talking about."*⁶⁷

⁶⁷ NZME Fairfax Merger, Commerce Commission Conference Transcript, 7 December, page 27.

One of the most significant risks is that the merged entity would remain commercially weak after a merger. Consequently, there is the possibility that all of these consolidated media assets could come under the control of a single politically motivated buyer in the future. Meanwhile, a rejection of the merger would set a strong precedent that avoids the risks associated with such comprehensive media consolidation.

Under the Counterfactual, Fairfax Media and NZME would be required to continue operating under two independent ownership structures. Furthermore, a rejection may prompt the Applicants to divest some of their media assets, resulting in a greater diversity of competing ownership structures. Even if an individual outlet became susceptible to a hostile takeover, it would not result in this entire network of publications becoming editorially compromised at the same time under one owner.

The Commission estimates that the merged entity would control approximately 90% of the print newspaper market in New Zealand. Considering that daily newspapers are the primary source of original news reporting in New Zealand, both in print and online, this creates a considerable risk to editorial independence within the New Zealand media landscape. As highlighted within Section 3.2, there will always be the risk that future owners or editorial leaders abuse the power inherent within a media organisation of this size and scope.

As highlighted within Section 5.2, the Applicants have emphasised they are still searching for an answer to their revenue problems. Furthermore, neither Applicant has detailed any new business model that would allow them to achieve financial sustainability. Consequently, there is a strong risk that a merged entity would remain commercially weak for the foreseeable future, further increasing the risk of a hostile takeover.

3.6 The limits of internal plurality

The Applicants have argued that internal plurality within the merged entity would uphold media diversity within the New Zealand market.

As outlined within their recent submission:

“At the Conference the Commission heard from numerous journalists on behalf of Fairfax and NZME that there is no central editorial oversight of angles / views / opinions, and that internal plurality is driven entirely by the journalists within the organisation.”⁶⁸

⁶⁸ Fairfax NZME Response to questions arising from the conference 23 December 2016, pages 4-5.

Furthermore, the Applicants have asserted that editorial plurality is an “inevitable result” of factors such as:⁶⁹

- a) Editorial principles and policies
- b) Diverse opinions and perspectives of individual journalists
- c) A diversity of user-generated content from readers, via Stuff Nation
- d) A claim that there is “no centralised oversight” of material published on websites.
- e) A claim that the Stuff and NZ Herald websites have so much content, that editorial oversight and vetting isn’t possible.
- f) A claim that market forces will inevitably ensure a diversity of content and editorial neutrality.

Each of these claims is contingent on some problematic assumptions, which are scrutinised in more depth below.

Claim a) Editorial principles and policies

As outlined within Section 3.2, the editorial policies and principles adopted by the Applicants are not immutable and could change in the future due to a variety of forces outside of their current control. Editorial independence is not an inevitable force, and could become more vulnerable following a merger.

Claim b) Diverse opinions and perspectives of journalists

The Applicants have highlighted some good examples of internal plurality, showing the diversity of opinions and perspectives that are allowed to proliferate within their news organisations. However, there are limits to the effectiveness of internal plurality in upholding a diverse media marketplace.

Perhaps most importantly, news organisations have significant power in deciding which voices within their publications are magnified and reach the largest audience. Editors have the power to determine which stories are featured prominently on front pages, syndicated across other publications, featured on the website homepage, or actively promoted via social media.

The processes used to promote specific stories are not neutral, and constitute an important dimension of media plurality. For example, some news organisations choose to prioritise human editorial curation based on the judgement of editorial staff. Other news organisations choose to prioritise audience metrics, giving prominence to stories that are clicked most often or shared within social media.

The relative weighting given to different types of editorial curation results in different types of stories being prioritised to readers. In a competitive media marketplace, editorial curation is one of the key factors that help give each news organisation its own unique flavour. If the merger were to be approved, the consolidation of policies related to editorial curation is an important area where plurality could be lost.

⁶⁹ Fairfax NZME Response to questions arising from the conference 23 December 2016, pages 4-5.

A recently leaked memo from Fairfax highlights the impact that curation can have on editorial diversity, even if individual journalists maintain their own opinions and perspectives. The memo refers to changes outlined by senior leadership, regarding a significant shift in the focus of their 8am and 4pm national news conferences.

The memo stated that:

“From now on the meetings will focus on your best social/sharable content along with stories that can make the homepage.”

[...]

“We’re focusing the meeting on our two biggest promotional channels: the homepage and Facebook.”

[...]

“So instead of us asking ‘what’s going on today?’ We’d like you to tell us what are your contenders for Facebook and the Homepage.”⁷⁰

Furthermore, Fairfax leadership outlined the types of stories they don’t want prioritised:

“What we’re not after:

Boring stories with no hook or visual elements. 30 per cent of our stories are being read by no one. Why are we doing them?

Court stories, particularly procedural appearances. Ongoing case reviews etc can’t go on social because of prejudicial risk and they’re almost always of no interest to the HP [homepage].⁷¹

This is not to say that the editorial strategy outlined within the leaked memos is inherently bad, or that the resultant journalism will be of low quality. The memo specifically emphasises that:

“Good, thorough, reporting remains really important.”⁷²

However, the memo does highlight that decisions regarding editorial curation have a profound impact on the types of stories that are prioritised within a news organisation. This has a direct impact on which stories ultimately reach the largest audience, and in the long term could also result in a reprioritisation of editorial resources. Consequently, editorial curation is an important component of media plurality for the Commission to evaluate.

⁷⁰ Wow: Secret memo reveals the true ruler of Stuff.co.nz (12-10-16_The Spinoff):
<http://thespinoff.co.nz/media/12-10-2016/wow-secret-memo-reveals-the-true-ruler-of-stuff-co-nz/>
--and--

Media stoush: Stuff editor hits back at Spinoff hack (14-10-16_The Spinoff):
<http://thespinoff.co.nz/media/14-10-2016/media-stoush-stuff-editor-hits-back-at-spinoff-hack/>

⁷¹ Ibid

⁷² Ibid

Claim c) Availability of diverse user-generated reader content

Stuff Nation is a great initiative that allows readers to submit their own stories, which are then published on the Stuff website. However, it is important to keep in mind that Stuff Nation is not a truly open platform. Articles are still vetted by editorial staff, and editors have the ultimate power to decide whether or not a story is published. Furthermore, user generated content is also subject to curatorial processes that determine which stories are prioritised within the homepage and on Facebook.

Claim d) There is “no centralised oversight” of material published on websites

It is true that no single individual controls everything that appears within the websites of NZME or Fairfax. However, the editorial model of these publications is based on centralised hierarchical management, where local editors work under the leadership of more senior editors. Furthermore, editorial leaders at the top decide which stories are prioritised to a national audience, greatly enhancing the reach of certain articles.

Each news organisation has also pursued internal restructuring that further centralises editorial leadership. In late 2015, NZME created an integrated newsroom combining the journalism teams of the New Zealand Herald, The Herald on Sunday, NZME News Agency, Newstalk ZB and Radio Sport.⁷³ Previously, each of these publications had been operated under separate leadership teams, but were placed under one leadership structure following the integration.

In mid 2015, Fairfax decided to disestablish the role of editor at a number of regional mastheads. As a replacement, regional editors were appointed to manage several publications that were previously under separate leadership. For example, the Manawatu Regional Editor became responsible for the Manawatu Standard, The Tribune and the Fielding-Rangitikei Herald.⁷⁴ Another example is the Nelson Regional Editor, who became responsible for The Nelson Mail, the Nelson Leader, the Tasman Leader, and Admire magazine.⁷⁵

By highlighting the trend of increased centralisation, I do not wish to imply that any of the newly appointed editors lack editorially objectivity. However, the process of centralisation does mean that the editorial oversight of individual editors is increasing in terms of both geographic reach and the number of publications managed. The NZME example also highlights how editorial centralisation is occurring across different mediums, such as print and radio.

⁷³ NZME moving to single newsroom (30-10-15_Otago Daily Times):

<https://www.odt.co.nz/business/nzme-moving-single-newsroom>

⁷⁴ New editor appointed for Manawatu newsroom (19-05-15_Stuff):

<http://www.stuff.co.nz/manawatu-standard/news/68653491/new-editor-appointed-for-manawatu-newsroom>

⁷⁵ New Nelson regional editor appointed (15-06-15_Stuff):

<http://www.stuff.co.nz/nelson-mail/69381141/new-nelson-regional-editor-appointed>

If a merger were approved, current trends indicate that further centralisation of editorial oversight is highly likely. The Applicants have already expressed a desire to streamline operations in markets where they have geographical overlap, and have already consolidated internal editorial structures across outlets they currently own. Consequently, the consolidation of editorial leadership structures is another area where internal plurality could be lost.

Claim e) Editorial oversight and vetting isn't feasible

As outlined earlier within this section, there are numerous methods that news organisations can use to magnify the prominence of particular stories, without undertaking explicit vetting of all content on their websites. Furthermore, editors are ultimately responsible for the curation of content and enforcement of standards that shape content creation.

The Applicants have also highlighted that retrospective vetting is exercised whenever they perceive that standards have been breached according to their own ethical guidelines, quality standards or legal obligations.⁷⁶ This shows that mechanisms do exist that allow editors to exert their influence over content when it is deemed appropriate.

Claim f) Market forces will ensure diverse content and editorial neutrality

As outlined within Section 3.4, market forces and commercial incentives are limited in their ability to ensure media plurality and editorial neutrality. Additionally, a merger would distort the market in ways that undermine the limited constraints that currently exist.

⁷⁶ Fairfax NZME Response to questions arising from the conference 23 December 2016, page 5.

Section 4: Facebook as a source of publisher revenue

During the conference, Commissioner Begg asked the Applicants:

“Does Facebook pay you anything for content? [...] You don’t get any share of their ad revenue?”

In response, Mr Tong said:

“No, what we get is some audience from them [...] There’s no other financial return.”⁷⁷

This answer omits some important details about the advertising relationship between Facebook and the Applicants. As outlined below, all publishers are provided with opportunities to generate advertising revenue whenever their articles are read via Facebook.

4.1 Scenario A: News content hosted by publishers

Most news articles shared within Facebook are hosted on the websites of publishers. All publishers have full control over where their news content is hosted, and can generate revenue by embedding ads within their articles.

The most common pathway for publishers to generate revenue from their content shared on Facebook is outlined below:

- 1) A Facebook user shares a publisher’s article, in the form of a URL link.
- 2) All users who click on the link are redirected to the publisher’s website, where the news content is hosted.
- 3) The user views the ads that the publisher has embedded alongside the news content.
- 4) The publisher keeps 100% of the advertising revenue that is generated from this page view.

Under this scenario, Facebook provides publishers with an important source of new readers and advertising revenue. Furthermore, Facebook does not get any of the revenue generated by the page view.

⁷⁷ NZME Fairfax Merger, Commerce Commission Conference Transcript, 6 December, page 26.

4.2 Scenario B: News content hosted by Facebook

Publishers are also provided with the option of having news content hosted directly within Facebook. This initiative is called 'Instant Articles', and is an opt-in programme where publishers voluntarily upload their content to Facebook's servers.⁷⁸

Under this programme, there are two options for generating advertising revenue.⁷⁹

- 1) Publishers can embed advertising content directly within their 'instant' articles. For these direct placements, publishers get to keep 100% of ad revenue.
- 2) Publishers can allow Facebook to embed targeted ads from its own network of advertisers. Under this arrangement, publishers get to keep 70% of ad revenue – with Facebook keeping a 30% commission.

Consequently, even when Facebook hosts a publisher's content there are opportunities to generate a financial return. Facebook does not take any other revenue that would otherwise belong to the publisher.

Section 5: Business model challenges

5.1 The failed economics of digital advertising for publishers

The Applicants have asserted that one of the biggest benefits of the merger, is that it would allow them to enhance their position within the digital advertising market. In particular, they claim that the merger would allow them to gain a significant competitive edge over Google and Facebook.

Because the Applicants have redacted their digital revenue projections within the public version of their submissions, it is difficult to comprehensively scrutinise their exact plans for increasing digital advertising revenue. However, quantifiable industry trends highlight that their current overreliance on digital advertising as their primary source of online revenue is not a sustainable business model.

Perhaps of greatest concern is that news organisations still rely on their print product as their primary source of revenue. In Australasia, it has been estimated that more than 80% of publisher advertising revenue still comes from print products.⁸⁰ As detailed within Section 1.1, Fairfax New Zealand and NZME only earn 12% of their revenue from digital sources.

This is particularly concerning considering that print revenues are declining much more quickly than online revenues are increasing. In the USA, the Pew Research Centre has estimated that every new dollar in online advertising

⁷⁸ Facebook Instant Articles: <https://instantarticles.fb.com/>

⁷⁹ Facebook's Instant Articles Advertising Fixes Win Over Publishers (11-02-16_Wall Street Journal): <http://www.wsj.com/articles/facebook-instant-articles-advertising-fixes-win-over-publishers-1455218551>

⁸⁰ Australia's major newspaper publishers still make over 80% of ad revenues in print (10-05-16_Crikey): <https://www.crikey.com.au/2016/05/10/australias-major-newspaper-publishers-still-make-over-80-of-ad-revenues-in-print/>

revenue coincides with a loss of \$15 in print advertising.⁸¹ In New Zealand, the Standard Media Index (SMI) has estimated that \$18 in print ad revenue is lost for every \$1 gained in digital ad revenue.⁸²

PwC estimates that by 2020, print revenue across the New Zealand market will decrease by 58%.⁸³ For the Applicants, this would reduce their revenue base by approximately \$260 million.⁸⁴ Meanwhile, PwC estimates that internet advertising will increase by 13.8%.⁸⁵ Assuming the Applicants can maintain this rate of growth, they would gain approximately \$62 million in digital advertising over the same period.⁸⁶ This deficit of nearly \$200 million is concerning, especially considering that PwC's estimates are more optimistic than the decline evident within the market data of Pew and SMI.⁸⁷

Quantitative market trends also suggest that sustained double-digit growth in digital advertising will be challenging. As the Applicants have highlighted, the vast majority of new digital advertising revenue is going directly to Google and Facebook. In the USA, an estimated 85 cents from every new dollar spent in advertising will go to Google or Facebook.⁸⁸ In New Zealand, the Applicants have estimated that Google and Facebook are attracting 81 cents for every new advertising dollar spent.⁸⁹

Any reasonable analysis of this market data would come to the conclusion that the merged entity would not solve its revenue crisis through its current plans to increase online advertising. As explored within Section 3.5, Mr Hywood has highlighted that a financially weak media company is vulnerable to a hostile takeover by politically motivated buyers. If the merged entity does not solve its revenue crisis, our country's largest network of publications could become editorially compromised through a single acquisition.

It is important for the Applicants to focus their resources on business model innovation that goes beyond online advertising. As explored within Section 5.3, however, large organisations can experience diseconomies of scale that pose an obstacle to agile innovation. Meanwhile, Section 6 highlights that there are a range of collaborative strategies that the Applicants could pursue to achieve the goals outlined within their proposal, without merging within one ownership structure.

⁸¹ Does not compute: a look at news media's existential crisis (26-08-13_StopPress):

<http://stoppress.co.nz/didge/does-not-compute-online-publishing-and-scramble-revenue>

⁸² Audience up, ad spend down: a depressing graph for Fairfax and APN? (21-02-14_StopPress):

<http://stoppress.co.nz/didge/apn-fairfax-online-ad-spend>

⁸³ Almost all media and entertainment growth to come from digital says PwC (08-06-16_Stuff):

<http://www.stuff.co.nz/business/industries/80812584/Almost-all-media-and-entertainment-growth-to-come-from-digital-says-PwC>

⁸⁴ Based on the Applicants' combined pro forma revenue of \$766.2 million for year ending June 2016, assuming that 80% of current revenue comes from print.

⁸⁵ Digital media on track for double-digit growth (08-06-16_PwC):

<http://www.pwc.co.nz/media-centre/news-releases/digital-media-on-track-for-double-digit-growth/>

⁸⁶ Based on the Applicants' combined pro forma revenue of \$766.2 million for year ending June 2016, assuming 12% of current revenue comes from digital.

⁸⁷ The Commission may wish to ask the Applicants to provide raw data to an independent expert, who can verify their projections and evaluate the extent to which a merger results in long-term financial sustainability.

⁸⁸ Media Websites Battle Faltering Ad Revenue and Traffic (17-04-16_The New York Times):

<https://www.nytimes.com/2016/04/18/business/media-websites-battle-faltering-ad-revenue-and-traffic.html>

⁸⁹ Submission: NZME and Fairfax response to Commerce Commission questions arising from the conference on 6 and 7 December 2016, page 19.

5.2 Absence of clear strategy to overcome revenue problems

Within their most recent submission, the Applicants stated their belief that digital revenues post-merger would grow to a point where:

“The digital business adequately funds the quality of journalism produced today, so that the businesses are not reliant on print to support their fixed costs.”⁹⁰

Furthermore, they claim that:

“Print products will not be essential to cover fixed costs as they are today”⁹¹

The Applicants, however, have not outlined a robust plan that would sufficiently improve the long-term financial sustainability of their business model. Instead, the Applicants have highlighted that a core purpose of the merger is to enable cost-cutting initiatives that increase the ‘runway’ available to experiment with new commercial models.

As Mr Hywood outlined:

“This whole merger is really about trying to maintain and continue a runway for these businesses to rebuild and develop new revenue streams.”⁹²

However, neither Applicant outlined any specific plans to generate a sustainable level of online revenue from their journalism content. As Mr Tong outlined:

“I think there’s no publisher in the world that we’re aware of that has cracked this particular issue [...] You’ll find a lot of coverage of different ideas that have been tried. But it’s fair to say there isn’t a silver bullet. Everybody’s facing the same challenges. So what we are doing is looking at how we can create new business models [...] But we don’t have that answer today.”⁹³

Mr Currie also outlined that The New Zealand Herald is still in the position of searching for a digital business model that is sustainable for online content:

“The whole basis I guess of why we’re here today and what’s driving our mind and our thoughts and the best brains in the business are trying to find that new business model in the digital sense where we’re seeing that enormous shift in our audience moving to digital channels.”⁹⁴

⁹⁰ Submission: NZME and Fairfax response to Commerce Commission questions arising from the conference on 6 and 7 December 2016, page 23.

⁹¹ Ibid.

⁹² NZME Fairfax Merger, Commerce Commission Conference Transcript, 7 December, page 20.

⁹³ Ibid, pages 21-22.

⁹⁴ Ibid, 6 December, page 51.

Within the Applicants' submissions, there is no evidence they have found a business model that ensures sustainability following the merger. Instead, we are presented with the hope that their online advertising revenue would increase. As highlighted within Section 5.1, it is highly unlikely that online advertising revenue would increase to the point where financial sustainability can be achieved.

The Applicants also mention the possibility of paywalls, particularly for niche content. However, the Applicants' have repeatedly asserted that paywall revenue would not be sufficient to sustain their business.

As Mr Currie highlighted:

*"The other area is I personally do not believe that a paywall for commodity news will work in any market, whether it's New Zealand or overseas, but the ability for a merged company to be able to focus its attention on specialist areas of journalism."*⁹⁵

On these points, Mr Tong elaborated further:

"The Commission has seen the evidence from Fairfax over a number of years on the modelling that we've done around the paywall [...] It is very clear to us from our modelling that unless we were to charge a significant sum of money, we would lose far more on the advertising side than we would gain [...] That situation hasn't changed, it is the nature of a market of this size.

[...] There may be specialist areas where there's an opportunity, but you need to understand the scale of New Zealand; it's two men and a dog in some cases that you're talking about that are in specialist areas where people are willing to pay.

*[...] So there's no maths that I've seen after four or five years of the Australian example and all the modelling we've done that suggests that a paywall for general news will work."*⁹⁶

Beyond the hope for increased ad revenue and the possibility of a paywall, the Applicants' only robust plan for improving their financial position has been based on cost-cutting measures. By the Applicants' own admission, these cost-cutting measures are only a short-term solution that would increase their operating runway for a limited period of time. This would likely only be a few months longer than the Counterfactual, but the exact timeframe has been redacted within their submission.

Once the short runway is over, the Applicants' financial situation begins to look very similar to the bleak outlook presented within the Counterfactual. However, there is one important difference: our country's largest nationwide

⁹⁵ NZME Fairfax Merger, Commerce Commission Conference Transcript, 6 December, page 21.

⁹⁶ Ibid, page 37.

network of publications would be controlled under a single ownership structure. As outlined within Section 3.5, all of these media assets would then become vulnerable to the risk of a hostile takeover in one fell swoop.

There are better ways for the journalism community to collaboratively pursue financial sustainability, without putting our two largest media companies under a single ownership structure. These strategies are explored in more depth within Section 6.

5.3 Potential impact of merger on business model innovation

The financial sustainability and survival of the Applicants is wholly dependent on successful innovation with new business models. However, there are significant diseconomies of scale that can occur within large organisations. This is a particularly important factor for the Commission to consider, since the large size of the merged entity may create additional barriers that hinder the ability to innovate with new strategies in a nimble and responsive manner.

A number of scholars have explored diseconomies of scale within large businesses. One of the most well known is Clayton Christensen, who outlined his thesis within *The Innovator's Dilemma*.⁹⁷ At the heart of his thesis is that large organisations primarily focus their organisational capacity on their established product offering, and take a long time to embrace innovative 'disruptive' products. Large organisations are predisposed to favour the incremental improvement of their existing products, because these types of enhancements are readily quantified and therefore easier to justify budget allocation for.

Furthermore, large organisations experience significant struggles when they try to focus their organisational capacity on 'disruptive' innovations, even though these innovations are essential for achieving financial strength within new markets. The key barrier is that 'disruptive' innovation is inherently risky and uncertain in the short-term, and large businesses find it extremely difficult to justify significant budget allocation to internal innovation. When innovation does occur, it is often through the emulation of others or through the acquisition of innovative products that have already become established.

For the Applicants, the first stage of *The Innovator's Dilemma* was the difficult transition from a print-centric production model to one that was online-centric. For three decades after the internet was introduced to New Zealand, the Applicants focused on print newspapers as the primary focal point of the news production process. Online distribution was an afterthought, and content was typically copied and pasted online after publication. It wasn't until print revenue had declined precipitously that the Applicants began shifting their resources to an explicitly 'digital first' approach.

⁹⁷ Christensen, C. M. (2003). *The Innovator's Dilemma*.

For example, Fairfax's 'News Rewired' programme was launched in 2015. Meanwhile, NZME also underwent a 'digital first' restructure of its integrated newsroom in 2015. By comparison, New Zealand's first internet-based 'Usenet' discussion groups were launched in 1985⁹⁸, and from the beginning were exploring innovative digital-centric methods of sharing news and information. Furthermore, prominent blogger, Russell Brown, has been distributing his 'Hard News' articles via the internet since 1993,⁹⁹ and countless other New Zealand bloggers have been experimenting with 'digital first' approaches to news production since the 1990s.

The fact that it took three decades for the Applicants to pursue an explicitly 'digital first' production strategy illustrates the impact of the *Innovator's Dilemma* within large organisations. When it comes to innovation, large organisations are typically followers rather than leaders, due to a strong institutional reluctance to pursue risky business strategies. When the Applicants did finally shift to a 'digital first' production model in 2015, they relied heavily on case studies of overseas news organisations that had already tested the model and therefore minimised the risk involved.

The second stage of the Applicants' *Innovator's Dilemma* relates to creating a 'digital first' business model. While the Applicants have successfully pursued production strategies that are more digital-centric, their business models are still heavily reliant on traditional revenue sources such as print and radio. Both Fairfax and NZME only derive 12% of their revenue from digital sources, and have not presented any plans that would allow them to balance their ongoing losses in print.

Of particular concern is the Applicants' ongoing commitment to digital advertising as their primary online revenue strategy. As demonstrated within Section 5.1, digital advertising is already an outdated model without reasonable hope of sustaining the Applicants' operational costs. Instead, the Applicants should be actively innovating within a range of other revenue models if they wish to achieve financial sustainability, and this should be the primary focus of their attention.

In stark contrast to conglomerates, small autonomous ownership structures provide an environment that is far more conducive to agile innovation. This becomes evident if we consider a hypothetical scenario at a smaller scale of ownership. If the Applicants' publications were instead operated as dozens of independent companies, then we would likely see a far wider range of business model innovation throughout the country.

Each publisher would have operational authority to experiment with a model carefully crafted to their specific market, and could also share their insights with others. This is not to say that such a scenario would result in an instant solution, but it would provide a greater number of opportunities for a new business model to be discovered.

⁹⁸ Story: Digital media and the internet (Te Ara): <http://www.teara.govt.nz/en/digital-media-and-the-internet>

⁹⁹ From blog to brand: Russell Brown Public Address (01-04-16_StopPress): <http://stoppress.co.nz/news/blog-brand-russell-brown-public-address>

I would like to emphasise that this section is not intended to disparage the Applicants, who are clearly interested in the pursuit of innovation. However, this section does highlight the fundamental institutional challenges that large organisations face when pursuing disruptive innovation. If the merger were approved, there is a risk that the process of consolidation could hinder future innovation.

Additionally, the Applicants have already indicated that their primary initial focus would be on restructuring the two organisations to achieve operational efficiencies. Such restructuring is the inevitable outcome of merging two large and diverse organisations into one ownership structure, and this time-consuming process cannot be avoided if the merger were approved. This poses a significant risk that organisational focus would be diverted away from the urgent task of innovating their business model.

Section 6: Collaborative opportunities to improve financial sustainability

Almost all of the efficiency gains desired by the Applicants can be achieved by embracing collaboration, instead of pursuing corporate consolidation. In fact, many of the collaborative strategies outlined within this section would provide benefits that exceed those provided by a merger. Not only do these strategies have the potential to be more beneficial to the Applicants, but they would also benefit the wider New Zealand journalism industry as a whole.

There are two partnership structures specifically designed for industry-wide collaboration: the cooperative and the joint venture. Each of these structures have been embraced by the Applicants in the past, within areas where industry collaboration has been mutually beneficial. For 125 years, the NZPA cooperative worked across competitive boundaries to enable editorial synergies.¹⁰⁰ More recently, the KPEX joint venture has created a shared programmatic advertising exchange across NZME, Fairfax, TVNZ, MediaWorks and other publishers.¹⁰¹

Cooperatives and joint ventures provide some important advantages over corporate consolidation. Firstly, they increase the economies of scale that can be achieved, by broadening the level of collaboration across a larger number of partners. Furthermore, these structures allow publishers' editorial resources to remain independently owned and operated. As a result, the operational autonomy and editorial independence of each publisher is maintained. Cooperatives and joint ventures are also most effective when conducted with partners who have similar market share, without any one dominant player.

As the Applicants have highlighted, the challenges outlined within their application are shared by the entire New Zealand journalism industry. The Commission should be extremely cautious about approving a merger that disproportionately benefits the two largest players within this industry, while making it more difficult for other news organisations to overcome the competitive challenges they face. If a merger were approved it would create significant pressure for further corporate consolidation, which would result in a greater loss of media diversity across the industry.

When considering the range of strong collaborative opportunities that exist, it becomes clear that the arguments in support of a merger are weak when placed under robust scrutiny. Corporate consolidation is one of the most detrimental strategies to achieve the economies of scale desired by the Applicants, with significant costs to the competitive structure of the New Zealand media marketplace for both consumers and other news organisations.

¹⁰⁰ Ellis, Gavin (2009). Word war: how 125 years of newspaper co-operation was consigned to history.

¹⁰¹ KPEX homepage: <http://www.kpex.nzme-ds.co.nz/>

The subsections outlined below highlight that there is a better approach, with the potential to provide greater benefits to both the Applicants and the wider media industry in New Zealand. Considering the abundance of alternative strategies, the Commerce Commission should be sceptical of claims that a rejection of the merger would inevitably precipitate an “end game” scenario for the Applicants.¹⁰²

6.1 Structures to enable collaborative reporting

The Applicants have each identified that a reduction in duplicative reporting is a key motivating factor in their desire to merge. As Ms Boucher highlighted:

“Just on the pure editorial point of view, there is an extreme amount of duplication happening at the moment.¹⁰³ [...] When we are freed up from having to basically cover a very generic sort of thing, we are able to put journalists on to covering [other] news.”¹⁰⁴

This reasoning is articulated in further depth within the Applicants’ submission:

“Part of the rationale for the Merger is to achieve cost synergies through the removal of duplicated frontline journalism – i.e. duplication of coverage of fact reporting on “commodity” news stories.”

“In addition to synergies, an associated, and more important, benefit is that NZME2 will be able to re-deploy journalists that would otherwise currently be covering “commodity” news stories in a duplicative way.”¹⁰⁵

Editorial efficiencies are a worthwhile synergy to pursue. However, there are collaborative reporting structures, such as that previously used by the NZPA, which would enable the Applicants to achieve the same efficiency gains.

As Mr Boggs pointed out:

“It’s a bit like Back to the Future. There used to be the NZPA where the organisations represented in this room worked together on commodity news.”¹⁰⁶

He also pointed out that this type of collaborative reporting structure would likely be pursued, with or without the Merger:

“It may well happen anyway, and in fact it will be a great thing to happen. I think it will be things we have to do, whether we’re one organisation or whether we’re multiple organisations.”¹⁰⁷

¹⁰² NZME Fairfax Merger, Commerce Commission Conference Transcript, 7 December, page 22.

¹⁰³ Ibid, 6 December, page 80.

¹⁰⁴ Ibid, 7 December, page 32.

¹⁰⁵ Fairfax NZME Response to questions arising from the conference 23 December 2016, page 4.

¹⁰⁶ NZME Fairfax Merger, Commerce Commission Conference Transcript, 6 December, page 81.

¹⁰⁷ Ibid.

If the Applicants were to reinstitute a collaborative reporting pool, similar to the NZPA, it would be an excellent strategy to achieve the efficiency gains they desire. Such an organisation would be well positioned to better coordinate their editorial resources, so that each organisation could avoid the production of duplicative content (such as the numerous “Digger hits Bridge” examples provided by the Applicants within their cross-submission¹⁰⁸).

One of the most significant advantages of cooperative structures, such as the NZPA, is that they are predicated on shared ownership and management by multiple stakeholders across the entire publishing industry. Consequently, the economies of scale that the Applicants are hoping to achieve through the merger would become available to the wider journalism community, including RNZ, TVNZ and MediaWorks. Meanwhile, each individual news organisation would maintain its operational autonomy and editorial independence.

6.2 A collaborative approach to business model innovation

The New Zealand journalism community should embrace a collaborative approach to business model innovation, if it wishes to ensure the highest chance of success. To help achieve this goal, it would be beneficial for publishers to create an innovation task force that operates as a collaborative initiative, open to the entire media industry.

Under such a model, each participating publisher would contribute financial resources into a pool, with funds allocated to projects that would benefit from direct collaboration. For example, these shared resources could be used to conduct nationwide consumer surveys to evaluate a range of promising business models. The Applicants could survey their collective audience with the same questions, greatly enhancing the accuracy of their data. The findings could then be shared with the wider journalism community, with news organisations encouraged to experiment with a business model that best suits their online publication.

After conducting initial experimentation, the participating publishers could then share insights in an open forum so that they can learn from each other about successes and failures. If a promising business model is identified, publishers could then pool their resources to achieve economies of scale with shared infrastructure. A diversity of ownership structures would also result in a wider range of experimentation, without the cumbersome diseconomies of scale that can be experienced within large organisations (see Section 5.3).

¹⁰⁸ Fairfax NZME Response to questions arising from the conference 23 December 2016, page 26.

There are numerous business models that an innovation task force could evaluate. For example, the New York Times¹⁰⁹, Wall Street Journal¹¹⁰ and the Sydney Morning Herald¹¹¹ have gained millions of subscribers who pay for access to premium content. Meanwhile, The Guardian¹¹², Pro Publica¹¹³, Mother Jones¹¹⁴ and others, have had significant success with their voluntary membership models focused on supporting quality investigative reporting. In the Netherlands, Germany and the USA, an innovative start-up called Blendle has created a shared ecosystem where users can pay-per-article for premium content.¹¹⁵ In New Zealand, The Spinoff is currently experimenting with a paid mobile app while offering its web content for free.¹¹⁶ The Spinoff has also raised more than \$24,000 in a recent crowdfunding campaign focused on coverage of the Auckland housing crisis.¹¹⁷

Experimentation with these strategies will have an important role to play in helping the journalism industry achieve financial sustainability. The key to success will be experimentation with a diverse range of business models, across independently owned publications that openly collaborate.

6.3 Collaborative technology projects

The Applicants have also shared their desire to cut costs by streamlining the technology that powers their websites, apps and advertising technology. As outlined within their cross-submission:

“The Merger will achieve economies of scale from single investment in platforms and new advertising technology [...] rather than duplicated investment in the same platforms.”¹¹⁸

The Applicants have identified an extremely beneficial area to cut duplication, without negatively impacting the quality or plurality of their journalism. Building technology infrastructure is an expensive endeavour, and results in high levels of duplication across the New Zealand media landscape.

¹⁰⁹ Trump-bump subscription surge brightens otherwise grey results at New York Times (02-02-17_Poynter): <https://www.poynter.org/2017/trump-bump-subscription-surge-brightens-otherwise-grey-results-at-new-york-times/447078/>

¹¹⁰ How The Wall Street Journal plans to reach 3 million subscribers (19-08-16_Poynter): <http://www.poynter.org/2016/how-the-wall-street-journal-plans-to-reach-3-million-subscribers/426917/>

¹¹¹ Digital subscriptions continue to rise (16-05-15_NewsMediaWorks): <http://www.newsmediaworks.com.au/digital-subscriptions-continue-to-rise/>

¹¹² Road to 1 million: The Guardian has gone from 15,000 to 200,000 paying 'members' in the past year (02-02-17_Digiday): <http://digiday.com/publishers/guardian-draws-200000-paying-members/>

¹¹³ ProPublica is seeing a surge in donations after John Oliver's Trump segment (14-11-16_Poynter): <https://www.poynter.org/2016/propublica-is-seeing-a-surge-in-donations-after-john-olivers-trump-segment/439254/>

¹¹⁴ Mother Jones Supporter's Page: <http://www.motherjones.com/about/support>

¹¹⁵ Blendle Home Page: <https://blendle.com/>

¹¹⁶ Announcing The Spinoff app (27-01-16_The Spinoff): <http://thespinoff.co.nz/app/27-01-2017/announcing-the-spinoff-app/>

¹¹⁷ The Spinoff's War for Auckland (PledgeMe Crowdfunding Project):

<https://www.pledgeme.co.nz/projects/4738-the-spinoff-s-war-for-auckland>

¹¹⁸ Submission: NZME Fairfax Response to Questions Arising from the Conference on 6 and 7 December, page 23.

However, the benefits of shared infrastructure could be achieved through a cooperative company or joint venture. The Applicants could pool their resources, in addition with other New Zealand publishers, in order to create a backbone of technology infrastructure. Each news organisation could then customise this core technology to match the style and functionality that best suits their online publication.

This cooperative arrangement would allow the Applicants to achieve significant synergies and cost savings. Inclusion of other New Zealand publishers within the cooperative arrangement would further reduce the costs associated with technology development, and the resultant economies of scale would become shared across the entire media industry – allowing all New Zealand publishers to increase their competitive position relative to global competitors.

A cooperative approach is not only far more desirable than corporate consolidation, but it also has the potential to provide greater benefits to both the Applicants and the wider New Zealand journalism community. Shared infrastructure would also allow publishers to have a common backbone of core technology, allowing them to focus their resources on innovative features that expand upon core functionality. Therefore, duplicative effort would be avoided while also enhancing the pursuit of new innovations.

6.4 Expanding existing collaborative initiatives with digital advertising

The Applicants have already highlighted the benefits of working across competitive rivalries, to develop shared infrastructure that benefits the entire journalism industry. One such initiative is the KPEX exchange for programmatic advertising, which is a partnership between NZME, Fairfax, MediaWorks, TVNZ and is open to other publishers.

As Mr Tong highlights:

“I think the programmatic exchange KPEX we created, we should be rightly proud of. It’s quite unique in many facets and it’s working reasonably well and we’ve invited many other parties to join, and that’s a good example of us working together.”¹¹⁹

Within the Applicants’ application and submissions, the desire to enhance synergies within digital advertising are a recurring theme. In particular, the Applicants believe that they can achieve higher rates and increased market share due to the scale achieved by the merger. Specifically, they wish to gain access to enhanced customer data, and to also make improvements to the digital technology they use to connect advertisers with consumers.

¹¹⁹ NZME Fairfax Merger, Commerce Commission Conference Transcript, 6 December, page 82.

A joint venture or cooperative company would be a far more effective structure to achieve these goals, as it would increase the scale of collaboration across the entire industry rather than just between the Applicants. The Applicants could also work with other publishers to pursue an industry-wide data and privacy policy. As Mr Oram highlights, such a policy could be an important foundation to uphold consumer protections and create competitive differentiation relative to Google and Facebook.¹²⁰

Internationally, a collaborative approach appears to be the most effective strategy pursued by publishers. A valuable case study is the Pangaea Alliance, an international initiative that focuses on pooling resources to create shared infrastructure for a programmatic advertising exchange.¹²¹ Participating publishers include The Guardian, CNN International, The Economist, Reuters, the Financial Times, and Fast Company.¹²² Such an arrangement allows participating publishers to achieve economies of scale in providing an enhanced advertising product, while still retaining their individual autonomy and editorial independence.

Considering the proven success of the KPEX initiative, there is no reason why the Commission should accept the merger as the best solution moving forward. Instead, the Applicants should be encouraged to continue building upon the strong collaborative foundations they have already created with the wider journalism industry.

6.5 Other opportunities to collaborate

There are many other collaborative initiatives that the Applicants could pursue to achieve synergies and economies of scale, without a merger. The following is not an exhaustive list, but merely highlights areas that could be explored:

Sales teams

The Applicants could create a joint venture focused on streamlining their sales teams, allowing them to achieve synergies when selling their subscriptions and advertising inventory. There is already considerable overlap between the organisations, both in regards to the resources required for sales, as well as their respective product offerings. By outsourcing to a joint venture or cooperative entity, economies of scale could be achieved while upholding operational autonomy.

Currently, the Applicants already pool their resources for KPEX sales. The same collaborative approach could be used to streamline sales for direct placement offerings such as homepage takeovers and native advertising (which could involve a shared team of copywriters). In regards to subscriptions, the Applicants could also share a single system for Customer Relationship Management, used by a streamlined team of sales agents.

¹²⁰ NZME Fairfax Merger, Commerce Commission Conference Transcript, 7 December, page 48.

¹²¹ World's leading digital publishers launch new programmatic advertising alliance, Pangaea (18-03-15_The Guardian): <https://www.theguardian.com/gnm-press-office/2015/mar/18/worlds-leading-digital-publishers-launch-new-programmatic-advertising-alliance-pangaea>

¹²² The Pangaea Alliance Home Page: <http://www.pangaeaalliance.com/>

Print infrastructure

Within the print environment, a joint venture could be created to merge the infrastructure and workflow associated with print production. For example, the Applicants could merge their design teams, subeditors, printing facilities, and delivery mechanisms for subscribers and retail distributors. A range of back-end synergies could be achieved through the rationalisation of management teams and physical infrastructure, without merging all of the Applicants' editorial assets.

Office space

In regards to office space, the Applicants have already identified opportunities to achieve synergies where teams geographically overlap, such as in Auckland. The Applicants could choose to create a joint venture that consolidates ownership of their existing properties, or pursues the acquisition of new office space. Furthermore, the Applicants could achieve economies of scale by combining the management structures associated with coordinating leases of rental property, as well as maintenance and cleaning services.

6.6 The importance of equitable collaboration

The collaborative strategies outlined above would allow the Applicants to achieve the best of both worlds, embracing collaboration while upholding their operational independence. However, it is important that collaboration is pursued on an equitable footing that does not unfairly favour one publisher over another.

If the merger were approved, then the dominant market position of the merged entity would result in a structural imbalance that undermines the pursuit of equitable collaboration. Specifically, the bargaining power of smaller publishers would be significantly undermined when forming a partnership, since the pooled resources of the merged entity would dwarf their nearest competitors. Subsequently, the likelihood of a partnership that treats all publishers equally would be greatly diminished.

If the merger were rejected, however, then each Applicant would remain independently owned. If operated under separate ownership structures, NZME and Fairfax would be encouraged to negotiate with each other and other publishers on a more equal footing. Consequently, the balance of market power between each company would increase the incentives to pursue collaboration on equitable terms, similar to the environment within which NZPA and KPEX were established.