

A SUBMISSION TO THE COMMERCE COMMISSION RELATING TO AN APPLICATION SEEKING AUTHORISATION OF A MERGER BETWEEN WILSON & HORTON LTD (TRADING AS NZME) AND FAIRFAX NZ LIMITED

1. Introduction

1.1. My name is Gavin Peter Ellis. I am a media researcher and commentator. I hold the position of senior lecturer in media, film and television in the School of Social Sciences at the University of Auckland. I hold masters and doctoral degrees in political studies. I am a former editor-in-chief of *The New Zealand Herald* and have had an association with journalism for more than 50 years. I am the author of *Trust Ownership and the Future of News: Media moguls and white knights* (London, Palgrave 2014), which examined news media structures and alternative forms of ownership; and of a forthcoming book titled *Complacent Nation* (Wellington, Bridget Williams Books, publication August 2016), which examines the erosion of New Zealanders' right to know.

2. Purpose

2.1. The purpose of this submission is to request that, should it grant the application, the commission impose conditions to overcome potential issues that could have serious civic and democratic implications.

2.2. The Commission's *State of Preliminary Issues* addresses a number of issues relating to readers but does so largely in the context of the relationship between NZME/Fairfax and competing media. I respectfully suggest that it must also examine a number of issues that are not relational but internal and regulatory. Specifically, these relate to the aggregation of editorial power and regulatory influence.

3. Current editorial context

3.1. A merged organisation would control all metropolitan daily newspapers with the exception of the *Otago Daily Times* (87.5% of daily net circulation)¹, all of

the Sunday newspapers, and the vast majority of daily regional newspapers (95% of daily net circulation). It will also control the two most popular New Zealand news websites and half the commercial radio networks.

- 3.2. It has been a laudable feature of the New Zealand newspaper industry that each publication has been able independently to determine its editorial policies and news selection.
- 3.3. That largely remains the case with the country's metropolitan titles. However, recent organisational changes in Fairfax New Zealand have seen the creation of a regional control structure in place of one based on the newspaper titles published in provincial cities. The structural changes coincided with the implementation of a 'digital first' policy under which each regional editor became responsible for feeding material to the company's stuff.co.nz website. As a result, there has been a shift of emphasis and the needs of the national website may take precedence over those of local publications.
- 3.4. Since the unfortunate demise of the New Zealand Press Association that provided a cooperative exchange of stories between all daily newspapers, NZME and Fairfax New Zealand have developed separate content sharing systems within each group that sees a range of common news stories appearing in their respective titles. There is also increasing use of centrally-created common pages of content (e.g. world news, national news and features) across regional titles in both the Fairfax New Zealand and NZME stables. Regional and local content in those titles continues, however, to be determined at those levels.
- 3.5. Newspapers continue to be the dominant medium in which a publication's institutional view on a given topic is presented on a regular basis in a leading article or editorial. The editorial in each publication has traditionally been independently decided by the editor and her or his senior staff, and does not follow a line set centrally within the company.
- 3.6. In metropolitan newspapers there is at least one leading article each publishing day. Resource restrictions have led some regional titles to reduce the frequency of editorials but most continue to use the leader column as an important contribution to debate.² A review of editorials on a given topic across various publications shows each takes an independent stance. Where

they are in agreement it is evident that they have weighed the arguments independently (see appendix A).

3.7. Both groups have introduced converged newsrooms serving all types of media currently operated by them. In the case of Fairfax New Zealand this means newspapers and digital platforms. NZME's Auckland operation serves newspaper, digital and radio platforms although the integration of radio into the newsgathering and distribution systems is not as advanced as it is in NZME's other forms of production.

3.8. In short, while the level of autonomy has been reduced, the content of the individual publications and digital platforms operated by each group continue to be determined by a relatively wide range of editorial decision-makers.

4. Aggregation of editorial power

4.1. A primary purpose of a merger is the realisation of reduced costs through the removal of duplication and the distribution of services across a wider range of activities. I believe the current merger proposal will inevitably lead to a reduction in staff.

4.2. News organisations are no strangers to staff cuts. I was in the invidious position of having to oversee significant redundancies in the *New Zealand Herald* over much of my tenure as editor and editor-in-chief between 1996 and 2005 and my fellow editors and our successors have been in similar positions. Reduced resources, coupled with the increased productivity demands created by digital platforms, have had a significant impact on both the range and quality of news content.

4.3. A cost-saving device has been the re-use of material across as many publications and platforms as possible. I believe we will witness a significant reduction in the range of editorial content and, significantly in the range of independent voices that are currently given public exposure in the opinion pages and columns of our daily press. Will the combined group pay for two economics commentators when the need to be competitive no longer exists?

- 4.4. The Commission, I submit, cannot discount the effect of staff reductions and consolidation of content. The interests of society will only be met by undertakings or requirements on the editorial output of the combined group.
- 4.5. The proposal also introduces an additional element with substantial social significance: A reduction in the number of editorial decision-makers by the removal of duplicated positions and the reorganisation of editorial structures.
- 4.6. The elimination of duplication could, for example, affect the editor-in-chief role currently held by Fairfax New Zealand's executive editor and NZME's managing editor. Similarly, the two most senior editorial roles in weekend newspapers could be consolidated. Removal of duplication would, in fact, permeate through the entire news executive from those crucial decision-makers to the heads of departments such as business, sport, entertainment, magazines and features.
- 4.7. Both groups currently field substantial teams in the Parliamentary Press Gallery, each headed by a political editor. Consolidation in that area would have significant impact on the civic function of the combined organisation.
- 4.8. Fairfax New Zealand's editorial structure, substantially changed in 2015, is more integrated than that of NZME, which has yet to fully amalgamate its constituent parts. In particular, the bonding of regional operations within the overall editorial structure is effectively complete in Fairfax New Zealand but not in NZME where regional editorial control is vested in each title (although the *Bay of Plenty Times* and Rotorua's *Daily Post* currently share an editor).
- 4.9. Post-merger it is likely that the Fairfax regional structure would be applied across the enlarged group. This could, for example, see the *Bay of Plenty Times* and the *Daily Post* in Rotorua come under the overall editorial control of the Waikato Regional Editor-in-chief while *Hawkes Bay Today* and the *Wanganui Chronicle* could fall under the control of the Wellington Regional Editor-in-Chief. Editorial control would be concentrated in fewer hands.
- 4.10. Fairfax New Zealand has no daily newspaper in Auckland but maintains a significant bureau that feeds large amounts of editorial content throughout

the company's news network and on the stuff.co.nz website. The bureau is headed by the Auckland Regional Editor-in-chief. It is extremely unlikely that the bureau would be maintained after the merger delivers the newsgathering power of the NZME integrated newsroom that produces the *New Zealand Herald*.

4.11. For its part, the *New Zealand Herald* could come under the editorial control of an Auckland Regional Editor-in-chief, along with the *Herald on Sunday* and the *Northern Advocate*.

4.12. Both groups operate substantial websites with their own centralised control. This control would be consolidated to a single entity even if the combined group altered the content and appearance of selected digital platforms to divide the market rather than have sites competing against each other.

4.13. Fairfax New Zealand's community (free) newspapers are grouped under a national executive while NZME's community publications tend to be associated with the regional publication that also serves the area. It is likely that NZME's community newspapers would be integrated into the existing Fairfax New Zealand structure.

4.14. The upshot of this consolidation will be the concentration of editorial decision-making into fewer hands and, if a group editor-in-chief role is maintained, a single person with unprecedented levels of editorial control.

4.15. There is no direct evidence of concerted management interference in editorial decision-making in either group although there are anecdotal suggestions that, as the financial health of newspapers declines, there is an emerging reluctance to alienate advertisers. We are also seeing the appearance of paid content within editorial columns in forms and positions that would not have been countenanced in more affluent times.

4.16. The integration of radio, print and digital within NZME has led to considerable cross-promotion and the appearance of in the *New Zealand Herald* of columns written by radio hosts. It is my belief that these moves have been at the 'request' of management and that they may indicate a

growing degree of influence over editorial content even if final decisions are in the hands of editorial staff. I submit that it is highly likely that this cross-promotion will extend to the Fairfax New Zealand publication and lead, perhaps, to the appearance of columns by hosts such as Mike Hosking – who already has an unrivalled position on radio and television – in three of the four metropolitan newspapers.

4.17. It is vital, I submit, that NZME/Fairfax be prevented from running the same editorial in all of its daily publications or requiring its editors to publish editorials with a pre-ordained view. Appendix A shows there is a range of topics and viewpoints in our newspapers' leader columns. They remain the dominant means by which a news medium gives its audience its own opinion. While radio and, latterly, television, have given airtime to individuals like Mike Hosking to proffer their personal opinions, only newspapers and magazines offer the considered view of the publications themselves. They therefore have an important place in democratic society. It would be an unacceptable level of power for a dominant group such as that proposed by the merger to be in a position to dictate a single viewpoint or support for a political party through all of its publications and platforms. I submit that the group should be required to (a) maintain editorial leader columns in its daily and weekly publications and (b) vest in the editor of that publication the right to decide its content.

4.18. The upshot of the editorial reorganisation following merger represents the potential loss of editorial independence at community, regional and metropolitan levels. The structure that I believe will be employed in the post-merger period facilitates centralised control, the aggregation of power, and the potential loss of journalistic self-determination.

4.19. I believe that the potentially detrimental effects of editorial consolidation and restructuring cannot be left to the good intention of the combined group. I submit that there must be enforceable guarantees of editorial independence at national, metropolitan, regional and local levels.

4.20. I further submit that these guarantees need to be written into the enlarged company's articles of association. Appendix B contains two examples – from

the Irish Times Limited and The Scott Trust Limited (*The Guardian*) – that indicate the means by which this may be achieved. In the case of NZME/Fairfax editorial independence would need to be recognised within each strata of the editorial operation. I submit that the inclusion of these provisions in the Articles of Association should be a requirement for merger approval

4.21. When Rupert Murdoch bought *The Times* and *Sunday Times* he gave undertakings of editorial independence and established a committee of worthies to oversee it. This proved to be a Trojan horse and within a short period of time his control was absolute. For that reason, I would also recommend that the editorial independence of NZME/Fairfax publications and platforms be subject to external regulatory oversight.

5. **Regulatory oversight**

5.1. The newspapers within both groups, and their digital sites, are subject to oversight by the New Zealand Press Council. The NZPC has industry and public members and an independent chair who is a retired high court judge. It is largely funded by the publications that have placed themselves under its adjudication. In the 2014 year (the latest available) \$240,000 of the total \$263,033 revenue of the NZPC was provided by the Newspaper Publishers Association. The Newspaper Publishers Association comprises NZME, Fairfax New Zealand, Allied Press (publishers of the *Otago Daily Times*) and a small number of independent publishers. The overwhelming majority of the association's funding to the press council comes from NZME and Fairfax New Zealand. The newspaper representatives on the council are from the *New Zealand Herald* and Fairfax Media.

5.2. Post-merger this would mean that 92% of the circulation of daily and weekly newspapers under NZPC regulation would be owned by one company and that company would be providing approximately 90% of its funding. I submit that this level of dominance requires a reappraisal of the regulatory environment.

- 5.3. There has been a reluctance on the part of government to move on media regulation despite the irrefutable fact that adjudication by the Press Council, the Broadcasting Standards Authority and the Online Media Standards Authority is a nonsense in the age of media convergence. The new NZME newsroom, for example, feeds radio networks, streaming video, digital platforms...as well as the *New Zealand Herald*.
- 5.4. I submit that the domination of the Press Council by an NZME/Fairfax group should be acknowledged by the Commission and that it recommends to government an urgent review of media regulation.
- 5.5. In the absence of such a recommendation, I submit that the Commission should make it a condition of approval that the merged group agree to place editorial independence under the oversight of the Press Council, the Broadcasting Standards Authority and the Online Media Standards Authority should the group decide also to place itself under OMSA scrutiny.

¹ New Zealand Audit Bureau of Circulation Press Audit Results Q1 2016.

² The *Waikato Times* no longer carries regular editorials but will publish them as required on highly significant topics.

APPENDIX A

Examples of editorial opinion 29 June 2016

NZME

Northern Advocate: Draw the EU curtains and Brexit, stage left

New Zealand Herald: EU must eject Britain from block quickly

Bay of Plenty Times: Britain sadly driven by fear

Daily Post Rotorua: Justice was served for Moko

Hawkes Bay Today: Role for all in keeping kids safe

Wanganui Chronicle: Is this the way to go? (wastewater treatment)

Fairfax New Zealand

Taranaki Daily News: Child abuse is on our minds – let it stay there

Manawatu Standard: Britain unlikely to regret its decision in the long run

Dominion-Post: Moko: Never let go the rage

The Press: Brexit and Trump symptoms of a wider malaise

Southland Times: Moko's killers face huge infamy atop their penalty

APPENDIX B

- A. From the Memorandum of Association, *The Irish Times*

3. The objects for which the Company is established are:-

- (1) To publish The Irish Times as an independent newspaper primarily concerned with serious issues for the benefit of the community throughout the whole of Ireland free from any form of personal or of party political, commercial, religious, or other sectional control.
- (2) To follow, in the publication of The Irish Times, an editorial policy with the following as its principal objectives:-
 - A. The support of constitutional democracy expressed through governments freely elected.
 - B. The progressive achievement of social justice between people and the discouragement of discrimination of all kinds;
 - C. The promotion of a society where the quality of life is enriched by the standards of its education, its art, its culture, and its recreational facilities and where the quality of spirit is instinct with Christian values but free from all religious bias and discrimination;
 - D. The promotion of peace and tolerance and opposition to all forms of violence and hatred so that each man may live in harmony with his neighbour considerate for his cultural, material and spiritual needs;
 - E. The promotion of understanding of other nations and peoples and a sympathetic concern for their well being.
- (3) In pursuance of the foregoing and to enable the readers of The Irish Times to reach informed and independent judgments and to contribute more effectively to the life of the community to ensure that the following principles govern the publication of The Irish Times:
 - (i) that news shall be as accurate and as comprehensive as is practicable and be presented fairly;
 - (ii) that comment and opinion shall be informed and responsible and shall be identifiable from fact;
 - (iii) that special consideration shall be given to the reasonable representation of minority interests and divergent views.

B. From the Articles of Association of Scott Trust Limited, owner of *The Guardian*

POWERS OF DIRECTORS

58 Notwithstanding any other provision of these articles, but without prejudice to the directors' other duties (save to the extent they can be lawfully modified by this article), in exercising their powers or discretions as directors of the company, the directors shall

- (a) having regard to, among other things, the manner in which this objective has heretofore been pursued, act for the purposes of and in a manner they reasonably believe, in each case acting in good faith, to be consistent with securing and preserving the financial position and editorial independence of the Guardian in perpetuity, and
- (b) subsidiary to that, and to the extent consistent with paragraph (a), the directors shall be empowered to take such actions as they believe to be reasonable, acting in good faith, to promote the causes of freedom of the press and liberal journalism both in Britain and elsewhere