

NZME/ Fairfax: Commerce Commission Draft Determination dated 8 November

**Summary of key points in response to concerns identified in
the Executive Summary of the Draft Determination**



Concern #1: Control over “90% of print” ?

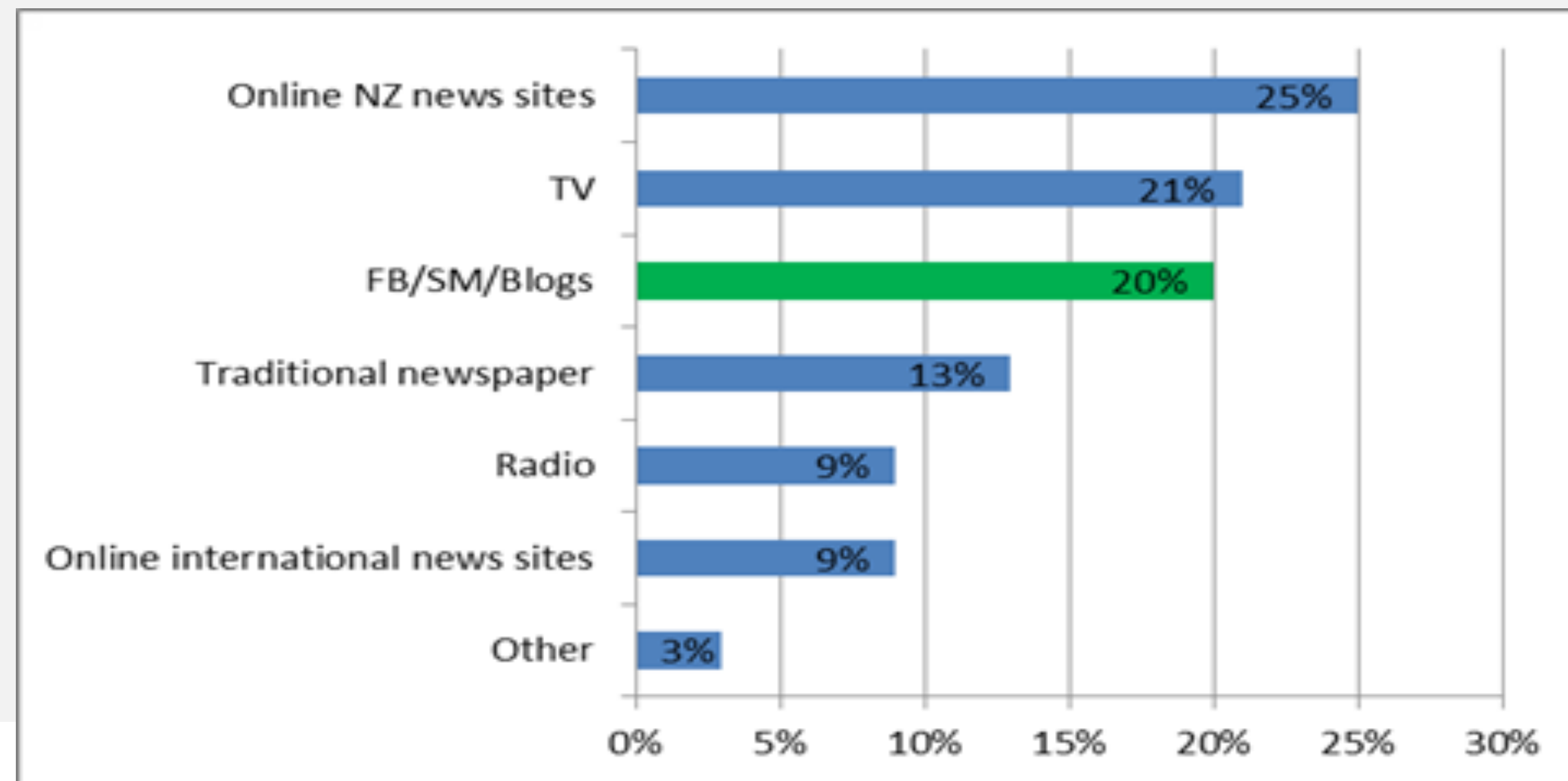
9. If the merger was to proceed, NZME and Fairfax would have direct control of nearly 90% of daily circulation of all daily newspapers in New Zealand – a recent study suggests that this would be second highest concentration of print media ownership in the world, behind only China.¹

- *New Zealand Commerce Commission Draft Determination, at [9].*

The print statistic is meaningless from an economic perspective

- The Commission found the daily newspapers do not compete with each other - there is no “market” in which NZME will have a 90% share
- Only 13% of New Zealanders get their news from print. Most people today get their news from Facebook (15%), TV (21%) and online (25%)

Q: In a typical week, what proportion of your news do you get from ...? For each item listed, please allocate a % figure to a total of 100%



Source: Fairfax customer survey, cited in Draft Determination at Figure 11



New Zealand Herald Editor, Shayne Currie

on Media Trends



Concern #2: control of the “media voice”

18. The media plays a substantial role in shaping public discourse and influencing the political agenda. Different perspectives and voices would ultimately be lost under the proposed merger, which in our view would impact on the quantity and quality of national, regional and local news coverage available in New Zealand. In an industry where the costs of achieving scale are substantial, we consider the loss of plurality that arises from the proposed merger is likely to be significant and potentially irreplaceable.

- New Zealand Commerce Commission Draft Determination, at [18].

In an online world, not only journalists publish news

- Politicians, businesses and individuals publish their own news on social media. Popular individuals and businesses get similar reach.



John Key
16 November at 10:41 · 🌐

This morning I spoke with United States President-elect Donald J. Trump and we had a very warm and cordial conversation.

Mr Trump offered his sympathies for the earthquake, and I congratulated him on his election.

We discussed the New Zealand economy, trade and agreed the relationship between New Zealand and the United States is in great shape.

Like Comment Share

Jackie Rooke, Jaimes Lawrie and 7.5k others

205 shares 475 comments



Stuff.co.nz
Published by Paul Harper [?] · November 16 at 10:17am · 🌐

"Mr Trump offered his sympathies for the earthquake, and the Prime Minister congratulated him on his election."



Donald Trump calls John Key to offer sympathies after earthquake

STUFF.CO.NZ

8,539 people reached

Boost Post

Like Comment Share

Peter Neilson, Rachel Morgan and 60 others

12 shares 26 Comments

Professor Randal C. Picker, University of Chicago Law School



Concern # 3: a “single editorial voice”?

17. In our view, the check that NZME and Fairfax provide on each other would be lost under the proposed merger. The merged entity would have discretion as to what it does and does not cover, and the competitive tension that currently exists between NZME and Fairfax, which drives content creation, would be removed. The competitive tension between the Applicants that promotes accurate reporting would similarly be gone. In addition, anyone criticised in an article under the merged entity would have lost access to a direct competitor to tell their side of the story.

- *New Zealand Commerce Commission Draft Determination, at [17].*



When considering plurality, ownership is only one factor of many, and it is not the most important

- As the report from the Commission's own UK Experts notes:

...UNESCO, in the report referred to earlier, argues that **plurality can be thought of as meaning at least six different aspects**: access to a wide variety of different types of media, plurality of ownership structures, **sustainability of business models, diversity of viewpoints and sources, broad scope of media coverage, and gender equality.**

[...]

There has also been interest in the form and quality of journalism as well as its plurality. Professor Steven Barnett, for example, has argued that – alongside diversity of voice - **we should be as concerned with the extent to which journalism is successfully performing its key roles (as he sees them) of informing, representing, campaigning and interrogating.** Are relevant stories and ideas being covered? Are the powerful being held to account? Are proper journalistic values being upheld? Is there a commitment to investigative journalism?

- *Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: expert review of the Commerce Commission Draft Determination Document, Dr Levy and Robin Foster, November 16, 2016. at p4.*



Group Executive Editor, Fairfax Media, Sinead Boucher *on Diversity of Voices*



Concern #4: NZ already has limited diversity of views

14. An international comparison study undertaken this year by the Bertelsmann Foundation assessed plurality across 41 OECD and EU countries and ranked New Zealand last equal with Romania and Turkey. New Zealand already has limited diversity of views across its news media and the proposed merger would substantially reduce this.

- *New Zealand Commerce Commission Draft Determination, at [14].*



The New Zealand Law Commission reached the opposite conclusion in its detailed 2013 Report on NZ media

- The Commission fails to mention at all in the draft determination the detailed New Zealand analysis of media plurality undertaken by the Law Commission in 2013. It concluded:

New Zealanders now have access to a plethora of news sources ranging from global media brands through to the spectrum of “new media” providers generating, aggregating, and commenting on news. Most significantly, the public are now able to generate, debate and distribute news and opinion themselves, without reliance on the mainstream media. [...]

[A]n acknowledgment that the commercial model which has funded primary news gathering is under threat and that the institutional news media may not survive the paradigm shift brought about by the internet. At the same time the virtual elimination of barriers to publishing now makes it possible for any individual or organisation to undertake the core democratic functions assigned to the news media. This has the potential to strengthen democracy and increase the accountability of Parliament and the courts, and other powerful public and private institutions [...]

Our review has not found any evidence to challenge the mainstream media’s own assertion that New Zealand has an ethical and trustworthy news media.



New Zealand Law Commission *The News Media meets 'New Media'* (Report 128, March 2013).

<http://r128.publications.lawcom.govt.nz/uploads/NZLC-R128-The-news-media-meets-new-media.pdf>.

The logo for NZME (New Zealand Media and Entertainment), featuring the letters "NZME" in a large, bold, white font, with "NEW ZEALAND MEDIA AND ENTERTAINMENT" in a smaller font to the right.

The Bertelsmann Foundation study was focussed on diversity of ownership, not 'views'

- The question that was asked considered the extent that ownership structures – as opposed to other factors – ensured plurality

To what extent are the media characterized by an ownership structure that ensures a pluralism of opinions?

- NZ ranked only just behind Australia and France
- In relation to newspapers and online:

In September 2011, the New Zealand Press Association, New Zealand's largest news agency, closed. It was replaced by three news services. Because all three are Australian-owned, New Zealand is now one of only a handful of countries that lack their own local news agency. It remains to be seen whether this is a "serious blow to media diversity," as Freedom House has argued.

Bloggers have gained prominence as an alternative to traditional media offers. Some of them concern themselves with political affairs and reach high numbers of visitors.

– ***Creating a viable, New Zealand focussed, professional news business is a key benefit of the transaction***



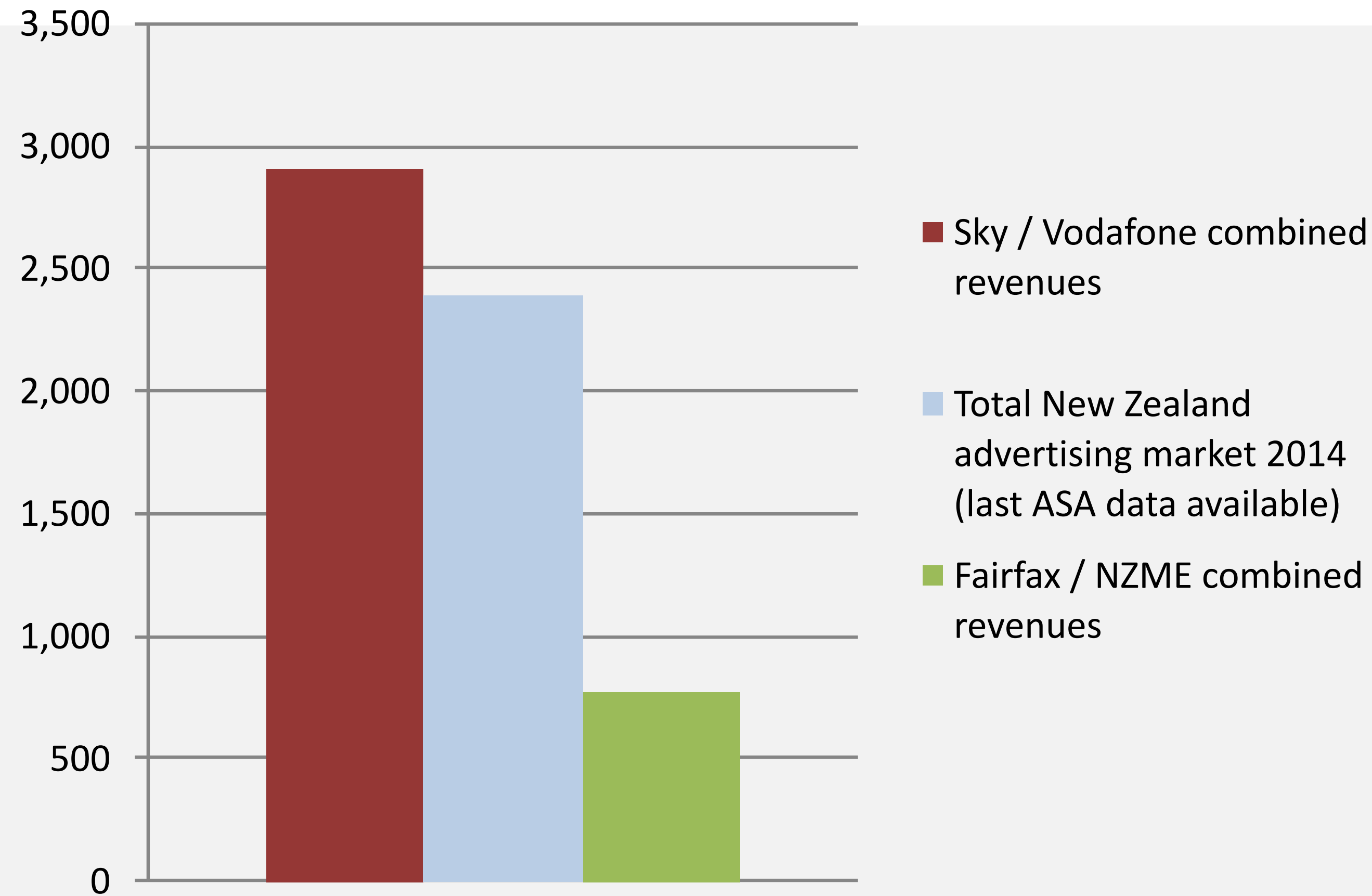
NZME CEO, Michael Boggs

on the NZME Fairfax Deal

PLAY

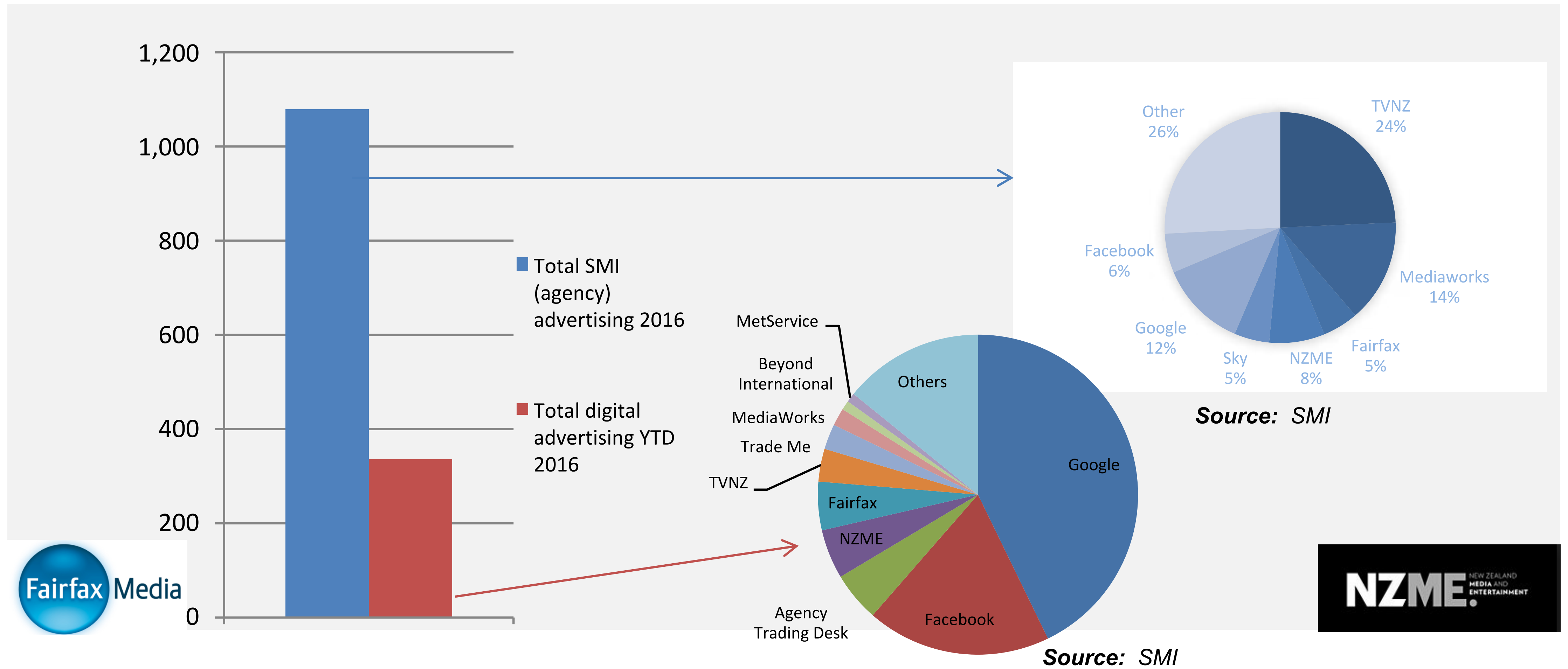


Even combined, NZME/Fairfax is not a big media business, even in the context of the NZ market



Sources: <https://www.nbr.co.nz/article/vodafone-take-51-stake-sky-merger-th-190110>
<http://www.asa.co.nz/wp-content/uploads/2015/06/ASA-Advertising-turnover-report.pdf>
<http://www.fairfaxmedia.co.nz/pressroom/au---nz-press-room/au---nz-press-room/nzme-and-fairfax-nz-merger>

NZME/Fairfax will not have the largest share of advertising revenues, nor digital revenues.



Fairfax Media Managing Director, Simon Tong

on Protecting Local Journalism

PLAY



Concern # 5: Advertisers will not protect diversity

19. We also do not consider that the two-sided nature of the market would prevent these detriments from occurring. The merged entity would have a large reach that would be appealing to advertisers. Consequently, we do not consider that advertisers would be likely to constrain the merged entity from reducing quality.

- *New Zealand Commerce Commission Draft Determination, at [19].*

The ACCC reached a different view. Advertisers want reach, and good, diverse journalism attracts a wide audience

The ACCC also took into account the two-sided nature of media markets, noting that each of SWM and News supply content to readers and advertising opportunities to advertisers.

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

- Australian Competition and Consumer Law Commission, Seven West Media – proposed acquisition of The Sunday Times publication and website from News Limited.



Concern # 6: Plurality trumps efficiency

8. We accept the Applicants' submission that there would be significant cost savings for the parties from the proposed merger. We estimated the difference between the likely benefits and detriments to be at least \$14.1 million over five years. While we cannot place a specific value on the cost savings, we accept that on a purely quantitative basis there is likely to be a financial benefit from the merger. However, in our view, the merger would likely result in detriments that cannot be quantified. These detriments arise from the reduction in content quality and plurality (diversity of views) that we consider would be likely to result from this merger.

- *New Zealand Commerce Commission Draft Determination, at [8].*



The Commission must focus on net efficiency – this has been the case since the merger test was changed in 1986

The 1986 Act revokes the power of the Commission or the Court to canvass the issues of independence of the press or editorial freedom as reasons for refusing consent to a merger or takeover proposal.

- *New Zealand Commerce Commission, News/Independent Newspapers (1986) 6 N.Z.A.R. 47.*

Russell McVeagh Partner, Sarah Keene

On NZCC Draft Determination



The Commission is not the right body, and the merger process is not the right framework, for a plurality analysis

- When a Canadian Parliamentary Inquiry considered whether to introduce media public interest considerations into the competition (anti-trust) legislation it decided that would be poor public policy, including because:

In essence, there are simply no analytical models for expressing social concepts in an objective and meaningful way. **Ultimately, to challenge a proposed transaction, the [Competition] Commissioner must be able to provide compelling and objective analysis detailing the expected impact of the deal on markets.** Expanding the objectives of the Act to take account of such considerations **would require Canada to make a complete paradigm shift, away from the analytical approach currently used by antitrust authorities the world over,** towards a more holistic model relying not on economics, but on the disciplines of psychology, sociology and political science.

Those concerns apply equally in New Zealand in 2016.



Only the Government has the tools to properly assess and address diversity and plurality

- In the Ofcom report that is quoted by the Commission in the Draft Determination, Ofcom concludes that questions on media plurality require the exercise of judgement of the type which is for Parliament to consider:

1.4 An effective framework for measuring media plurality is likely to be based on quantitative evidence and analysis wherever practical. However, there are also areas where a high degree of judgement is required. **The appropriate approach to exercising such judgement is ultimately for Parliament to debate and determine.** [Emphasis added.]

- *Ofcom "Ofcom's report on measuring media plurality" (media release, 29 June 2010). Accessible at: <https://www.ofcom.org.uk/consultations-and-statements/category-1/measuring-plurality/statement>.*

Governments internationally are rather more focussed on the sustainability of strong local journalism

Trudeau government assessing a future without Canada's two largest newspaper companies

SEAN CRAIG | November 17, 2016 5:11 PM ET
More from Sean Craig | @sdbcraig



Like 287 Share Twitter Google+ LinkedIn Email Typo? More

OTTAWA — As the print media industry copes with mounting revenue declines, layoffs and quarterly losses, the Trudeau government is considering what the media landscape would look like without the country's two largest newspaper companies.

The proposed NZME/Fairfax merger is a demonstrably efficiency enhancing solution to a global challenge.

It should be approved.

