



**Submission by TVNZ in response to the
Commerce Commission
Statement of Preliminary Issues**

WILSON & HORTON LIMITED AND FAIRFAX NEW ZEALAND LIMITED

14 September 2016

PUBLIC VERSION

1. Introduction and Executive Summary

- 1.1 Television New Zealand (**TVNZ**) is the country's leading free to view video content provider. It reaches approximately 2.2 million New Zealanders every day (and 3.7 million per month), predominantly through its two main broadcast channels, TV ONE and TV2, as well as its TVNZ OnDemand and ONE News Now online services. TVNZ is owned by the Crown but operates as a self-funded, commercial entity by virtue of the Television New Zealand Act 2003. Its predominant source of revenue is from advertising.
- 1.2 Wilson & Horton Limited trading as NZME (**NZME**), Fairfax NZ Limited (**Fairfax**), and their respective parent companies (**Applicants**) are seeking Commerce Commission approval¹ to merge the New Zealand operations of NZME and Fairfax (**Proposed Transaction**).
- 1.3 On 14 June 2016 the Commission released a Statement of Preliminary Issues (**SoPI**) in relation to the Proposed Transaction. This submission is made in response to the SoPI.
- 1.4 In this submission we focus on two issues:
- (a) The relevant markets in which we operate as broadcasters of free to air television which are impacted by the Proposed Transaction; and
 - (b) The likelihood that TVNZ will, as claimed by the Applicants, engage in 'head-to-head' competition with the merged entity (for whom online delivery is core business) in the market for the online supply of New Zealand news, or provide any form of effective 'direct competitive constraint' on its activities.
- 1.5 Accordingly, we do not comment on the impact of the merger on print news and print advertising, which in any event have been covered in detail in submissions already received by the Commission.
- 1.6 For the reasons set out in detail in our submission, and the Covec report attached, we consider that:
- (a) There are two national markets in which we operate which are affected by the Proposed Transaction, namely:
 - (i) the upstream market for the production of New Zealand news; and
 - (ii) the downstream market for the delivery of New Zealand news over various platforms including online delivery.
- 1.7 While we will continue to provide access to our content online as an ancillary offering to our core broadcasting services, [

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2. Applicants' characterisation of news/information/social media market unsound

- 2.1 The Applicants characterise the relevant market as a global news/information market in which "news/information is simply one form of content vying for consumers' attention on

¹ Fairfax New Zealand Limited and Wilson & Horton Limited, *Notice seeking authorisation or clearance of a business acquisition* (27 May 2016) (**Application**).

*social media platforms in competition with all other content forms (eg humour, gaming, social posts etc)*². They assert that “*only providers of the best news/information content will succeed in the competition for New Zealand’s consumers’ attention in amongst all other content sources vying for consumer attention.*”³

- 2.2 It is correct that media encompasses a wide range of different genres – local news, international news, information, documentaries, entertainment, sport, gaming and social media – and that content providers carefully monitor the amount of time viewers spend watching those various genres.
- 2.3 It is however not correct to say that each of those content forms is therefore “*in competition with each other*” in a Commerce Act sense, such that, as the Applicants assert, the NZME and Fairfax online news services face competition not just from other New Zealand online news services, but also from “*Yahoo, The Daily Mail, MSN, CNN, BBC and The New York Times, and social media platforms such as Facebook, Twitter, Instagram, and Youtube, to name but a few.*”⁴
- 2.4 In an analogue world, this is the equivalent of saying that, because an individual may choose between reading a newspaper, reading a book, going out for dinner, or attending a concert, movie or sporting event, and because all of these activities compete for the individual’s time and attention, the newspaper publisher faces competition from book shops, restaurants, live theatres, movie theatres, and sports promoters. We contend that this approach is unsound, and there is no close economic substitute for national news.
- 2.5 A similarly broad approach to market definition was rejected by the Commission in the *Hoyts/Pacer Kerridge* cinema merger clearance application in 1991.⁵ There the parties unsuccessfully argued for either a “*screen entertainment market*” (cinemas, video hire and broadcast TV) or a wider “*entertainment/leisure market.*”⁶
- 2.6 On the wider market definition put forward, the Commission concluded that while “*many people might go to any of a range of different entertainments in the course of a year, including the Winter show, a play, an orchestral concert etc*” which “*are indeed different forms of entertainment ...in the Commission’s view they are not close substitutes for one another.*”⁷
- 2.7 The Commission’s view was upheld by the High Court on appeal:⁸

Speedway racing, evening horse racing, and evening open-air concerts may well all impact on cinema viewing but without necessarily forming part of the latter’s market for dominance evaluation purposes. The error in interpreting the impact of such activities as indicating the parameters of the market arises from a failure to pay sufficient regard to the need for the substitute product, if it is to form part of the relevant market, to be one which in terms of commercial reality is used in place of the other rather than simply being an alternative.

² Above n 1 at 2.

³ Above n 1 at 3.

⁴ Above n 1 at 5.

⁵ *Hoyts Corporation Holdings (NZ) Ltd /Pacer Kerridge Corporation Ltd*, NZCC Decision 265 (24/5/1991).

⁶ Above n 5 at 5.3.4.

⁷ Above n 5 at 5.3.11.

⁸ *Hoyts Corporation Holdings Operations (NZ) Ltd v Commerce Commission* (1991) 4 TCLR 459 (HC) at 467.

- 2.8 The test of whether products or services are in competition with each other under the Commerce Act is determined by whether, as a matter of fact and commercial commonsense, products or services are substitutable for one another to the point that attempted monopolisation of one will be unprofitable because consumers will substitute to another.
- 2.9 The correct and traditional approach is to identify the narrowest field of rivalry, and determine whether consumers would substitute to another product or service if they faced a small, but significant, non-transitory increase in price (*ssnip*); typically between 5% and 10%.
- 2.10 If a hypothetical monopoly provider of the product or service could not profitably sustain the price increase because of a loss of customers to the substitute product or service, the process is repeated (with increasingly broader market boundaries) until the stage is reached where the price increase could be sustained. The correct question to ask therefore is whether a consumer of New Zealand national news, in the face of a *ssnip*, would substitute to an overseas news provider such as CNN or BBC or a social media platform such as Twitter or Facebook.

3. The NERA Analysis

- 3.1 While the Applicants simply assume a broad news/information product market without analysis, the expert report provided by NERA Economic Consulting in support of the Application (**NERA Report**) does consider the issue of market definition from a conventional antitrust perspective, and endeavours to answer this substitution question.
- 3.2 It describes the Applicants as “*news media organisations*”, and identifies as one of the “*key competition questions...for readers: are other online platforms/websites (eg Facebook, YouTube) in the same market as news websites?*”⁹ We agree that is a critical competition question.
- 3.3 The NERA Report notes that “*there is little if any empirical evidence on substitutability between news websites and other online platforms in response to relative price or quality changes, at least in an antitrust sense,*”¹⁰ and then, under the heading “*online competition for eyeballs*” makes a series of claims:¹¹
- (a) “*The internal evidence of the parties ...shows that they carefully analyse data on what viewers are reading online*”;
 - (b) “*The evidence suggests that readers are increasingly using mobile phones to access the internet*”;
 - (c) “*Publication and distribution barriers have been lowered...The costs of setting up a website are low in both a financial and transaction cost sense*”;
 - (d) “*Convergence across media types: Previously a physical newspaper could not have audio or video content. Now all media firms have a website, so a traditional newspaper can upload video content, radio and television companies can publish written content etc*”; and
 - (e) “*Online distribution is being disrupted by social media*”.

⁹ Fairfax NZ Limited and Wilson & Horton Limited, *NERA economic report* (27 May 2016) at 2.3.1.2.B.

¹⁰ Above n 9 at 2.3.3.2.1.

¹¹ Above n 9 at 2.3.3.2.2, 2.3.3.2.3.

- 3.4 The report identifies (b) and (d) above as “perhaps key in the present context. Distribution is really ‘content discovery’ from a consumer’s perspective. ...This implies that homepages of, for example, stuff.co.nz and Facebook are competing distribution channels.”¹²
- 3.5 It is accordingly not surprising that the NERA Report, despite identifying as the key competition question whether “other online platforms/websites (e.g. Facebook, YouTube) [are] in the same market as news websites”, does not attempt to answer the question.
- 3.6 The NERA Report’s focus on “online competition for eyeballs” makes the same mistake as was identified by the High Court in *Pacer Kerridge/Hoyts*, quoted above at 2.7.
- 3.7 In addition, the NERA Report classifies websites/platforms such as Google, Facebook and YouTube as competitors to the content provider, rather than simply a distribution conduit for the content provider. While a consumer may, for instance, use Google to find a newspaper article, Google merely redirects the consumer to the source article.
- 3.8 The role of such websites as content aggregators rather than content generators was identified by the ACCC in its recent Statement of Issues relating to the proposed *Seven West Media/Sunday Times* transaction:¹³

Some consumers are increasingly using search engines such as Google News and social media sites such as Facebook as a means of accessing information, distinct from online news sites that have a particular focus on producing and supplying news. However, market inquiries have indicated that many social media and similar sites tend to only be aggregators of news content, rather than generators of news (especially in producing and supplying local news).

- 3.9 NERA Consulting provided a further report to the Commission on behalf of the Applicants in response to submissions on the SoPI (**NERA Response Report**). A large number of submissions had argued, as do we, that the relevant market is one for “original New Zealand content and news”; the submissions identified NZME and Fairfax’s competitors in this market as TVNZ, MediaWorks and RadioNZ (**RNZ**).
- 3.10 The NERA Response Report states that “drawing the market boundary around these five firms would underestimate the competitive pressure on the merged entity”, and draws attention to the “cluster market” literature.¹⁴ It argues that on the demand-side it is uneconomic to unbundle the purchase of products in the cluster, and on the supply side, it is uneconomic to supply just a sub-set (here original New Zealand content and news) of the products in the cluster.
- 3.11 This argument is as unsound as the “online competition for eyeballs” argument, and is also inconsistent with the Applicants’ argument that the merged entity would be constrained by stand-alone niche content providers. If the cluster market theory were to hold, those niche market participants would not exist, because it would be uneconomic to offer (or purchase) an unbundled service.
- 3.12 We refer to the attached report from Covec for further discussion on the relevance of cluster market and two-sided market theory to market definition in this case.

¹² Above n 9 at 2.3.3.2.3.

¹³ Seven West Media – proposed acquisition of The Sunday Times and perthnow.com.au, ACCC Statement of Issues (4 August 2016) at 57. The ACCC’s Statement of Issues is described in more detail in the Appendix to this submission.

¹⁴ Fairfax NZ Limited and Wilson & Horton Limited, *NERA Response to the Statement of Preliminary Issues* (29 July 2016) at 3.

4. Market definition

4.1 Markets are typically delineated across product, functional and geographic dimensions. The competition effects are assessed within the most narrowly-defined market available, on the basis, as the Commission has previously noted, that “*if competition concerns are not identified within the narrowly-defined market they are unlikely to arise in a broadly-defined market*”.¹⁵

4.2 In *Bauer Media Group/APN* the Commission said:¹⁶

Consumers buy magazines for entertainment and/or information. Magazines are a discretionary purchase. In a wider context, similar entertainment and/or information can be available from a range of increasingly fragmented media, including traditional media, such as television, radio, and newspapers, and new media, such as digital magazines and other websites.

Market definition is a tool that can provide a framework to help identify and assess the close competitive constraints a merged firm would likely face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.

4.3 The Commission accordingly assessed the effect of that transaction across three “*product categories*”, current affairs, mass market women’s weekly, and women’s interest magazines.

4.4 Similarly narrow market definition approaches have been taken by the Commission in assessing markets for local and national news, including:

- (a) *Independent News Auckland Ltd/The Marlborough Express Newspaper Company Ltd*¹⁷ (separate print markets for local news/information and national/international news/information in the Marlborough region);
- (b) *Wilson and Horton Ltd/Power Plant Productions*¹⁸ (the supply of local news and information in Hawkes Bay); and
- (c) *Fairfax NZ Ltd/Times Media Group Limited*¹⁹ (the market for local print news and information in the Rodney region).

4.5 As is the case in New Zealand, the focus of international competition agencies considering media mergers has been on the extent to which technological developments meant that newspapers compete with their online counterparts.

4.6 In its recently published draft Media Merger Guidelines, the ACCC states:²⁰

Media services using the same modes of delivery are likely to be closer substitutes than those operating via different platforms. In some cases,

¹⁵ *Reckitt Benckiser and Boots Healthcare International* [2005] NZCC Decision 567 (30 November 2005) at 44.

¹⁶ *Bauer Media Group (NZ) LP and APN Specialist Publications NZ Limited* [2014] NZCC Decision 1 (23 January 2014) at [24] and [38].

¹⁷ *Independent News Auckland Ltd and The Marlborough Express Newspaper Company Ltd* NZCC Decision 329 (2 October 1998).

¹⁸ *Wilson and Horton Ltd and Power Plant Productions* NZCC Decision 445 (7 December 2001).

¹⁹ *Fairfax NZ Ltd and Times Media Group Limited* NZCC Decision 561 (14 October 2005).

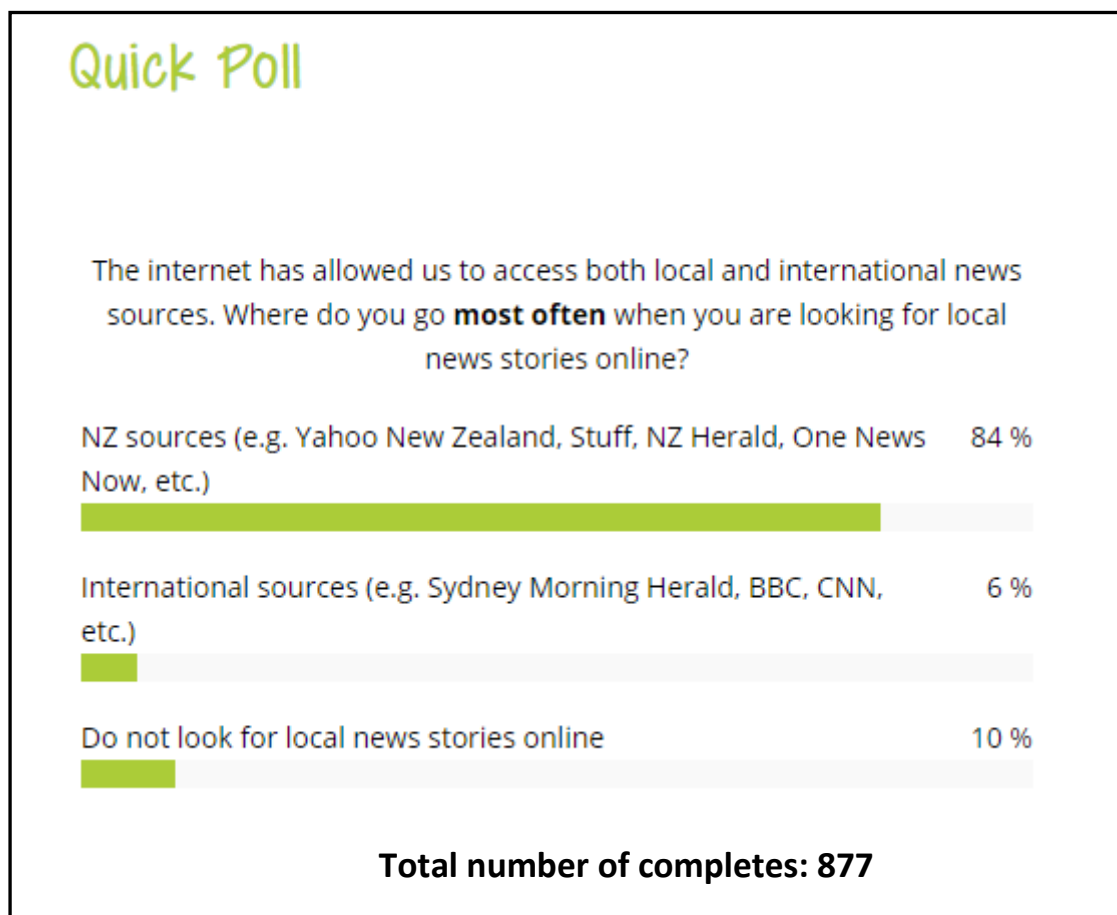
²⁰ Australian Competition and Consumer Commission, *Media Merger Guidelines: Draft for Public Consultation* (August 2016) at [15].

however, different modes of delivery have converged such that the supply of content or advertising across different platforms may compete more closely. Alternatively, some modes of delivery may be complementary rather than competitive.

- 4.7 The core product in all cases, however, regardless of delivery platform, has been news and information. This can be seen in the European Commission’s consideration of mergers across a number of delivery platforms – print, broadcast or online – which has consistently identified distinct markets for the supply of news.²¹ Further, in its recent Seven West/Sunday Times Statement of Issues the ACCC identified as a principal area of competitive concern, the supply of news/information with a focus on Western Australian news content to readers/consumers in Western Australia.²² A case study of Seven West/Sunday Times is included as Appendix 1.
- 4.8 In June 2016, research conducted by TVNZ’s Green Room (a community panel of TVNZ viewers) investigating people’s views of One News Now and news sources in general revealed that:
- (a) News websites and TV news are the most popular sources of news – 83% of those surveyed get news from websites such as stuff.co.nz and herald.co.nz while 78% get news from television.
 - (b) stuff.co.nz and herald.co.nz are the most popular online sources for New Zealand news. 96% of people surveyed had used the Stuff website/app (including 36% who cited Stuff as their favourite website for local news) and 83% had used the NZ Herald website/app (with 22% citing it as their favourite website for local news).
 - (c) In contrast a large number of those surveyed had never used major international online news sources such as BBC (39%), CNN (52%), The Guardian (64%), The Daily Mail (65%), The New York Times (71%) and the Sydney Morning Herald (77%) which indicates that international news is complementary to, rather than substitutable for, New Zealand news.
- 4.9 A further September 2016 Green Room survey revealed that TVNZ viewers do not regard international news sources as substitutes for New Zealand news sources. Of the 877 people surveyed, 73% placed up to date (online) local New Zealand news in the “I can’t live without it” or “It’s important to me” categories.
- 4.10 In addition, as shown in the table below 84% said they go to New Zealand sources when looking for local news stories online while only 6% go to international sources:

²¹ See for example, European Commission, *Dow Jones / NBC - CNBC Europe*, Case No IV / M.1081, 22/01/1998 and European Commission Competition DG, *Market Definition in the Media Sector – Comparative Legal Analysis* (Bird & Bird Report, December 2002).

²² Above n 13 at 30.

Table 1: TVNZ Green Room Survey

- 4.11 In our view, accordingly, the appropriate markets for analysis of the competition impacts of the proposed transaction, are national markets for:
- (a) the production of New Zealand news;
 - (b) the delivery of New Zealand news over various platforms, including
 - (i) print, and
 - (ii) online delivery; and
 - (c) the supply of advertising over various platforms, including
 - (i) print; and
 - (ii) online delivery.
- 4.12 The question of whether other forms of content, information and entertainment are substitutable for New Zealand news, and whether print and online supply and advertising respectively are substitutes or complements, can then be determined by conventional competition analysis.
- 4.13 As discussed in the introduction, in this submission we discuss only the markets described at 4.11(a) and (c) (ii) above.

5. The national market for the production of New Zealand news

- 5.1 The Applicants assert that they produce “*local and regional news, life and style, sport and entertainment content*.”²³ As a result of technological changes (and in particular the increase in internet access over fast fixed and wireless connections) which are driving changes to content delivery, they claim that their “*content creation activities are in direct competition with the multimedia online offerings of global publishers, broadcasters, and other media and online companies*.”²⁴
- 5.2 They identify the creation of a “*stronger, New Zealand-centric news/information focussed organisation*”²⁵ as a benefit of the merger, which they will achieve by “*enhanc[ing] the abilities of the Parties to create high-quality journalistic content*.”²⁶
- 5.3 They accordingly adopt “*news and information services*” as the appropriate product market,²⁷ and identify as competitors in the supply of news and information services, in addition to conventional New Zealand news operations such as MediaWorks, TVNZ, RNZ, and Allied Press, magazines, private blogs, and international online news services.
- 5.4 This is entirely a supply-side analysis, whereas market definition is heavily focused on consumer preferences. New Zealand news is a discrete service for which overseas news, blogs or general information services are not substitutes.
- 5.5 The Commission has recognised in previous decisions that different categories of content form their own product markets for antitrust analysis (for instance, the different markets for the acquisition of live sports rights, movie rights and first-run TV rights in its SKY/Prime decision²⁸).
- 5.6 On the demand side, it is clear from consumer behaviour, and is well recognised by competition authorities internationally, that news services have unique features which consumers value highly. This distinct demand for local content can be seen in the online menus of media companies: OneNewsNow, Newshub and RNZ all have separate ‘NZ’ and ‘World’ news categories whereas stuff.co.nz and nzherald.co.nz have ‘National’ and ‘World’ categories.
- 5.7 In Australia, research shows that of those visiting news websites, 88 per cent had a preference for Australian websites.²⁹ In New Zealand, as table 1 at 4.10 shows, that proportion is greater than 90% of those who use online news services.
- 5.8 In FTA TV, the evening news is the flagship programme, as a large percentage of viewers who watch the news on one channel tend to stay on that channel for the rest of the evening.³⁰

²³ Above n 1 at 6.1.

²⁴ Above n 1 at 6.46

²⁵ Above n 1 at 6.47.

²⁶ Above n 1 at 6.48(a).

²⁷ Above n 1 at 12.24(b).

²⁸ *Sky Network Television and Prime Television New Zealand Limited* [2006] NZCC 573 (8 February 2006).

²⁹ Franco Papandrea, *State Of The Newspaper Industry In Australia, 2013*, University of Canberra, at 17

(<https://www.canberra.edu.au/research/faculty-research-centres/nmrc/publications/documents/State-of-the-Newspaper-Industry-web-publication.pdf>).

- 5.9 On the supply side, local news production requires specialist journalistic skills and editorial expertise that is not available to providers of entertainment or sport content. The barrier is even higher for providers of a New Zealand-wide news service, with a requirement for staff and facilities across the country.
- 5.10 The significant fixed costs of producing news is explained by James T Hamilton, Hearst Professor of Communications and Director of Journalism at Stanford University:³¹

The structure of high fixed costs/low variable costs that characterizes the production of information goods readily applies to news stories. ... There are tremendous fixed costs [in producing a day's edition of a newspaper], that is, costs that do not vary with the number of units produced once you decide to make the first unit. You need to pay for reporters to research topics, editors to make sense of the offerings, a production staff to lay out and compose the paper, and a business staff to solicit ads. The variable costs, which by definition will depend on the number of units produced, include the paper, ink, and distribution trucks used to deliver the finished products. The first copy costs – the cost of producing the first unit of a newspaper – are extremely high relative to the variable costs. Once you have made the first copy of the paper, however, the additional costs of making another are the relatively moderate costs of copying and distribution.

- 5.11 A national news gathering operation is comprised of journalists, producers, camera crews, studios and newsrooms and requires legal and editorial acumen and oversight. Providing national news coverage requires multiple and immediate live capability and field operational staff using 4G/SNH technology.³² In addition, a national news gathering operation requires a content management platform, an analytics platform, a video platform (TVNZ uses 'Brightcove'), an ad serving platform, a website, mobile site, apps and social media.
- 5.12 As a consequence, there is a distinct market in New Zealand for the production of national news. This market is supplied by five participants:
- (a) NZME (print, radio and online);
 - (b) Fairfax (print and online);
 - (c) TVNZ (FTA TV and online);
 - (d) MediaWorks (FTA TV, radio and online); and
 - (e) RNZ (radio, online and FTA TV).
- 5.13 Prime is not included, as its TV news service has been produced by MediaWorks since 2015.³³

³⁰ This viewer behaviour has been observed by Stanford University media specialist James T Hamilton in *All the news that's fit to sell: how the market transforms information into News* (Princeton University Press, 2004), at 71: “[P]rogrammers will try to attract younger viewers to the network evening news, in part to increase news advertising revenues and in part to add these viewers to the audience that stays with the network into the prime-time schedule.”

³¹ Above n 30 at 9.

³² 4G/SNH technology is used in preference to microwave / satellite technology due to ease of use and superior speed.

³³ Damien Venuto “Prime's losses are MediaWorks' gains as Sky changes its free-to-air focus” StopPress (online ed, Auckland, 27 January 2015) available at <http://stoppress.co.nz/news/prime-mediaworks>.

6. TVNZ's role in the online distribution of New Zealand news

6.1 While there are a number of online specialist news services such as subscription service nbr.co.nz (business), there are only five providers of mass market online national news services. They are listed below, together with their monthly average audience over the last 6 months:

Table 2

Provider	Reach
Fairfax (stuff.co.nz)	[]
NZME (nzherald.co.nz)	[]
MediaWorks (newshub.co.nz)	[]
TVNZ (One News Now)	[]
RNZ (radionz.co.nz)	[]

6.2 Fairfax and Stuff are clearly the market leaders based on audience numbers; their combined reach (removing duplicate audience numbers) would increase to around [], or [] of the total audience:

Table 3

Provider	Reach
Fairfax/NZME	[]
MediaWorks (newshub.co.nz)	[]
TVNZ (One News Now)	[]
RNZ	[]

6.3 In addition to the considerable skill and expertise required for news reporting capability as discussed in section 5, significant investment in online delivery capability is also required to provide an online service. As a consequence, there are significant barriers to entry into this market, with only parties who already possess national news gathering capability likely to be able to participate.

6.4 As the ACCC has recently observed in its Seven West/Sunday Times Statement of Issues:³⁴

The ACCC's preliminary view is that barriers to establishing an online news site are lower than for print....However some industry participants have pointed to significant difficulties in being able to monetise online news sites in order to generate a profit.

Market inquiries have suggested that some traditional media participants, even with the benefit of long established incumbency and the ability to leverage their existing media businesses, have faced challenges in expanding into digital news and operating it as a profitable business model.

³⁴ Seven West Media – proposed acquisition of The Sunday Times and perthnow.com.au from News Limited, ACCC Statement of Issues (4 August 2016) at 58-61.

In addition, a potential new entrant may not have the advantage of being able to leverage off an existing multi-platform media business and shared resources, including branding, journalists and a network of local, national and international content.

The established incumbency of major media players may act as a deterrent for potential new entrants.

- 6.5 This is a far different situation to that contended for by the Applicants – that “*entry into the online space is relatively easy and can be achieved quickly with minimal investment.*”³⁵
- 6.6 Online news services were initially little more than a reproduction of the printed story in electronic form. As these sites have developed, the use of video clips has increased significantly, and a digital arms race is developing. Online sites are increasingly investing in better technology for competitive advantage, as the Applicants acknowledge in the Application.³⁶
- 6.7 The Applicants assert that “*media convergence has led to direct head-to-head competition between Fairfax/NZME and TVNZ, Newshub and RNZ,*”³⁷ and “*the direct competitive constraint from those entities in the provision of news/information is only going to grow in the future, with each of TVNZ’s, MediaWorks’ and RNZ’s focus on digital news/information platforms comparatively recent and, therefore, still very much in their growth stages.*”³⁸
- 6.8 TVNZ agrees that, compared to NZME and Fairfax, each of TVNZ, MediaWorks and RNZ are relatively recent entrants into online distribution of news. This is reflected in the average monthly audience figures in Table 2 above.
- 6.9 The Applicants then speculate that “*these three competitors, and others, are well positioned to continue to grow in the provision of New Zealand news/information delivered through multiple channels including online, given they have sizeable newsrooms, and journalists around New Zealand.*”³⁹
- 6.10 As we note at 6.3 above, however, while news reporting capability is a necessary prerequisite for the online distribution of New Zealand news, it is not sufficient; significant investment in online delivery capability is also required.
- 6.11 This point is explained by Professor Hamilton:⁴⁰

At first glance the Internet might seem to offer relief from distribution cost worries. Once a news site is up and running with stories the marginal cost of another web surfer logging onto the site is effectively zero. The spatial model emphasizes that costs in a particular news segment limit the number of providers that can earn profits there. If the Internet drops these fixed costs, then one would think that many more news outlets can survive in a genre such as hard news provision. The limits on human attention and information processing, however, mean that in a world of many Internet sites there will still be advantages to size. Sites may have to engage in significant advertising, often in print or broadcast media, in order to raise

³⁵ Application, above n 1 at 15.1

³⁶ Application, above n 1 at 14.32.

³⁷ Fairfax/NZME, *Response to Submissions* (29 July 2016) at 18.

³⁸ Above n 37 at 19.

³⁹ Above n 37 at 20.

⁴⁰ Above n 28 at 28.

awareness of their existence and brand location. This reintroduces the problem of fixed costs and gives established media outlets advantages in the operation of Internet news markets.

6.12 The business case to make the investment needed to develop the requisite level of online capability is dependent on the advertising revenue the platform is able to generate, which in turn is dependent on the audience reach of the platform. As noted in Table 3 above, the combined audience reach of the merged entity (removing duplicate audience numbers) would increase to around [], compared with, for the other online providers of NZ news, MediaWorks ([]), TVNZ One News Now ([]) and RNZ ([]).

6.13 Under the current market structure, with no clearly dominant player in the online New Zealand news market, there are some significant opportunities in that market. As an example, in May 2016 TVNZ entered into a video distribution trial with Fairfax to combine TVNZ's technical capability in online video delivery with *stuff.co.nz*'s reach, []

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6.14 In July 2016 Fairfax concluded a similar deal with RNZ to publish RNZ's audio and video content on the Stuff platform.⁴¹

6.15 The Proposed Transaction would be a game-changer, creating a vast disparity between audience reach (as listed in Table 3), and delivering incumbency benefits that reach provides to the dominant provider. []

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6.16 []

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6.17 While TVNZ will continue to provide access to its content online as an ancillary offering to its core broadcasting services, []

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⁴¹ <http://www.stuff.co.nz/business/82563532/RNZ-audio-and-video-to-play-on-Stuff>

APPENDIX 1

CASE STUDY: AUSTRALIA**Seven West Media – proposed acquisition of *The Sunday Times* and *perthnow.com.au* from News Limited****ACCC Statement of Issues, 4 August 2016**

On 27 May 2016, the ACCC commenced a review of the proposed acquisition by Seven West Media (SWM) of *The Sunday Times* and *perthnow.com.au* from News Limited (News).

SWM is a national media operator. In Western Australia it publishes two paid newspapers (The West Australian and The Weekend West) and produces thewest.com.au (TheWest), a free online news site supplying news and information, including news content with a Western Australian emphasis.

News is wholly-owned by News Corporation, a publisher of various print media and online sites throughout Australia. In Western Australia it publishes *The Sunday Times*, a paid weekly paper and PerthNow, a free online news site supplying news and information, including news content with a Western Australian emphasis.

The ACCC considers that SWM and News are likely to be each other's closest competitors. They are the only companies which supply print newspapers across Western Australia which include news (Western Australian news, national and international news), opinion, business, travel, technology, entertainment, lifestyle and other content that is designed to meet the needs of a range of consumers in Western Australia. In addition, **SWM and News compete head to head with each other in producing breaking and leading news content online to attract readers, especially Western Australian news.**

In its Statement of Issues the ACCC has identified two key areas of concern:

- (a) ***Provision of news and information to Western Australians*** – *The ACCC's preliminary view is that the proposed acquisition may be likely to substantially lessen competition in relation to the supply of news and information to readers in Western Australia, by reducing choice and removing the competitive constraint between SWM and News.*
- (b) ***Western Australian advertising opportunities in print newspapers*** – *The ACCC's preliminary view is that the proposed acquisition may be likely to substantially lessen competition in relation to the supply of Western Australian advertising opportunities in print newspapers.*

The ACCC is of the view that the proposed acquisition:

- (a) ***May reduce consumer choice for readers in terms of editorial content and perspective on news stories;***
- (b) ***May increase newspaper prices to consumers or encourage the introduction of a digital paywall for online news;***
- (c) ***May lead to a reduction in the quality of content contained in the newspapers and/or online;***
- (d) ***May lead to a reduction in the total offering (for instance one of the two weekend papers being discontinued).***