



Supplementary Submission to the Commerce Commission on its Draft Determination on Merger Authorisation for NZME Limited and Fairfax New Zealand Limited¹

Prepared for the CBB by Peter A. Thompson², November 2016

The Coalition for Better Broadcasting³ would like to provide a supplementary submission to the Commerce Commission on its Draft Determination on Merger Authorisation for NZME Limited and Fairfax New Zealand Limited. We would also appreciate inclusion in the forthcoming conference where further NZME/Fairfax merger deliberations will be conducted.

The CBB fully endorses the Commerce Commission's draft determination declining to authorise the application for merger between NZME and Fairfax. It is apparent that the Commission has gone to commendable efforts in its consideration of the evidence and discussions with several key stakeholders as well as its soliciting of international expert opinions on media plurality.

We strongly agree with the Commission's conclusions that the proposed merger (factual scenario) would carry the risk of substantially reducing competition in the print/online news sector. The prospect of a single media group controlling almost 90% of the daily print/online news audience would be unprecedented in any developed, democratic society and must be regarded as a potential threat to the range of editorial perspectives and by extension, the capacity of the news media to serve the public interest either as consumers or as citizens.

We also agree with the Commission's analysis that the merger would most likely not confer the ostensible public benefits asserted by the applicants. Indeed, the CBB would contend that the impact of the merger on overall newsroom resourcing (including the number of journalists employed) would almost certainly have negative implications for the overall scope, substance and plurality of perspectives among the major *metropolitan* publications as well as the regional and Sunday titles identified as concerns by the Commission (Draft Determination- hereafter DD- para 2). In particular we agree that "*competition post-merger would not be sufficiently robust to constrain a multi-media organisation, potentially with a single editorial voice, that would be the largest producer of national, regional and local news by some margin in New Zealand.*" (DD para 12).

The CBB welcomes Levy & Foster's report⁴ for the Commerce Commission (Impact of the proposed NZME/Fairfax impact merger on media plurality in New Zealand: expert review of the Commerce Commission's Draft Determination Document) and consider that this analysis reinforces the main concerns

¹ <http://www.comcom.govt.nz/dmsdocument/14943>

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³ The CBB is an independent charitable trust with a grassroots membership, board of trustees, chief executive and regional committees. The Trust is non-profit, has no political party affiliation or vested interest in any commercial enterprise. Our primary interest is to inform civic debate and policy formation in regard to public service broadcasting, although media convergence extends the scope of our concern to other platforms and content providers, particularly those which support public interest journalism. See the Coalition for Better Broadcasting website <http://betterbroadcasting.co.nz/about-coalition-better-broadcasting/structure-people/>

⁴ <http://www.comcom.govt.nz/dmsdocument/14975>

about editorial plurality already raised in the Coalition for Better Broadcasting's original submission. Levy & Foster rightly note that there are several dimensions of plurality that need to be considered in such cases. We would particularly highlight the point they raise about the role of public service broadcasters in mitigating concerns about media concentration in other countries (such as Australia). No such mitigating factor is applicable in New Zealand: The government repealed the TVNZ Charter legislation in 2011, discontinued the commercial-free channels TVNZ 6 and 7 (in 2012), and since 2008, has frozen the budgets of Radio New Zealand and NZ On Air. As Levy and Foster duly note, New Zealand invests considerably less than other comparable countries in public service media. Obviously this is a public policy consideration outside of the Commission's scope of jurisdiction. However, we want to emphasise that the merger cannot be justified on the pretext that existing public service media provisions would off-set any negative consequences. We would, however, invite the government to recognise the wider public policy concerns arising from both the factual and counter-factual scenarios (including the sustainability of print journalism itself),

Fairfax and NZME⁵ have predictably dismissed the criticisms of the merger from other media competitors as well as academics and public interest groups like the CBB (although its ostensible rebuttals appeared to be primarily premised on a blunt reassertion of their own preferred definitions). It appears that the applicants' primary angle of objection to the Commission's draft determination is that it has taken account of intangible public interest/public policy factors not specific to the Commerce Act. This is somewhat ironic given the prominence of the claims about investing in quality journalism introduced by the original NZME/Fairfax merger proposal. Having introduced these normative and non-quantifiable assertions as a premise for the merger, it seems both self-interested and rather cynical to now reject such considerations as falling outside the legitimate boundaries of the Commission's deliberations.

As DD para 42 duly notes, the demonstration that there is a risk of a substantial reduction of competition does not hinge solely on a quantified prediction of price increases in the factual over the counterfactual scenario- *"A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the 'competitive price'), or reduce non-price factors such as quality or service below competitive levels."* (emphasis added). Moreover, as DD para 47 rightly observes, the Commerce Act's reference to public benefit does not specify that only quantified monetary calculations are germane to the Commission's decisions. Indeed, there is nothing in the Commerce Act that specifies that only strictly quantifiable criteria can be considered. In fact this would be practically impossible in modelling counter-factual scenarios where data has to be estimated.

Hypothetically, if one did accept the NZME and Fairfax claim that the Commerce Act's reference to the long term benefit of the public cannot be construed to entail considerations of non-tangible factors, then neither could the Act be invoked as the pretext for a merger when the primary motive is evidently to prop up the failing business models of the applicants: This too entails intangible considerations of public (not to mention private shareholder) benefit. If one accepts the applicants' very broad definition of the digital media market⁶ as entailing competition across all media platforms and content forms (not just New Zealand news), then it logically foregoes any claim for the current financial challenges of NZME/Fairfax to be construed as a public interest consideration in the Commission's deliberations. Put bluntly, if Fairfax/NZME are simply generic digital media companies amidst so many others then their potential failure in the counterfactual scenario would not be a Commerce Commission concern either on the retail or wholesale side.

However, the non-substitutability of New Zealand news is a very good reason to consider this as the primary (retail side) market. Given that news by its nature has a role in sustaining civic discourse and public deliberation on the issues of the day, the compelling evidence that the factual scenario would see an unprecedented concentration of editorial power and leave the consumer with a narrower choice is a significant concern. The CBB's view is that supporting a robust and independent press and protecting editorial independence and news quality are indeed public policy issues that the government should address as a matter of urgency- and the scope of these matters do extend beyond the Commerce Act and the Commerce Commission's remit. *However, that in no way obviates the legitimacy and correctness of the Commerce Commission draft ruling declining the proposed merger.* Even if one can contest the precise scope of the 'public benefit test' underpinned by the Commerce Act, allowing a merger to go ahead when it would create such an unprecedented level of market concentration (and probably weaken or wipe out the smaller newspaper competitors) would not be consistent with the Act's intent or spirit. Insofar as the Act is

⁵ See <http://www.comcom.govt.nz/dmsdocument/14517> ; also <http://www.stuff.co.nz/business/industries/82718743/Fairfax-and-NZME-hit-back-at-merger-critics>

⁶ The CBB considers that the case put forward by NZME and Fairfax conflates the substitutability of *platforms* on the wholesale (advertising) side with the substitutability of *content* on the retail (news consumption) side. This results in an unrealistic and misleading conception of the relevant market boundary which, crucially, fails to recognise the *non-substitutable* nature of *New Zealand news content* at national, regional, and local levels.

vague and open to interpretation on such points, it rightly the role of the Commerce Commission to interpret and implement it in the best interests of the public- not the best interests of Fairfax/NZME shareholders.

The CBB appreciates that the Commission is not able to impose conditions on the prospective mergees, but we are aware that E'tu union has raised the prospect of Fairfax and NZME voluntarily undertaking to commit to a kind of operational charter to protect editorial plurality with an independent adjudication board. While this could in principle reduce the negative impact of any merger, it is unclear how such conditions could be enforced without a statutory basis. The CBB is also concerned that even with such conditions, the merger could still have deleterious effects on the overall shape of competition in the news market, especially for the sustainability of the smaller newspaper competitors (which would probably lose advertising to the merged entity), and would still fail to resolve the more fundamental challenges facing the business models of the print news sector. The merger is not a solution to the failing business model faced by the print media in the digital media ecology.

NZME/ Fairfax news coverage of the merger

Given the concerns about the loss of editorial plurality highlighted in the stakeholder submissions, the expert report from Levy & Foster, and the Commission's Draft Determination, one of the questions the CBB would raise is how far the NZME and Fairfax coverage of their own proposed merger might lend credence to (or undermine) their claim that editorial independence and plurality would not be compromised in the event of a merger. The merger represents an interesting case in that respect, given that it is a matter of public interest in which the applicants' own newspapers have an institutional vested interest. The table below presents a descriptive content analysis of 39 online stories based on the top-ranked search results on nzherald.co.nz and stuff.co.nz using key words "commerce commission + merger + Fairfax + NZME".

The stories cover both the period immediately following the merger application announcement up to the Commission's announcement of its draft determination and the immediate responses to this. Articles were excluded from the sample if they were not primarily focused on the NZME/Fairfax merger, duplicated a very similar story in the same publication or were short announcement-type items containing no discussion of the issues. The stories were analysed by the presence of actors or institutions expressing a view on the NZME/Fairfax merger issue. These were coded according to whether they were generally supportive of the merger (e.g. identifying advantages to the companies or potential public benefits), generally opposed to the merger (e.g. identifying risks/disadvantages to the companies or outcomes detrimental to the public), or neutral (e.g. identifying complexities without taking a pro/anti –view or else simply unclear or ambivalent). An actor officially representing a specific institution (e.g. Michael Boggs of NZME or Simon Tong of Fairfax NZ) were treated as the same 'voice' as their respective institution (although the parent companies APN and Fairfax Media Ltd. were coded as separate). There are numerous instances where a view representing NZME/Fairfax as joint applicants in the merger is mentioned, in which case these counted as a single entity. Opinion pieces identified as such include the author as the represented actor. Actors discussing non-merger issues within the same story were not coded.

Note the table only indicates the presence of pro/neutral/anti voices in a story, not the number of times they are mentioned/quoted, their prominence in the narrative, or more qualitative discursive elements such as framing and tone. Note also that the same actor may represent a different pro/neutral/anti voice in different stories. For example, before the draft determination, the Commission was generally neutral and its reported comments were mainly procedural and hence neutral. After the draft determination the Commission's reasons for declining the authorisation were highlighted, placing it in the 'anti' position.

| Source | Pro-Merger | Neutral/ Unclear | Anti-Merger |
|---|--|------------------|---|
| NZME (NZ Herald) nzherald.co.nz (Search for Commerce Commission + merger + NZME + Fairfax) | | | |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11744762 | <ul style="list-style-type: none"> NZME/Fairfax Anne Callinan, Simpson- Grierson, | n/a | <ul style="list-style-type: none"> Commerce Commission |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11744520 | <ul style="list-style-type: none"> NZME/Fairfax Anne Callinan, Simpson-Grierson, Bill Ralston | n/a | <ul style="list-style-type: none"> Commerce Commission E'Tu union |
| http://www.nzherald.co.nz/business/news/video.cfm?c_id=1503079&gal_cid=1503079&gallery_id=167538 | <ul style="list-style-type: none"> NZME/Fairfax Bill Ralston | n/a | <ul style="list-style-type: none"> Commerce Commission Janet Wilson |

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|---|---|--|--|
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11724514 | <ul style="list-style-type: none"> NZME/Fairfax Paul Head (CAANZ), | n/a | <ul style="list-style-type: none"> Commerce Commission Mediaworks |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11744131 | <ul style="list-style-type: none"> NZME/Fairfax Bill Ralston David Seymour (Act) | <ul style="list-style-type: none"> John Key (National) | <ul style="list-style-type: none"> Mark Berry, Commerce Commission Andrew Little (Labour) Winston Peters (NZ First) E'Tu union |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11744333 | <ul style="list-style-type: none"> NZME/Fairfax | n/a | <ul style="list-style-type: none"> Mark Berry, Commerce Commission E'Tu union |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11669545 | | <ul style="list-style-type: none"> Gavin Ellis | <ul style="list-style-type: none"> Allied Press (ODT) Matthew Horton, Horton media Commerce Commission |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11685815 | <ul style="list-style-type: none"> NZME/Fairfax | n/a | <ul style="list-style-type: none"> Commerce Commission |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11702674 | n/a | <ul style="list-style-type: none"> John Drinnan | n/a |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11698614 | n/a | <ul style="list-style-type: none"> Commerce Commission | n/a |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11714777 | <ul style="list-style-type: none"> Overseas Investment Office Michael Boggs, NZME Fairfax | n/a | n/a |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11705091 | <ul style="list-style-type: none"> Michael Boggs, NZME Fairfax | n/a | n/a |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11664111 | <ul style="list-style-type: none"> Michael Boggs, NZME | n/a | n/a |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11663835 | <ul style="list-style-type: none"> Michael Boggs, NZME | n/a | n/a |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11645845 | <ul style="list-style-type: none"> NZME/Fairfax | n/a | n/a |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11636283 | <ul style="list-style-type: none"> NZME/Fairfax Shane Solly, Harbour asset Management Mark Lister, Craigs Investment Partners | n/a | n/a |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11637176 | <ul style="list-style-type: none"> NZME/Fairfax Michael Boggs, NZME Simon Tong, Fairfax NZ Greg Hywood, Fairfax Matt Goodson, Salt Funds Management Ciaran Davis, APN | <ul style="list-style-type: none"> Amy Adams (National) | <ul style="list-style-type: none"> Gareth Hughes (Green) David Shearer (Labour) Coalition for Better Broadcasting |
| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11646310 | <ul style="list-style-type: none"> NZ Herald | n/a | n/a |

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| http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11656141 | n/a | <ul style="list-style-type: none"> • Commerce Commission | n/a |
| Fairfax/Stuff.co.nz (Search for Commerce Commission + merger + NZME + Fairfax) | | | |
| http://www.stuff.co.nz/business/83409047/commerce-commission-delays-fairfaxnzme-merger-decision-date-to-march-2017 | <ul style="list-style-type: none"> • Simon Tong, Fairfax NZ • Michael Boggs, NZME | <ul style="list-style-type: none"> • Commerce Commission | n/a |
| http://www.stuff.co.nz/business/81797755/commerce-commission-releases-submissions-on-nzme-fairfax-merger | n/a | n/a | <ul style="list-style-type: none"> • Allied Press (ODT) • Ashburton Guardian, Sun Media and Farming Lifestyles • E'Tu union • Gavin Ellis • Rod Oram |
| http://www.stuff.co.nz/business/opinion-analysis/86262856/rod-oram-nz-media-will-benefit-if-commerce-commission-denies-fairfaxnzme-merger | n/a | n/a | <ul style="list-style-type: none"> • Commerce Commission • Rod Oram |
| http://www.stuff.co.nz/business/opinion-analysis/86240563/shamubeel-eaqub-commerce-commission-makes-right-decision-on-fairfaxnzme-merger | n/a | n/a | <ul style="list-style-type: none"> • Shamubeel Eqaub |
| http://www.stuff.co.nz/business/86113185/Fairfax-NZME-could-consider-legal-challenge-to-mergers-early-no-from-Commerce-Commission | <ul style="list-style-type: none"> • Anne Callinan, Simpson Grierson • Michael Boggs, NZME • Simon Tong, Fairfax NZ • Matt Goodson, Salt Funds | <ul style="list-style-type: none"> • John Key (National) | <ul style="list-style-type: none"> • Mark Berry Commerce Commission • Paul Tolich, E'Tu union • Andrew Little (Labour) |
| http://www.stuff.co.nz/business/79848214/Fairfax-Media-APN-confirm-merger-talks-for-Fairfax-NZ-NZME | <ul style="list-style-type: none"> • Simon Tong, Fairfax NZ • Michael Boggs, NZME • Ciaran Davis, APN | <ul style="list-style-type: none"> • Amy Adams (National) • Andrew Little (Labour) • Clare Curran (Labour) | <ul style="list-style-type: none"> • Paul Tolich, E'Tu union |
| http://www.stuff.co.nz/business/industries/82718743/Fairfax-and-NZME-hit-back-at-merger-critics | <ul style="list-style-type: none"> • NZME/Fairfax | n/a | <ul style="list-style-type: none"> • Paul Tolich, E'Tu union |
| http://www.stuff.co.nz/business/83987630/Fairfax-and-NZME-merger-terms-show-more-cost-cutting-decisions-likely | <ul style="list-style-type: none"> • Simon Tong, Fairfax NZ • Grant Davies, Hamilton Hindin Greene | n/a | |
| http://www.stuff.co.nz/business/industries/85089936/mediaworks-sees-other-possibilities-if-fairfaxnzme-merger-rejected | <ul style="list-style-type: none"> • Communications Agencies Association of New Zealand (Caanz) | n/a | <ul style="list-style-type: none"> • Mediaworks |
| http://www.stuff.co.nz/business/82161341/More-submissions-on-media-merger-released | <ul style="list-style-type: none"> • Simon Tong, Fairfax NZ | n/a | <ul style="list-style-type: none"> • Coalition for Better Broadcasting • Anonymous ComCom submission • Beacon media • Alan Aldridge |
| http://www.stuff.co.nz/business/industries/80999403/Competition-watchdog-sets-out-expected-issues-in-Fairfax-NZME-merger | n/a | <ul style="list-style-type: none"> • Commerce Commission • Annelies McClure, Overseas Investment Office | n/a |
| http://www.stuff.co.nz/business/86611871/report-backs-commerce-commissions-view-on-merger-risk | n/a | n/a | <ul style="list-style-type: none"> • David Levy, Reuters Institute • Robin Foster |

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|---|---|--|---|
| http://www.stuff.co.nz/business/86212145/Fairfax-NZME-merger-plans-explained | <ul style="list-style-type: none"> • Simon Tong, Fairfax NZ • Michael Boggs, NZME • Communications Agencies Association of New Zealand (Caanz) | <ul style="list-style-type: none"> • Amy Adams (National) | <ul style="list-style-type: none"> • Commerce Commission • Clare Curran (Labour) • Paul Tolich, E'Tu union |
| http://www.stuff.co.nz/dominion-post/business/83409047/Commerce-Commission-delays-Fairfax-NZME-merger-decision-date-to-March-2017 | <ul style="list-style-type: none"> • Simon Tong, Fairfax NZ • Michael Boggs, NZME | <ul style="list-style-type: none"> • Commerce Commission | n/a |
| http://www.stuff.co.nz/business/industries/86276157/Fairfax-NZME-merger-Morningstar-analyst-doubts-status-quo | <ul style="list-style-type: none"> • Brian Han, Morningstar • Anne Callinan, Simpson Grierson | n/a | n/a |
| http://www.stuff.co.nz/business/86113185/Fairfax-NZME-merger-gets-draft-rejection-from-Commerce-Commission?cid=app-iPhone | <ul style="list-style-type: none"> • Michael Boggs, NZME • Simon Tong, Fairfax NZ • Anne Callinan, Simpson Grierson • John Key (National) | <ul style="list-style-type: none"> • Matt Goodson, Salt Funds | <ul style="list-style-type: none"> • Mark Berry Commerce Commission • Paul Tolich, E'Tu union • Andrew Little (Labour) |
| http://www.stuff.co.nz/business/industries/84545522/Overseas-Investment-Office-approves-Fairfax-NZ-NZME-merger | <ul style="list-style-type: none"> • Overseas Investment Office | n/a | n/a |
| http://www.stuff.co.nz/business/industries/86356130/Fairfax-boss-says-newspapers-under-threat-from-myopic-NZ-competition-watchdog | <ul style="list-style-type: none"> • Greg Hywood, Fairfax | <ul style="list-style-type: none"> • Paul Tolich, E'Tu union | <ul style="list-style-type: none"> • Commerce Commission |
| http://www.stuff.co.nz/business/industries/85722940/No-simple-link-between-media-competition-and-story-choice-says-US-professor | <ul style="list-style-type: none"> • Randal Picker, Chicago University | n/a | n/a |
| http://www.stuff.co.nz/business/opinion-analysis/86230976/Preventing-a-media-merger-would-imperil-journalism | <ul style="list-style-type: none"> • Joanna Norris, Fairfax Media NZ | n/a | <ul style="list-style-type: none"> • Commerce Commission |
| http://www.stuff.co.nz/dominion-post/business/80446902/Fairfax-NZME-media-merger-approval-sought | <ul style="list-style-type: none"> • Michael Boggs, NZME • Simon Tong, Fairfax NZ | n/a | n/a |
| Total pro/neutral/anti Voices | 63 | 17 | 49 |
| Number of Different institutional voices | 20 | 11 | 19 |
| Total Articles representing pro/neutral/anti positions | 31 | 14 | 22 |
| Total pro-viewpoint stories with no anti- viewpoints | 14 | - | |
| Total neutral-only or both pro and anti- viewpoints | - | 20 | - |
| Total anti-viewpoint stories with no pro- viewpoints | - | - | 5 |

The analysis above is very much descriptive, and we emphasise that a preliminary break-down of content is not a sufficient basis to draw firm conclusions about structural/editorial bias in the news coverage. Nevertheless, it does reveal some interesting patterns in the stuff.co.nz and nzherald.co.nz coverage of the NZME/Fairfax merger which would merit closer investigation. These include:

1. There is a larger overall number of pro-merger voices (63) compared with anti-merger voices (49)
2. The number of different institutional voices present in the overall coverage is roughly balanced, with 20 pro-, 11 neutral, and 19 anti-merger.
3. There is a larger overall number of articles including a pro-merger view (31) than neutral (14) or anti-merger viewpoints (22)
4. Although roughly half the stories included both pro-and anti-merger voices (note these may not represent those views with equal prominence), there is a larger number of stories representing pro-merger voices with no anti-merger viewpoint (14) compared with stories representing anti-merger voices with no pro-merger viewpoint (5).
5. The pro-merger voices were heavily represented (unsurprisingly) by NZME and Fairfax official statements or senior management, and also by financial sector analysts.
6. The anti-merger voices were primarily represented by the Commission (especially after the draft determination was announced) and E'tu union (which represents newswriters). Many of the other anti-merger voices were quotations from other stakeholder submissions to the Commission.

Despite methodological caveats, these very basic findings do raise some pertinent questions about how far the NZME/Fairfax coverage presented a balanced perspective on the merger. If one took the range of merger related submissions to the Commerce Commission as indexical of the relevant stakeholder and public interest perspectives meriting news representation, then one might hypothesise that balanced news coverage would reflect these viewpoints proportionally. Given that the majority of the submissions to the Commission on the merger expressed scepticism or opposition, the fact that the majority of voices in the NZME/Fairfax sample were pro-merger arguably reflects a disproportionate level of attention to pro-merger viewpoints. This may reflect the extent to which the merger issue was framed primarily as a technical business competition matter in which the views of financial analysts and industry figures were given greater consideration than the views of non-business perspectives or public policy considerations. However, that would not then explain the relatively low level of coverage afforded other media interests opposing the merger, especially given the prominence of NZME and Fairfax's own chief executives.

Moreover, insofar as the editorial assumption here is that the merger is primarily a technical competition matter, not an issue of public policy, it begs an important and substantive question in regard to how the notion of 'public benefit' in the Commerce Act is construed. The relative absence of public-interest perspectives in the overall coverage cannot be explained away on the pretext that such perspectives are *a priori* not germane to the legal definitions of competition law when the scope of that definition is itself a central issue of contestation in NZME/Fairfax's own objections to the Commerce Commission's decision.

While this very basic analysis is admittedly not conclusive, the CBB would suggest that there is *prima facie* evidence to suggest that the Fairfax/NZME coverage of the merger has not been as well balanced as it could have been. The priority afforded their own senior managers compared with those of industry rivals with their own vested interests is a concern, as is the limited representation of civic voices concerned about the impact of the merger on the quality and plurality of editorial/journalistic perspectives. Note this should not be interpreted as a criticism of the professional shortcomings of any individual reporter or editor- the findings do not measure this.

However, the CBB would suggest that if NZME and Fairfax maintain their claims that editorial plurality and independence would not be harmed by the merger and that the concerns of stakeholders concerned about such matters are misguided, then one might expect to see exemplary balance in the coverage of an issue in which the applicants have a clear vested interest. Although not blatant (and probably structural rather than instrumental) these findings raise concerns about potential bias in the overall preference for pro-merger voices and the framing of the merger as a technical matter broadly favourable to Fairfax/NZME.

The point here is not to invite the Commerce Commission to further investigate the NZME/Fairfax reports on the matter but to highlight the salience of taking into account considerations of the likely impact of the merger on editorial plurality. If there are concerns about how the applicants' own media outlets have represented their prospective merger thus far, then there must be even greater concerns about the potential for any merged entity to skew the overall pattern of news coverage on future issues of public concern where vested commercial interests might outweigh the editorial commitment to the public interest.
