

Economic Analysis of market definition relevant to the NZME – Fairfax Merger Proposal

Prepared for

TVNZ

Authorship

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Executive Summary

1. This report studies market definition in the context of the proposed merger between NZME and Fairfax. It represents the independent expert views of the author and relies on independent examination of a wide range of data and information sources cited below.
2. We have not had access to the confidential modelling undertaken by NERA for the Applicants or to un-redacted versions of the Applicants' submissions. Instead, we have worked from first principles and analysed time series data from 2004 on cover prices, advertising rates and readership data for the two major daily newspapers: the New Zealand Herald and the Dominion Post.¹
3. Based on the analysis reported in the body of this report, our current views on market definition are as follows.
 - a. Horizontally, there are several distinct category-specific markets that are relevant to assessing the proposed transaction;
 - b. Vertically, there is an increasingly important distinction between markets for the creation and wholesale provision of content, and the subsequent publication/distribution of that content;
 - c. At the distribution/publishing layer, there are distinct markets for the online and print supply of content.
4. Our reasons for distinguishing separate markets for the 'online' and 'print' supply of content are explained in the body of this report and rely on the following facts.
 - a. Both newspapers launched online versions more than 15 years ago (in 1998 for the New Zealand Herald and in 2000 for the Dominion Post / Stuff);
 - b. Our cover price and readership data show that prices for both physical newspapers doubled between May 2004 and May 2016, including 9 separate small but significant and non-transitory price increases (SSNIPs) for each;
 - c. Over the same period, readership declined by 24% and 28% for the Dominion Post and New Zealand Herald respectively, so reader revenues have increased materially;
 - d. Substitution by readers to the free online versions of both newspapers was therefore insufficient to undermine these price increases; and

¹ We sourced the advertising (at rate card values) and readership data from Nielsen Consumer and Media Insights and Nielsen Advertising Information Services (May 2004 to May 2016). Cover prices were supplied by NewsWorks.

- e. Over the same period, readership adjusted advertising rates in both printed newspapers have also increased materially.

1 Introduction

5. A merger has been proposed between Wilson & Horton Limited trading as NZME (NZME), Fairfax NZ Limited (Fairfax), and their respective parent companies (Applicants). The Applicants are seeking Commerce Commission approval. This report contains an economic analysis of some of the markets which are affected by the proposed transaction. It was commissioned by TVNZ and represents the independent expert views of the author.
6. This analysis relies on the application itself, the Commerce Commission's statement of preliminary issues (SOPI), submissions on the SOPI and responses to those submissions by the applicants and NERA, and a range of other sources as cited in this report.
7. It is well established that the purpose of market definition is to assist in exposing the underlying competition issues. As the High Court has noted "*the market is an instrumental concept designed to clarify the sources and potential effects of market power*".² We therefore begin this section by describing what problems might arise and then proceed to analyse the boundaries of markets that will assist in exposing and analysing these issues.
8. The applicants supply printed newspapers and websites that display similar but not identical content. The geographic reach of printed newspapers is often quite small (e.g. the Westport News) but websites reach readers all over New Zealand. It is common for regions to have just one locally focussed newspaper with a non-zero price to readers, along with one or more free newspapers. This suggests that inter-regional competition between newspapers may be relatively weak.
9. There may however be closer competition between the two most popular newspapers in the country (the Dominion Post and the New Zealand Herald) one of which is owned by each applicant. Similarly, the websites of the two applicants appear to compete with each other.
10. If so, this competition is likely to benefit final consumers (i.e. readers) in two ways:
 - a. Creating a contest of ideas and views, including through competition between the editorial stance that each of the applicants adopts on issues of the day; and
 - b. Preventing either of the applicants from instituting a paywall on their website.
11. The natural hypotheses arising from this analysis are that the proposed transaction may reduce both of these benefits by:
 - a. substantially lessening competition between the respective content and editorial teams in the market(s) they serve; and
 - b. exploiting this lessening of competition by creating a paywall on one or both of their websites.

² Telecom Corporation New Zealand Ltd v Commerce Commission, (1991), 4 TCLR, 473 at 500

12. To test whether either or both of these hypotheses can be rejected, we need to consider market definitions that help to expose them. In doing so, we will explain how the concepts of two-sided markets and cluster markets are relevant to the analysis.
13. Our primary tool for market definition is the SSNIP test, which begins with a narrow market definition and inquires whether a hypothetical monopolist of that market could profitably impose a small but significant and non-transitory increase in price above the competitive level. This test is widely accepted because it focuses on the extent to which consumers might switch away from a product in response to a price increase, which helps us understand the essence of the relevant competition.
14. In applying this test we need to consider so-called “cross-platform” effects because both of the applicants operate “platform”, or “two-sided” business models. Whether we consider a newspaper, a magazine or a newspaper website, there are two different types of “customer” and they are introduced to each other by what the economics literature views as a platform.
15. If the advisers to the applicants had not raised the concept of “cluster markets” we would not comment on it. Since they have, we also explain why this concept, which arises from consumer preferences for buying from one supplier rather than several, is not particularly helpful in analysing the matter at hand.
16. This report is structured as follows.
 - a. Section 2 examines the features of two-sided markets.
 - b. Section 3 considers cluster markets.
 - c. Section 4 analyses functional markets.
 - d. Section 5 deals with horizontal market definition.
 - e. Section 6 investigates the possible distinction between print and online markets.
 - f. Section 7 presents our conclusions on market definition.

2 Two-Sided Markets

17. Newspapers and their websites are both examples of “platforms” that serve “two-sided markets”. The distinguishing feature of such a market is that its provider can influence the volumes of users accessing its platform by altering the *structure* of prices it sets for each group, as distinct from the overall or average level of its prices. Rochet and Tirole (2006) put it this way:

“A market is two-sided if the platform can affect the volume of transactions by charging more to one side of the market and reducing the price paid by the other side by an equal amount; in other words, the price structure matters, and the platforms must design it so as to bring both sides on board.”

18. Notice that the “*volume of transactions*” is an important assumption in this quote. Some platforms, such as eftpos and trademe, directly facilitate transactions between users on either side. In such cases the users that pay for the service (eg sellers on trademe) can directly recover the cost from the counterparty to the transaction, because there is a transaction.
19. The applicants’ platforms do not have this feature. Advertising is not what readers are seeking when they visit one of these websites or buy a newspaper, and while advertisers expect the profit from extra sales to cover the advertising cost, they are definitely not in the business of facilitating transactions. Newspapers and their websites are therefore said to be operating “non-transactional” platforms.
20. Some platform products have a zero price to readers. Examples include the numerous free newspapers in New Zealand and both of the applicants’ websites. A recent analysis of market definition in platform/two-sided markets has highlighted the risk of mis-interpreting zero prices.³

“The risk of neglecting one side of a two-sided market is particularly important when the product on the overlooked side is priced at zero. In such a case, one may, at first sight, think that firms are not competing on that side.”

21. In the case of non-transactional platforms, separate markets should be defined on each side. In this case, those sides can be broadly defined as comprised of readers and advertisers. It still remains to delineate the product, functional and geographic boundaries of these markets of course, and we address these topics below.

2.1 Product Differentiation

22. Product differentiation is common in the newspaper industry and the literature has distinguished between two types of differentiation, following Lancaster (1979).⁴ Horizontal product differentiation occurs when two products would both have positive demand if offered at the same price whereas products are said to be vertically differentiated if, when offered at the same price, only one of the products would be purchased.

³ Filistrucchi, L., D. Geradin, E. van Damme and P. Affeldt, 2014, “Market Definition in Two-Sided Markets: Theory and Practice”, *Journal of Competition Law & Economics*, 10, pp.293-339.

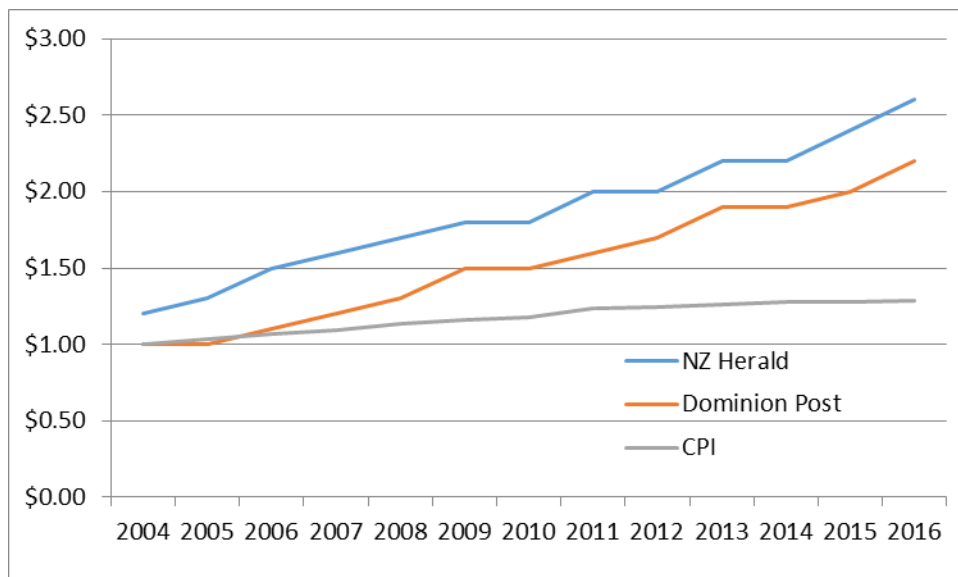
⁴ Lancaster, K., 1979, Variety, efficiency and equity, Columbia University Press, Chapter 2.

23. Filistrucchi et al (2014) argue persuasively that newspapers are vertically differentiated in the number of readers. If advertising prices were the same for all newspapers, advertising revenue would flow only to the newspapers with the largest readership. More likely, newspapers will set advertising rates that vary with readership, for print and online access.
24. Horizontal product differentiation also occurs in these activities however, due to heterogeneity on the reader side. Different media can co-exist at the same prices (for advertisers *and* readers) because they appeal to different demographic groups. The example offered by Filistrucchi et al (2014) is a sports newspaper and a financial newspaper.

2.2 Interaction between Platform Sides

25. Notice however that these two forms of product differentiation might arise endogenously from commercial interaction. Through a combination of reader pricing, editorial/news content and advertising content, publishers can segment both the advertising and reader sides of their platforms, catering to diverse preferences. This effect was seen as creating distinct, category-specific magazine markets in the Commerce Commission's recent Bauer determination.⁵
26. This is also why one needs to consider cross-platform effects when defining markets for the matter at hand. The SSNIP test remains a useful and relevant concept, but we may also need to check that its predictions remain robust even after cross-platform effects are considered.
27. To illustrate this point, consider the following history of cover prices for week-day copies of the New Zealand Herald and the Dominion Post.⁶

Figure 1: Cover Prices of Dominion Post and NZ Herald 2004-16 (Source NewsWorks, see footnote 1).

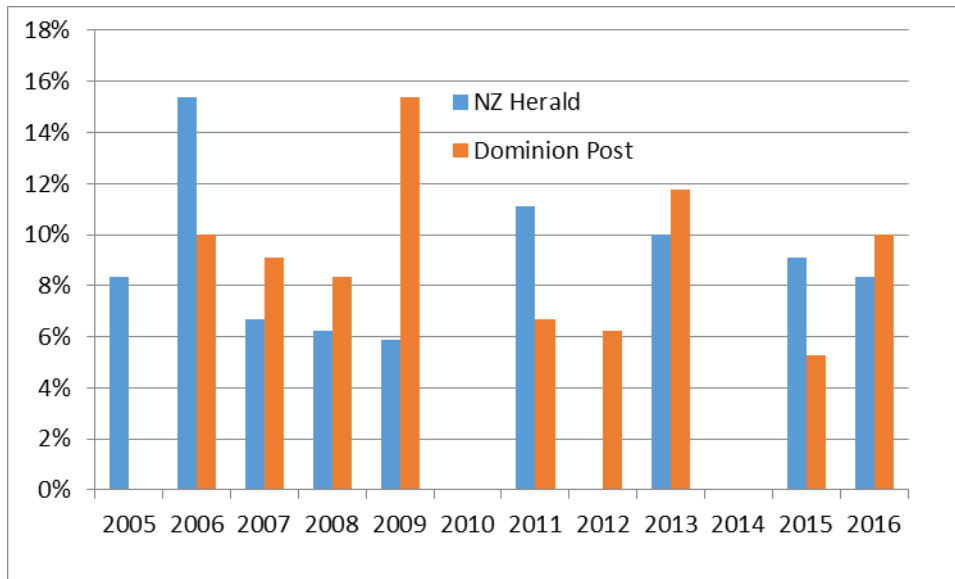


⁵ Commerce Commission, Bauer Media Group (NZ) LP / APN Specialist Publications NZ Limited, 23 January 2014.

⁶ The figure for each year is drawn from the first Wednesday in July of each year.

28. It is clear that reader prices have increased significantly over this period. Whereas the general basket of consumer prices increased by almost 30% over this period, cover prices went up by 120%.
29. Cover prices for both papers increased in nine of the twelve periods for which we have data. In all cases, the price increases were large enough to meet the normal 5% standard for a SSNIP test, and all were non-transitory (e.g. none were rescinded). The year-on-year price increases (shown in Figure 2 below) range between 5% and 15%.

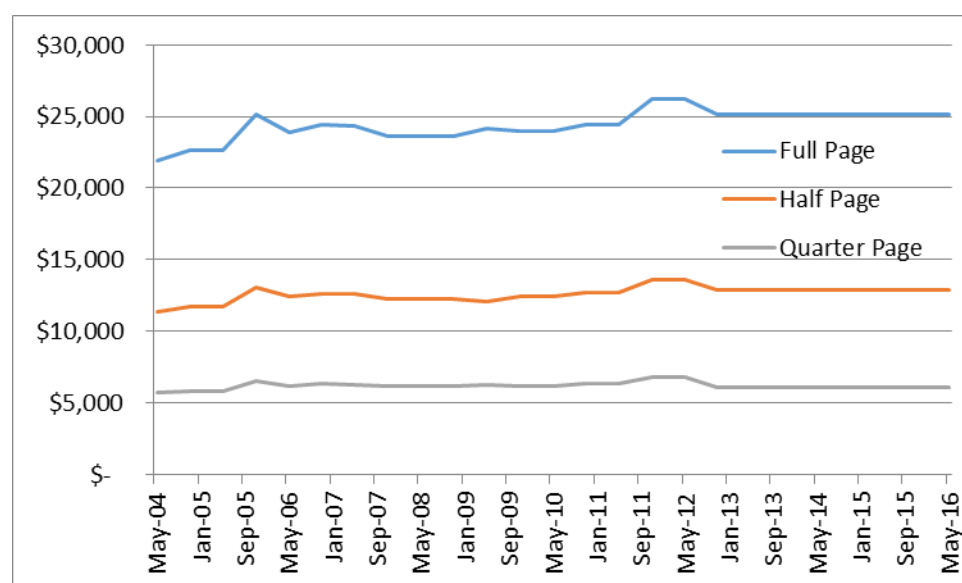
Figure 2: Cover Price Increases for NZ Herald and Dominion Post (Source NewsWorks, see footnote 1)



30. Since there are two sides involved here, we cannot immediately conclude that these price increases are profitable. That is because advertising prices will likely also have been changing over the same period and it is the total profit of the business platform (e.g. hard copies of the NZ Herald) that is relevant when using the SSNIP test.
31. To investigate the advertising side of these same platforms we obtained rate card prices for full-, half- and quarter-page advertising in both print newspapers over a similar time period. For both newspapers, the size of these advertisements changed during the sample period and we have scaled the later prices in direct proportion to the physical size of the advert to more accurately compare advertising prices over time.
32. In Figure 3 we show the New Zealand Herald's size adjusted advertising rates.⁷ These were generally increasing up until November 2012, at which point the print version had been changed to a much smaller tabloid format. Prices for each of these advertisements increased by 19% between May 2004 and November 2012 but have been unchanged since then.

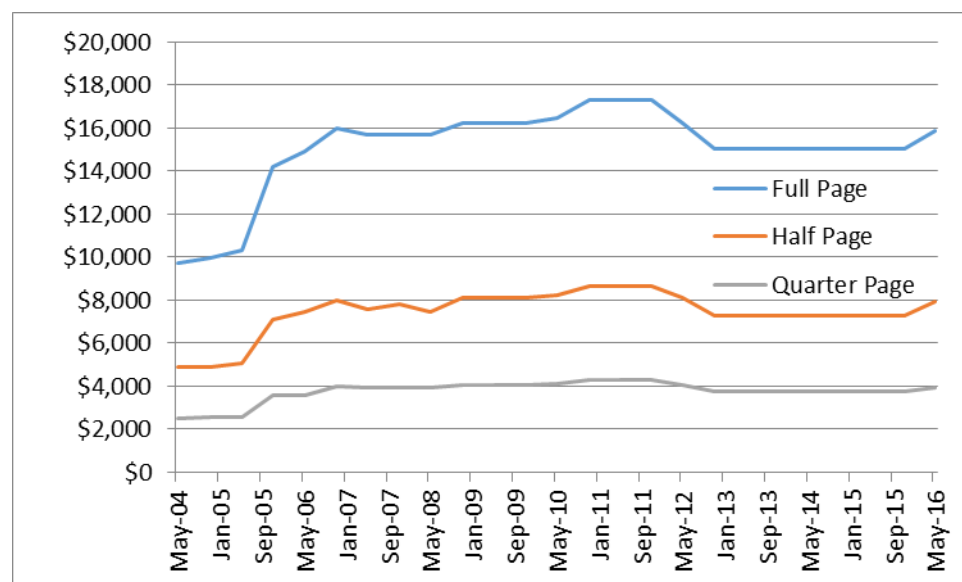
⁷ We scaled back the rate card prices after the NZ Herald switch to tabloid format, using the ratio of the page sizes before and after the format change.

Figure 3: Size Adjusted Rate Card Prices for Advertising in NZ Herald (Source Nielsen, see footnote 1)



33. The corresponding data for the Dominion Post are show in Figure 4.⁸ These rates also dropped in nominal terms when the NZ Herald adopted the tabloid format. Prior to that event, since May 2004, the Dominion Post's advertising rates increased by 61% for quarter-page adverts to 67% for full page adverts. After the NZ Herald switched to tabloid format, the Dominion Post's advertising rates were, like the NZ Herald's, flat in nominal terms, though they increased in the last date for which we have prices.

Figure 4: Size Adjusted Rate Card Prices for Advertising in Dominion Post (Source Nielsen, see footnote 1)



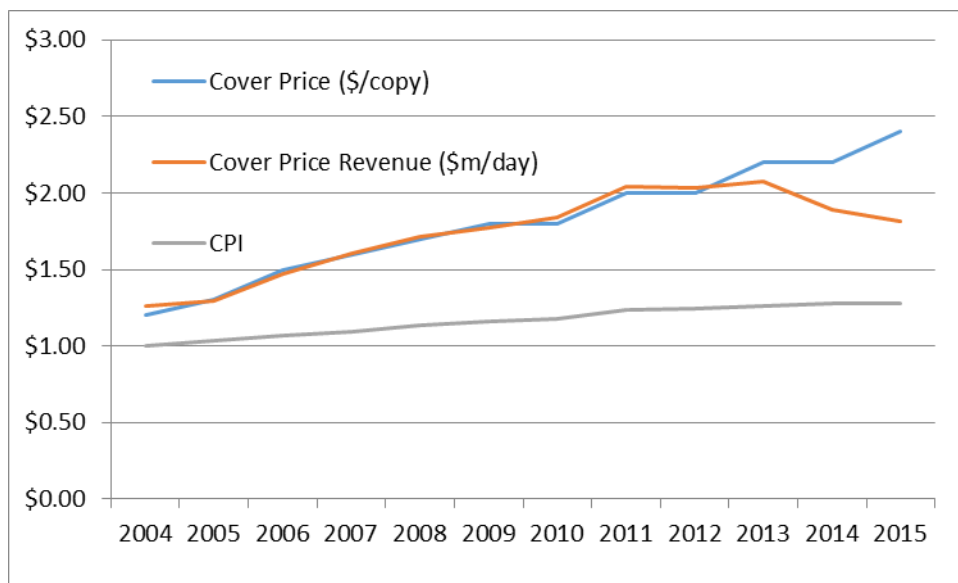
34. At a minimum, these data suggest that there is direct competition for advertising between NZ Herald and the Dominion Post.

⁸ These data were adjusted from November 2007 onwards to reflect the switch from a 56cm width to a 54cm width.

2.3 Circulation, Readership and Advertising

35. To further investigate this competition we requested matching circulation data for these two print publications. Both have been losing readers as cover prices have increased, but reader demand is quite inelastic. Over the 11 years from mid-2004 to mid-2015 (when our circulation data ends) both print newspapers doubled their cover prices and demand fell by 24% for the Dominion Post and 28% for the NZ Herald, implying 'own-price' elasticities of $-.24$ and $-.28$ respectively over this period.⁹
36. The overall impact is shown in Figure 5 for the New Zealand Herald.¹⁰

Figure 5: Cover Prices and Reader Revenue Trends for NZ Herald (Source NewWorks & Nielsen, see footnote 1)

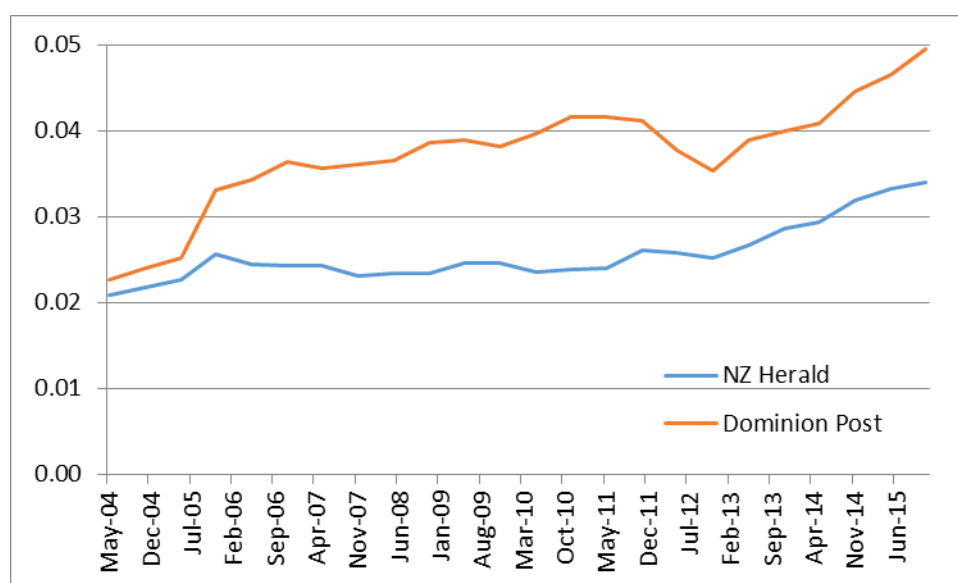


37. It therefore seems that readers of these newspapers are not particularly price sensitive. This is all the more notable given the rise of so many alternative sources of content during this period, including the advent of Facebook which launched early in 2004 and Twitter in 2006, and of course the Applicants' own websites.
38. To standardise the advertising prices of these print newspapers, we took the (space adjusted) price of a full page advertisement and divided it by readership. The results are shown in Figure 6.
39. Over the same sample period that both newspapers increased prices by 100%, the (readership adjusted) price of full page advertising increased by 63% for the New Zealand Herald and 118% for the Dominion Post. We have no information on the volume of advertising so we cannot calculate own-price elasticities.

⁹ These estimates are indicative only: they have not been derived from an econometrically estimate system of demand equations.

¹⁰ This figure should be viewed as showing trends, rather than actual reader revenue, since not all newspapers are sold at the cover price.

Figure 6: Full Page Advert Prices per Reader (Source Nielsen, see footnote 1)



40. Based on the above analysis it seems fair to draw the following inferences
- Competition appears stronger on the advertising side of these newspaper platforms than on the reader side;
 - These newspapers have correspondingly more market power over their readers than their advertisers;
 - Bearing in mind their 1998 and 2000 launch dates, the provision of websites by both newspapers has not materially affected reader-side revenues.

2.4 Inference from Two-Sidedness

41. The application (at ¶12.3) cites a 2006 speech from a former Chair of the Commerce Commission suggesting that in two-sided markets there is an “inbuilt mechanism for preserving competition”. This is simply incorrect. The effect referred to in the quote cited by the applicants arises from the cross-platform externality (e.g. advertisers care about the number of readers). While this effect can limit or moderate pricing decisions, this does not “preserve competition” in any meaningful sense for the following reasons.
42. It is well understood in New Zealand competition law that setting a high price is not necessarily considered anti-competitive because it reflects the exercise of market power rather than the undermining of a competitive process. If anything, setting a high price makes entry more attractive and therefore stimulates the incentives that drive the competitive process.¹¹
43. There can however be an anti-competitive effect from low pricing, if this is so low as to be predatory. So to the extent that cross-platform externalities lead to relatively low pricing (i.e. the

¹¹ For completeness, we note that creating strong incentives for more competition may not actually elicit more competition if there are barriers to entry or expansion by rival firms.

situation referred to by the applicants), there are no grounds for viewing this as an “inbuilt mechanism for preserving competition”.

44. No equivalent expression appears in the Commission’s current (2013) merger guidelines.¹² Instead, the guidelines simply point to the cross-platform effects and note that they may be influential in the competition analysis.

¹² Commerce Commission, Mergers and Acquisitions Guidelines, July 2013.

3 Cluster Markets

45. The concept of a cluster market was raised by NERA in its response to submissions on the SOPI, though not in its original submission. NERA argues that, on the reader side, there are more than five firms in the relevant market. This is said to be because of cluster markets and the effect of the internet in reducing economies of scope both for suppliers and consumers of news. It is not clear from NERA's response how it sees these cluster effects operating.
46. In a cluster market, buyers have demand for several distinct products or services and find it convenient to acquire them from the same supplier. These goods are "transactional" complements, even if (depending on pricing) they might actually be substitutes for consumers. For example, retail banking services include call accounts, savings accounts and term deposits.¹³ Many consumers that purchase all three of these services do so from the same supplier. Similarly, in retail telecommunications markets it is common for end-users to buy text message services, voice calling services, and internet access services from the same supplier.
47. In particular applications there may be a close parallel between the potential relevance of cluster markets and the definition of a functional market (discussed further below). For example, if for reasons of transactional convenience (a cluster market issue) there would be so little demand for a distinct component as to make third party supply unprofitable, then a separate functional market should not be defined.

3.1 Relevance of Pricing

48. In each of the cases discussed above (retail telecommunications and banking), it is possible to spread the purchase of individual services across different suppliers, but it is (usually) more convenient from a transactional perspective to buy them all from one supplier. This transactional complementarity is the defining feature of a cluster market: buyers could split their purchases across different providers but generally chose not to.
49. By contrast, newspapers and their associated websites offer a smorgasbord of content at a single price (sometimes zero). A single fixed bundle is offered to all readers by publishers seeking to attract a diverse set of readers by offering a wide range of content. In this way, reader heterogeneity is managed by trying to provide enough value to justify the cover price even though readers have very different interests and preferences.
50. This buffet-style of pricing can have important effects on consumer behaviour. For example Thaler (2004)¹⁴ distinguishes between "acquisition utility" which depends on the difference between consumers' *net* valuations of the good or service received (i.e. net of the price paid) and "transactional utility" which depends only on whether the consumer feels that they got a good deal. This difference can matter when a single price gives access to a smorgasbord of content, because if transactional utility concerns are relatively more important than "acquisition utility",

¹³ Banking provided one of the earliest examples of a cluster market. See US Supreme Court, *United States vs Philadelphia National Bank*, 374, US 321, 356, (1963), as discussed in Tim McCarthy, 1997, *Refining Product Market Definition in the Antitrust Analysis of Bank Mergers*, *Duke Law Journal*, 46, pp. 865-902.

¹⁴ Thaler, R.H. "Mental Accounting Matters." In Camerer, C.F., G. Loewenstein, and M. Rabin (eds.) *Advances in Behavioral Economics*. Russell Sage Foundation. Princeton, NJ: Princeton University Press, 2004, 74 – 103

total perceived demand might not respond to the price in an expected way. Recent empirical work on this point (in the pizza restaurant sector) has found that, with buffet-style pricing, price discounts can lead to reduced consumption.¹⁵

3.2 Relevance of Cluster Markets

51. The NERA report cites the cluster market concept to argue that, in the case of supplying “original New Zealand content and news” to readers, there are more than five suppliers.¹⁶ The NERA report has not argued or established that this is a distinct relevant market.
52. Nevertheless, if it were a distinct and relevant market, and that market were a cluster market, then it would be commercially infeasible to supply a subset of the products in the cluster. By the definition of cluster markets, there would not be enough demand to support a disruptive supplier that chose to offer just one part of the bundle.
53. Yet, as the NERA then notes, citing the NBR and interest.co.nz as examples, “*a large variety of specialist (news) content providers exist and appear to be viable*”. This evidence suggests that the cluster market concept does not apply in this matter. If there really is a cluster of products that all providers must offer, we would not observe the counter-examples cited by NERA.

¹⁵ Just, David R. and Brian Wansink (2011), “The Flat-rate Pricing Paradox: Conflicting Effects of ‘All-You-Can-Eat’ Buffet Pricing,” The Review of Economics and Statistics, 93, pp. 193-20

¹⁶ NERA, Response to Submissions on the SOPI. July 2016, Section 3.

4 Functional Markets

54. The NERA report does not attempt to define the relevant markets. However it does suggest that the applicants' websites are competing with Google and Facebook for "audience time" (p.12) and that they are "competing distribution channels" (p.13), and that "content publishers can be displaced by other publishers who better serve consumer demands" (p.16). While NERA places most emphasis on the publication and distribution of content, its report also acknowledges the applicants' roles as creators of news content (p.11):

"Stuff and nzherald.co.nz are close in product space as broad and in-depth creators of news content"

55. This naturally raises a question over whether there is a distinct market for the creation and sale of news content, located upstream from the publication and/or distribution activities. To focus this question more precisely: could a monopoly creator of New Zealand news content profitably increase the price of that content by a small but significant and non-transitory amount?
56. A distinct upstream market exists if there are no insurmountable technical barriers to trade and there is downstream demand for its output at cost-covering prices.
57. There are no serious technical barriers to upstream (non-retail) trade in content, broadly defined to include both news and entertainment and to include distribution in text or video format. This is evident from the regular sale and purchase of broadcast rights for premium sports and the regular use of syndicated columnists in newspapers. The same evidence also demonstrates the existence of downstream demand for third-party content. So there must be at least one upstream market for content creation.
58. In fact, there are many upstream markets for the sale and purchase of different types of content. This multiplicity of upstream content markets arises from the heterogeneity of consumer preferences in the downstream retail markets. Thus, for example, an article about some aspect of gardening is unlikely to be viewed as a substitute for a sports report or an article of crime news.

5 Horizontal Market Definition

59. This lack of substitutability between different content types was evident in previous Commerce Commission decisions such as the 2014 Bauer determination. In that case, the Commission found it unnecessary to define markets precisely, but it treated distinct categories of magazines as if they were separate markets.¹⁷
60. It is worth noting that the content offered in speciality magazines can overlap with content in newspapers and their associated websites. For example, both of the applicants' websites contain separate sections catering to "lifestyle", "entertainment" "travel" and "sport" topics, all of which are covered in specialised magazines. This shows that, in some cases at least, it is possible for entrepreneurs to select topics from within the single fixed bundles offered by newspapers and their associated websites and compete in a more specialised market.

5.1 Local News and Editorial Content Creation

61. Some of the distinct content markets, such as the "entertainment" category, draw largely on international news and events. In these cases the upstream content creation market may not be a market in New Zealand. Rather, the content is created outside New Zealand and imported and distributed/published for local consumers by the applicants and others.
62. Local news and editorial content does not have this feature however, so the associated content creation market lies within New Zealand. The market for local news and editorial content creation is arguably the most important of all markets relevant to this matter. This is because competitive markets process information about the offers of suppliers, and by allowing consumers to express their preferences, competitive markets end up reflecting those preferences.
63. In the case of the market for local news and editorial content, what suppliers offer are ideas that have the potential to shape the future of our society. Consumers benefit from unrestrained competition in the market for ideas, and have several channels through which their preferences across those ideas can be expressed, including
- a. Purchasing more content from suppliers who are reflecting their views; and
 - b. Participation in elections for representatives to many governance bodies including school boards, local authorities and central government.
64. The best known legal precedent for protecting competition in ideas is from the prominent jurist Oliver Wendell Holmes who argued in 1919¹⁸

"...that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market"

¹⁷ Commerce Commission, Bauer Media Group (NZ) LP / APN Specialist Publications NZ Limited, 23 January 2014.

¹⁸ <http://www.theatlantic.com/national/archive/2013/08/the-most-powerful-dissent-in-american-history/278503/>

65. Competition in ideas is sometimes described under the term “plurality”, but that term can also be used in a different way. For example, the applicants use the term (at ¶20.11(a)) to refer to the incentive for a news media monopolist to offer “*a sufficiently varied menu of programs in each time slot to appeal to every substantial group of potential television viewers in the market, not just the largest group*”.
66. This argument assumes that news and editorial content is just another category, like sport for example. That runs counter to the view that consumers benefit from the contest of ideas that emerges from the co-existence of diverse and competing news teams serving a competitive market news and editorial content market.
67. The Australian Competition and Consumer Commission has recently released draft Media Merger Guidelines that include guidance on the role of competition in fostering and maintaining a diversity of media “voices”. The ACCC considers that “*the diversity of media voices is interlinked with a number of issues the ACCC considers in its competition assessment under section 50 of the Act*”.¹⁹ This provision in Australia’s Competition and Consumer Act 2010 performs a similar role to s47 of New Zealand’s Commerce Act 1986.
68. To further examine this point, consider how a hypothetical media monopolist would treat the contest of ideas relating to possible future changes in the drafting of laws and regulations. There are some very clear predictions that emerge from this scenario. The media monopolist would have strong incentives to:
 - a. Oppose any nascent challenges to its monopoly, including by suppressing inconvenient arguments, for example arguments that might cite or be aligned with the above quote from Oliver Wendell Holmes;
 - b. Not publish any material critical of its advertisers; and
 - c. In the lead-up to an election, select and exclusively promote whichever party was most accepting of the above positions.
69. When combined with the apparently poll-driven nature of successful political parties,²⁰ these incentives could materially undermine the democratic foundations of New Zealand society. We conclude that:
 - a. The concept of media plurality extends to competition between ideas for the future evolution of New Zealand’s society and economy; and
 - b. This competition occurs in the distinct markets for the creation and distribution of local (New Zealand) news and editorial commentary.

¹⁹ ACCC, Draft Media Merger Guidelines, August 2016, paragraph 38.

²⁰ On election night in 2014 the Prime Minister congratulated his polling supplier, saying “he got his numbers right”. <http://thewireless.co.nz/themes/election/twvote-election-night-live>

70. The above reference to distribution is important because the value of content relies on it being distributed. We now consider whether online and print distribution services are in the same market or distinct markets.

6 Print and Online Markets

71. In its SOPI, the Commerce Commission noted its interest in *“whether separate product markets exist for the supply of online and print advertising and content”*. Since both of the applicants create local news and editorial content for print and online publication, we interpret the Commission’s interest as relating to the downstream markets. As explained in section 5 above, we consider that there is a distinct upstream market for the creation and supply of local (New Zealand) news and editorial content. Our focus in this section is on the market for the distribution of local (New Zealand) news and editorial commentary.
72. The applicants say (at ¶12.8) that even if there is a separate market on the consumer side for *“national online news and information services”* the proposed transaction *“will not give rise to a substantial lessening of competition”*. However they then argue that this *“narrow market definition”* should not prevail and (at ¶12.10) that it is *“not appropriate to draw distinctions between: online and print advertising; and print and online news/information services”*.
73. On the advertising side of the relevant platforms, we have no evidence to dispute the applicants’ view that there is a single market encompassing print and online publications. However, on the consumer side, we note that none of the applicants’ citations at paragraph 12.11 directly support the view that there is a single market for online and print supply of local news and editorial commentary. Most of the citations concern the advertising side and the remainder are insufficiently specific to carry precedent weight in this matter.
74. Neither do we find the NERA report helpful on this point. Section 2.3.3 of that report devotes nine pages to *“online competition”* on the *“reader side”* but only two of those pages concern competition for readers between online and print supply, the balance being devoted to online-online competition. Focusing on the question of online vs print, our reading of NERA’s argument is that these are in the same market because readership of print newspapers is declining while online views are increasing.
75. This argument begs several questions, the most important being:
- a. How the increasing price of printed news (see section 2) has been factored into the analysis; and
 - b. Whether a monopolist of the online distribution of local (New Zealand) news and editorial commentary could profitably implement a SSNIP.
76. We address these questions separately in the remainder of this section. In doing so, we consider the prospects for a profitable SSNIP in respect of two distinct activities in succession: print and online.

6.1 Print Price Effects

77. The SSNIP test is based on the sound premise that firms will not impose a SSNIP if doing so is unprofitable. We have nevertheless observed (section 2) that the cover prices for the New Zealand Herald and the Dominion Post have, on average, been subject to a SSNIP every year for

the last decade.²¹ It follows that this strategy must have been profitable *relative to the counterfactual* facing this supplier.

78. The New Zealand Herald website was launched in 1998, some eight years before our first observation on its cover price. The corresponding Stuff website launched in 2000. It is inconceivable that the management and board governing this business, when deciding to increase cover prices, ignored the way its website might affect the response of readers. Even if these groups initially under-estimated the response, they would have had a decade to realise any error and stop increasing cover prices.
79. We do not know the counterfactual perceived by the respective management and board governing the New Zealand Herald and the Dominion Post. However, assuming rational profit maximising behaviour, we can be confident that these groups believed, for 10 years, that it was profitable to keep pushing up cover prices.
80. From a SSNIP test perspective, this analysis indicates that print and online versions of the New Zealand Herald are not seen by the governing board and management as being in the same market. Notice that this analysis applies to the complete set of content, not just to one or more distinct content-type markets.

6.2 Online SSNIP Prospects

81. Consider now the prospects of implementing a SSNIP in respect of online publication of local (New Zealand) news and editorial commentary. This is a relatively narrow product dimension but an important one for the reasons articulated by Oliver Wendell Holmes and discussed in section 5.1 above.
82. While we do not have access to the Applicants' data and information, it is clear from Tables 2 and 3 of the TVNZ submission that the Applicants' websites are by far the most important online sources of local news and editorial commentary for New Zealand consumers. In this case it is likely that they are constrained by competition between each other from implementing a SSNIP by means of some kind of paywalls, despite the international popularity of this practice.²²
83. If this analysis is correct then the applicants may be involved in a version of the well-known Prisoners' Dilemma game:²³ each would be better off by colluding to implement paywalls, but they are legally prohibited from doing so. Section 27 of the Commerce Act prevents them from colluding to both implement a paywall, and neither is willing to lead by unilaterally doing so, because of the fear that the other will not follow.

²¹ By contrast, NERA (at p.9) say that "*prices have been rising marginally in real terms*"

²² <http://www.bloomberg.com/news/articles/2013-11-14/2014-outlook-online-publishers-paywall-strategy>

²³ <http://www.econlib.org/library/Enc/PrisonersDilemma.html>