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## COMMERCE COMMISSION

### **Decision No. 395**

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

**Independent News Auckland Limited**

and

**Review Publishing Co Limited**

**The Commission:** M J Belgrave (Chair)  
M N Berry  
P R Rebstock

**Summary of Proposed Acquisition:** Independent News Auckland Limited seeks clearance to acquire from Review Publishing Co Limited certain assets associated with the magazine New Zealand Fisherman.

**Determination:** Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition.

**Date of Determination:** 16 June 2000

**CONFIDENTIAL MATERIAL IN THIS REPORT IS  
CONTAINED IN SQUARE BRACKETS [ ]**

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## **THE PROPOSAL**

- 1 On 26 May 2000, the Commission registered a notice pursuant to section 66(1) of the Commerce Act 1986 (the Act) seeking clearance by Independent Newspapers Auckland Limited (INL) to acquire from Review Publishing Co Limited assets comprising the magazine New Zealand Fisherman masthead, advertiser database, goodwill, website and work in progress (including subscriptions and advertising as at settlement).

## **THE PROCEDURES**

- 2 Section 66(3) of the Act requires the Commission either to clear, or to decline to clear, a notice given under section 66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period. An extension of four working days was sought by the Commission and agreed to by the applicant. Accordingly, a decision on the application is required by Friday 16 June 2000.
- 3 The applicant sought confidentiality for the fact of the application, and a confidentiality order was made in respect of the fact of the application until Monday 5 June 2000. The applicant also sought confidentiality for specific information contained in the notice, and a confidentiality order was made in respect of this information for a period of 20 working days from the Commission's determination of the notice. When the confidentiality order expires, the provisions of the Official Information Act 1982 will apply.
- 4 The Commission's determination is based on an investigation conducted by its staff. In the course of the investigation Commission staff obtained further information from the applicant, other magazine publishers, the Magazine Publishers Association, major advertisers, fishing and boating retailers, and booksellers.

## **THE PARTIES**

### **Independent News Auckland Limited (INL)**

- 5 INL is a publicly listed media company with interests in the publishing of newspapers and magazines, and in commercial printing. INL also has a 49.6% shareholding in Sky Network Television Limited.
- 6 INL's major shareholder is News Limited, with 49.44%. Details of INL's group structure and subsidiary companies are provided in Appendix 1.
- 7 Of particular interest to this application is INL's ownership of "New Zealand Fishing News", a monthly magazine circulated throughout New Zealand. INL also publishes the magazine titles "Fish & Game New Zealand", and "Boating New Zealand".
- 8 INL also owns Gordon and Gotch (NZ) Limited, a magazine marketing and distribution company. Distribution of magazines is discussed further at paragraphs 32 - 34.

### **Review Publishing Co Limited (RPC)**

- 9 RPC is an Auckland-based magazine publisher. Among its titles, RPC publishes "New Zealand Fisherman", the subject of this application.
- 10 RPC also publishes "Sea Spray", "NZ Baby & Child", and a number of grocery trade publications. These publications are not included in the proposed acquisition.

## THE RELEVANT MARKETS

### Introduction

- 11 The purpose of defining a market is to provide a framework within which the competition implications of a business acquisition can be analysed. The relevant markets are those in which competition may be affected by the acquisition being considered, and in which the application of section 47(1) of the Act can be examined.
- 12 Section 3(1A) of the Act provides that:
- “. . . the term ‘market’ is a reference to a market in New Zealand for goods and services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them.”
- 13 Relevant principles relating to market definition are set out in *Telecom Corporation of New Zealand Ltd v Commerce Commission*,<sup>1</sup> and in the Commission’s *Business Acquisition Guidelines* (“the Guidelines”).<sup>2</sup> A brief outline of the principles follow.
- 14 Markets are defined in relation to three dimensions, namely product type, geographical extent, and functional level. A market encompasses products that are close substitutes in the eyes of buyers, and excludes all other products. The boundaries of the product and geographical markets are identified by considering the extent to which buyers are able to substitute other products, or across geographical regions, when they are given the incentive to do so by a change in the relative prices of the products concerned. A market is the smallest area of product and geographic space in which all such substitution possibilities are encompassed. It is in this space that a hypothetical, profit-maximising, monopoly supplier of the defined product could exert market power, because buyers, facing a rise in price, would have no close substitutes to which to turn.
- 15 A properly defined market includes products which are regarded by buyers or sellers as being not too different (‘product’ dimension), and not too far away (‘geographical’ dimension), and are therefore products over which the hypothetical monopolist would need to exercise control in order for it to be able to exert market power. A market defined in these terms is one within which a hypothetical monopolist would be in a position to impose, at the least, a “small yet significant and non-transitory increase in price” (the “*ssnip*” test), assuming that other terms of sale remain unchanged.
- 16 Markets are also defined by functional level. Typically, production, distribution, and sale occurs through a series of stages, with markets intervening between suppliers at one vertical stage and buyers at the next.

### Print publications

#### *Product Market*

- 17 In considering previous applications involving the media, the Commission has concluded that, while there is competition at the fringes, there are separate markets for each media form (print media, television, and radio), and that for each medium there are two symbiotically linked product markets. One market relates to the dissemination

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<sup>1</sup> (1991) 4 TCLR 473.

<sup>2</sup> Commerce Commission, *Business Acquisition Guidelines*, 1999, pp. 11-16.

of news, information and entertainment, while the other is for the provision of advertising services.

- 18 Print publications generally cover daily and weekly newspapers, community newspapers, magazines, and other printed material.
- 19 There are a wide range of print publications in New Zealand, covering many interests. Magazine titles in the main fall to be considered as either “general interest” or “special interest” publications. Of particular interest to this proposal is the breadth of titles that potentially fall within the relevant market.
- 20 The applicant submits that, while fishing titles generally fall into the classification of leisure or lifestyle publications, they are targeted principally to readers who are amateur fishermen and/or boat owners. These titles typically provide information about fishing locations in New Zealand and elsewhere, fishing techniques, tackle and equipment, recreational boating, safety, transport, accommodation, and marine cuisine.
- 21 The applicant therefore submits that the appropriate market is that for fishing, boating and related activities. Included in this category are publications dealing with outdoor activities such as hunting and duckshooting.
- 22 The above approach to defining the market is to focus upon “demand-side” factors. Another approach to market definition is to consider “supply-side” possibilities. There is a close relationship between this approach to market definition and the consideration of “near entrants” when examining potential constraint from market entry.
- 23 In this application, taking a supply-side perspective, consideration needs to be given to the ability of publishers to introduce new titles, or “re-position” existing titles, quickly. This would be likely to result in a wider market definition than that taken following a demand-side analysis. The Commission recognises that there are some arguments available that would support a broader market. However, the Commission proposes to test the application against the narrower market directed by demand-side considerations. The supply-side substitutability factors that might have lead to a wider market definition are nevertheless considered by the Commission in its assessment of potential competition later in this document. In adopting this approach the Commission notes that if no dominance concerns arise in the narrower market, it is unlikely that any dominance concerns will arise in any market of wider definition.
- 24 Publishers and advertisers agreed that print titles fell within a market for recreational fishing and boating activities. They advised of a “complementarity” between fishing and boating. Industry sources commented that approximately 90% of boats in New Zealand are “trailer boats”, used for recreational fishing and boating activities (such as water skiing). With this in mind, many “marine” publications contain articles and advertising of both a fishing and boating nature.
- 25 There appears to be a degree of overlap in the nature of articles and advertising in fishing and boating magazines. Fishing titles contain articles and advertising about boating, such as boat tests, and advertising for boat manufacturers and outboard motors. Similarly, boating titles contain articles related to fishing, as well as advertising of fishing-related products.
- 26 The applicant has also submitted that hunting titles, such as “Rod & Rifle” and “NZ Outdoor” should also be included in this market. The Commission found little support for this view. Hunting was considered by publishers and advertisers as forming its own specialist category. While there is a small degree of fishing-related material in hunting

magazines, the Commission understands that it is included as a “point of interest” only, and is not considered as a component of the overall theme of the magazine. The Commission notes that both Rod & Rifle and NZ Outdoor are predominantly focused on hunting-related activities, information and advertising.

- 27 The applicant submits further that “NZ Professional Skipper” and “Seafood New Zealand” be included in this category. “NZ Professional Skipper” is the official journal of the Maritime Transport Industry. It is an “industry” publication, and contains editorial and advertising for commercial boating and fishing interests. Similarly, “Seafood New Zealand” (which incorporates “NZ Professional Fisherman”) is also an industry journal, targeting commercial readers and advertisers. Both publications contain information such as legislation, industry technology, commercial training, industry association news, and seafood retailing.
- 28 Again the Commission found little support from publishers and advertisers for industry-related publications to be included in this market. The “professional” publication was considered to cater to the commercial fishing and boating industries, and to offer little interest to recreational fisherman/boat-owners and advertisers.
- 29 The Commission therefore proposes to assess the application with regard to magazine titles in the category of recreational fishing and boating only.

#### *Geographic Market*

- 30 The geographic extent of the markets affected by the proposed acquisition is a national market. The applicant and other publishers of recreational fishing and boating magazines all publish for a national audience. Publications are available through subscription, bookshops, supermarkets and service stations throughout New Zealand.
- 31 Consequently, for the purposes of analysing the competition issues raised by this proposal, the Commission proposes to define a national market.

#### **Distribution services**

- 32 Distribution of magazines and print publications is normally handled by a distributor. Sales by subscription only can be managed by a publisher directly. There are a number of distributors operating, the major providers being Gordon and Gotch (owned by the applicant) and Netlink (owned by Australian Consolidated Press). A third, smaller, national operator is Independent Magazine Distributors. In addition to these parties, there are a number of smaller regional operators.
- 33 It is noted that NZ Fisherman is currently distributed by Gordon and Gotch. If the proposal were to be implemented, there would therefore be no change in the distribution sector. The Commission understands that, in general, distribution contracts are typically for no set period, but include a notice of cancellation period of three months. Placement into retail stores is generally managed by the distributor, with some input from the publisher (though arrangements may vary). This is mainly due to the distributor’s knowledge of retail outlets and likely sales in particular areas. The display placement of publications on the shelves is managed by the retailer.
- 34 The proposal is unlikely to alter the distribution market, and the presence of Netlink provides a competitive alternative to Gordon and Gotch. Given these factors, the Commission does not propose to consider distribution services further.

## Conclusion on market definition

- 35 The Commission considers that the following markets are relevant for the consideration of the present proposal:
- the national market for the provision of advertising services in the print medium in respect of recreational fishing and boating activities; and
  - the national market for the provision of news, information and entertainment services in the print medium in respect of recreational fishing and boating activities.

## COMPETITION ANALYSIS

### Introduction

#### *The Dominance Test*

- 36 Section 47(1) of the Commerce Act prohibits certain business acquisitions:

- “No person shall acquire assets of a business or shares if, as a result of the acquisition, -
- (a) That person or another person would be, or would be likely to be, in a dominant position in a market; or
  - (b) That person’s or another person’s dominant position in a market would be, or would be likely to be, strengthened.”

- 37 Section 3(9) of the Commerce Act states:

“For the purposes of sections 47 and 48 of this Act, a person has ... a dominant position in a market if that person as a supplier ... of goods and services, is or are in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market and for the purposes of determining whether a person is ... in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in a market regard shall be had to-

- (a) The share of the market, the technical knowledge, the access to materials or capital of that person or those persons:
- (b) The extent to which that person is ... constrained by the conduct of competitors or potential competitors in that market:
- (c) The extent to which that person is ... constrained by the conduct of suppliers or acquirers of goods or services in that market.”

- 38 The test for dominance has been considered by the High Court. McGechan J stated:<sup>3</sup>

“The test for ‘dominance’ is not a matter of prevailing economic theory, to be identified outside the statute.”

...

“Dominance includes a qualitative assessment of market power. It involves more than ‘high’ market power; more than mere ability to behave ‘largely’ independently of competitors; and more than power to effect ‘appreciable’ changes in terms of trading. It involves a *high degree of market control*.”

- 39 Both McGechan J and the Court of Appeal, which approved this test,<sup>4</sup> stated that a lower standard than “a high degree of market control” was unacceptable.<sup>5</sup> The Commission has acknowledged this test:<sup>6</sup>

<sup>3</sup> *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC)

<sup>4</sup> *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA)

<sup>5</sup> *Commerce Commission v Port Nelson Ltd* (1995) 5 NZBLC 103,762 103,787 (HC)

“A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint by competitor or customer reaction.”

40 The Commission’s *Business Acquisitions Guidelines* state:

“A person is in a dominant position in a market when it is in a position to exercise a high degree of market control. A person in a dominant position will be able to set prices or conditions without significant constraint by competitor {or} customer reaction.”

...

“A person in a dominant position will be able to initiate and maintain an appreciable increase in price or reduction in supply, quality or degree of innovation, without suffering an adverse impact on profitability in the short term or long term. The Commission notes that it is not necessary to believe that a person will act in such a manner to establish that it is in a dominant position, it is sufficient for it to have that ability.”<sup>(p21)</sup>

41 The role of the Commission in respect of an application for clearance of a business acquisition is prescribed by the Commerce Act. Where the Commission is satisfied that the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of a dominant position in a market, the Commission must give a clearance. Where the Commission is not satisfied, clearance is declined.

42 The Commission applies the dominance test in the following competition analysis.

### **The National Market for the Provision of Advertising Services in the Print Medium in respect of Recreational Fishing and Boating Activities**

#### *Market Concentration*

43 An examination of market concentration may give a useful first view of whether a merged firm may be constrained by other participants, and thus on the extent to which it may be able to exercise market power.

44 The *Business Acquisitions Guidelines* specify certain “safe harbours” which can be used to assess the likely impact of a merger in terms of s 47 of the Act -

“In the Commission’s view, a dominant position in a market is generally unlikely to be created or strengthened where, after the proposed acquisition, either of the following situations exist:

- the merged entity (including any interconnected or associated persons) has less than in the order of a 40% share of the relevant market;
- the merged entity (including any interconnected or associated persons) has less than in the order of a 60% share of the relevant market and faces competition from at least one other market participant having no less than in the order of a 15% market share.” (p 17)

45 These safe harbours recognise that both absolute levels of market share, and the distribution of market shares between the merged firm and its rivals, is relevant in considering the extent to which the rivals are able to provide a constraint over the merged firm. The Commission went on to state (at page 17) that:

“Except in unusual circumstances, the Commission will not seek to intervene in business acquisitions which, given appropriate delineation of the relevant market and measurement of shares, fall within these safe harbours.”

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and *Commerce Commission v Port Nelson Ltd* (1996) 5 NZBLC 104,142 104,161 (CA)

<sup>6</sup> *Business Acquisition Guidelines*, Section 7



- 46 Although, in general, the higher the market share held by the merged firm, the greater the probability that dominance will be acquired or strengthened (as proscribed by s 47 of the Act), market share alone is not sufficient to establish a dominant position in a market. Other factors intrinsic to the market structure, such as the extent of rivalry within the market and constraints provided through market entry, also typically need to be considered and assessed.
- 47 There are a number of publications that relate to recreational fishing and boating activities. These are sold either by subscription, or through newsagents, supermarkets and service stations.
- 48 In New Zealand, circulation figures of magazines are collated, audited and reported by the Audit Bureau of Circulations (ABC). The Commission has received circulation figures from ABC for “New Zealand Fishing News”, “Fish & Game NZ”, “Boating New Zealand”, and “New Zealand Fisherman”. However, the other publications in this market are not members of the ABC, and therefore do not provide data for audit purposes. The Commission has received circulation figures for those competing publications directly from the publishers. This information is shown below in Table 1.

**Table 1**  
**Publications featuring Recreational**  
**Fishing and Boating Activities**

<b>Publication</b>	<b>Timing</b>	<b>Price</b>	<b>Owner</b>	<b>Annual Circ. (000)</b>	<b>Market Share (%)</b>
NZ Fishing News	Monthly	\$4.95	INL	[ ]	[ ]
Fish & Game NZ	Quarterly	\$6.95	INL	[ ]	[ ]
Boating NZ	Monthly	\$5.95	INL	[ ]	[ ]
NZ Fisherman	Monthly	\$4.95	Review Publishing	[ ]	[ ]
<b>Combined entity</b>				[ ]	[ ]
Trade-A-Boat	Monthly	\$4.50	ACP	[ ]	[ ]
Marine Scene	Monthly	\$3.95	Scene Publications	[ ]	[ ]
Bayfisher	Monthly	\$2.95	Bayfisher Publishing & Printing Limited	[ ]	[ ]
Fishing Action	Monthly	\$4.95	Malcolm Halstead	[ ]	[ ]
NZ Propeller	Bi-monthly	\$6.50	DMB Publishing	[ ]	[ ]
Southern Fishing & Boating	Monthly	\$7.95	Allan Burgess	[ ]	[ ]
Sea Spray	Monthly	\$5.90	Review Publishing	[ ]	[ ]
NZ Troutfisher	Monthly	\$4.50	PW Storey & Assoc	[ ]	[ ]
<b>Total</b>				[ ]	<b>100</b>

- 50 On the basis of the above figures, the combined entity’s market share is estimated to be [ ]%.
- 51 From this data, the combined entity’s market share falls outside the Commission’s “safe harbours” (refer paragraph 44). However, as stated earlier, the fact that a proposed acquisition may lead to a market share falling outside these “safe harbours” does not necessarily mean that it will be likely to result in the acquisition or strengthening of a

dominant position in a market. Additional factors must also be considered before a conclusion on dominance is reached. These factors are discussed below.

### *Existing Competition*

- 52 The applicant submits that the combined entity would continue to be constrained by the conduct of existing competitors. The applicant submits that the number of publications in this market has risen from two ten years ago, to approximately fifteen today. The applicant points to the existence of these rival publications as evidence of existing competition in this market.
- 53 The Commission notes that there are a number of other titles currently in the market, however the Commission does not (as discussed in the market definition) necessarily agree that all the titles submitted by the applicant are direct competitors in the recreational fishing and boating market. Notwithstanding this, there are established titles such as Marine Scene, NZ Propeller and Sea Spray available nationally.
- 54 While the publications in Table 1 are nationally distributed, “Southern Fishing & Boating”, “Fishing Action “ and “Bayfisher” may be described as “regional” publications. As noted earlier, Southern Fishing & Boating and Fishing Action both have a focus on the South Island, while Bayfisher is published in Tauranga and concentrates upon the Bay of Plenty region. [
- ]
- 55 The regional nature of smaller publications is suited to local retail advertising and service suppliers in particular regions. These smaller publications commonly contain advertising for charter operations, accommodation, and local fishing and boating retailers. The local nature of the publication provides an attractive advertising option for these advertisers, as opposed to advertising in a national title. The Commission has been advised that regional publications have increased in popularity in Australia, and that the trend is expected to develop in New Zealand.

### *Potential Competition*

- 56 In the Commission’s view, a business acquisition is unlikely to result in a dominant position in a market if the threat of new entrants acts as a significant constraint on behaviour in that market. An assessment of the nature and extent of that constraint represents a key element of the Commission’s assessment of competition and market dominance. Evaluation of the weight to be given to the possibility of new entry requires assessing the conditions of entry, and identifying any barriers to entry. If these barriers are high in aggregate, the likelihood of new entry is diminished.
- 57 The applicant submits that there are low barriers to entering the market, and the relative ease and speed with which a new publisher can enter is a real constraint.
- 58 Industry sources advised that there are relatively low barriers to entry into magazine publishing. The fundamental requirements of magazine publishing are editorial material, advertising, production systems, printing, and distribution.
- 59 The Commission understands that editorial material can be readily sourced from contributors, acting as independent contractors. Contributors range from qualified journalists to casual writers, forming a pool of contributors that can be accessed depending upon the targeted interest group and theme of the publication.

- 60 Advertising is sourced from local and national advertisers, depending upon the target and strategy of the publication. Advertising can be received either directly from advertisers, or through advertising representatives.
- 61 The Commission has been advised that production systems can be as simple and cost-effective as desktop publishing software, through to large-scale computerised systems. Printing and distribution functions can be contracted out. There are a large number of printing firms nationally that provide competitive printing services. As noted earlier, distribution can be contracted through one of three major distribution providers, smaller regional operators, or managed through direct channels and subscription.
- 62 Entry is likely to occur either through a national title, or a regional publication. The costs involved in entering into or expanding into fishing and boating activities will be less for an existing participant. Australian Consolidated Press (ACP), publishers of “Trade-A-Boat”, estimated that entry at a scale similar to the combined entity’s title would cost between [ ]. The financial cost of entry for regional titles is significantly lower. Bayfisher advised that its entry cost was [ ], and Fishing Action advised that its entry was effected for approximately [ ].
- 63 Entry through a regional publication does not necessarily indicate that a publication is of interest only to readers and advertisers in that particular geographic region. Rather, it is a common approach to deal with the inherent risks of entry, and the fact that market share can be built up only gradually over time.
- 64 Given the above factors, the Commission concludes that barriers to entry are not onerous and are unlikely to be a significant hurdle for a properly financed new entrant.
- 65 Industry sources advised further that the ability to “re-position” an existing title is as significant a constraint as new entry. This practice involves an established publication introducing more fishing and/or boating content into its magazine, than that currently offered. Re-positioning of a magazine is seen by industry sources as a straightforward and readily available response to favourable market conditions.
- 66 There are a number of New Zealand publications that cover outdoor recreation interests, as well as the fishing and boating “industry” publications referred to in paragraph 27 above. These titles, listed below in Table 2, may be regarded as near entrants to the recreational fishing and boating market.

**Table 2**  
**Fishing Industry and Outdoor Recreation Titles**

NZ Professional Skipper	Quarterly	\$5.50	Maritime Transport Industry	[ ]
Seafood NZ	Monthly	\$5.90*	NZ Seafood Industry Magazine Limited	[ ]
Rod & Rifle	Bi-monthly	\$5.50	Rod & Rifle Magazines Limited	[ ]
NZ Outdoor	Bi-monthly	\$5.95	NZ Outdoor Magazines	[ ]
Dive NZ	Bi-monthly	\$3.95	Dive New Zealand/Sea Tech Ltd	[ ]
Adventure NZ	Bi-monthly	\$6.00	Starlight Publishing	[ ]

\* subscription only

67 It is likely that re-positioning of an established magazine, or the entry of a new magazine by an incumbent publisher, is likely to involve much lower costs than *de novo* entry.

68 ACP publishes “Trade-A-Boat”, a trader style publication focusing on the sale of recreational boats. Trade-A-Boat has a monthly circulation of [ ] copies. [

]

69 Expansion to existing titles is also a possibility for an incumbent publisher. [

]

70 [

]

71 Examples such as these suggest that competitive responses to the behaviour of the merged entity, or to market conditions generally, could be effected immediately. The threat of expansion by an existing magazine title or by an incumbent publisher is therefore regarded as an effective constraint upon the attempted exercise of market power by the merged entity.

#### *Other Media*

72 There are a number of other outlets through which advertisers may promote their products. These include advertising flyers and direct mail. Some outlets, such as direct mail, are viewed by advertisers as an effective alternative to magazines. Other advertisers commented that direct mail is effective, when included as a supplement to a publication. Television and radio advertising were not considered as effective forms of advertising.

73 A number of advertisers advised that they had previously utilised print advertising, but were now increasingly using the Internet as the main form of advertising. The Internet offered an inexpensive and immediate channel for placing products and services before consumers. One advertiser commented that it offered 20 products on a full-page print advertisement, and 500 products on its website. The website offered a cheaper advertising outlet, and also allowed for direct sales to consumers through credit card facilities and e-mail technology. A further advertiser advised that, faced with an increase in print advertising rates, it would likely increase promotion of its website, and associated e-mail catalogue.

74 The Commission concludes that there is likely to be some additional constraint on the combined entity from other media outlets.

#### *Countervailing Power*

75 The applicant submits that advertisers, if faced with an unacceptable advertising rate increase by the combined entity, could immediately place advertising with alternative publications, change to newspaper advertising or regional publications in key

population areas, or move to alternative media, particularly direct mail or catalogue, insert or internet.

- 76 Publishers and advertisers in fact submitted that major advertisers (in particular) could actually resist advertising rate increases, due to the large advertising contribution they make to the magazine. While the exact nature of this countervailing power was not made clear, publishers and advertisers generally agreed that major advertisers, controlling a significant advertising budget, would have sufficient power to constraint the merged entity from increasing advertising rates above competitive levels. One advertiser commented further that advertisers can group together to produce their own advertising publications.

*Conclusion on the market for the provision of advertising services in the print medium in respect of recreational fishing and boating activities*

- 77 The proposed acquisition will result in an aggregation of market share in this market. However, there are a number of existing competitors in the market, offering both national and regional publications. Further, if the market conditions are attractive, entry conditions are unlikely to represent a major barrier to any prospective entrant wishing to enter the market, or to existing participants “repositioning” an existing title so as to offer more fishing and boating related content. The threat of entry, or expansion, is likely to provide an effective constraint upon the behaviour of the combined entity.
- 78 Given these factors, the Commission concludes that the acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in the national market for the provision of advertising services in the print medium in respect of recreational fishing and boating activities.

**The Market for the Provision of News, Information and Entertainment Services in the Print Medium in respect of Recreational Fishing and Boating Activities**

*Existing Competition*

- 79 Existing competitors in the market for the provision of news, information and entertainment services in the print medium include those publications listed above in Table 1.
- 80 In addition to those publications in Table 1, there are a number of publications produced by fishing clubs, boating clubs, and interest groups. As the Commission has not determined the circulation figures of such publications, it has listed again those publications from Table 1 as a starting point for consideration of this market. Due to its focus on classified and commercial advertising, Trade-A-Boat has not been included in this market. Table 3 sets out publications containing news and information about recreational fishing and boating activities.

**Table 3**  
**Publications featuring Recreational**  
**Fishing and Boating Activities**

<b>Publication</b>	<b>Timing</b>	<b>Price</b>	<b>Owner</b>	<b>Annual Circ. (000)</b>	<b>Market Share (%)</b>
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NZ Fisherman	Monthly	\$4.95	Review Publishing	[ ]	[ ]
<b>Combined entity</b>				[ ]	[ ]
Marine Scene	Monthly	\$3.95	Scene Publications	[ ]	[ ]
Bayfisher	Monthly	\$2.95	Bayfisher Publishing & Printing Limited	[ ]	[ ]
Fishing Action	Monthly	\$4.95	Malcolm Halstead	[ ]	[ ]
NZ Propeller	Bi-monthly	\$6.50	DMB Publishing	[ ]	[ ]
Southern Fishing & Boating	Monthly	\$7.95	Allan Burgess	[ ]	[ ]
Sea Spray	Monthly	\$5.90	Review Publishing	[ ]	[ ]
NZ Troutfisher	Monthly	\$4.50	PW Storey & Assoc	[ ]	[ ]
<b>Total</b>				[ ]	<b>100</b>

- 81 On the basis of the above figures, the combined entity's market share falls outside the Commission's "safe harbours" (refer paragraph 44). However, further factors must be considered before a determination as to dominance can be made. These factors are considered below.
- 82 In addition to the titles in Table 3, and the various publications produced by fishing and boating clubs, there are also a number of imported magazine titles available in New Zealand, providing news and information on a wide range of fishing and boating topics, including (but not limited to) new products and techniques, overseas holiday locations, and fishing and boating stories.
- 83 Daily and community newspapers also carry columns specifically reporting such fishing and boating information as river and tidal forecasts, technical and equipment information, and competition reports.

#### *Potential Competition*

- 84 In addition to the current availability of news and information services in the print medium, the entry and expansion conditions for this market closely resemble those conditions analysed for the advertising market (refer paragraphs 56 – 71). It is not proposed to repeat that analysis here, other than to record that those constraints are likely to prohibit the combined entity from exercising any degree of market power.

*Other Media*

- 85 The applicant submits that news and information directed at recreational anglers and boaties is found in other media, including radio, television, direct marketing, and the Internet.
- 86 Publishers advised that these other media outlets provide a strong degree of competition at present, and this is expected to continue if the current proposal proceeded. Examples of news and information about fishing and boating include radio and television programmes, and Internet websites (both New Zealand and overseas).
- 87 Given these factors, the Commission considers that there is likely to be some additional constraint on the combined entity provided by these other media outlets.

*Conclusion on the national market for the provision of news, information and entertainment services in the print medium in respect of recreational fishing and boating activities*

- 88 There is a wide range of news and information services in the print media, relating to recreational fishing and boating activities. In addition, entry and expansion are characterised by low barriers, and are considered to provide an effective constraint upon the behaviour of the merged entity.
- 89 In addition, other media outlets such as radio and television programmes, and the Internet provide an effective constraint upon the merged entity.
- 90 Given these factors, the Commission concludes that the acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in the national market for the provision of news, information and entertainment services in the print medium in respect of recreational fishing and boating activities.

**OVERALL CONCLUSION**

- 91 The Commission has considered the impact of the proposed acquisition in the following markets:
- the national market for the provision of advertising services in the print medium in respect of recreational fishing and boating activities; and
  - the national market for the provision of news, information and entertainment services in the print medium in respect of recreational fishing and boating activities.
- 92 Having regard to the factors set out in section 3(9) of the Commerce Act, and all other relevant factors, the Commission is satisfied that the proposed acquisition would not result, or would not be likely to result, in any person acquiring or strengthening a dominant position in a market.

**DETERMINATION ON NOTICE OF CLEARANCE**

93 Accordingly, pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance to Independent Newspapers Auckland Limited to acquire from Review Publishing Co Limited assets comprising the magazine New Zealand Fisherman masthead, advertiser database, goodwill, website and work in progress (including subscriptions and advertising as at settlement).

Dated this 16<sup>th</sup> day of June 2000

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M J Belgrave  
Chair



## APPENDIX 1

### Independent Newspapers Limited – Group Structure<sup>7</sup>

#### INL Divisions:

- Central Community Newspapers Ltd - newspaper publishing
- The Christchurch Press Company Ltd - newspaper publishing
- Gordon and Gotch (NZ) Ltd - magazine marketing and distribution
- Herald Communications Ltd - newspaper publishing and commercial printing
- Independent Community Newspapers Ltd - newspaper publishing and commercial printing
- Independent News Auckland Ltd - newspaper and magazine publishing and commercial printing
- The Manawatu Standard Ltd - newspaper publishing and commercial printing
- The Marlborough Express Newspaper Co Limited – newspaper publishing and commercial printing
- The Nelson Mail Ltd - newspaper publishing
- Southcom Ltd - computer services bureau
- The Southland Times Company Ltd - newspaper publishing
- Taranaki Newspapers Ltd - newspaper publishing and commercial printing
- Terabyte Interactive Ltd (75.5% interest) - Internet and multimedia developers
- Waikato & King Country Press Ltd - newspaper publishing and commercial printing
- Wellington Newspapers Ltd - newspaper publishing

#### Other Subsidiary Companies:

- Alpha Mining Ltd
- Alpha Petroleum Ltd
- Auckland Star Ltd
- Independent Newspapers Finance Company Ltd
- Independent Newspapers Services Ltd
- Independent Publishers Ltd
- Matamata-Te Puke Newspapers Ltd
- Mercer Investments Ltd
- The New Edition Ltd
- News Media Ownership Ltd
- Network Distributors Ltd
- Propaganda Press Ltd
- Zaroma Investments Ltd

#### Associated Companies:

- Sky Network Television Ltd (49.6%)
- Business Media Group Limited (49.9% interest)
- NZPA Investments Ltd (44.28% interest)
- NZ Press Association Ltd (33.7% interest)
- Newspaper House Ltd (42.7% interest)

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<sup>7</sup> Refer Independent Newspapers Limited Annual Report, 1999, pp54-55.