Submission on the merger authorisation application by Fairfax NZ Ltd and Wilson & Horton Ltd

Contents

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1 General position

This submission is on the merger authorisation application by Fairfax NZ Ltd and Wilson & Horton Ltd. It focuses on the impact of the proposed merger on New Zealand news consumers and the general public of New Zealand. We offer no opinion on the impact of the proposed merger for advertisers, nor on the impact of the merger on the commercial radio market.

The authors are all academics in New Zealand universities who have conducted research on the New Zealand media industry and the profession and performance of journalism.

We oppose the merger because we believe it will result in a significant reduction of competition, and that this will have detrimental consequences on product quality for news consumers and the New Zealand public at large. We disagree with many assertions made in the merger authorisation application and support our arguments here with persuasive evidence.

2 Definition of the market

The definition of 'market' is crucial to competition analysis. Define the market widely and more competitors appear; define it narrowly and there is less competition. The applicants have defined 'market' in a nonsensically broad manner. They have included as competition almost every possible source of information and entertainment available to New Zealanders; their list includes a news website that has not been launched, a gossip website that has since folded, and a University-based site that features summaries of research.[1] The 1986 Commerce Act (s. 3) defines 'market' as being about substitution: a market consists of goods and services that are *closely substitutable* [our emphasis] for each other. It is clear that many of the competitors the applicants name do not compete in the same market; at best they are partial competitors offering partial substitution.

There are difficulties in defining the markets in which Fairfax NZ and Wilson & Horton are operating. The media sector is no longer so easily divisible – as it was even 20 years ago – between newspapers, broadcasting, film and telecommunications. The Australian Media and Communication Authority has argued that 'regulation constructed on the premise that content could (and should) be controlled by how it is delivered is losing its force'.[2] Nonetheless, the claims in the merger application concerning the fundamental shift in

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[1] Unnamed website (p. 67 of the application); Scout (p. 67); the Briefing Papers (p. 49).

[2] Cited in Flew. (September 2012). The convergent media policy moment. Institute for Culture and Society Occasional Paper Series, University of Western Sydney, p. 5. Retrieved from http://www.westernsydney.edu.au/__data/assets/pdf_file/0004/396373/ICS_Occasional_Paper_Series_3_3_Flew_Final.pdf

audience news consumption patterns (e.g section 6.28-6.34) are overstated. Audience research in 2014 by New Zealand On Air and Colmar Brunton suggests that many new media platforms complement rather than supplant traditional media usage and that even if people do access more content on new devices, the patterns of news consumption still reflect traditional habits: radio and newspapers in the morning, and television in the evening.[3] Indeed, the applicants' own document (fig 16, p. 61) cites Nielsen research showing that 36% of weekly New Zealand audiences for news/information use print-only, while a further 31% use both print and online, suggesting newspapers are still used by 67% of the public. Thus it is erroneous to assume that media convergence, which has led to increased platform neutrality and content agnosticism in the advertising market, applies also to audience consumption of content.

The applicants have many business units including:

- Daily newspapers
- Community newspapers
- Sunday newspapers
- Stuff.co.nz and nzherald.co.nz websites
- Magazines
- Neighbourly.co.nz
- Grabone.co.nz
- Advertising services
- Commercial radio stations

Source: Application pp. 6-8 and appendices 1 and 2.

Our submission is concerned with the news products: newspapers and the online news websites stuff.co.nz and nzherald.co.nz. There is considerable sharing of resources between the different media within each firm; stories written for print newspapers are also written for online inclusion; regional and community newspapers within the same stable share stories (e.g. Fairfax's *Rodney Times* and *NorWest NewsBrief*); regional newspaper stories are included on the main news websites, sometimes under their original mastheads (e.g. *Northern Advocate* stories on nzherald.co.nz); and radio hosts from ZB have columns in the *New Zealand Herald*. This sharing of resources between different media outlets within each company strengthens the power and audience reach of the applicants, and makes it harder for new entrants to compete.

As the applicants assert, newspapers and websites have many competitors for their readers' attention and money. However, the distinctive 'product' made by Fairfax NZ and Wilson & Horton are media items with a focus on original New Zealand content and news, and the public and civic affairs of this country. (Note: relevant data on local content levels is redacted from the public version of the applicants' submission and we are therefore unable to

[3] New Zealand On Air. (June 2014) *Where are the audiences? Benchmark survey of New Zealanders' media consumption*. Prepared by Colmar Brunton. http://www.nzonair.govt.nz/document-library/2014-audience-research-full-report/

comment on it) If the market is defined in terms of this distinctive product, then the applicants have fewer true competitors: MediaWorks, Radio New Zealand and Television New Zealand being the only daily news providers that have comparable scale (in terms of audience reach) and scope (in terms of the range of stories covered). Nonetheless, in terms of online reach, MediaWorks, Radio New Zealand and Television New Zealand rank well behind the applicants.[4]

When defining market boundaries, New Zealand news content is *not* substitutable with any other genre. This is partially true in the case of the wholesale side (advertising) where maximising eyeballs is the aim, although this does not apply to local/regional advertising in New Zealand as a local shop in Invercargill has no use for readers in Auckland or Australia. But this conception is fundamentally incorrect in the case of the retail (audience) side because clearly news does not substitute for other media content genres. Movies on Netflix do not fulfil the same function as news, and international news does not substitute for domestic New Zealand news. The BBC does not cover daily events in the Waikato. The domestic market for news in New Zealand is discrete and this is where there is a risk of an over-concentration of market power if the merger proceeds.

As the NERA paper commissioned by the applicants notes (table 4, pp. 29-38) there is limited substitutability, and thus limited price competition, on both the advertising and retail side for local/regional newspapers. This analysis also noted that the news content between metropolitan and regional newspapers is different, and concedes (section 3.1.1 p.21) that, although other media may impose some degree of price constraint, 'offline platforms like television are not technically in the same antitrust market'. This undermines the applicants' insistence that media convergence/homogenisation creates a single market. Indeed, the applicants' document tends to conflate the recognition that platforms/reception devices have become more substitutable, with the notion that media *content forms* have become substitutable (e.g. section 16). As pointed out above, while the latter is partially true on the wholesale (advertising) side it is fundamentally incorrect in respect of the audience (retail) side of the news market.

The applicants suggest that several competitors have the potential to expand their reach, should the market power of the newly merged entity abuse its dominant position. Potential competition, or contestability, refers to an ideal world where there are no sunk costs, low barriers to entry and new players can gain scale and revenue quickly enough to challenge the incumbent before the incumbent can retaliate strategically against new competition. While there are lower entry costs in starting a website than printing and distributing a newspaper, it is nonetheless challenging to gain scale and recognition in terms of audience and revenue, at levels sufficient to challenge existing businesses. Many new ventures have started but struggled with finances and to overcome reader preferences for established news sources, or been proposed but never eventuated. As the annual media ownership reports compiled by

[4] Chris Keall. (23 June 2016*).* Fairfax-NZME merger: Just how dominant are Stuff and the Herald in online mainstream news? *National Business Review*. http://www.nbr.co.nz/big-ck-p

the Journalism, Media and Democracy Research Centre (JMAD) at Auckland University of Technology clearly demonstrate, the New Zealand media market remains highly concentrated, and proposed new ventures, such as the non-profit journalism.org, never materialised.[5] There is no recent example of a successful new competitor in the New Zealand news market that has grown sufficiently in size to be a genuine competitor to the incumbents (This is not the case with advertising; witness TradeMe). The last new entrant in the Auckland daily newspaper market was the *Auckland Sun* (1987-1988), which lasted only eleven months, despite the substantial resources of its corporate owners. There have been no new online websites that carry a range of original New Zealand news content started in the last decade, except as the online versions of existing news organisations. Earning revenue online is hard. The *National Business Review* recently celebrated its 4000th subscriber, which is considered impressive but is hardly a competitor for stuff.co.nz with a unique monthly readership of 2,044,000 in May 2016 (the latest survey results available). Many niche sites have been established but, as we explain below, these do not offer close substitution for the applicants' products. Further, they struggle financially, and for readership, against the already dominant market position of the applicants and their high profile brands.

The notion of contestability – that competitors will magically arise to challenge the newly merged applicants should they abuse their position – therefore needs to be dismissed; it is simply not plausible in a market the size of New Zealand, especially given the existing high ownership concentration levels.

The merger application lists many competitors and potential competitors for the newly-merged firm – almost thirty pages of them. But these are partial competitors with a much smaller audience, often with a niche product or niche geography, and thereby covering only a fragment of the market covered by the applicants. They are not closely substitutable products and they are not in the same market.

Here is a partial list of the New Zealand and global competitors the applicants put forward (pp. 46-51) in an attempt to demonstrate the amount of competition in their market. We comment on their substitutability in each case:

- **Allied Press** is a private company that owns the *Otago Daily Times (ODT)* and a range of other print and boutique television operations in the South Island. As the applicants comment, the *ODT* does carry national and international news, but news from outside southern New Zealand is sourced from other publications. For example, Auckland news is reproduced from the *New Zealand Herald*, and while the *ODT* has one accredited member of the Parliamentary Press Gallery, most Wellington-centric political stories on its website are reprints from NZME, with whom it has a content-sharing deal. This deal, along with an advertising one, would come under threat should the merger proceed, potentially undermining Allied Press' successful business model.

[5] Merja Myllylahti (2011-2015). JMAD New Zealand Media Ownership Reports. Retrieved from http://www.aut.ac.nz/study-at-aut/study-areas/communications/media-networks/journalism,-media-and-democracy-research-centre/journalists-and-projects/new-zealand-media-ownership-report

The applicants claim Allied Press could 'readily expand' to other parts of New Zealand and hence is potential competition for the applicants; the implausibility of such a development is identified in our comments above about the feasibility of contestability. Revenue for Allied Press currently comes from impressive print penetration in their local markets[6], not their website traffic which was ranked 143rd in the May 2016 Neilson Media View Survey[7]. Yet presumably any assault on the nationwide news market would be online and likely yield little revenue. Assaulting the applicants' daily print news products would have very high costs and the new product would struggle to gain new readers fast enough to be sustainable. Allied Press at present does not have the scale or scope of news coverage to be closely substitutable for the applicants' main websites; while contestability exists in theory, it is doubtful Allied Press would be able to scale-up sufficiently to provide close substitution.

- **Scoop** is a news aggregation website that produces a small amount of original content; mostly it groups together comment and press releases generated by others. Scoop currently has four full-time and one part-time staff members. Despite fundraising efforts and paid partnerships with many news producers – who not only provide Scoop with free content but also pay to be associated with the site – Scoop can only afford very modest salaries in the range of $30-40,000 for editorial staff.[8] Scoop's focus and resourcing mean it is not a close substitute for the applicants.

- **Bauer Media Group**'s magazines such as the *New Zealand Listener* and *North & South*, do provide more in-depth coverage of a small range of news stories, but are not substitutes for broad news coverage or the news of the day function of the applicants.

- The ***National Business Review*** covers business news not general news and, as already noted, has a subscriber base of 4,000. Many stories are behind a paywall and are therefore inaccessible to most readers of Fairfax and Wilson & Horton news websites. This is not a close substitute for the applicants' websites in terms of scale or scope.

- **Business Desk** has a focus on business news and is behind a paywall, reducing its audience size. It provides business stories to a range of other publications and a paid subscription service for readers who wish news delivered to their e-inbox. It has a staff of seven journalists. This is not a close substitute for the applicants' websites in terms of scale or scope.

- **Hive News** has most of its content behind a paywall. There is a daily summary of stories with a government and business focus, up to five reads per person allowed free per month. Two and a half years old, Hive News has two listed staff members including high profile journalist Bernard Hickey, who still writes and comments for

[6] Allied Press. 'The Otago Daily Times'. https://www.alliedpress.co.nz/publications/otago-daily-times
[7] Chris Keall. (23 June 2016*).* Fairfax-NZME merger: Just how dominant are Stuff and the Herald in online mainstream news? *National Business Review*. http://www.nbr.co.nz/big-ck-p
[8] Gordon Campbell. (25 May 2016). Editorial Comment. Retrieved from http://www.scoop.co.nz/stories/HL1605/S00054/editorial-comment-gordon-campbell.htm

other news organisations. This is not a close substitute for the applicants' websites in terms of scale or scope.

- **Interest.co.nz** has a business focus giving it a narrow range of content. It is therefore not a close substitute for the applicants.

- **The Spinoff** website describes itself as an 'online magazine which covers sports and pop culture'. It does not have a staff of reporters gathering and analysing the news. While some current issues are covered by the site, this is not comprehensive and not the primary focus of the site. Indeed, in a news report about the proposed merger, Spinoff founding publisher and editor Duncan Grieve conceded, 'Not a lot of actual reporting goes on…. And I, if I'm honest, can't ever see a period where we do breaking news or hard news reporting'[9].

- **Politik** has a focus on New Zealand politics and policy, providing analysis of issues but it does not cover daily political news. It has a small staff – only Richard Harman is identified - and is behind a paywall. This is not a close substitute for the applicants' websites in terms of scale or scope.

- **Investigate Daily** does not have its own journalists covering the news of the day. Most of its stories (surveyed 12 June 2016) are old and based around religious themes (such as 'the truth about Easter' in nine parts). The only daily news stories are an aggregation of stories from other news producers under the menu tab 'NZ news, breaking'.

- **Tangible Media** produces niche magazines and specialist news. It does not report on the news of the day, except news relevant to those in the marketing, media and advertising industries (e.g. The All Blacks end their association with Coca-Cola and join up with Gatorade). Its magazine titles – specialist lifestyle titles – do offer some competition in the magazine market for Wilson & Horton titles.

- **Sky TV** and **Māori TV** are listed as potential competition; again, see our comments on potential competition (contestability) above. Māori Television's mandate is to promote the use of te reo Māori; in an ideal world this would not preclude it becoming a major source of news and information, but it does conflict with the idea of the station becoming a close substitute for the general, mainstream news of Fairfax and Wilson & Horton. In order to tackle the applicants head-on in their markets, Māori TV would need a change to its mandate. This would be a political decision, not an economic or business one. Sky TV could change its offerings to provide accessible content that was a close substitute for Fairfax and Wilson & Horton, but it is currently experiencing its own issues adjusting to new technologies and competition in its

[9] Phil Pennington. (12 May 2016). Could online media step up post-merger? Radio New Zealand. http://www.radionz.co.nz/news/national/303643/could-online-media-step-up-post-merger

existing products.[10] It has not shown innovative and creative responses to the disruption of its old business model, which suggests it also would not have the strategies to thrive in the local news space, where the incumbents have the advantage of scale and audience loyalty.

- **Blogs**. Generally, the blogs listed as providing some content to readers (p. 49 of the application) do not provide daily news reporting. Most blogs listed provide commentary not news reporting, and in many cases rely on journalistic coverage of events by the main players, including Fairfax and Wilson & Horton, to be informed about the event in the first place, and to support their content. Few blogs have paid staff with expertise in investigating stories and writing them up according to journalistic norms. Scoop editor and journalist Gordon Campbell notes that blogs don't have the resources to do news gathering as they have even fewer resources than legacy newsrooms, and blogging's 'strength lies in its analysis and commentary'. He further states that the proposed merger between Fairfax and Wilson & Horton threatens the news gathering capability of two news organisations, and 'if there's a decline in news gathering capacity, this will damage the ability of the blogosphere to carry out its valuable contribution to the public discourse'.[11]

- Google News, Yahoo! News, *The New York Times*, BBC Online, Mail Online, Fox News, *The Guardian*, Al Jazeera English, CNN, MSM News and BuzzFeed (pages 49-51 of the application) do not produce original New Zealand news content of any significance. Yahoo! NZ, for example, has only a handful of editorial staff in New Zealand and is mainly directed by its Australian parent Yahoo7.[12] As such, these websites do not offer close substitutes for the applicants' distinctive core New Zealand news business. The case by the applicants that the market they are competing in is a global one applies a little better to advertisers but only weakly to audiences, for whom international content does not substitute for local content.

The applicants may conceivably compete with overseas media outlets for international news, even if nearly all of the international news published in New Zealand media is bought in from elsewhere.[13] No one can coherently argue that publications like *The Guardian*, *The New York*

[10] Paul Brislen. (9 June 2016) The Skodafone deal is driven by the battle with the dumb pipe. The Spinoff. http://thespinoff.co.nz/media/09-06-2016/the-skodafone-deal-is-driven-by-the-battle-with-the-dumb-pipe/

[11] Gordon Campbell, G. (13 May 2016). Gordon Campbell on the proposed media merger. Scoop. Retrieved from http://gordoncampbell.scoop.co.nz/2016/05/13/gordon-campbell-on-the-proposed-media-merger/

[12] Merja Myllylahti. (11 December 2015). JMAD New Zealand media ownership report 2015, page 32. Retrieved from http://www.aut.ac.nz/study-at-aut/study-areas/communications/media-networks/journalism,-media-and-democracy-research-centre/journalists-and-projects/new-zealand-media-ownership-report

[13] Donald Matheson. (2012). People like us: The cultural geography of New Zealand's international news. In M. Hirst, S. Phelan and V. Rupar (Ed.), *Scooped: The politics and power of Journalism in Aotearoa New Zealand* (pp. 128-140). Auckland: AUT Press; Sean Phelan & Thomas Owen. (2010). The Paradoxes of Media Globalization: On the Banal "World" of New Zealand Journalism. *International journal of Communication*, 4, 27-5.

Times, BBC online, and others (application p. 49) are competitors in the production of news about the public life of cities like Auckland, Wellington, Napier, Christchurch. Palmerston North and Whanganui. Therefore, we think the notion of a distinct New Zealand news media market must remain central to any definition of market and assessment of the alleged public benefits (application p. 74) of the merger.

As the applicants note, the online news market is hard to define precisely. News websites such as Yahoo! may not be well used for news but for other services such as email, search and as default homepages. Facebook is a major site where individuals come across news. However, much of that news is not actively sought out but interspersed with other activity. In the United States, the Pew Research Center suggests only 12 percent of Facebook users go to the site seeking news.[14] A survey of Yahoo! New Zealand local news was taken on May 30 2016 by Merja Myllylahti. 'Local news' consisted of only seven stories, of which only one was produced by Yahoo! New Zealand. Yahoo! New Zealand cannot be considered substitutable for stuff.co.nz or nzherald.co.nz in terms of the quantity or scope of local news, or its news gathering or analysing capacity.

Yahoo! NZ local news May 30 2016:

	No. of stories	Story	News source	Total number
Auckland	2	Zuri the giraffe sets off on road trip Murder trial due to start in Auckland	NewstalkZB; Newswire NZ (owned by AAP)	2
Hawkes Bay	0			0
Christchurch	1	Another jolt for residents of Christchurch	Newswire NZ – story not retrievable	1
Wellington	1	Explosion at Wellington meat works	Newswire NZ	1
Nelson	1	Third case of measles in Nelson	Newswire NZ	1
Waikato	0			0
Otago	0			0
Northland	1	Person dies in truck in Northland	Newswire NZ	1
Dunedin	1	Inappropriate driver lurks around school	Newswire NZ, Yahoo NZ	1

Source: https://nz.news.yahoo.com/local/

[14] Mitchell et al. (2013). The role of news on Facebook: Common yet incidental. Pew Research Center, 24 October. Retrieved from http://www.journalism.org/2013/10/24/the-role-of-news-on-facebook/

3 Increase in concentration; lessening of competition

Whichever way you measure market share, the proposed merger will result in a substantial increase in market dominance and lessening of competition in the New Zealand news market.

In the daily newspaper market, the applicants' combined share of the market in terms of circulation is 89.3%, with fewer than 50,000 readers of the total national audience of 460,000 readers controlled by other providers. We explain how extraordinary this figure is in an international context, in section 4.5.

The following table is the circulation data from the Audit Bureau of Circulation for daily newspapers, for the period ending 31 March 2016.[15]

Newspaper title - dailies	ABC data to 31/03/16	Newspaper group	Total circulation by owner
The Press	57 022	Fairfax	210 965 (45.9%)
The Dominion Post	57 367		
Waikato Times	22 831		
Manawatu Standard	10 075		
Taranaki Daily News	16 317		
Marborough Express	6 075		
The Nelson Mail	10 598		
The Southland times	20 828		
The Timaru Herald	9 852		
New Zealand Herald	131 447	Wilson & Horton/NZME	199 436 (43.4%)
Northern Advocate	12 015		
Rotorua Daily Post	7 324		
Bay of Plenty Times	14 113		
Hawke's Bay Today	19 238		
Wanganui Chronicle	9 424		
Wairarapa Times-Age	5 875		
Otago Daily Times	34 578	Allied Press	38 548 (8.4%)
Greymouth Star	3 970		
Ashburton Guardian	4 375	Independent	4 375 (.95%)
Gisborne Herald	6 096	Independent	6 096 (1.3%)
TOTAL:			**459 420**

[15] Audit Bureau of Circulations. Circulation data. Retrieved from http://newspaper.abc.org.nz/audit.html?org=npa&publicationid=%25&mode=embargo&npa_admin=1&publicationtype=19&memberid=%25&type=%25

The applicants also have substantial holdings in the Sunday and community newspaper markets.

Calculations of market share based on daily audience or readers of the five big news companies in New Zealand – Fairfax NZ, Wilson & Horton, MediaWorks, Radio New Zealand and Television New Zealand – done by Peter Thompson of Victoria University and the Coalition for Better Broadcasting, gives the combined market share of the applicants at 32.6%, more than any other player. It makes sense to look at this cross-medium market as these companies are the only providers of daily New Zealand news comparable to the applicants' distinctive product. Peter Thompson has also calculated the Herfindahl Hirschmann Index (HHI) for the five main news providers. We discuss this further in section 4.5 of our submission, and there are more details about both sets of calculations in the submission made by the Coalition for Better Broadcasting.

The ratings for the top websites in New Zealand by unique monthly audience similarly show that for New Zealand news, the applicants have by far the largest online market share. Their combined readership is more than three times the size of their next rival, Television New Zealand:

Top sites in New Zealand, by unique monthly audience (000s)

1	Google	3,025
2	Facebook	2,484
3	MSN/Outlook/Bing/Skype	2,450
4	YouTube	2,046
5	**Stuff.co.nz**	**2,044**
6	Microsoft	1,926
7	Trade Me	1,785
8	**nzherald.co.nz**	**1,704**
9	NZ govt	1,670
10	Yahoo	1,248
11	Wikipedia	1,166
12	**TVNZ**	**916**
13	Inland Revenue	911
14	ANZ	852
15	The Warehouse	797
16	Apple	795
17	Blogger	765
18	Amazon	727

19	Ask Search Network	666
20	Air New Zealand	662
22	**Newshub**	**647**
49	**RNZ**	**407**
143	**Otago Daily Times**	**143**

Source: Nielsen Media View survey, May 2016. Reproduced from the *National Business Review*, 23 June 2016, http://www.nbr.co.nz/big-ck-p

It is clear, then, that the applicants are major players in the New Zealand news market, and that their merger will substantially increase market dominance in what is already one of the most concentrated news markets in the Western world (see 4.5 below). The question then becomes one of weighing public benefits and detriments for the merger.

4 Public benefits and public detriments

The applicants argue there will be public benefits arising from the merger. They suggest a reallocation of resources will be possible once duplication is eliminated, enabling them to provide wider coverage of issues, and quality improvements. This is problematic for two reasons. The first is that these promises are good intentions which cannot be taken into account in any mitigation of detriments: the Commission has no statutory ability to accept behavioural undertakings (s69A Commerce Act). They are promises the applicants simply cannot be held to; they must therefore be dismissed from consideration.

Secondly, the applicants' case for these benefits is weak. On the one hand, they say they need to be in a position to compete strongly over content, but, on the other hand, their strategy seems to consist solely of gaining economies of scale by reducing staff, including journalists (content producers). Given the claims the applicants make about the severity of the revenue pressures they face, revenue savings will not all be reallocated; the new firm's costs must be reduced overall. Reallocating resources to provide more and better content is potentially possible in a growing market but much less likely in a shrinking one. Because the application is devoid of ideas as to how the merger will enable the new firm to adapt to the inherent problems facing the traditional news business model, the assumption that scale and reduced costs alone will work is unconvincing. If revenues continue to fall, what then? Will more journalists' jobs be lost, will the range and depth of coverage be further reduced, and will a greater focus on cheaper clickbait stories win out at the expense of the promised diversity? Without a new strategy, any increase in coverage for minority issues will be partial and short-lived.

The applicants also predicate quality on an anti-competitive environment of market dominance, which must be rejected out of hand conceptually.

The applicants claim that, post-merger, they

> will be incentivised to invest because the creation of *quality* local news/information and the editing of quality international news/information will continue to be the way it differentiates its digital offering from other media and from the multitude of consumer and other third-party generated content available online [our emphasis]. (para 1.12 (c), p.5)

Quality content is given as the new firm's competitive advantage, but nowhere do the applicants define what they mean by quality or how this might be measured. Indeed, the overriding consideration when discussing content is the need to 'deliver content that attracts consumer attention in an increasingly competitive content/attention environment' (para 1.6 p. 3). The parties' own economic consultants, NERA Economic Consulting, concede that they cannot objectively measure 'quality detriments' because 'the dimensions… can be wide ranging, particularly in regards to news content, and this can make assessing quality changes difficult and subjective' (p. 19). We are left with the impression that 'quality' is equivalent to reader attention or views. For further discussion of the inadequacy of this conception, see our comments in 4.1 on plurality, 4.2 on diversity, 4.3 on regional consumers and 4.4 on specialised journalism and investigation.

The merger application asserts that the partners would pursue a high-quality (rather than mass journalism) strategy, but their track record suggests the reverse. The weakening of competition would intensify the current market trends. We suggest that the merged company would likely narrow the market, effectively treating all consumers as different demographics of fast-food customers, because those are the market incentives it currently recognises. There is a severe risk that other parts of the news market in New Zealand would be neglected, even more so than at present, with negative effects on the public good. There is little in the way of historical or overseas evidence to support the applicants' claims that mergers lead to a company that 'cover[s] more stories, invest[s] in more investigative journalism, and cover[s] more minority issues/sports than the two Parties each could separately' (p.80).

4.1 Plurality

Plurality in media markets refers to many providers. Plurality lessens as ownership concentration grows. The concerns democrats have about market power in media industries is not about extracting monopoly rents by increasing cover prices or advertising rates; it is about the ability to influence, control and circumscribe the 'marketplace of ideas', and inhibit the possibility of a vibrant public sphere. Plurality in the media system is important in evening out the power of dominant interests, groups and perspectives in society. The public benefits of plurality may be intangible and difficult to quantify, but they are nevertheless very real and potent. Assessing intangible benefits and detriments are within the scope of the Commerce

Commission's remit so we ask that they be given weight in the evaluation of the applicants' proposal.

A stated goal of the merger is to reduce duplication, as if two journalists covering similar events or topics is inherently *wasteful*. On the contrary, a democracy functions best with many voices and perspectives. It is this distinctive aspect of the product – the role of news in a democratic society – that makes media markets different from other markets, creating unique public benefits and detriments. We repeat: these are within the scope of the Commerce Commission's deliberations, and should therefore be incorporated into any analysis of the proposed merger.

It is true that a range of perspectives can now be found on the internet, and that the public does have more access to more information than ever before. Yet the world of content on the internet is not substitutable for (a) New Zealand news (see our comments on close substitution, and the current dominance of the applicants in the New Zealand news markets, in sections 2 and 3 above) and (b) much content on the internet is not produced according to the rigour of professional journalistic norms. While there may be many voices available online, those tend for the most part to be unheard or unread, and are without significant public authority or profile. The applicants' companies, along with Mediaworks and the two state-owned media organisations, occupy dominant positions in public debate in New Zealand because of the size of their audiences, their brand positions as facilitators of public opinion and their assumed cultural authority. New Zealand's media system already tends towards oligopolistic ownership structures in which '[i]mportant opinions are represented but there are no or only weak institutional guarantees against the predominance of certain opinions'.[16] The Sustainable Governance Indicators project measures cross-national sustainable governance; it lists New Zealand along with Hungary, Romania and Turkey, at the bottom of its OECD media pluralism index.[17] Media pluralism will only get weaker after the merger, and under the reduced journalistic workforce of the new company.

There is strong evidence that pluralism in media content is a factor in maintaining structural pluralism: a wide distribution of power in a society.[18] It follows that a diversified ownership

[16] Sustainable Governance Indicators. (2015). Quality of democracy: Access to information. Retrieved from: http://www.sgi-network.org/2015/Democracy/Quality_of_Democracy/Access_to_Information/Media_Pluralism

[17] Sustainable Governance Indicators. (2015). Quality of democracy: Access to information. Retrieved from: http://www.sgi-network.org/2015/Democracy/Quality_of_Democracy/Access_to_Information/Media_Pluralism

[18] For example, Rodney Benson & Daniel C. Hallin. (2007). How States, Markets and Globalization Shape the News: The French and US National Press, 1965-97. *European Journal of Communication* Vol 22(1): 27–48. doi: 10.1177/0267323107073746; Rodney Benson and Matthew Powers. (2011). *Public Media and Political Independence: Lessons for the Future of Journalism from Around the World*. Washington, D.C. Free Press Policy Report. Retrieved from https://www.freepress.net/sites/default/files/stn-legacy/public-media-and-political-independence.pdf; Gavin Ellis & Peter Thompson. (2016). Restoring Civic Values to the News Media Ecology. *Policy Quarterly* 12(2) 37-40. Available from: http://igps.victoria.ac.nz/publications/files/67dc16ba25a.pdf; Des Freedman. (2014). *The contradictions of media power*. London: Bloomsbury; Martin Hirst. (2010). *News 2.0*

structure is more likely to ensure that a range of voices in society is heard. In some parts of New Zealand's media sector, that pluralism is almost non-existent, as homogenous or generic representations of events are recycled and repackaged across business units. There is already a very high concentration of ownership in the newspaper market. It is also the case with news agencies, New Zealand's third-party providers and wholesalers of news and visuals which produce original content that is then on-sold to media outlets. News agencies are widely regarded in media policy, including by UNESCO, as important elements of a national communication infrastructure.[19] When the New Zealand Press Association ceased trading in 2011, US-based Freedom House noted that New Zealand was one of only a handful of countries serviced only by foreign-owned, and foreign-run, news agencies, which it called 'a serious blow to media diversity'.[20]

Plurality is partly a simple matter of the number of journalists employed to produce news stories. It is telling that the applicants used the relatively trivial case of 'having one journalist at a particular accident scene, rather than two' (p. 74) as their example of reducing wasteful coverage, so that they can simultaneously both save money and redirect resources. However, to make substantial cost savings the applicants will have to reduce 'duplication' across the board. Rod Oram estimates that NZME's (Wilson & Horton's) demerger from APN adds $7.5M to costs alone.[21] The applicants currently have 13 full and 11 associate members of the Press Gallery; it seems highly unlikely that the newly merged company will continue with so many members. There will be a corresponding decrease in institutional knowledge – an essential requirement in holding political players to account – should Press Gallery membership fall. Any reduction in its numbers will reduce the impact on the quantity – and quality – of political reporting. A smaller Press Gallery will reduce the coverage given to routine political events such as Select Committee hearings, where Ministers and senior public servants are questioned about their agencies' track records. The more sensational political journalism, for example covering slanging matches in Parliament, will dominate even more as the quieter and more routine reporting of hearings and reports drop. There will be fewer experienced staff to investigate issues across a wide range of policy areas, leading to a serious public detriment: a decrease in the ability of the public at large to participate in informed political debate.

The Press Gallery example serves to illustrates the bigger point: there can be no public benefit from having fewer commentators on important issues or a reduction in the number of

Can Journalism Survive the Internet? NSW: Allen & Unwin; Martin Hirst, Sean Phelan & Verica Rupar (2012). (Eds.) *Scooped: The politics and power of journalism in Aotearoa New Zealand*. pp. 96-113. Auckland: AUT Media/JMAD; Kari Karppinen. (2012). *Rethinking media pluralism*. New York: Fordham University Press; Denis McQuail. (2010). *Mass Communication Theory* (6th ed). London: Sage.

[19] G. Gerbner, H. Mowlana, & K. Nordenstreng, (1993) *The global media debate: Its rise, fall, and renewal*. ABC-CLIO.

[20] Freedom House (2012). New Zealand Country Report: Freedom of the Press. Retrieved from https://freedomhouse.org/report/freedom-press/2012/new-zealand

[21] Rod Oram. (26 April 2016). Making money from a media merger between Fairfax and NZME. Retrieved from http://www.stuff.co.nz/business/opinion-analysis/81394782/rod-oram-making-money-from-a-media-merger-between-fairfax-and-nzme

political, economic or social correspondents. On the contrary, the public benefits of journalism – the 'marketplace of ideas' eulogised by classic liberals – are enabled by giving expression to different perspectives and voices.[22] To suggest otherwise is to ignore the wide body of media, communication and journalism research that shows how two news stories, both following the conventions of 'objective' reportage, can be marked by all kinds of subtle, and sometimes not so subtle, differences in their representation of an event or issue. It is therefore not persuasive to describe a merger that will amplify these self-interested trends and tendencies as a 'public benefit'.

4.2 Diversity

Any lessening of plurality also lessens diversity. A plurality of providers does not guarantee diversity of views, but without plurality there can be no diversity. In addition to fewer journalists, the applicants' merger scenario will result in fewer editorial decision-makers, deciding which and how many journalists and columnists to employ under a merger. The risks of the chief editor of the merged newspaper company having a narrow outlook, or reproducing political, ethnic or gender biases, or disliking certain individuals, is twice as large as in two separate newspaper companies.

Other areas where a drop in plurality of voices may be experienced is the number of columnists. The *New Zealand Herald*, for example, lists 14 columnists on the Opinion section of its website, and employs others in its specialised sections, as well as cartoonists. Fairfax employs a similar number of specialised writers and has its own cartoonists. A merged company would be unlikely to retain the services of all these staff. Indeed, their business case rests on such reductions. The applicants (p. 77) quote the UK Ofcom, 'we note that a diversity of viewpoints can be formed within an organisation and between organisations. Both are relevant to the question of plurality.' Yet the applicants' whole business case for the merger rests on reducing plurality *within* the new organisation, which will reduce their potential for diversity. Concerns about diversity are especially pertinent to Māori and other minority ethnicities (Pasifika, Chinese New Zealanders, and so forth), whose interests and concerns have been poorly served historically by New Zealand media providers.[23] We therefore have

[22] See for example: Stuart Hall, Critcher, C., Jefferson, T., Clarke, J. & Roberts, B. (2013). *Policing the crisis: Mugging, the state and law and order* (35th anniversary ed.). Basingstoke: Palgrave Macmillan; Daniel C. Hallin. (1986). *The Uncensored War: The Media and Vietnam*. Berkeley: University of California Press; Denis McQuail. (2010). *Mass Communication Theory* (6th ed). London: Sage; Sean Phelan. (2012). Media power, journalism and agency. In Martin Hirst, Sean Phelan & Verica Rupar (2012). (Eds.) *Scooped: The politics and power of journalism in Aotearoa New Zealand*. Pp. 80-95. Auckland: AUT Media/JMAD; Gaye Tuchman. (1978). *Making news: A study in the construction of reality*. New York: Free Press.

[23] See, for example: Jenny Rankine, Angela Moewaka Barnes, Belinda Borell, Raymond Nairn, & Tim McCreanor. (2014). Content and source analysis of newspaper items about Maori issues: Silencing the 'natives' in Aotearoa? *Pacific Journalism Review*, 20(1), 213-233; Donald Matheson. (2010) Minding the gaps. *Media International Australia* 136: 35-41; Robert Loto, Darrin Hodgetts, Kerry Chamberlain, Linda Waimarie Nikora,

reason to believe that, contrary to the assertion of the applicants, the merger will exacerbate these tendencies, because of the structural pressures on large media corporations to appeal to a mass audience aligned with the dominant cultural identity and a mythical 'middle New Zealand'.

4.3 Regional consumers

Newspapers have historically complemented television's focus on Auckland and Wellington-centred politics, with a wider range of news from different regions. Television New Zealand, for example, has considered closing its Dunedin bureau a number of times and retained it only under political pressure.[24] Radio New Zealand is closing its Queenstown office at the end of July, and in recent years has also closed offices in Tauranga and Palmerston North.[25] Fairfax and Wilson & Horton currently maintain a commitment to regional journalism and to community journalism, through the large number of local titles they own. In many markets the companies have a monopoly or dominant position over local news provision. There is currently latent competitive pressure on them to maintain reporters on the ground in regional markets, for fear of leaving a gap for other news media companies – including, unmerged, each other. A merged company would be under less pressure to maintain such a presence, and would make it harder for latent regional competition to arise against a local news provider backed by the resources of the country's largest news company.

It is not likely that resources would be freed up to cover a wider range of regional and local issues. Both companies' mass market strategies to date and the reduction in local coverage (such as the closure of *D*-Scene in Dunedin) that has occurred over the longer term provide contrary evidence.

The applicants have overlapping community publications in Whangarei, Rotorua, Hamilton, Coromandel/Hauraki, Taupo, Taranaki, Hawke's Bay, Napier, Hastings, Manawatu, Kapiti and Wairarapa (Appendix 15, p.127-128). Clearly the merged unit would not maintain all these community papers and, if they are closed down, there is a real threat to local/regional news provision.

Rolinda Karapu, & Alison Barnett. (2006). Pasifika in the news: The portrayal of Pacific peoples in the New Zealand press. *Journal of community & applied social psychology*, 16(2), 100-118.

[24] Hamish McNeilly. (2 November 2015). TVNZ to keep Dunedin reporter. Retrieved form http://www.stuff.co.nz/national/73612739/TVNZ-to-keep-Dunedin-reporter

[25] Guy Williams. (2 July 2016). RNZ confirms resort office closing. *Otago Daily Times*. Retrieved from http://www.odt.co.nz/news/queenstown-lakes/388927/rnz-confirms-resort-office-closing

4.4 Specialised journalism and investigation

The existence of a larger number of news media companies is particularly important in the provision of specialised forms of reporting. In a small country such as New Zealand with few news companies, there are fewer outlets for controversial stories. Jon Stevenson's investigation of SAS operations in Afghanistan in the mid-2000s, for example, was published by *Metro* in 2011 only after a number of other publishers baulked at it.[26] Shrink the number of media companies, and the risk increases in the future that publicly important but controversial stories will be unable to find a publisher. At the very least, a reduction in media companies will reduce the number of independent decision-makers making judgement calls on controversial stories.

Specialised reporting has reduced in New Zealand journalism in the medium term and is a vulnerable aspect of the news offering. It remains more of a characteristic of newspaper outlets, in contrast to the more generalist and personality-led approach in television news journalism. Each of the applicant companies currently employs some journalists with specialisations, such as Simon Collins (*New Zealand Herald* social issues correspondent), Juha Saarinen (*New Zealand Herald* technology blogger), or Paul Gorman (Christchurch *Press* science reporter). These journalists differ from specialised journalists at magazines or blogs, where there is a narrow audience, because they translate specialised stories for broader audiences. The Prime Minister's Science Advisor has described these specialists as 'an increasingly rare resource in media outlets struggling to compete in a changing market'.[27] It would take only a moderate weakening of competition resulting from the merger for any market-based incentives to shrink or eliminates such specialists.

Given the concerns raised above, it is extraordinary for the parties to blithely suggest – under the brief heading of 'public detriments' – that 'there will be no material detriments arising from the Transaction' (p. 80). The logic seems to be: 'quality detriments' are difficult to measure, therefore let's assume there aren't any at all, because measurable phenomena are the only things that matter and everything else is merely 'subjective'. The argument rests on a very narrow conception of public benefit, and ignores the specific public interest functions of media and journalism. It also completely ignores the body of research produced by NZ media scholars since the deregulations of the 1980s and 1990s on the negative effects of market and commercial forces. Television news, for example, underwent significant change in this period, with the elimination of local television and a commercialised approach leading to a 'morselisation and depoliticisation of news', with consequent detriments to public discourse.[28]

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[26] Russell Brown. (26 April 2011). More secrets and lies. Public Address: Hard News. Retrieved from http://publicaddress.net/hardnews/more-secrets-and-lies/

[27] Peter Gluckman. (26 July 2013). Scientists, the media and society: Where are we now? Office of the Prime Minister's Chief Science Advisor. Retrieved from http://www.pmcsa.org.nz/blog/scientists-the-media-and-society-where-are-we-now/

[28] Joe Atkinson. (1994). The State, the Media and Thin Democracy. In A. Sharp (ed.) *Leap into the Dark*. Auckland University Press, pp. 146-177. See also, for example, Wayne Hope (2012). 'New Thoughts on the

4.5 Concentration of ownership

The New Zealand news media market is already highly concentrated. The JMAD New Zealand media ownership reports from 2011-2015 show that there is now an effective duopoly in the print newspaper market held by the two companies proposing the merger; a Wilson & Horton and MediaWorks duopoly in commercial radio markets; and Sky TV dominance in pay-television. The Sustainable Governance Indicators describes the pre-merger situation in New Zealand media as already oligopolistic and dominated by foreign companies.[29] Under the merger scenario, New Zealand's print newspaper market would be one of the most concentrated in the world. Only five countries have one owner with over 50 percent ownership of the daily newspaper market, and this figure includes China (state owned) and Egypt (state owned), as the list below shows:

The daily newspaper market - Market share of top company %

China - Government of China 100%
Egypt - Government of Egypt 72%
Australia – News Corporation and associated Murdoch companies 57.5%
Chile - El Mercurio SAP 54.9%
Ireland - Independent News and Media 52.0%
Turkey - Dogan Group 46.4%
Switzerland - Tamedia 44.3%
Portugal - Cofina 42.4%
Sweden - Bonnier 41.3%
Russia - Komsomolskaya Pravda 39.6%
South Africa - Naspers Group 35%
UK - Murdoch Group 32.5%
Brazil - Globo Group 28.4%

Source: Noam. (2016). *Who Owns the World's Media?: Media Concentration and Ownership around the World*. Oxford: OUP.

The proposed merger would see the applicants' combined share of the market in terms of circulation to be 89.3%, second highest on this list.

Public Sphere in Aotearoa/New Zealand' in M. Hirst, S. Phelan, V. Rupar (Eds.) *Scooped: the politics and power of journalism in Aotearoa/New Zealand*.pp 27 – 47. Auckland AUT Media/JMAD; and McGregor, J., & Comrie, M. (Eds.) (2002). *What's news?: Reclaiming journalism in New Zealand*. Palmerston North, NZ: Dunmore Press.

[29] Sustainable Governance Indicators. (2015). Quality of democracy: Access to information. Retrieved from: http://www.sgi-network.org/2015/Democracy/Quality_of_Democracy/Access_to_Information/Media_Pluralism

The question of how much concentration of ownership is too much has been answered in different ways in different countries. In Canada, the Canadian Radio-Television and a Telecommunications Commission (CRTC) proposed in 2008 that any transaction, such as a merger, leading to one corporate group controlling less than 35% of the pay television market will not be seen as diminishing diversity. Transactions leading to 35-45% control will be regarded as potentially diminishing diversity, and those leading to over 45% control will be regarded as constituting excessive concentration and rejected outright.[30] In the Republic of Ireland – a liberal democracy with roughly the same population as New Zealand and a similar media system[31] – control of an 'undue number' of television stations is calculated by the Broadcasting Authority of Ireland as control of more than 25% of licensed broadcast stations, as well as a more qualitative measure of a company's ability, through its audience share, 'to influence opinion-forming power'.[32]

In the United States, the Department of Justice uses the Herfindahl-Hirschman Index (HHI), regarding a score of between 1500 and 2500 as evidence of moderate concentration and a score of greater than 2500 as evidence of a highly concentrated market, with an increase in score of more than 200 raising concerns.[33] The Coalition for Better Broadcasting's submission on this merger application includes HHI estimates based on projected shares of the daily New Zealand news audience (retail side market) across platforms for the major news media companies (including Fairfax, Wilson & Horton, MediaWorks, Radio New Zealand and Television New Zealand). This suggests that the merger would push the level of news media concentration above 2500, constituting a substantial and problematic increase of 466 in the index. Meanwhile, the HHI for a market limited to the newspaper sector (hard copy and online) was found to increase from an already problematic index of 3865 to a massive 7649 as a consequence of a Fairfax-Wilson & Horton merger. If one regards the newspaper retail market as a discrete sector separate from broadcasting (and at various points the applicants' own document acknowledges this) these HHI projections suggest a substantial problem with existing concentration and the creation of a single dominant market actor bordering on monopoly power in the event of a merger. Although the Coalition for Better Broadcasting acknowledges some figures were estimated, neither of these HHI calculations can be dismissed and both suggest a merger would not be in the long-term interests of the audience.

Weakly competitive environments do not have strong reputations for fostering public debate, partly because they provide opportunities for abuses of power. In Ireland, for example, Independent News and Media is controlled by a company owned by Denis O'Brien, who aggressively pursues his critics in the courts. O'Brien has initiated over twenty cases in the

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[30] Eli Noam. (2016). *Who Owns the World's Media?: Media Concentration and Ownership around the World*. Oxford: OUP.

[31] Daniel C. Hallin & Paolo Mancini (2004). *Comparing media systems: Three models of media and politics*. Cambridge: Cambridge University Press.

[32] Eli Noam. (2016). *Who Owns the World's Media?: Media Concentration and Ownership around the World*. Oxford: OUP.

[33] United States Department of Justice. (19 August 2010). Horizontal Merger Guidelines. Department of Justice. Retrieved from https://www.justice.gov/atr/horizontal-merger-guidelines-08192010

Irish High Court since 2010, including twelve against other media organisations who have been critical of his business affairs. He also threatened to sue a satirical website, and sought an injunction to stop RTE, the Irish public service broadcaster, from reporting a parliamentary speech that questioned his banking affairs.[34] O'Brien is a powerful figure in a small country. While there is no obvious O'Brien figure on the immediate horizon for the proposed merged entity, this is a simple example of the dangers arising from allowing high levels of ownership concentration. Such high levels of concentration increase the risk that media power in the public sphere will be abused, and reduces the likelihood of investigative journalism holding the powerful to account. The media proprietor Rupert Murdoch offers an even more stark example of the corrosive effects of concentrated media ownership, given his power to shape political discourse in the UK and elsewhere.[35] A similar concentration of political power as well as commercial power, with the risk of both being abused, is more likely in New Zealand under the merger scenario.

There is also a case for defining the news market narrowly. Many international jurisdictions that have considered this question emphasise that print and broadcast markets do not overlap significantly enough to be considered active competitors.[36] Balmer cites, for example, the United States Department of Justice conclusion that non-newspaper media do not sufficiently constrain the prices that newspapers charge for sales or advertising to be considered as operating in direct market competition. In New Zealand, television news providers continue to emphasise Auckland, packaged news, images and personality, while newspaper companies are able to provide longer articles, analysis and a wider range of news content. The convergence of media in the digital landscape means those assumptions are a little less secure. But given that the news product of a newspaper is not directly comparable to the product of a television news provider, even when both are provided online, the degree of substitutability is open to question. On that view, the concentration of market power after the merger would be even more severe. The share of the print market is 89.3% of daily print circulation, with less than 50,000 readers of the total national audience of 460,000 readers controlled by other providers.

A healthy market depends on the emergence of new players. New Zealand's news market is characterised by a low rate of start-ups and a high degree of vulnerability. Online, only a small number of net-native players have emerged since the market developed at the start of the century. The major journalistic players, leaving aside non-profit blogs, are Scoop, which

[34] Colm Keena. (14 May 2016). Holding court: Denis O'Brien's long list of legal actions. *The Irish Times*. Retrieved from http://www.irishtimes.com/news/crime-and-law/holding-court-denis-o-brien-s-long-list-of-legal-actions-1.2647302. Roy Greenslade (29 October, 2015). Why does Irish media mogul Denis O'Brien launch so many legal actions? Retrieved from https://www.theguardian.com/media/greenslade/2015/oct/29/why-does-irish-media-mogul-denis-obrien-launch-so-many-legal-actions

[35] Steven Barnett (2013). Leveson past, present and future: The politics of press regulation. *The Political Quarterly*, 84(3), 353–361; Des Freedman. (2014). The contradictions of media power.

[36] R. E. Balmer. (2013). *Competition and Investment in Telecommunications and Media Markets*. Lugano: University of Lugano.

receives 344,000 New Zealand visitors a month, Neighbourly, which receives 100,000 unique visitors, and *The Spinoff* with 150,000 monthly users. None of these are financially secure, and they are unable to rely on a free at point of view, advertising-led model. Neighbourly is part-subsidised by Fairfax. Scoop sought $50,000 in public contributions to sustain its public good journalism in 2015. The *Spinoff* is sustained by brand placement and sponsorship, the editor's other work[37] and, recently, a $20,000 grant from Creative New Zealand for its commercially-sponsored book review section. Throng, an entertainment blog that expanded into the UK, Australia and Canada, closed in 2015, blaming advertising agencies' conservatism.[38] It is evident, then, that despite some healthy readerships, alternative news outlets such as blogs would not be able to compete against the new media giant. As Scoop's editor Gordon Campbell points out, 'the blogosphere does not have the resources to compensate for the reduction in competition (and the loss of journalistic resources) that will be the inevitable outcome of this merger'.[39]

The applicants include a number of international studies in support of their arguments. A number of these studies have been cited out of context and in general they do not support the claims of the merger proposal. Lars Nord, who is cited in the application (pp. 77-8) to support the claim that there is no necessary link between newspaper competition and the quality of content or diversity, was studying the degree of competition between newspapers within regions in Sweden. In New Zealand, almost no newspapers compete regionally and his argument about the negative effects of competition are therefore hard to apply. In addition, Sweden has three larger newspaper groups (Bonnier, Stampen, and Schibsted), which a 2008 study suggested held 69% market share (cited in Noam 2016), and a number of small, regional chains.[40] In New Zealand, under the proposal, there would be a single highly dominant newspaper owner, so there is no fair analogy with the argument made by Nord. Certainly his work does not support the near complete elimination of competition in a media sector. He told us: 'I would not favor media mergers on the national level if the result is one owner of all daily newspapers (except one)'.[41]

Public benefits are more likely to accrue in a diversified and open market. The currently weak competitive situation is likely to be made considerably worse by the merger. Suppression of innovation in the market would reduce the offering available to news consumers.

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[37] Fahy, B. (26 May 2015). Inside: The Spinoff. *StopPress*. Retrieved from http://stoppress.co.nz/news/inside-spinoff

[38] Reagan Cunliffe. (18 December 2015). It's time to turn out the lights. *Throng*. Retrieved from http://www.throng.co.nz/2015/12/its-time-to-turn-out-the-lights/

[39] Gordon Campbell. (13 May 2016). Gordon Campbell on the proposed media merger. Scoop. Retrieved from http://gordoncampbell.scoop.co.nz/2016/05/13/gordon-campbell-on-the-proposed-media-merger/

[40] Noam, E.M. (2016). *Who Owns the World's Media?: Media Concentration and Ownership around the World*. Oxford: OUP; European Journalism Centre. (2016.) Media Landscapes: Sweden. Retrieved from http://ejc.net/media_landscapes/sweden

[41] Lars Nord, personal communication (email).

4.6 Effect on competitiveness

The proposed merger would have the effect of significantly reducing competition in the New Zealand news media market to the detriment of consumers.

Fairfax and Wilson & Horton have not clarified what they intend to do with the Stuff and the *New Zealand Herald* websites, but, yet again, taking one out of the market would considerably limit New Zealanders' choice for news content. The two parties may well compete for advertising dollars with the companies like Google and Yahoo, but they certainly don't compete with The Daily Mail, MSN, CNN, BBC, and The New York times for local news.

4.6.1 Predatory pricing

While the applicants deny this is possible, good intentions cannot be the basis of analysis. Larger media companies can clearly engage in predatory pricing. The merged company would be in a strong position to drive smaller players out of the news market by under-cutting them on price. It is widely thought that this strategy was adopted by News Corporation in the United Kingdom national newspaper market in 1992-1994, where it cut the price of *The Times* and *The Sun*, severely weakening some of its rivals.[42]

4.6.2 Suppression of start-ups

The applicants claim that merger is necessary in order to provide the resources for them to compete with transnational players. However, a corollary of this argument is that the company would have resources to suppress small players and start-ups, either by matching their products, undercutting them in advertising rates or buying them up. Fairfax, for example, bought the independent Dunedin free newspaper *D-Scene* in 2008 only to later close it.

4.6.3 Coordinated conduct

The proposed efficiencies arising from de-duplicating coverage point to an increase in the likelihood of coordinated interaction in the market. The United States Department of Justice notes that markets with significant concentration are susceptible to such conduct, stating that free competition is less likely when companies can predict each other's actions or when the dominant player is likely not to be price sensitive to actions by others in the market because

[42] R. Brennan, P. Baines, P. Garneau and L. Vos. (2008). *Contemporary strategic marketing*. 2nd edn. Houndmills: Palgrave Macmillan.

it would be unlikely to lose customers to them.[43] The relative separation of the broadcast and newspaper markets makes this likely in this case. The extent to which both applicant companies already partner with broadcasters (in Fairfax's case, Television New Zealand content is published on its website) also suggests a logic of coordinated interaction is already present in the market.

5 The counter-factual

The applicants say the merger is necessary because of the changing market they operate in, whereby they face competition for advertising from international giants such as Google and Facebook, while simultaneously competing with small low-cost internet start-ups for readers. While merging will allow the applicants to gain some efficiencies in terms of economies of scale and reduce duplication (including in content), they do not explain their *strategy* to gain advertising revenue from the likes of Google and Facebook. It is the revenue side where the real challenge lies. Reducing costs – including by reducing the number of journalists they employ – will buy the companies time, but does not solve their main problem. Therefore, the problems facing the firms with or without the merger are essentially the same.

The applicants have not come together to devise a strategy for their post-merger form as they are still competitors.[44] It is possible that un-merged, the competitive pressure to devise and experiment with new ideas regarding survival in the digital environment will be stronger than if the merger proceeds. Post-merger, as the largest media company in New Zealand and distracted by the change process (which may take several years), the urgency, creativity and pressure for a radically new strategy may be diminished or postponed. The post-merger company will be larger and less flexible in its response to change. Further, a failure by the merged company to find a successful business model would be more devastating for the New Zealand news market than the failure of one of the unmerged companies.

This submission focuses on the likely implications of a merger. It is important, however, to note that the applicant companies could adopt other, non-merger responses to the current news business climate, responses that do not reduce competition. Either company could focus on audience niches for some of its business, offering readers a compelling, distinctive and quality product; the notion that quality is contingent on the approval of the merger is not credible. In this scenario there would be active competition in the national news market as each company addressed the audience(s) in different ways. The companies, particularly Fairfax, could disaggregate titles further so that they offered a more distinctive regional proposition. Paywalls and other charging mechanisms remain an option for regional news,

[43] United States Department of Justice. (19 August 2010). Horizontal Merger Guidelines. Department of Justice. Retrieved from https://www.justice.gov/atr/horizontal-merger-guidelines-08192010

[44] Rod Oram. (3 July 2016). Media merger will shape journalism's future. *Sunday Star-Times*. Retrieved from, http://www.stuff.co.nz/business/opinion-analysis/81637193/rod-oram-media-merger-will-shape-journalisms-future

where many of the titles have a monopoly; paywalls have already been implemented by the *Ashburton Guardian*, *The Gisborne Herald*, *Whakatane Beacon* and the *Greymouth Star*. In this strategy, competition would be indirect, as each pursued the diverse needs of consumers with a range of targeted news products. Allied Press, the next largest newspaper company in New Zealand after the applicants, which publishes the *Otago Daily Times*, odt.co.nz, a number of smaller newspapers and produces regional television, pursues a local news strategy that successfully competes in this indirect way with national news brands.

The competition among news companies for consumers also takes place, in some markets, through diversification of their products and services. In some markets, it is common for news organisations to leverage their reputations with their audiences by vouching for services or providing them various special offers, including travel, books, internet service provision, fitness packages or insurance.[45] In New Zealand, for example, the Star Group in Christchurch competes in the local market in terms of a broader community service brand. Among its services is an event management company, which benefits from the marketing reach of its newspapers and television station.

6 Conclusion

New Zealand already has a heavily concentrated media market for national and local news. We oppose this merger because it will further strengthen the dominance of the two largest media companies. The undertakings the applicants give for greater diversity are not legal undertakings and cannot be considered when weighing public benefits and detriments.

There is a paucity of international academic evidence to support the applicants' claim that there would not be significant negative impacts on the public good from the proposed merger. In fact, most scholarship suggests the contrary. In particular, there is evidence that mergers between large market players have the effect of reducing plurality of perspectives and diversity of content. The literature also points to a significant risk to freedom of speech.[46] These are significant public goods which would be put at risk in the proposed merger. How a scenario where there will be fewer journalists employed to produce New Zealand-specific news can be construed as a 'public benefit' is quite a mystery.

[45] International News Media Association. (15 December 2015). Revenue Diversification Beyond Traditional Print and Digital. International News Media Association. Retrieved from http://www.inma.org/report-detail.cfm?pubid=184

[46] See, for example, Natalie Fenton (2011). Deregulation or democracy? New media, news, neoliberalism and the public interest. *Continuum*, 25(1), 63–72; and C. Edwin Baker (2001). *Media, Markets and Democracy*. Cambridge, UK: Cambridge University Press.

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