Star Media

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Public Version of submission to the New Zealand Commerce Commission by The Christchurch Star Company Ltd (trading as "Star Media") regarding the proposed merger between Wilson & Horton Limited (trading as NZME) and Fairfax NZ Limited

SECTION I: Executive Summary

Fairfax and NZME are the two largest media companies in this country, and between them they dominate, almost completely, the markets in which they operate. Currently, they compete aggressively with one another. In our submission we provide evidence that the proposed merger will lead to a near elimination of competition in the markets in which Fairfax and NZME operate (hereafter referred to as NZMEFF in this submission). Both at the national level, and on an even more pronounced basis at the regional level (where in most markets NZMEFF would have over 75% market share) in the provision of advertising to New Zealand companies and individuals. This will have extremely detrimental effects on the choice, quality, and price of advertising in New Zealand.

While we focus on the issue of advertising concentration, we also address the questionable public interest arguments put forward by NZMEFF, namely that the merger would allow them to publish more content to benefit readers and that by merging they will prolong the life of printed newspapers in this country. We will disprove both these arguments by providing evidence that:

- When they enjoy market dominance there are incentives to cut back rather than expand content based on the highly predictable outcome of the merger that it will result in "synergies" i.e. cutbacks on reporting staff, ergo less content.
- NZMEFF have both by their statements and behaviours demonstrated they have no faith in print so cannot relied upon to sustain that market. It is in fact their smaller independent competitors who are keeping the print market alive and who risk being put out of business by this anti competitive merger.

They are highly profitable businesses, and if allowed to merge will tower over any other media business in the country. Their core markets also remain highly profitable for both (in the words of NZME the company is "*highly cash generative*"[1]). Post merger, NZMEFF would have an aggregate pro-forma revenue of $802.6 million and $133.7 million EBITDA[2]. Post merger their market power in New Zealand would represent a 66% share of the profits of the major NZ media companies.

2015 Financials of NZMEFF vs main NZ competitors ($millions)

	NZMEFF	Mediaworks	TVNZ	Total	NZMEFF Share
Revenues	$ 802.60	$ 347.90	$ 349.99	$ 1,500.49	53%
EBITDA	$ 133.70	$ 33.50	$ 36.30	$ 203.50	66%

Sources: NZME June 2016 Investor Briefing; TVNZ & Mediaworks reported figures

There is no denying digital advertising spend has grown, and will continue to grow, yet this is not relevant to the assessment of this merger as the companies combined have less than 4% of the digital market and digital advertising represents less than 3% of their combined

[1] NZME Investor Briefing June 2016, p5
[2] NZME Investor Briefing June 2016, p34

revenues[3] so are not material players in the digital advertising market. Fairfax and NZME are therefore very much "old" media and in this area (except for Otago) they effectively control the market between them, bar some small independents. Their competitive framework therefore must be assessed against their actual competitors, and their markets defined as per the commerce act "*as a matter of fact and commercial common sense*", not the markets in which the CEOs in Sydney and Auckland see themselves as operating.

Actions speak louder than words.

Below we provide evidence that:

The NZ market is recognised to be in contrast to overseas markets, and overseas trends do not automatically apply to NZ.

They paint a picture that the historical pillars of their business are shrinking and disappearing, yet the numbers simply do not support this.

- In the ASA figures they themselves use, their core markets (radio, magazines and newspapers) showing only an extremely modest annual decline of only 2% between 2011 and 2014
- The three segments that NZMEFF would operate in still represent 41% of the total advertising market.
- 2015 full year NZ readership data from Nielsen shows that 79% of New Zealanders read a printed newspaper every week suggesting that the parties may be overstating the decline of newspaper readership (see appendix 2)

Despite their contentions to the contrary, the numbers show that NZMEFF are not new media businesses and they cannot be assessed against markets in which they do not effectively operate

- Their digital revenues are very low and have hardly moved over many years, and over 97% of their revenue comes from publishing and other "old" media
- They have been talking themselves up as digital businesses since at least 2008, yet have had no material growth or diversification beyond traditional revenue streams

NZMEFF's statement that "*the parties are of the view that at some point in the near to medium term, it will be necessary to fund that ongoing journalism predominantly from online advertising revenues*"[4], is based on no more than personal opinion

- Their evidence of the supposed veracity of this statement is a quote from Fairfax's own CEO who is well known for his negative statements regarding newspapers, and many others take a markedly different view.
- This statement is misleading since their extremely low online advertising numbers will clearly be unable to "*fund...ongoing journalism*" from these negligible revenues.

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[3] According to the submission, Fairfax$10.4 million of digital advertising revenue in the year ended Feb. 29, NZME had slightly more at about $10.8 million. This is a combined revenue of $21.2 million or 3.5% of the 2014 Interactive market as per the ASA/ This represents 2.6% of their combined $802.6 revenue

[4] NZMEFF application section 6.44

There is no single converged market in NZ but rather a national and regional market

- A national market, dominated by advertising agencies who take a highly planned and strategic approach to advertising mediums and do not treat differing media as direct substitutes (undermining a core part of the parties' rationale)
- A local/regional market dominated by direct sales to businesses spread throughout the country where the impact of local sales forces are key and where radio and newspapers dominate the local market in a converged manner

The level of "convergence" differs markedly at national and local/regional levels

- At the national agency level, the market is not in fact converged, i.e. the relevant competitive framework is within the categories, e.g. TV companies competing against each other; radio companies; magazine publishers; newspapers etc.
- The local level is more converged at least insomuch as newspapers and radio compete very aggressively at a local level. The competitive picture is more fluid, but almost entirely consists of competition for the advertising dollar between competing "old" media, mostly newspapers and radio (as digital hardly features at the local level aside from trademe).
- Therefore, in assessing this merger, the market must be differentiated to the relevant advertising categories in which they operate and the market shares that would result from a merger.

There is no material substitutability between digital advertising and print/radio advertising

- At the national level, a professional buyer will assign a budget to digital/tv/print etc. as a fixed $$ spend. They will then source the best offering within each segment. As the merged business would dominate the newspaper market following a very substantial increase in concentration, the merged business will be in a position to use its market power to increase prices. This is not the case with the counterfactual where they compete with each other to maintain low pricing
- At the local level, aside from classified advertising which left print over at least five years ago, digital is not a material market player and local business advertising budgets are typically split between radio and newspapers with competition between these. The merged business will therefore increase concentration and enable the parties to increase pricing

At the regional/local markets are discrete and depend on interactions within a local community and strong business relationships. Aide from between radio and newspapers there is little substitutability within these local/regional markets

- In every local market in New Zealand, radio competes vigorously with local newspapers for advertising spend (and paid dailies compete vigorously with free newspapers)
- Digital does not feature materially at the local/regional level in the competition for local business display advertising dollars aside from trademe with classifieds
- The merger will therefore materially reduce competition in every market in the country even where the parties have no overlapping newspapers as the addition of radio will reduce competition.

NZMEFF post merger would enjoy a market dominant position

- At the national level, they would control over 86% of the newspaper market (where massive concentration will occur)
- At the local/regional they would control over 60% of the local radio/newspaper market (which effectively operates as one single advertising market)
- At both levels, therefore, the combined group would have a dominant share, being by far the largest provider of advertising services and both these concentrations fall well above the Commerce Commission's guidelines [5] and will lead to major anti competitive impacts.
- *The actual way the market operates in terms of advertiser decision making and purchasing behaviour is the only fair way to segment the markets for concentration and anti-competitive effects.*

Fairfax already has a very significant market penetration into the regional Canterbury market, and enjoys a dominant, near-monopolistic position

- Our detailed case study of the Canterbury market shows Fairfax currently has a 61% share of advertising spend across newspapers and radio (over 86% of newspapers)
- This share which would increase to over 75% if the merger goes ahead
- Canterbury is currently the most concentrated market in the country, and the merged entity would enjoy similar market shares in most regional markets except perhaps Otago, and possibly higher in certain North Island markets.

Fairfax has demonstrated it has market power in the market for those looking to advertise locally and associate with a local event and has harmed and will continue to harm Star Media by:

- Making agreements with event organisers and advertisers to exclude *The Star.*
- Shutting out *The Star* from advertising.
- Using their community newspaper *The Mail* for predatory pricing.
- The merger will substantially increase market power by adding radio to the local business. Our own business is dependent on the same advertising markets served by the parties so our business will be negatively affected by the increase in concentration
- Our newspapers have higher circulation than FFX products, yet despite this Fairfax dominant position means there is no level playing field and we are disadvantaged despite having superior products. A fair marketplace does not exist in Canterbury in our market.
- The increase in concentration will enable the merged business to increase pricing through for example bundling of advertising products (radio/papers) and further abuse of its strengthened market position and we will be further at the mercy of their market power.

REDACTED

[5] http://www.comcom.govt.nz/business-competition/guidelines-2/mergers-and-acquisitions-guidelines/

If the merger goes ahead, implementation of a paywall is likely

- It is very likely that a merger would enable the parties to create a paywall, a situation clearly not viable in the counterfactual were to prevail due to the competitive nature of their two principal news sites
- The merged groups is likely to imitate the example of News Limited in the UK with *The Times* (paywall) and *Sun* (free) by both a paid and a free strategy online.
- Most likely the Herald website would be put behind a paywall and stuff would be free, with differentiated content
- REDACTED
- This would create a clear opportunity to raise prices that does not exist in the counterfactual

There is no public good:

- Quality will diminish. We demonstrate, using the Canterbury market as an example, that dominance leads to lesser quality of media products offered to readers and advertisers (measured by local story count, pagination). Where dominance exists, they are incentivised to cut costs and reduce their offering to market due to their dominant position.
- Price will increase. The NZMEFF strategy is to maximise the pricing of their paid newspaper products and it is commercially logical that post merger they would employ strategies to reduce the amount of content in their local free papers and force those who still consume their news in print form to pay more.
- Despite NZMEFF's statement that they would have an "*incentive to maximise the lifespan of print for consumers whose preferences is to consume news in this way*"[6], the evidence of their past behaviour contradicts this position. They have both made public statements that they have no long term strategic interest in newspapers, therefore, the logical strategy for them is to maximize profits by increasing pricing on their newspapers. It is the existence of strong independent local papers (free or paid) that provide the constraint on price raising and these are threatened by the merger.
- There will be less local content. REDACTED

[6] NZMEFF application section 6.44

SECTION II: The market for advertising in New Zealand (Market Definition)

The single most important factor to determine the anticompetitive risks of a merger between MZME and Fairfax is how one defines the market. The Commerce Commission states that a market is defined by "*a matter of fact and common sense*". **How the market *actually works* in practice is therefore of utmost importance.**

The parties state in their application that "*Even looking solely at the way the businesses were historically structured, before their respective reconfigurations as 'digital-first' businesses, in the areas of newspapers, community publications and radio, the transaction gives rise to no material overlap*"

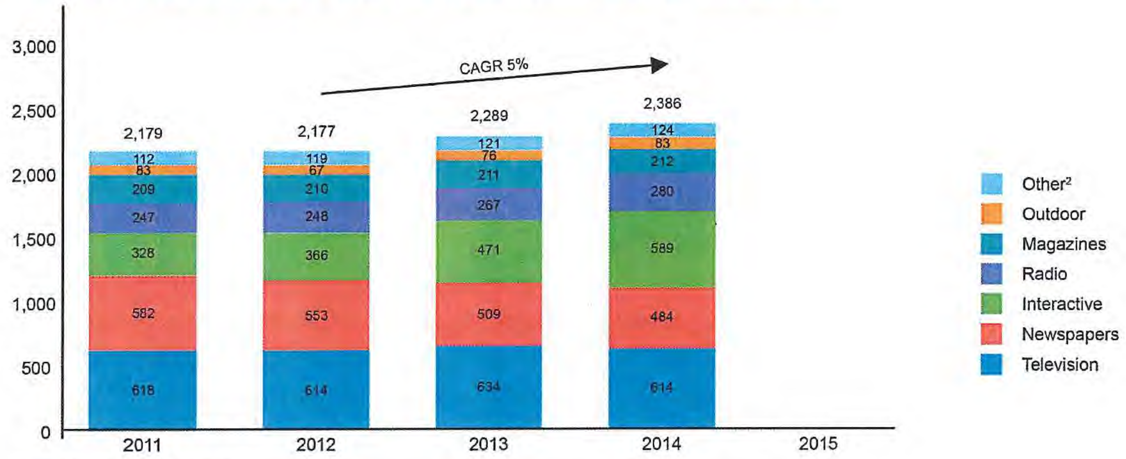
First of all, they may wish themselves to be digital first businesses, but in terms of advertising the numbers plainly show this is not credible. The parties combined share of the market for digital advertising is less than 4% and represents less than 3% of their combined revenue.

There is no material substitutability between digital advertising and newspaper, magazine, radio advertising. At the national level a budget allocation is made to different media channels and then pricing and other terms are negotiated. The highly competitive nature of the newspaper channel, where both parties can create national opportunities (Fairfax on their own and NZME through partnerships with the likes of ourselves, Allied Press and Gisborne Herald) creates a strong limiting factor on pricing. This would disappear if the merger went ahead as they would control the only national advertising channel. <u>It is very important to note that this will remain the same with the counterfactual and the factual, the only difference being the prices charged post merger would be higher as NZMEFF would have the only national advertising channel for newspaper advertising so could increase pricing</u>.

In their report they paint a picture that the historical pillars of their business are shrinking and dying, yet the numbers simply do not support this. In the ASA figures they themselves use, their core markets (radio, magazines and newspapers) show only an extremely modest annual decline of only 2% between 2011 and 2014, and the three segments that NZMEFF would operate in still represent 41% of the total advertising market. This is hardly the "*exponential change over the past five years*"[7] they claim it to be.

[7] NZMEFF application section 1.2

ADVERTISING SPEND IN NEW ZEALAND BY CHANNEL 2011 - 2014 (NZ$M)



Source: Advertising Standards Authority

Principal Sources of NZMEFF Revenue by Market ($$ Millions)Advertising Markets in which NZMEFF operate

	2011	2012	2103	2014
Newspapers	582	553	509	484
Radio	247	248	267	280
Magazines	209	210	211	212
Subtotal	**1,038**	**1,011**	**987**	**976**

Source: ASA Advertising Standards Authority NZ ADVERTISING INDUSTRY TURNOVER REPORT

In addition, the authoritative readership survey in NZ is produced by Nielsen, in their "*Media Trends 2015*" report (appendix 1) they show than 79% of NZ adults read a printed newspaper every week. This might be lower than it was a decade ago, but it is still a very high number and shows the strong reach of newspapers. They are not businesses in mortal danger and a likely real motivation for the merger becomes clear from this telling sentence in NZME's recently released Investor Presentation (our underline)

"The proposed merger with Fairfax New Zealand offers the potential for <u>significant synergies</u>"

Synergies usually refer to job cuts and logically a consequent reduction in content. It is our belief that this is an anticompetitive merger proposal, where the parties will combine their revenues and at the same time cut costs dramatically thanks to dominating their markets. Profits will increase and competitors will be squeezed out and likely hundreds of their staff will lose their jobs.

They also refer often in their submission to the move of classifieds from newspapers to online. In New Zealand this is almost exclusively a move from newspapers to Trade Me. This happened many years ago (Trade Me revenues are stagnant now) and this is a business of course that Fairfax itself sold and profited from, it is therefore ironic they are now asking for the Commerce Commission to permit this merger to compensate for their own poor strategic decisions.

It is also important to address that these are New Zealand businesses, with the entities that are to merge operating solely in New Zealand. The parties have gone to great lengths to try and compare New Zealand to overseas markets, and draw extensively on data from the US and other countries. This is misleading, as the New Zealand market (and to some extent Australia where both companies' parents operate) is unique. The reasons were very clearly and concisely explained by former APN Group CEO Brendan Hopkins:

> *We remain extremely positive about the long-term prospects for our media businesses in general, and our Publishing businesses in particular. The performance of newspapers in Australia and New Zealand stands in clear contrast to overseas markets, particularly in the United States and United Kingdom. Locally, newspapers have far less reliance on classified advertising, are experiencing good readership growth, enjoy high subscription rates and are seeing solid outcomes in national and retail advertising. This is not the case in other overseas markets especially the United States and United Kingdom. Newspapers in Australia and New Zealand deliver high penetration within well-defined discrete markets, giving them the opportunity to foster long-term interaction with their local communities and strong business relationships with local advertisers. APN is at the forefront of delivering a highly local, integrated business model to readers and clients which will, we believe, ensure a long and profitable future for newspapers in our markets.*[8]

This quote is very insightful because it highlights the point that newspapers in our region operate locally and largely depend on the relationships with local advertisers. Even though this dates from 2009 the market dynamics have not changed.

The New Zealand market for advertising, broadly, operates at two distinct levels, a national level and and a regional/local level. We cover each in more detail below.

Overall, the total market using the most recent available data is over $2.3 billion. As shown in the table below, the share of spend made nationally varies greatly by type of advertising. This reinforces the analysis that markets need to be analysed nationally and locally/ regionally as they operate with very different dynamics. As discussed above, NZMEFF core markets still represent 40% of the total and the core areas in which they operate have hardly shrunk over the past few years.

[8] APN CEO Brendan Hopkins March 2009, in the foreword to the APN 2008 Annual Report

Advertising Market New Zealand ($ millions)

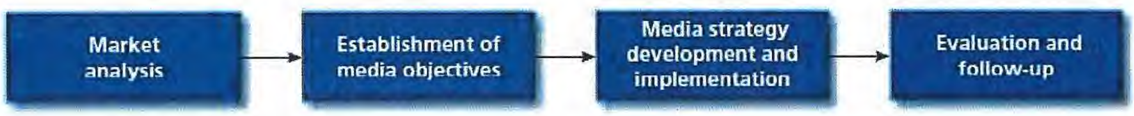
Category	NZ	% national	$ national	$$ Local	$$ Canterbury
Addressed Mail	$ 61	90%	$ 55	$ 6	$ 1
Cinema	$ 9	95%	$ 9	$ 0	$ 0
Interactive	$ 589	80%	$ 471	$ 118	$ 15
Magazines	$ 212	75%	$ 159	$ 53	$ 7
Newspapers	$ 484	18%	$ 87	$ 397	$ 50
Outdoor	$ 83	85%	$ 71	$ 12	$ 2
Radio	$ 280	39%	$ 109	$ 171	$ 22
Television	$ 614	95%	$ 583	$ 31	$ 4
Unaddressed Mail	$ 54	80%	$ 43	$ 11	$ 1
Total	$ 2,386		$ 1,587	$ 799	$ 101

Source: ASA Advertising Standards Authority NZ ADVERTISING INDUSTRY TURNOVER REPORT YR ENDING 31 DEC 2014

The National Market for advertising

The national market for advertising is dominated by professional advertising agencies representing major clients. In some sectors, especially TV and interactive, the advertising spend is dominated by these players. In others, notably radio and newspapers where the parties operate, the share of national spend is much smaller. Overall, 67% of the market is dominated by national decision makers.

The national market is defined therefore by carefully planned media strategies implemented by sophisticated buyers. These buyers do not see all media as homogenous substitutes, as claimed by the parties in their submission. An advertising agency will carefully plan its media strategy and determine which media to advertise in, as per the below chart detailing the media planning strategy. **As explained above, this means there is no substitutability between advertising channels.**



[9]

The relevant markets as the Commerce Commission can establish by speaking to any major media agency are separate and spending decisions between media are made independently.

The two exceptions to this are the newspaper markets, where national buyers are slowly changing their distinction between dailies, sundays and community newspapers (these three

[9] https://en.wikipedia.org/wiki/Media_planning

are converging) and to more limited extent between traditional broadcast TV and streamed TV (an area in which neither party operates) .The fact that TV and digital are growing and newspapers are shrinking is therefore irrelevant as these decisions are made by agencies together with their clients. This will be the case either with the merger or if the counterfactual were to prevail.

As is clear from the financial data of these companies, they are not in fact and in practice significant players in the TV, outdoor, digital/interactive or direct mail markets. In addition, the radio market and magazine markets are each only represented by one player (NZME for radio and Fairfax in magazines). At the national buying/decision-making level, the competitive framework for magazines and radio is therefore irrelevant as the counterfactual and post merger are the same. As professional buyers distinguish between these media and do not see them as substitutes, we only look at the newspaper market at a national level.

Fairfax and APN national revenue ($$ millions) 2014

Category	$$ NZ	% national	$$ national	$$ Fairfax	$$ NZME	$$ Combined	Combined market share
Interactive	589	80%	471.2	10.4	10.8	21.2	4.5%
Magazines	212	75%	159	39.1	0	39.1	24.6%
Newspapers	484	18%	87.12	39.6	33	72.2	82.9%
Radio	280	39%	109.2		50	50.3	46.1%

Source: ASA Advertising Standards Authority NEW ZEALAND ADVERTISING INDUSTRY TURNOVER REPORT YEAR ENDING 31 DECEMBER 2014

Anaylsis from published annual reports, desk research and industry sources

The national market for newspaper advertising is worth $87.12 million. Between the two players they will have the only national network for advertising (currently there are two) control 82.9% of this market and be able to exercise monopolistic control.

The local market for advertising

The local market for advertising demonstrates very different dynamics. Purchasing decisions are made by local businesses, and are to a large extent influenced by local advertising reps.

One marked difference between the national and local markets is that the radio and newspaper markets are converged, in the sense that radio reps and newspaper reps compete directly and aggressively for the same advertising dollar. In any typical local market in New Zealand newspapers and radio between them will employ the largest amount of local advertising reps and this places a strong element of competition into local markets and keeps pricing competitive.There is undeniably substitutability between paid dailies, community newspapers and local radio and therefore, there will be a very substantial increase in concentration from the merger.

A real world example of this dynamic can be witnessed in the Oamaru market. Star Media previously owned the daily in this market, the *Oamaru Mail* (formerly an NZME paper). Historically its main competition for advertising came from the Fairfax community newspaper the *Waitaki Herald*. However, the *Oamaru Mail* had most of the local real estate market in its weekend edition, until Allied Press launched a free newspaper solely targeted at the real estate market, and these advertisers switched to the new free newspaper *North Otago News* which also picked up retail advertisers from both the *Oamaru Mail* and the *Waitaki Herald.* Eventually, the *Oamaru Mail* was sold and merged into the *North Otago News* becoming a free weekly. The fluidity by which advertisers moved between products and publishers shows how seamless the convergence is between paid and free newspapers. [Oamaru does not have a strong local radio presence.]

In every local market that Fairfax and NZME both operate therefore, the Commission needs to consider radio, paid dailies and community newspapers as competing interests, and measure the anticompetitive nature of concentration post-merger, which will be very substantial throughout New Zealand.

The local/regional market for advertising is shown in the chart below.

Fairfax and APN local revenue ($$ millions) 2014

Category	NZ	% local	$$ local	$$ Fairfax	$$ NZME	$$ Combined	Combined market share
Interactive	589	20%	117.8	2.6	3	5.3	4.5%
Magazines	212	25%	53	13.0	0	13.0	24.6%
Newspapers	484	82%	396.88	145.2	119	264.6	66.7%
Radio	280	61%	170.8	0	79	78.7	46.1%
Radio/Newspapers (converged locally)			567.68	145.1629664	198	343.3	60.5%

Source: ASA Advertising Standards Authority NEW ZEALAND ADVERTISING INDUSTRY TURNOVER REPORT YEAR ENDING 31 DECEMBER 2014

Anaylsis from published annual reports, desk research and industry sources

The parties will enjoy a clearly dominant market share across all of New Zealand's local advertising markets with an overall share of 66.7% of the newspaper market. This number is misleading as it will be skewed by Otago where a strong independent still operates (Allied Press). In other regions the percentage will be much higher. The parties will argue of course that their share is less because they are trying to include digital interactive in that number. But this is incorrect as in practice the majority of interactive advertising at the local level is trademe listings, which have been steady for years and do not compete for the local business display advertising dollar (and of course Fairfax themselves sold that business)

There is no escaping the fact that "*a matter of fact and common sense*" a merged NZMEFF would completely dominate most regional/local markets for advertising in New Zealand.

Fairfax abuse of its dominant market position in Canterbury

Star Media, employing 100 staff locally makes us one of the larger independents in the country. We are a consolidated media group operating newspapers, magazines (local and digital) regional TV (CTV) and digital, yet of course we are dwarfed by either of the two applicants and especially the combined group [see further **About Star Media** below].

Fairfax alone dominates this market and they aggressively promote this fact.

Full page Press House Ad June 2016

As shown below, **Fairfax routinely uses its dominant position in our market to engage in practices designed to reduce our ability to compete freely with them.**

REDACTED

Our analysis of the Canterbury market is shown below

Fairfax and APN Canterbury revenue ($$ millions) 2014

Category	NZ $$ Local	% Canterbury	$$ Canterbury	$$ Fairfax	$$ NZME	$$ Combined	Combined market share
Interactive	117.8	12.7%	15.0	0.78	0.5	1.3	8.8%
Magazines	53	12.7%	6.7	3.9	0.0	3.9	58.1%
Newspapers	396.88	12.7%	50.4	43.5	0.0	43.5	86.4%
Radio	170.8	12.7%	21.7	0	10.8	10.8	50.0%
Radio/Newspapers (converged locally)			72.09536	43.54888993	11	54.4	75.4%

Source: ASA Advertising Standards Authority NEW ZEALAND ADVERTISING INDUSTRY TURNOVER REPORT YEAR ENDING 31 DECEMBER 2014

Anaylsis from published annual reports, desk research and industry sources

As shown, Fairfax control 86.4% of the newspaper market (or 61.5% across combined newspaper and radio markets). The merged group will control 75.8% of this market, i.e. a very substantial increase on what is already a dominant market share.

They argue that there are low barriers to entry for competitors. In a market such as Canterbury where Fairfax is dominant we show this is not the case.

Fairfax routinely engage in behaviour that we believe is anticompetitive and an abuse of market power.

We have grouped them into two areas, Event Sponsorship/Advertising; and Advertising

Event Sponsorship/Advertising

Fairfax dominate the market for local events, but the means by which they secure the spend from these events is an abuse of their dominant position. They frame these as sponsorships, but in fact they are not, they are advertising contracts. Fairfax will usually only offer to "sponsor" an event if the organiser agrees to put all of its newspaper spend with them. Typically, they will include this as a written (or sometimes unwritten) clause in their agreements.

We list below examples that we are aware of, with the details we have been able to gather, as well as contact details where we have them. Together these events will bring in hundreds of thousands of revenue (if not millions) to Fairfax. As their main competitor, we have never demanded an exclusivity clause in such agreements with anyone. We believe they are anticompetitive and do not provide best options for advertisers.

We have spoken to one of the largest professional event organisers in the country who organises major events, and he stated that they were very concerned that this practice of demanding advertising in return for "sponsorship" will become prevalent with lack of any competition. This already happens in Christchurch due to the market dominance of Fairfax, and will happen in other markets with the merger. In our view this is a clear abuse of market power. The event organiser we spoke to has already noticed this in North Island markets post the radio and newspaper merger at NZME, where they will not "sponsor" an event, if the organiser does not use both radio and print, even where the organiser believes Mediaworks would be a better partner in radio.

REDACTED

Advertising

Fairfax are aggressive in locking down advertising with special pricing that demands Star Media is excluded from any advertising schedules. They exploit their market share and use predatory package pricing, selling *The Mail* well below cost to keep business from us. They also impose unwritten rules on advertisers, that discourage them from advertising with us, or sometimes by openly including it in their agreements.

REDACTED

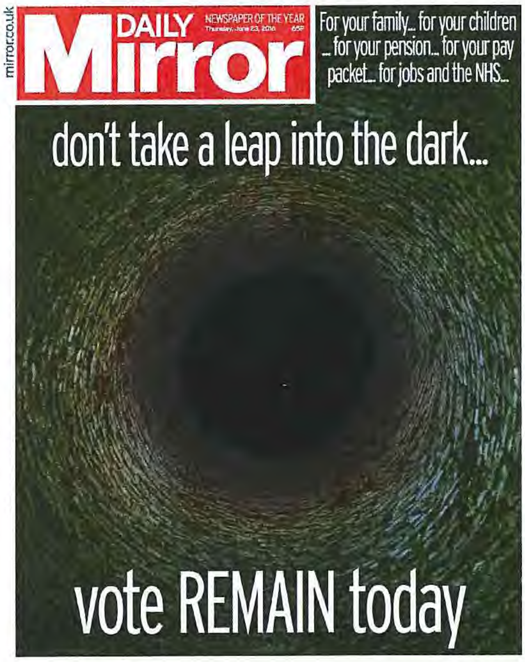
If the merger was allowed then this type of situation would be amplified on a national scale for many advertisers and this would be devastating for all local publishers/media companies trying to compete.

The Commerce Commission with its investigative powers will be able to verify the above examples and by asking questions about any exclusive advertising arrangements and their commercial terms find out what other advertising deals have similar terms.

REDACTED

Our examples merely touch the surface but they do make clear that where there is a position of FFX dominance such as in Canterbury, the statement by the parties in their application that they will "*remain constrained...by the strong countervailing power of advertisers*" is wrong in **fact and in practice**.

SECTION III: THE PUBLIC INTEREST

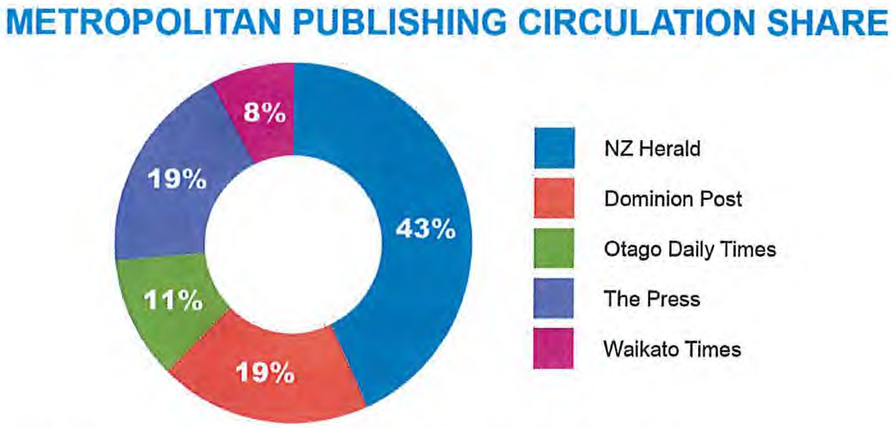


Above are the starkly different front pages of *The Sun* and *The Mirror* newspapers in the UK on the day of the Brexit referendum, probably the most important decision faced by that country in a generation. Turnout has been higher than at the UK's most recent general election. It is indisputable that newspapers are still setting the national agenda, and the opposing viewpoints demonstrated above show clearly that it is vitally important for our democracy and our public discourse that different viewpoints remain in the mass media.

On events that truly shape our nation's future, the public need to have a full range of informed opinion and comment to choose from, and while these occasions do not happen every day, and it is easy to be blinded by the clickbait that fills many news websites, if the merger is permitted we won't know what has been lost until it's too late. After the Brexit vote, Sun Editor Tony Gallagher told the Guardian "*so much for the waning power of the print media.*" In its analysis *The Guardian* states that (our underline) "*there is evidence that, despite such declining readerships and lack of trust, the press still sets the agenda. Where the newspapers lead on issues, far more trusted broadcasters follow. The latest research from Loughborough University's centre for research in communication and culture found that issues which dominated the press <u>also led the television news</u>.*" This is a vitally important aspect regarding the public interest which cannot be ignore in look at this merger, and what is seen in the UK will apply here.[10]

[10] http://www.theguardian.com/media/2016/jun/24/mail-sun-uk-brexit-newspapers

The chart below (produced by NZME[11]) shows the near total concentration of national metropolitan mastheads that NZMEFF would control (89%) post-merger which would allow one company to control the national news agenda.



Source: New Zealand Audit Bureau of Circulation, Average Daily circulation (Dec 2014 – Dec 2015)

One of the least credible statements in the NZMEFF submission is that they argue that they will act in the public interest to preserve the market for printed newspapers. Their actual behaviour in this regard, makes clear this is highly unlikely to happen.

The picture below from a media source speaks volumes

It shows one example of the New Zealand Herald compared to the ODT. This is a trend that NZMEFF have both led, to drive down content in their print products to the extent that there is less value for readers. They make this point themselves in their application, stating that "*both parties already produce content for their online channel first*". The inevitable consequence is old content and diminishing value for readers of their printed products.

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[11] NZME Investor Presentation June 2016, p14

However this is a **choice** they have made, and it is a path Fairfax have been on for a number of years.

The Fairfax strategy is to create "*new digital-centric editorial and production practices to deliver quality content to audiences, when and how they want it*"[12].

As the below chart shows, *The Mail* in Christchurch, which is one of Fairfax's flagship community newspapers in the country, performs very poorly when compared to its competitor *The Star* in terms of local news and pagination. Much of the content now is generic and syndicated and of little local interest.

Comparison of The Star and The Mail (Fairfax), June 2016

	The Star			The Mail		
	Pagination	News Briefs	Local Stories/ Opinion	Pagination	News Briefs	Local Stories/ Opinion
2-Jun-16	60	9	25	28	3	10
9-Jun-16	60	5	30	36	4	11
16-Jun-16	60	8	27	32	3	14
23-Jun-16	56	6	30	32	3	12
30-Jun-16	52	4	21	28	2	12
June total	**288**	**32**	**133**	**156**	**15**	**59**

Source: Star Media analysis

In addition to *The Star* our five weekly community newspapers which circulate within Christchurch publishes over 250 local news stories a month. *The Star*'s strong local focus, and its frequent breaking of stories that Fairfax follow, provides a constraint on the ability of the Fairfax daily *The Press* to raise prices (as they are disincentivised to compete editorially with their own paid daily in their own free paper, obviously).

In 2013, its CEO Greg Hywood stated in a much reported speech that the company

> *That means just one thing – we are all changing our business models as fast and furiously as we can....*
>
> *.... so we can extend the lives of our businesses – not as newspaper companies but as media companies whose lifeblood continues to be the public good of journalism – but distributed not via printing presses but the internet.*
>
> *It's simple really.*
>
> *I'm here today to give you a snapshot of what we at Fairfax are doing in this relentless journey from print to digital and to explore the issue that is top of the mind for many of us.*

[12] http://www.radionz.co.nz/news/national/274866/fears-cuts-will-affect-quality-journalism

.... when do we stop printing. Is there a business at the end. And how to restructure your business for that day.[13]

This is one view only, relentlessly driven through his organisation.

Yet Warren Buffet, probably the world's most successful investor and one of the world's richest people, has been busy buying newspapers in the US (69 newspapers). He has stated the following about them

Newspapers continue to reign supreme, however, in the delivery of local news. If you want to know what's going on in your town — whether the news is about the mayor or taxes or high school football — there is no substitute for a local newspaper that is doing its job. A reader's eyes may glaze over after they take in a couple of paragraphs about Canadian tariffs or political developments in Pakistan; a story about the reader himself or his neighbors will be read to the end. Wherever there is a pervasive sense of community, a paper that serves the special informational needs of that community will remain indispensable to a significant portion of its residents.. [14]

The important point is that NZMEFF have made a **choice** to devalue their printed products, and to pursue a digital first strategy. The numbers show this is clearly not working for them, so it would appear they are resorting to an uncompetitive merger to make up for their own strategic errors.

The Australian newspaper has recently reported on confidential documents that show in Australia Fairfax modelled a future with no newspapers and 40 percent fewer journalists . The detailed analysis showed how many staff could be cut if the publisher stopped printing its flagship metropolitan newspapers *The Sydney Morning Herald* and *The Age* in Melbourne.[15]

They are therefore very unlikely to save newspapers in New Zealand as they believe they can cut staff costs by closing them. All the actual evidence of their behaviour and statements points to the contrary. We do not attach any credence to their claim to be trying to prolong the life of newspapers. As stated by the EPMU after one of Fairfax's many recent restructures (our underline) "*This is a very sad occasion for a lot of people who have spent their lives in service to journalism. It all goes back to the decision that was made to give digital news away for free. This is going to be repeated at other publications*."[16]

Further, while our submission focused largely on advertising impacts, the parties argue that their will be constraints on them to raise prices on their printed products. Again, actual

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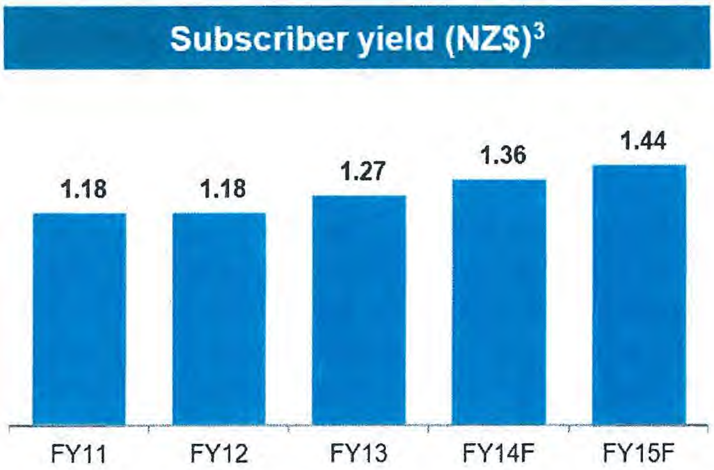
[13] http://www.scoop.co.nz/stories/BU1305/S00158/the-journey-from-print-to-digital-fairfax-ceo-greg-hywood.htm

[14] http://www.niemanlab.org/2014/03/warren-buffett-on-newspapers-____________/

[15] http://www.theaustralian.com.au/business/fairfax-modelled-future-with-no-newspapers-and-40pc-fewer-journos/news-story/c45f8ecd0cec6b775d6bc5271e33efca

[16] EPMY organiser Paul Tolich quoted http://www.stuff.co.nz/business/industries/68938640/fairfax-plans-further-editorial-restructure

behaviour speaks stronger than their rhetoric. The chart below is taken from an NZME investor presentation in 2014



The NZME strategy is to maximise the pricing of their paid newspaper products, as is made clear in their demerger submission to the NZX (our underline)

"Circulation revenue is derived from retail and subscriber volumes and the prices that retail customers and subscribers pay for publications ("yield"). In FY15 circulation revenue represented 32% of publishing revenue. Between FY13 and FY15, retail circulation revenue decreased whilst subscriber circulation revenue remained stable, <u>assisted in part by an increase in average yield.</u>"[17]

It is therefore logical that post merger NZME would continue to employ strategies to increase their subscription prices, and they will be in a stronger position to do this as they could reduce the amount of content in their local free papers to force those who still consume their news in print form to pay more.

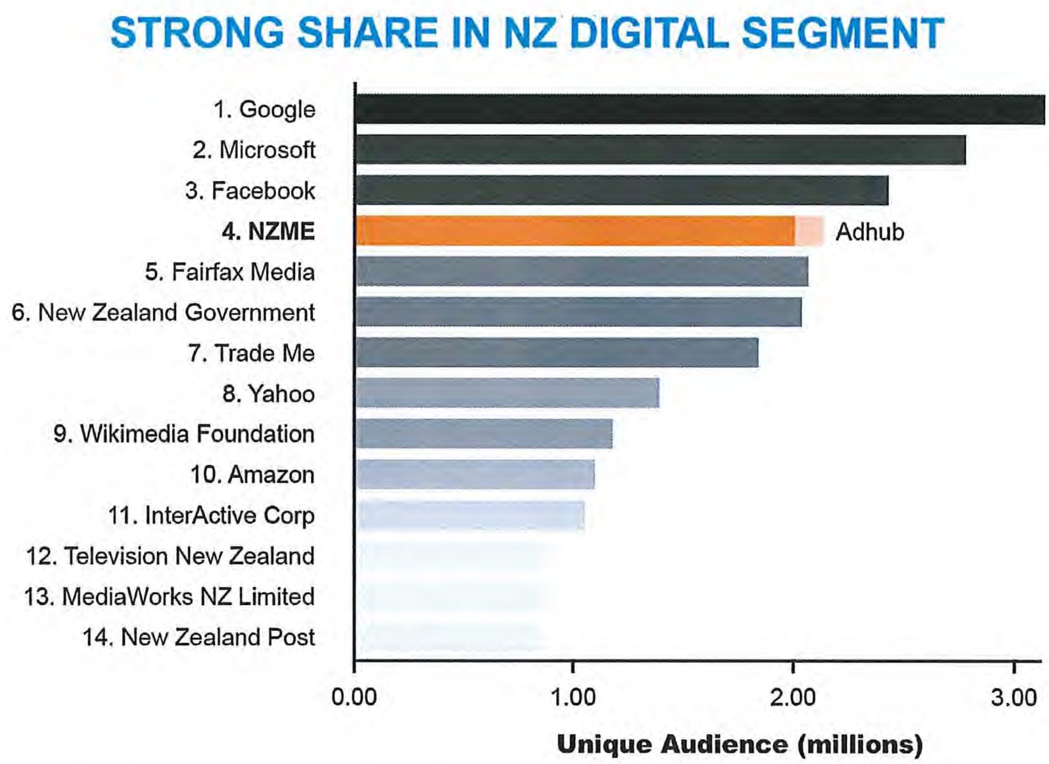
They have stated they have no long term strategic interest in newspapers so the logical strategy for them is to maximize profits by increasing pricing on their newspapers. As demonstrated above, it is the existence of strong local papers (free or paid) that provide the constraint on price raising, a constraint that will disappear in most markets where the new group will control both.

As shown with *The Mail* above there is a financial disincentive for a free paper to compete editorially with paid stablemate in its own market, which will happen all over the country if merger is permitted. It is the independent newspapers that remain and in fact keep paid newspaper prices low, and force the parties to still produce newspapers, that are the very businesses that will be threatened by the merger. **This situation would give NZMEFF free rein to further raise subscription prices in the short term and in the long term cease publishing newspapers and force consumers to consume their digital products.** .

[17] APN Explanatory Memorandum For the Demerger of NZME by APN to NZX, document 235222, May 2016 p.49.

Their argument in their application (section 1.11b) that the lack of overlap in their paid newspapers means there is no competitive impact from the merger is therefore not credible, as it is the competition between free and paid newspapers that provides the strongest constraint on cover prices. This competition will disappear in most markets where they will own both main the paid and the free papers post merger. **This clearly fails the public interest test and the pricing test.**

Further, if one takes their argument that the market is now being led as much by digital news as printed newspapers, the NZMEFF market share would also be extremely high[18].

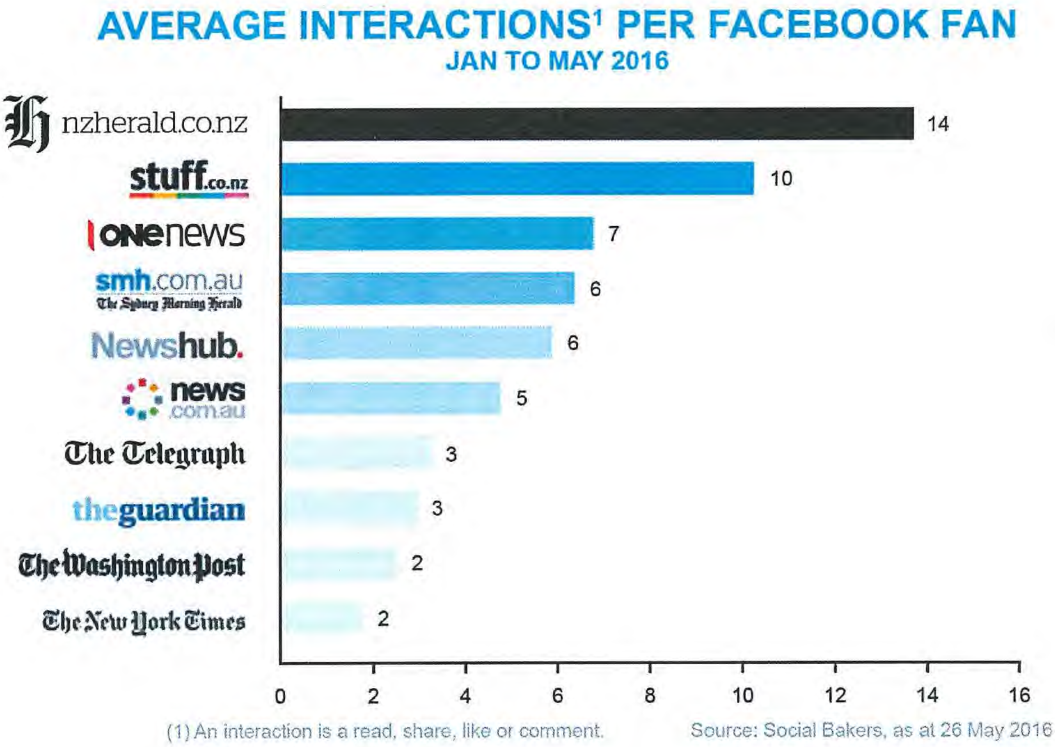


They publish the top two news sites in NZ, by far, with TVNZ and Mediaworks far behind. Above them are Facebook and Google which in so far as they present local news largely share content that NZMEFF produce. It is clear therefore, that they will control the national news agenda in print and digital.

The public interest issue is not so much global news, which is obviously a commodity, but New Zealand news. They cite people accessing google for news, while this may be true, this is deceptive, as the NZ news on that site is dominated by NZMEFF anyway (an example is shown in appendix 1 where 75% of the stories at a given point time in the NZ News page on google are sourced from NZMEFF). Therefore dominance of NZ news content will be very substantial.

[18] NZME Investor Presentation June 2016, p16

Finally, they argue that for sources of news are changing to global providers (section 6 in the NZMEFF submission), yet by their own admission if social sharing is a metric, and judging by the fact that NZME believes it is[19], they are holding out absolutely fine compared to their international (and local) news peers.



REDACTED

Finally, with regard to the public interest, the issue of paywalls is a key factor. The parties have indicated in their submission that they will not introduce a paywall arguing that "*other than for specialist publications and/or investigative content....the potential revenue that can be derived from a paywall will not displace the lost advertising revenue and lost audience data (which further undermines potential advertising revenues)*"[20]. We agree with this statement in the case of the counterfactual, as the two parties between them operate by far the two largest news sites in NZ (NZHerald and stuff) and generate 75% of NZ content on news aggregators like google. In the factual, however, due to the elimination of the competition between them, the parties are very likely to implement a paywall by differentiating the content between a premium site (likely the NZ Herald) and a mass, "clickbait" site (likely *Stuff*).

They are likely to follow the example of News Ltd in the UK where *The Times* is behind a paywall and the *Sun* is free. Each brand serves a different purpose.

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[19] NZME Investor Presentation June 2016
[20] NZMEFF submission 9.18

- The *Sun*, which is a mass market tabloid brand, website drives traffic and since removing its paywall in November 2015 it is the fastest growing news website in the UK.[21] Its focus is on experimenting with social channels, video etc. to boost audience and traffic and seek revenue from advertising[22].
- *The Times* has had a paywall for over five years, and is considered very successful. According the reports they are "earning more revenue from their readers than advertisers. As it stands now, readers account for about 55 percent of all revenue at the Times, an important shift as online advertising rates continue their downward spiral"[23].

Because they will eliminate their main online competitors (each other) we go so far as the state that the parties will experiment with a paywall as it would be the commercially rational step given their strong position to implementing a paywall. We know from the examples provided above with subscriber yields that the parties are highly sophisticated and analytical and successful at maximizing profitability. REDACTED Further, they are likely to look at the NBR's success with its own paywall to realise that premium content in NZ can be successful behind a paywall. According to the NBR:

> *They said it couldn't be done. When NBR ONLINE first introduced its paywall in 2009, people lined up to give it the bash. Sam Morgan, then a Fairfax director, called it "the brick wall" and he was one of the politer ones. But it turns out that if you deliver news people can use, they are willing to pay for it.People did sign on, and new subscription options have seen numbers accelerating over just the past six months to hit 4000 individual paid member subscribers today. Their numbers are supplemented by 336 organisations with IP (internet protocol) subscriptions that let every staff member access NBR ONLINE from their office. The list of IP subscribers includes nearly every one of New Zealand's largest organisations from blue-chip corporates to government departments and universities.*[24]

To further emphasise this point, it would be commercially illogical for them to continue to operate both sites as mass market sites competing with each other. This would drive down the prices (CPMs) they could charge. And they would not throw away massive brand equity by closing one of the sites. It is therefore "*a matter of fact and common sense*" that they would implement a paywall on one of their brands which would result in higher prices for CPM on the remaining free site (as this would dominate NZ news traffic) and higher pricing overall for content as readers seeking premium news would now have to pay for it behind the paywall. **The situation is therefore markedly different between the factual and the counterfactual with regard to paywalls.**

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[21] http://www.pressgazette.co.uk/national-newspaper-website-abcs-sun-fastest-growing-website-march/
[22] http://digiday.com/publishers/dropping-paywall-sun-focuses-rebuilding-traffic/
[23]
http://www.editorandpublisher.com/columns/digital-publishing-for-some-publishers-paywalls-are-gaining-traction/
[24] http://www.nbr.co.nz/4000

SECTION IV: CONCLUSION

"If...capital is divided between two different grocers, their competition will tend to make both of them sell cheaper, than if it were in the hands of one only; and if it were divided among twenty, their competition would be just so much the greater, and the chance of their combining together, in order to raise the price, just so much the less. Their competition might perhaps ruin some of themselves; but to take care of this is the business of the parties concerned, and it may safely be trusted to their discretion. It can never hurt either the consumer, or the producer; on the contrary, it must tend to make the retailers both sell cheaper and buy dearer, than if the whole trade was monopolized by one or two persons."
— Adam Smith, The Wealth of Nations

If there is one quote that concisely sets out the challenge facing the Commerce Commission it is this one. The parties argue comprehensively and persuasively that new competitors are challenging their traditional business models, and that this is affecting their profitability. However, they provide no compelling argument that they are players in these new markets, and are hoping to remediate this by gaining monopolistic control over the declining markets in which they do operate, in order to increase their profits and eliminate competitors. As Adam Smith points out the Commerce Commission's job is not to protect the interests of Fairfax and NZME shareholder from the realities of the market.

NZMEFF in their application summarise their rationale for clearance in section 1.12 in the following four points. We address each one in turn:

> *a) The Parties compete in the crowded, converged print/digital advertising market, with a large number of other providers of advertising services. The merger will enable the merged business to deliver advertisers a better product at a competitive price point.*

As explained in detail above the advertising market is not in fact converged to anywhere near the extent that the parties claim. They do not in fact compete in a crowded market at all but between them dominate specific market segments and the merger will remove the main competitors which are each other. Rather than provide advertisers a better product at a lower price the evidence strongly indicates they will provide advertisers a worse product at a higher price by utilising the advantages granted them by monopolistic control of their markets through controlling the national advertising channel for newspapers and dominating local advertising markets throughout the country.

> *(b) Looking only at print publications, there will be no material change to the constraints on subscription prices. There is limited "head-on" competition for subscription dailies today.*

The parties have made clear in current regulatory submissions that they have in place a deliberate strategy to raise prices on subscribers, and since the merger will remove the major constraint of editorially competing free papers in most markets they will be able, and are likely to, raise prices further than they would be able if the counterfactual applied.

> *(c) The quality of news/information content will be improved by the ability of the merged entity to invest in quality editorial content. The merged entity 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.*

The evidence shows that this is not true. The recent (Mar 2016) job cuts Fairfax announced in Sydney of 120 reporting staff (one quarter of its editorial workforce) was the staff on the newsroom floor who had been leading Fairfax's change to digital that were being let go. The Media Entertainment and Arts Alliance chief executive officer Paul Murphy said (our underline), "*through all of that transition they have worked to produce quality, independent journalism and this is the reward they get - another devastating round of cuts. <u>You really have to question the priorities of senior Fairfax management if they make an announcement like this</u>.*" Evidence of past behaviour indicates that the parties cannot be taken at their word and makes it predictable that the parties if merged will use their dominant position in local news to further cut editorial staff and thereby reduce "*quality editorial content*".

REDACTED.

> *(d) The print channel will benefit from the creation of a strong, print- invested entity that will be motivated to continue to improve the print offering to differentiate print from digital, in order to continue to attract the maximum number of consumers who may prefer that format. It will also benefit more broadly from the merged entity's investment in quality journalism for digital audiences.*

The evidence, as demonstrated in detail in our submission above, does not support this statement and indicated the parties are not in fact "*print-invested*" as they state. As early as 2011 Fairfax CEO Greg Hywood has been very open about the fact that "*the company has moved beyond print*".[25] Further, both parties been doing the opposite of differentiating print from digital and have been moving all their editorial teams to a "digital-first" orientation, where the printed products effectively recycle old news that has already appeared online. We contend that evidence of past and current behaviour is a far more accurate predictor of future behaviour than statements in their submission.

Give all the evidence that contradicts nearly all of the supporting we do not believe the merger can be allowed under competition law, or if it is, the group must divest itself of assets to lessen its concentration at a national level (e.g. closer to the Commission's guideline of 20-40%). At a local level, the dynamics of each regional advertising market need to be assessed on a case by case basis and in many markets to maintain any semblance of a fair playing field, divestments will need to be made (for example divesting the radio business

[25] https://www.radioinfo.com.au/news/fairfax-newspapers-broadcast-business-greg-hywood

and/or newspapers). It will be unsustainable in any market for NZMEFF to control both the main free/community papers and the dailies. In the Canterbury market in particular, we would ask the Commerce Commission to consider not only the power of the combined entity, but the power of Fairfax by itself in the Canterbury market.

> *We must not tolerate oppressive government or industrial oligarchy in the form of monopolies and cartels.*
> Henry A. Wallace, 33rd Vice President of the United States

About The Christchurch Star Company Limited, trading as Star Media

Star Media is a diversified media business with a broad suite of media products reaching across greater Christchurch encompassing metro and community newspapers, regional television, gloss magazines, trading titles, major local events, social media and digital streaming television and video production services.

Our brands connect with every household in greater Christchurch, and offer greater reach than any other media into New Zealand's second largest city. We also operate niche national multimedia mastheads in rugby and gardening.

The family owned company is fast growing and innovative, with over 100 staff all working locally in the Canterbury region. We are proud of our ability to be more flexible and responsive to customer needs than multinational competitors.