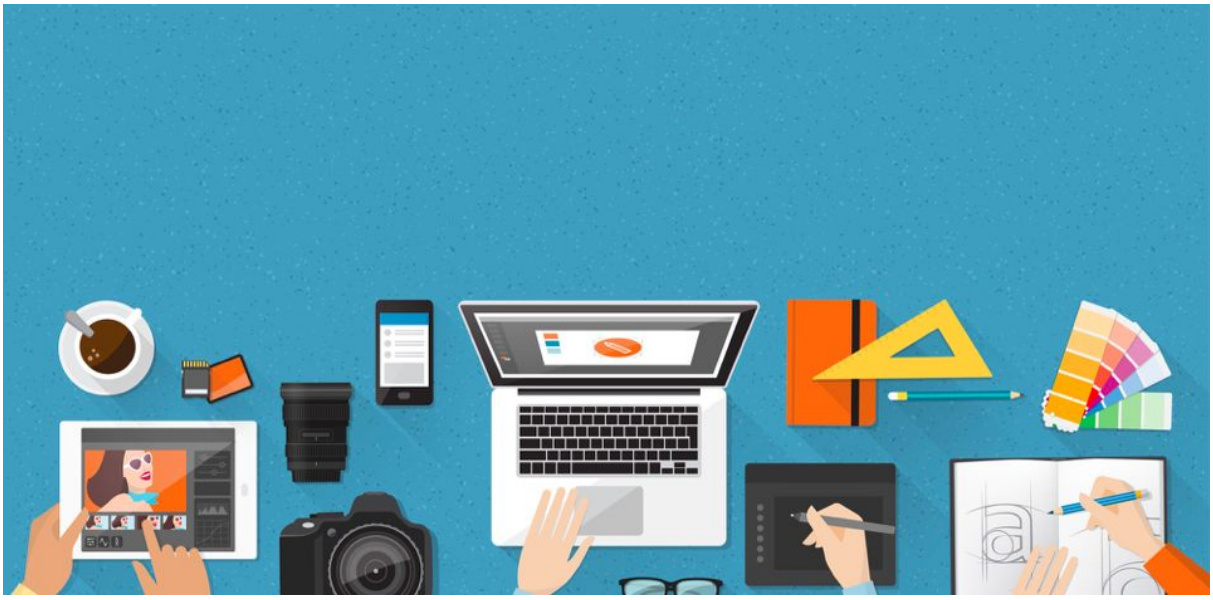
Submission to NZ Commerce Commission on proposed merger of Fairfax NZ and NZME



Stuart Howie

November 24, 2016

FLAME TREE MEDIA

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1.0 Our credentials, relevance of submission

Flame Tree Media is a communications and media consultancy. Our speciality is helping to prolong the life of newspapers by transforming their newsrooms into more sustainable and profitable multi-media operations. We also set up newsroom environments for medium-sized non-media companies.

We are incorporated in Australia with our business split between there and New Zealand.

As director of Flame Tree, I have deep knowledge and experience of newspapers. I am passionate about them and believe that, while they are under duress, in many cases they can continue to have a place in our communities and in the portfolio of media companies. This may be a diminished place, but newspaper-based companies still employ the greater share of journalists and few solely digital news operations worldwide match them for resources.

Typically, Flame Tree Media analyses editorial costs for companies, reviews how to balance resources in favour of content creation, and designs organisational restructure. Our approach is to honour print's place (it remains profitable for many companies) while making editorial operations more digitally focused.

My experience over more than 30 years in journalism includes:

- Editorial Director of Fairfax Regional Media, where I oversaw the editorial operations of 180+ newspapers and an associated network of websites and other digital assets;
- General Manager (Editorial Development) of Fairfax Regional Media;
- Editor of the daily *Illawarra Mercury*;
- Deputy Editor and Acting Editor of *The Canberra Times*;
- Editor of *The Courier*, Ballarat's daily newspaper;
- Senior News Editor of Leader Newspapers, Melbourne (News Ltd).

I've worked as an executive, editor or journalist across metropolitan, regional and community media - print and digital. I hold a Bachelor of Arts (Journalism).

I'm a Harry Brittain Fellow with the Commonwealth Press Union and a fellow of the now defunct Australian Suburban Newspaper Association. During these fellowships I travelled to large and small operations in the UK and US, with a special interest in community and civic journalism.

Of relevance, I was the architect of NewsNow, the signature editorial transformation program for Fairfax Regional Media (now Australian Community Media, a division of Fairfax Media). This program introduced changes to make the production of print easier and to transform almost 200 titles across Australia from print-centric operations to a digital footing. This program is acknowledged as underpinning AUD$60 million in costs savings for Fairfax.

Since leaving Fairfax and setting up Flame Tree, I have consulted for Fairfax NZ. I socialised NewsNow concepts with the company and wrote the business case for News Rewired, a transformation program styled for NZ. The main thrust of News Rewired was to transform Fairfax NZ's editorial operations into a "Modern Newsroom" environment. In May 2016, this project won a global award for Corporate Innovation at the International News Media Association (INMA) awards in London. News Rewired also won Best in Show, judged from all entries across all categories for Asia/Pacific.

Flame Tree Media has consulted to Allied Press, a Dunedin-based independent publisher.

As the Commerce Commission would know, Allied Press's main interest is the daily metropolitan newspaper the *Otago Daily Times.* It also has a stable of 11 community titles, a community TV operation, and majority ownership of the *Greymouth Evening Star* and a handful of west coast titles.

Flame Tree conducted an editorial review for Allied Press and presented this to the business in August 2016. This review considered the state of competition and outlined a transformation strategy for Allied Press.

Allied Press has objected to the merger on the grounds of the material impact on its access to news services, decreased plurality of opinion and a perceived negative impact on its advertising and other commercial interests.

I believe Flame Tree is well-placed to provide a rounded view on the state of the media industry, the NZ market in that context, and the likely practical impact of a merger for the companies involved, independent publishers and audiences.

Having designed and implemented transformation strategies for big and smaller media in this country and Australia, I believe I offer a view from the coalface of media change.

2.0 Plurality of views

On our reading, the chief concern of the Commerce Commission as outlined in the draft determination on the proposed merger is around the potential for the plurality of views to diminish should the merger proceed. The commission makes a strong and compelling case around this - and by definition, with the merger reducing major NZ media players from five to four, this is hard to argue against.

Similarly, the expert review concludes, using methodologies that compare media concentration elsewhere in the world, that on the weight of evidence the merger would reduce the breadth of views and voices.

The review notes none of this is a perfect science (our paraphrase). Both the draft determination and expert review cannot and do not precisely quantify what constitutes an acceptable amount of plurality.

While we accept the commission has gone to a great extent to validate its determination, we do not believe it has shown in any real way how the diversity of opinion would be reduced, let alone to a significant level.

In particular, we believe three areas deserve more attention:

1. **The rise and rise of social media and other new media means there is greater plurality of views than at any time before**

This is an environment inherently different to several decades ago when regulation was important and possible. Legitimate fears have transpired in some parts of the world where, for instance, the only two daily newspapers in town have merged to the detriment of the community interest because of the lack of other outlets for news, information and public discussion.

Times have changed. Today, anyone can be a publisher - and it is a smorgasbord of media for consumers. Not all appetising, but plenty of fare, quality and choice.

The draft determination and expert review have used or referred to a number of measures to gauge the impact of any further media concentration. This includes media ownership as a percentage of sold daily newspaper copies in national markets.

The commission stated NZ would only be behind China for concentration of newspaper ownership. A merged company would account for 90 per cent of daily newspaper sales in the country - a far more dominant position than Rupert Murdoch has across Australian media.

However, the commission is only capturing a view of plurality in part of the mass media market - the traditional media market as we have known it in the form of newspapers, radio, TV and their main digital assets (such as Stuff.co.nz and nzherald.co.nz).

The commission and expert review argue that while Facebook and Google could be seen as competitors they do not produce content. In regard to this, we believe the commission fails to see the forest for the trees.

Facebook has some 1.8 billion users worldwide. In NZ, more than 2.5 million people access Facebook each month, about 2 million per day – and about 1.5 million from a mobile device (Nielsen).

Facebook may not produce its own content but it is a real and direct competitor in the content market given the amount of user generated content produced there. Consumers do not necessarily distinguish on Facebook between what is aggregated or distributed news and other information that appears on the platform. It is a jumble that represents, whether we like it or not, the complexities of media today.

2. The two merger applicants can enshrine a greater level of "internal plurality" in a new larger organisation

By merging, these companies are in a better position to serve Kiwis and provide a multitude of voices for public discourse.

With varied media interests, NZME and Fairfax NZ would complement each other. Together, they would serve both national and niche audiences - providing quality journalism and entertainment via print, radio, video, online, social and so forth. **The Kiwi conversation would be endless, from talkback radio through to community chats on Neighbourly.** (Neighbourly alone has a membership of 300,000 members with a network of community forums that depend upon and foster local dialogue.)

In both organisations, the independence of editors is cherished, documented and protected. There is not a unilateral view within Fairfax NZ, for instance - no edicts on "the company" editorial line. All matters where an editorial opinion is required or where story angles are considered are judged on their merit and by the editors or news directors in those individual markets or for those particular products. From our reading of the findings and submissions to date, no-one seems to suggest this would be otherwise.

The merged entity would be a larger company of many channels and many voices. Outside of this, of course, NZ would continue to enjoy a variety of views across other media.

3. New Zealand has a diverse media and a plurality of views. It will so post-merger

With a population the size of Sydney, New Zealand is spoilt for media choice - a plethora of metropolitan, regional and community newspapers covering almost every nook and cranny of the country, commercial TV, publicly funded radio and TV, a host of websites attached to traditional media, as well as new media platforms.

The commission and the expert review found otherwise, looking at comparable markets by way of population.

We press the point that it is the wider market - traditional and new media - that should be considered when it comes to plurality.

3.0 Print

Imposing restrictions on an industry under duress does not make sense.

What is clear is that organisations that do not transform from print-centric models to environments where innovation is at the core will wither and die. That is the global experience. That is the NZ experience.

In the past five years, metropolitan daily newspaper circulation in NZ has dropped 25 per cent - and it continues to decline (Listener, NZ).

This merger represents media re-spawning. It reflects audience and advertising trends. It reflects social patterns. It is enabled by technology. It is called progress. And it is healthy.

The rub for publishers is that newspaper subscription and ad revenue still overwhelmingly funds those businesses and their journalism. These companies do not want to jettison print and require print to be stronger for longer as they move their respective business models to a solid digital footing.

For its part, the draft determination takes a “let’s-freeze-time” approach. But it applies a double standard.

On the one hand the commission presumes the status quo will apply if it prevents the merger. That is, things will bob along as now, with the current level of disruption. “... We have taken a pragmatic approach by conducting our competition analysis on the basis of the status quo scenario as we consider it to be the most conservative from a competition point of view,” the commission states.

This sounds more optimistic than conservative to us.

On the other hand, the commission presumes there would be significant rationalisation and reduction in competition if the merger proceeded. Print titles would go, the cost of advertising would be jacked up and the Fourth Estate as the independent force we know it would be destroyed.

What will happen to print post-merger or no-merger?

We can crystal-ball gaze. What we know for sure, is there will be no status quo.

4.0 Competition

If the commission ultimately rejects the proposed merger, the commission would leave these companies in limbo. Or worse. In the least, they would be stuck between a rock and a hard place - unable to sustain themselves sufficiently on legacy assets but prevented from gaining the critical mass they need to develop into a fully fledged digital business.

A merger is a natural progression for NZME and Fairfax NZ.

They have made ground in transforming their operations and transitioning to a predominantly digital environment. The fog has also lifted around the general media landscape. While there is no clear path to assured double-digit prosperity, as there was in the past, the choices they need to make are more apparent. The future for NZME and Fairfax NZ relies upon them combining their complementary media interests and the power of a combined force.

The reality in today’s global media economy, which is as relevant to New Zealand as anywhere in the world, is that the stronger a company is the better it is able to support journalism and therefore public discourse.

Growth equals jobs. And growth and jobs, not regulation, are the most solid guarantee you will get to ensure ongoing media diversity and a plurality of voices.

It is true consolidation can mean “efficiencies” - business-code for axing jobs. The reality is that just as old jobs will go new jobs can be created. Newspapers may close or drop in frequency of publication. New enterprises will be created. This depends on news operations being able to successfully move to a new business model.

To us, the merger is about that opportunity. The merger represents evolution not contraction.

Unfortunately, the commission provides a case to kill the merger based on a hypothesis. In short, the merger would reduce the major (traditional) media players in NZ from five to four. That would mean less outlets and diversity of opinion, and less choice for consumers around news and information. This is the theory.

However, by ring-fencing traditional media in this way belies the real landscape in which Fairfax NZ and NZME operate. Their battle for market share is, yes, with their traditional rivals, but today it is moreso with social and new media - and on every flank.

One important fact supports this argument. In 2015, 75 per cent of all new online ad spending went to Google and Facebook (US report, Internet Trends). That is what faces Fairfax NZ and NZME. This is not a hypothetical. This is the reality that bites.

The commission's role, of course, is to analyse all before it and do its best to predict what might or might not happen in regard to competition. However, with or without the merger, the media landscape will continue to change. The commission cannot regulate this.

While the commission is rightly keen to maintain at least the current level of plurality, at the heart of this merger proposition is an economic decision.

5.0 About regulation

We believe a free media is a less regulated media. Just as the commission justifies its decision on the grounds of wanting to protect the Fourth Estate, a counter-argument exists that this is best done by leaving it alone.

The commission holds "good judgement" as one of its core values - and "to understand the environment in which we operate and the impact of our actions". We believe its position does not give sufficient weight to the dynamics and realities of today's media environment.

Similarly, one of the commission's strategic objectives is to create an environment where "consumers and businesses are confident market participants". Instead, the draft determination fuels further uncertainty.

What is patently unfair is that the proponents of the merger do not operate on a level playing field with those companies that have emerged as media competitors. Facebook, Google, Apple and those who use their platforms or other new media, operate in a world relatively free of restriction.

We are only half-joking when we suggest that perhaps the commission ought to seek to regulate that market - the internet - for that is at the heart of the problem (and opportunity) for traditional media players like Fairfax NZ and NZME. Could the commission please regulate the internet and associated activity so everyone has to pay for content, intellectual property and authorship is protected and all domestic and foreign companies pays their fair share of tax as good corporate citizens should?

In Australia, media is poised to undergo its greatest deregulation in decades. Politicians there seem to have finally acknowledged the ludicrous situation of restricting the larger media players from transitioning from a less certain current state to one where new opportunities can be seized.

In the 1980s Australian Prime Minister Paul Keating said media tsars had to make a choice - they could be princes of print but not queens of screen. Back then, the staples of a daily media diet were radio, the 6 o'clock TV news, and the morning or afternoon newspaper.

Today, media is far more complex - and for regulation to be fair it must take into account the gamut of traditional and new media. Competition has only increased for traditional media players. Further restricting their operations would be counter-intuitive and it is why the Turnbull Government is considering a rewrite of Australia's restrictive cross-media laws.

6.0 Our position

In a nutshell

Our view is that the Commerce Commission should approve the merger with a number of conditions to ensure the merged company and its editorial leadership and management supports in principle and practice a high level of "internal plurality" of views.

We believe preventing this merger would economically and unfairly penalise these individual companies and by association the nation's interests.

We believe the new entity will be a strong company; one that can provide new platforms and channels for New Zealanders to engage in national and local conversations.

We believe if these companies are not permitted to merge they will be unfairly restricted from competing in the wider media market.

We believe a stronger company equates to growth. Growth equals jobs. Jobs equal stronger journalism.

We believe that within the new company there would be an increased plurality of views because of its mix of assets, channels and ability to innovate.

We believe editors' independence would be guaranteed.

We believe these companies should have the opportunity to re-spawn in today's media climate.

Solutions

Both NZME and Fairfax NZ are known for providing quality, independent journalism that enriches the lives of New Zealanders.

We understand the concerns the commission articulates on behalf of Kiwis about any diminishing of this through media consolidation.

To that end, the merger could be cleared subject to a number of conditions.

We offer these as suggestions to convey that, while we think fears around the plurality of views are ill-founded, practical checks and balances can be put in place. These could include:

- Greater industry funding and strengthening of the NZ Press Council. This could involve reviewing membership;
- Approval of the merger subject to protection provided to specific geographic markets where "loss of voice" was an issue. This could, for instance, require the company to maintain a prescribed and agreed level of news service through certain media in certain locales;
- Annual reporting on market diversity by the company to the NZ Press Council;
- Independent annual auditing and review of NZ media diversity;
- Independent annual auditing and review of the merged company's internal plurality;
- Appointment of an ombudsperson or audience advocate by the merged company;
- Establishment of a community advisory board by the merged company;
- Greater public funding for national broadcasters and national or local based news services or schemes.

On the last suggestion, we note we have not canvassed the role of the public broadcaster or other publicly funded news services.

We believe it is fair to say that NZ does not have the benefit of a comparatively strong public broadcaster as Australia does with the ABC and its myriad of services and "voices" across radio, TV and online. The ABC plays a critical role in public discourse in Australia. In advocating for media consolidation with this merger, we believe further discussions should be activated in enhancing the role of public radio, TV and online services.

We believe this is a better intervention - to strengthen publicly funded news assets - than restricting in-duress companies in the private sector from re-spawning in a changing market.

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Fast, dynamic, tumultuous. The media landscape continues to evolve and regulation needs to reflect the fluidity of the market and consumer behaviours.

By 2020, the amount of information produced online will treble (International News Media Association, Outlook 2016). Amid this cacophony of communications, media companies are looking to establish new products and services for consumers. What that eventually looks like in the future we can speculate about. One thing is certain - consumers will be spoilt for choice for how they can access that information and in the variety of information and opinion at their fingertips.

We hope common sense prevails and this merger is cleared to allow NZME and Fairfax NZ to better serve New Zealanders in this way.

Stuart Howie
Founder and director
Flame Tree Media
flametreemedia.co.nz

November 24, 2016