

Wilson & Horton Limited and Fairfax New Zealand Limited – Application for authorisation of a business acquisition

Second submission by:

Rod Oram, *business journalist*

November 22nd, 2016

Rod.Oram@NZ2050.com 021 444 839

Summary:

This submission is in response to the Commerce Commission's draft determination on the merger application of NZME and Fairfax. It concerns codes of conduct and I offer it alongside the submission of Dr Gavin Ellis on media ownership, editorial content and intellectual property, which I support.

1. In my first submission dated July 1st, 2016, I made the case that NZME and Fairfax need to considerably strengthen and deepen their codes of conduct to:
 - a. Bring greater transparency and accountability to their very powerful position in NZ media, if they were allowed to merge
 - b. Greatly strengthen their competitive position against their main rivals, Facebook and Google.
2. In their Response to Submissions dated July 29th, 2016, NZME and Fairfax said in paragraph 94: "Both NZME and Fairfax already have such charters in place."
3. However, seven problems arise:
 - a. They post their editorial codes on their corporate websites. This is not an obvious place for members of the public to find them if they want to know their editorial rights. Logically, they would look on the news websites.
 - b. The companies offer no evidence that they actively enforce the codes.
 - c. The companies' complaint processes for readers and users are not well sign-posted, and are barely documented.
 - d. The companies' other codes on privacy and data are posted separately; therefore in aggregate the codes do not form a coherent and compressive charter for readers and users.
 - e. If subscribers want to unsubscribe or unregister from either company's news website, it is very difficult for them to work out how to do so.
 - f. When a person unsubscribes, the companies do not state how they subsequently treat the data they have collected on the user.
 - g. Fairfax and NZME fall far short on these matters compared with the international best practice demonstrated by, for example, the *Financial Times* and the *Guardian*.

Editorial codes, and their enforcement:

4. The Fairfax editorial code is available on Fairfax's corporate website on this page:

<http://www.fairfaxmedia.co.nz/pressroom/NZ/fairfax-media-new-zealand-journalism-charter>

Logically, readers of Fairfax's online media would expect to find it instead on the Stuff website, in conjunction with editorial content. Moreover, it is dated August 2011, and the company offers no evidence that the code is actively enforced.

5. The NZME editorial code is on its corporate governance page of its corporate website, <http://www.nzme.co.nz/corporate-governance/>, not the *NZ Herald* editorial site. It is dated June 27th 2016. The company offers no evidence the code is enforced.

Complaint processes:

6. Stuff offers on its Contact Us page (accessible from the bottom of its home page) a brief description of its reader complaints procedure:

Complaints:

Stuff.co.nz is subject to NZ Press Council procedures. A complaint is to be first directed in writing to the editor at: patrick.crewdson@fairfaxmedia.co.nz

If not satisfied with the response, the complaint may be referred to the Press Council, PO Box 10879, The Terrace, Wellington, or email (info@presscouncil.org.nz). Enclose copies of the article complained of, and any correspondence you have had with us. Further detail and a complaint form are available at www.presscouncil.org.nz.

But Stuff fails to describe the internal process by which complaints are handled, and the factors on which it is adjudicated.

7. The route to the *NZ Herald's* complaints procedure is more complicated. At the bottom of its website home page, readers need to click on Help & Support, then under Editorial and Content they need to click on Feedback. Like Fairfax, the *Herald* fails to describe the internal process by which the complaint will be handled, and the factors on which it will be adjudicated.

Privacy and data codes:

8. The Stuff websites give links to its Privacy Code and Terms and Conditions at the bottom of its home page. To find the equivalent on the *Herald* site, readers need to click at the bottom of the home page on Help and Support, which brings up 11 categories, of which the last is General, which includes its Privacy Policy.
9. These are cumbersome and user-unfriendly pathways by which readers and users can seek to understand the media companies' commitments to them.

Unsubscribing or unregistering:

10. To unsubscribe from Stuff, users have to click at the bottom of the Home Page on Terms and Conditions, then click on Website and Membership (Stuff

Account) Terms and Conditions, then find these instructions buried in paragraph 12 (without a headline):

You have the right to deactivate your account and can do so by contacting [Tech Support](#). If you are a newspaper subscriber please note that by deactivating your Stuff Account this will not affect your subscription it will purely deactivate your ability to access the Stuff online portal. Please contact [Customer Service](#) for details on how to cancel your subscription

11. Stuff failed to respond to my enquiries about what it does with the data of members who have unsubscribed.
12. On the *Herald* website, I failed to find a way to cancel a registration or membership. The *Herald's* Help Desk and Shayne Currie, its editor-in-chief, failed to respond to my emails seeking advice on this, and the question of the *Herald's* use of cancelled members' data.

International best-practice:

13. The *Financial Times* and the *Guardian* are two examples of international best practice by media companies on these issues.

The FT's comprehensive system is laid out at:

<http://aboutus.ft.com/corporate-responsibility/ft-editorial-code/#axzz4HRLqBpTy>

And the *Guardian's* is at: <https://www.theguardian.com/info/complaints-and-corrections>

Remedy:

14. Fairfax and NZME, as separate entities or in some form of combination, could try to fight back, commercially and journalistically, against Facebook and Google, which they say are their rivals. As New Zealand companies they could generate a far higher degree of trust with their audiences, turning their loyalty into a competitive advantage against Facebook and Google.
15. As individuals we know very little about what Facebook and Google know about us, how they shape content and advertising to us, and how they make money from us.
16. To build high trust and increase their competitiveness, NZME and Fairfax, separately or in some form of combined entity, would have to commit to a charter embracing:
 - their code of ethics
 - the data they collect on us
 - how they make money from us
 - how they make editorial decisions
 - what editorial influence they allow sponsors and native advertisers
 - where they stand on public issues
 - how they guarantee a plurality of voices
 - how they deal with grievances
 - how they prevent powerful shareholders dictating editorial positions by,

for example, limiting shareholdings to a maximum of 15 per cent, and by creating a trust as the cornerstone shareholder to block a takeover of the companies.

17. If they won't commit to such a charter, they would hold a powerful position in media and the nation's discourse, with very weak constraints on them and very little accountability for how they used their power.

18. Thus, in the absence of such a charter, any form of merger or combination of the companies, or of a subset of their assets, would be detrimental to the commercial vitality of their sector and to public interest.

.....
Appendix:

Rod Oram's CV

Rod Oram has 40 years' experience as an international business journalist. He has worked for various publications in Europe and North America, including the *Financial Times* of London from 1979 to 1997.

Rod and his family emigrated to New Zealand in 1997. He was business editor of the *New Zealand Herald* 1997-2000.

He is currently a columnist for the *Sunday Star-Times*; a regular broadcaster on radio and television; and a frequent public speaker on sustainability, business, economics, innovation, creativity and entrepreneurship, in both NZ and global contexts.

For more than a decade, Rod has been helping fast-growing New Zealand companies through his involvement with The ICEHOUSE, the entrepreneurship centre at the University of Auckland's Business School.

From 1999 to 2012, Rod held a number of advisory and honorary roles at Unitec in entrepreneurship, innovation and business, including an adjunct professorship. He will shortly take up an adjunct professorship at Auckland University of Technology.

Penguin published in 2007 his book on the New Zealand economy, *Reinventing Paradise*. In 2008, the Royal Commission on Auckland Governance engaged Rod to write a "foresight" research paper on Auckland in 2060. He was named the Landcorp Agricultural Communicator of the Year for 2009.

In 2010, Rod was the winner in the individual category in the *Vero Excellence in Business Support Awards* and was Columnist of the Year in the consumer category in the national magazine awards for his columns in *Good*, a sustainability magazine.

In 2015, Rod contributed a chapter on New Zealand and the Global Financial Crisis to *New Zealand Government and Politics*, 6th edition, edited by Janine Hayward. This is an extensive collection of research writings for NZ university students published by the Oxford University Press.

In 2016 Rod has contributed to a peer-reviewed research paper on the economics of the Trans Pacific Partnership Agreement. He was a finalist in the business opinion category in the Canon Media Awards.

Rod has served as a trustee of the Sustainable Business Network and the Council for Socially Responsible Investment. As a member of the Anglican Church's Auckland Diocese and General synods, Rod is deeply involved in sustainability and fossil fuel divestment activities.

Rod was a founding trustee and the second chairman of Ākina Foundation, which helps social enterprises develop their business models in areas of sustainability. He remains actively involved with the foundation and the ventures it supports.

Rod's latest book, *Three Cities: Seeking Hope in the Anthropocene*, was published by Bridget Williams Books in September 2016.

Rod was appointed an adjunct professor at AUT in Auckland in September 2016.

- *Sunday Star-Times* [columns](#)
- Radio NZ *Nine to Noon* [segments](#)
- Twitter: [@RodOramNZ](#)
- Facebook: <https://www.facebook.com/Kiwiki-212299210904/?ref=hl>
- Ākina Foundation www.akina.org.nz

ENDS