

Impact of the proposed NZME/Fairfax merger on media plurality in New Zealand: expert review of the Commerce Commission's Draft Determination Document

Dr David Levy, Director of the Reuters Institute for the Study of Journalism at the University of Oxford, and Robin Foster, Media Policy Adviser and Founder of consultancy Communications Chambers.

November 16, 2016

Introduction and credentials

Brief

We have been commissioned by the New Zealand Commerce Commission to provide expert advice on the plurality aspects of the proposed merger between NZME and Fairfax and to review the way in which the Commission's draft determination addresses these aspects. This paper sets out our views under the following headings:

- The context for analysing plurality
 - Approaches to the meaning and importance of plurality
 - Plurality in New Zealand compared with similar jurisdictions
- The draft determination
 - Identification of the different dimensions of plurality
 - Assessment of plurality before and after the proposed merger
 - The changing nature of relevant markets.

In carrying out this brief, we have read the submissions to the Investigation, had sight of various data and research on the New Zealand media sector, and drawn on our own wide experience of media plurality analysis, which is set out below. The views in this paper are our own, and do not necessarily reflect those of the Commission.

Expert credentials

I, David Levy, Director of the Reuters Institute for the Study of Journalism at the University of Oxford, have more than 30 years' experience of working in the media sector, both as a practising journalist, producer, reporter, and editor, and as the leader of the BBC's Public Policy function in various roles and serving as the BBC's Controller, Public Policy until I left the BBC in 2007.

I am an established expert in the area of media policy and changing media use in the digital era. In my role as Director of the Reuters Institute I have written, edited and commissioned a variety of publications looking at the impact of the digital transition in journalism, and led the creation of the Reuters Institute Digital News Report in 2012, which is focused on tracking the move to consuming news online, and has grown to cover 26 countries in 2016, and become recognised as the most comprehensive and authoritative comparative study of the changing digital media landscape for journalism in the world.

In addition to my work leading the Reuters Institute, my expertise has been sought in a range of other media environments. I was the sole foreign member of a French expert commission reviewing the future of their public broadcaster in 2008, and served on the board of the French International broadcaster, France 24, from 2009 to 2012. In addition, I have served as a member of the Ofcom Content Board, from 2011 to date.

I, Robin Foster, am an adviser on media economics and policy and founder of UK-based media consultancy Communications Chambers, and previously led the strategy and regulatory teams at Ofcom, the Independent Television Commission, and the BBC. I am currently an independent member of the Ofcom Content Board and a member of the Advertising Advisory Committee (of the UK Advertising Standards Authority). I was also an independent member of the UK Government's Digital Britain Steering Board, and leader of the Global Communications Consortium research programme at London Business School.

I have written extensively on media plurality as an expert witness and consultant, including a submission on media plurality to the UK Leveson Inquiry on press standards and media plurality, followed by appearance at the Inquiry as an expert witness in July 2012. I was an expert witness to the House of Lords Communications Committee's Inquiry into media plurality, June 2013, and author of a paper and presentation for the Broadcasting Authority of Ireland on Media Plurality in a Digital Age, which assessed challenges ahead for regulators in smaller national markets.

I have provided advice to the BBC on proposed approaches to measuring media plurality, as part of its submission to Ofcom's consultation on plurality measurement, which examined inter alia the role of public broadcasters in enhancing plurality, and authored a report on News Plurality in the Digital World, for the Reuters Institute, which assessed the role and significance new digital intermediaries such as Google and Facebook, and their impact on future economic sustainability of traditional journalism.

Key context

Brief overview of approaches to the issue of plurality

There is general agreement in the democratic world that news and other media play an essential role in informing citizens thereby enabling their participation in public debate and democratic decisions. A thriving news sector ensures that people have access to information about the events and decisions which affect their lives, and have a better understanding of the world in which they live. It exposes its readers to views and analysis which both support and challenge their own ideas, and – through its investigative reporting - can shed light on important issues of the day and hold the powerful to account.

There is concern however that the commercial media market left to itself may not always provide either the range or variety of content which society would like, or may place too much power and influence in the hands of a few, powerful, news providers. Many therefore see media plurality – expressed both as a range of news providers and a diversity of content available - as an important public policy goal.

A recent UNESCO report, for example, highlighted the importance of press freedom as a corollary of the basic right to freedom of expression and opinion, and noted that such freedoms need to be underpinned

by a media environment that is legally free as well as providing for plurality and independence¹. In Europe, the concept of media plurality has played an important part in more general discussions of media policy², and respect for “freedom and plurality of the media” is set out in Article 11 of the European Union Charter of Fundamental Rights. In the United States, the Federal Communications Commission has long presided over media ownership rules designed to ensure a diversity of voices in local TV and radio markets.

Various approaches have been adopted to address media plurality concerns, but the most common to date have been so-called “structural” interventions – typically taking the form of rules designed to prevent undue concentration of media ownership³, the thinking being that the existence of a number of independently run media organisations is more likely to secure the provision of a wide range of news, opinions, perspectives and analysis than would be the case with just one or only a very few suppliers. A range of different voices in the media market will reduce the risk that any single news media owner can exert undue influence over the political process and dilute the impact of aspects of press behaviour seen in some countries, such as personal attacks on politicians, selective reporting and highly partisan editorials.

Alongside structural rules, some countries have created positive forms of market intervention in media, for example through different approaches to public broadcasting or subsidies for journalism, although the scale of such interventions varies greatly. Others have turned to so-called behavioural regulation, which attempts to influence the range and quality of journalism produced.

Structural interventions can be blunt tools, and increasingly do not effectively reflect the changing realities of media consumption across different media. They do not always guarantee desired levels of

¹ World Trends in Freedom of Expression and Media Development, UNESCO, 2014.

<http://unesdoc.unesco.org/images/0022/002270/227025e.pdf>

² Various EU working papers and projects have highlighted key plurality concerns such as diversity of ownership, variety of sources of information, and the range of media outlets available. For example, see the various online resources on Media Freedom and Pluralism at <https://ec.europa.eu/digital-single-market/en/media-freedom-and-pluralism>

³ Much of the focus has been on broadcast markets or on cross-media ownership. Such rules range from hard and fast caps on media ownership, perhaps expressed as share of consumption in a particular media market, to thresholds which are used to trigger further investigation. Few countries impose specific limits on newspaper ownership, although France caps the stake of any single company at 30% of total newspaper circulation. See R.Kuhn, ‘The Media in Contemporary France’, 2011. In many countries, these rules sit alongside but often go further than competition rules. In some countries competition authorities are charged with the responsibility of enforcing such rules or investigations. In others, the task is given to specialist media regulators or other independent bodies. For one high level international overview which covers approaches in New Zealand, the UK, Canada, USA, Germany and the EU along with Australia, see the briefing paper from the Australian Department of Communications published in June 2014 as ‘Media Control and Ownership: Policy Background Paper No 3’ available here

http://www.presscouncil.org.au/uploads/52321/ufiles/Control_Background_Paper_Australian_Government_Department_of_Communications.pdf . Another, slightly less recent international survey, covering

Australia, Canada and the USA along with six European countries, was produced by the UK Media Reform Coalition in 2013, as part of their submission to the UK Leveson Inquiry, and can be found here

http://www.mediareform.org.uk/wp-content/uploads/2015/11/The_Elephant_Next_Door-A_Survey_of_International_Media_Ownership_Regulations.pdf

plurality – for example, if all news providers in a given market take the same approach to news presentation, or pursue similar agendas – and can be counter-productive if they prevent successful media companies from serving larger audiences. Reviews of existing concentration and ownership rules happen regularly. The US FCC concluded its latest review in August 2016 and left its rules largely unchanged.⁴ By contrast while Australia has long had a variety of rules designed to impose limits on some forms of media ownership, two of these rules are currently being abolished, (the rule limiting ownership of commercial TV licences to 75% national reach, and the rule stating that media owners cannot own more than two out of three of a commercial radio licence, TV licence and control of a newspaper within a specific commercial radio licence area) other rules are being maintained and there will be some measures to strengthen local content requirements on TV licensees.⁵

Because of the shortcomings associated with hard and fast rules, much recent thinking, including that in the UK, has centred on developing a wider, more evidence and impact based (rather than e.g. a purely licence based) approach to assessing plurality and how it might be best secured. UNESCO, in the report referred to earlier, argues that plurality can be thought of as meaning at least six different aspects: access to a wide variety of different types of media, plurality of ownership structures, sustainability of business models, diversity of viewpoints and sources, broad scope of media coverage, and gender equality.

Debate has also focused on the extent of concern about plurality; whether just in news content or in a wider range of social, economic and cultural content; about the scope of any regulation, whether it should just cover traditional media outlets such as newspapers and TV stations, and the ways in which new digital media outlets and intermediaries might feature in such an approach, as well as the thresholds at which concentrations of media ownership might pose a threat to plurality. There is an emerging consensus that the policy priority is to secure plurality in news media (although wider cultural plurality should not be neglected) and that digital as well as traditional media should be included in any assessment.

There has also been interest in the form and quality of journalism as well as its plurality. Professor Steven Barnett⁶, for example, has argued that – alongside diversity of voice - we should be as concerned with the extent to which journalism is successfully performing its key roles (as he sees them) of informing, representing, campaigning and interrogating. Are relevant stories and ideas being covered? Are the powerful being held to account? Are proper journalistic values being upheld? Is there a commitment to investigative journalism?

It is certainly clear that plurality can impact on the news that citizens are exposed to in many varying ways:

⁴ For a description of the FCC rules see <https://www.fcc.gov/consumers/guides/fccs-review-broadcast-ownership-rules> . For an account of the August 2016 FCC decision see Reuters News report here <http://www.reuters.com/article/us-fcc-media-idUSKCN10L2M8> an FCC summary of their decision and the rules here, https://apps.fcc.gov/edocs_public/attachmatch/DOC-340033A1.pdf and the full FCC decision here https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-107A1.pdf . The full decision includes the statement: ‘...we find that the public interest is best served by retaining our existing rules, with some minor modifications. These rules promote competition and a diversity of viewpoints in local markets, thereby enriching local communities through the promotion of distinct and antagonistic voices. ... retaining the existing rules is the best way to promote our policy goals in local markets at this time.

⁵ For a brief overview see <https://www.communications.gov.au/what-we-do/television/media/updating-australias-media-laws>

⁶ See: “Journalism, Democracy and the Public Interest”, Steven Barnett, Reuters Institute, September 2009

- Competition between journalists working in different organisations can lead to issues being exposed and scrutinised in a way that are unlikely to occur with only one provider
- That competition can also lead to a wider news agenda being covered by different organisations than if there was one alone.

Such competition can also help protect journalists against attempts at political pressure or to bury stories, since where there are several providers pressure on one organisation is both less effective and riskier as it may be exposed. The same applies to areas where the commercial interests of media owners are used as a way to apply editorial pressure.

Defining and measuring plurality

New approaches to media plurality emphasise the importance of defining its various dimensions, and then its effective measurement. The perceived importance of media plurality, alongside the acknowledgement that existing approaches to its regulation were at best imperfect, led the European Commission to publish a very wide ranging study from a group of three Universities working with Ernst & Young Belgium, in 2009, which proposed a series of media pluralism indicators, which together formed the basis of what was termed a risk-based approach⁷ While comprehensive, the approach – which included 166 different indicators - was seen as too wide ranging to provide a concrete guide for policymakers. As a result the European Commission funded a follow up study from the Centre for Media Pluralism and Freedom based in Florence to update, simplify and conduct pilot tests for several countries of this simplified approach. The first report covering nine countries was published in January 2015 and while the new approach narrowed the monitor to focus on news and current affairs it still involved a fairly wide ranging set of indicators to capture the range of different risks to pluralism.⁸

The risk based approach recognises that plurality is multi-faceted and in a fast changing and converging media landscape traditional constraints on e.g. the numbers of broadcast licences held within a particular area or the extent of cross ownership between different forms of traditional media outlets, might miss emerging threats. However, the need to give certainty to market players has meant that, as far as we are aware, no country has yet adopted this more dynamic, risk based approach.

One exception to this is the UK, where Ofcom, the UK's Communications Regulator, has been called on to develop its approach to pluralism in a rather different policy environment. In response to concerns raised by Parliament, the 2003 UK Communications Act gave Ofcom the task of carrying out a so-called media plurality public interest test if so requested by the relevant Secretary of State in relation to a proposed UK media merger.⁹ This has necessitated the development of new analytical approaches and cross media

⁷ See 'Independent Study on Indicators for Media Pluralism in the Member states – Towards a Risk based approach', Final Report, 2009, https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/final_report_09.pdf

⁸ <https://ec.europa.eu/digital-single-market/en/news/monitoring-media-pluralism-europe-testing-and-implementation-media-pluralism-monitor-2014> See also <http://monitor.cmpf.eui.eu/simplification>

⁹ The Secretary of State can ask Ofcom to carry out this test for any UK media merger which could have a damaging effect on plurality, diversity or standards. In applying the test, Ofcom and the Secretary of State must take into account the need for a "sufficient plurality of views expressed in newspapers as a whole in each market for newspapers in the UK or part of the UK". Ofcom is also explicitly asked to take

measurement tools to assess plurality and its sufficiency. So far, this power to intervene has been exercised only twice¹⁰. In the course of applying the test, it became apparent that a better approach to defining and measuring plurality was needed. Since then, Ofcom has prepared a number of advisory documents for the Secretary of State on the subject notably in 2012 in response to a request for advice from the UK government over aspects of plurality including measurement. Most recently, in 2015, Ofcom responded to government on their request for further advice on measuring media plurality.¹¹

In their 2015 document Ofcom build on the basis of their 2012 publication. They argue that ‘Media plurality matters because it makes an important contribution to a well-functioning democratic society. Plurality is not a goal in itself but a means to an end.’ Ofcom then goes on to propose an approach which has two dimensions, one focused on outputs – i.e. what media is received by citizens, and the other focused on the inputs, who owns or controls the media, as follows:

- ‘Ensuring that there is diversity in the viewpoints that are available and consumed, across and within media enterprises; and
- Preventing any one media owner, or voice, having too much influence over public opinion and the political agenda’.

Ofcom focuses on news and current affairs rather than the entirety of media output. Ofcom also distinguishes between “external” plurality (delivered by a number of providers) and “internal” plurality (which may exist if a single publisher commits to including a diverse range of perspectives in its provision of news)¹².

When it comes to operationalising this approach Ofcom recommends a measurement framework which is comprised of four areas:

- Availability – the number of different news sources available

into account a “sufficient plurality of persons with control of media enterprises”, with regard to broadcasting or cross-media mergers. See 2003 UK Communications Act, paras 375-389.

¹⁰ In the first case (2006) an application by BSkyB to increase its stake in ITV was initially rejected on competition and plurality grounds, but finally approved after several rounds of appeal given the acceptance by the parties of undertakings to implement agreed remedies. In the second case (2010), an application by News Corporation to acquire shares in BSkyB which it did not already own, was withdrawn, (because of other developments involving phone hacking by journalists employed by the sister company, News International), although at the time of withdrawal, the Secretary of State had asked the parties to consider undertakings which might address public interest concerns identified by Ofcom.

¹¹ See the following Ofcom links <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2012/ofcom-publishes-report-on-measuring-media-plurality> and the 2015 document https://www.ofcom.org.uk/data/assets/pdf_file/0024/84174/measurement_framework_for_media_plurality_statement.pdf

¹² Public service broadcasters like the BBC often have an obligation to provide a range of views in an impartial and balanced manner, for example. Similar obligations apply to most European public broadcasters and to CBC in Canada and ABC in Australia. See this ABC guidance note on impartiality <http://about.abc.net.au/wp-content/uploads/2014/10/GNImpartialityINS.pdf> and a rather briefer statement from CBC, <http://www.cbc.radio-canada.ca/en/reporting-to-canadians/acts-and-policies/programming/journalism/>

- Consumption – use of different sources, and measurements for use by platform and cross media including a ‘share of references’ measure
- Impact – a range of proxies for impact are suggested including personal importance of a news source as a proxy for impartiality, reliability and trust
- Contextual factors - these are a range of qualitative measures ranging from the governance structure of each news organisation, to the regulatory framework under which it operates, degree of internal plurality etc.

Ofcom’s approach is one of the most advanced we have seen to the issues of capturing the key elements of media plurality and then measuring them in a systematic way¹³. While the Ofcom approach to measurement is simpler than the European risk-based model, it still requires sufficient market data for its effective application.¹⁴ Although plurality, by its nature, cannot be easily quantified, it is possible to gather relevant statistical data to build up a good picture of the level of plurality in a given market, and to allow considered assessment of its sufficiency and of the impact of any proposed changes in structure or ownership.

In an important sense there could be said to be an “ecology” of news provision and distribution, which relies for its overall effectiveness on the existence of a reasonable number of component parts, each of which may have slightly different characteristics, but which as whole contribute to the wider public interest objective of an informed citizenship able to scrutinise and participate in democratic decisions. Ofcom has attempted¹⁵ to set out the features which it considered would characterise an ideal plural outcome:

- There is a diverse range of independent news media voices across all platforms
- Overall reach and consumption is relatively high among all demographics and across regions
- Consumers actively multisource – such that the majority of individuals consume a range of different news sources
- Sufficiently low barriers to entry and competition between providers spurs quality and innovation in the gathering of news
- Overall investment and commercial returns are sufficiently high to ensure sustainability and guarantee high quality coverage, extensive newsgathering and investigative journalism
- No organisation or news source has a share of consumption that is so high as to create a risk that consumers are exposed to a narrow set of viewpoints.

It seems to us that these provide a good guide for assessing both existing and future sufficiency of plurality in New Zealand.

¹³ The Ofcom approach has also formed the basis of the first periodic review of media ownership and plurality in Ireland, carried out by the Broadcasting Authority of Ireland. See: Report on Ownership and Control of Media Businesses in Ireland 2012-2014: <http://www.dccae.gov.ie/communications/Lists/Publications%20Documents/BAI%20%20Report%20Ownership%20Control%20Media%20Businesses%202012-2014.pdf>

¹⁴ See the Ofcom annual survey of News Consumption in the UK for a worked example of this. https://www.ofcom.org.uk/data/assets/pdf_file/0020/77222/news_consumption_in_the_uk_2015_report.pdf Section 8 provides data on the ‘share of references’ for different providers in the UK market.

¹⁵ See Ofcom’s 2012 report on Measuring Media Plurality: https://www.ofcom.org.uk/data/assets/pdf_file/0031/57694/CMR-Scotland-2013.pdf

It should be noted by the way that a competitive market does not necessarily mean that there will be sufficient plurality from a public interest perspective. For example, commercial providers of news, even in a reasonably competitive market, may decide it is not profitable to cover certain issues or cater for certain audiences. Society might prefer wider coverage and for all to benefit from it. However, competition will often encourage the supply of a wider range and better quality of news content, as providers seek to attract readers and advertisers, hence it can be an important contributor to one of the main aims of plurality – a well-informed populace.

Plurality is not a static, fixed state of the world. Changes in markets and technologies are having a profound impact on the extent and effectiveness of news plurality. As we discuss later in this paper, some have argued that digital developments have opened news markets to a wide range of new entrants, and encouraged more sharing of news content, hence enhancing plurality. Others note the increasing financial pressures faced by established news providers. Any serious plurality assessment must take these changes into account. National conditions differ, and in many places the established press is facing serious economic challenges. In spite of that the press still plays an important part in the media ecology, through its role in often employing more journalists than other media,¹⁶ in covering more stories than broadcasters – because of the nature of a newspaper format versus the linear nature of a TV news bulletin - and often in breaking more new stories than broadcasters. As noted much will depend on local conditions, but in countries such as the UK newspapers have frequently been seen as important in setting the agenda for other news media.¹⁷

Plurality and concentration in New Zealand

While the ideal plurality outcome is a wide range of different news providers, the real world may not always support its full commercial provision. The degree of media concentration in a country will be affected by multiple variables, including historic patterns of ownership, regulatory constraints and at the economic level, by the size of the population, the level of newspaper readership, and to some extent by the size of the advertising market – though the dependence of newspapers on advertising revenues versus direct payments by readers, varies greatly between countries. There will also be variations from country to country in the influence of news providers based in neighbouring countries. Shared use of the English language can make some countries more open to news from outside than might otherwise be expected but this does not always take a predictable path. For example, In Ireland, UK news providers feature prominently in the list of most frequently used news sources both offline and online, and in Ireland and Australia, and to a lesser extent the US, UK based digital providers make some impact. But

¹⁶ See Mediatique report for Ofcom 2012, 'The Provision of News in the UK' https://secure.toolkitfiles.co.uk/clients/19826/sitedata/Reports/120628_Ofcom_news_report_F.pdf which indicated then that newspapers employed nearly 70% of UK journalists in spite of the strength of BBC news. Newspaper cuts since then will have impacted on the numbers but are unlikely to have reversed the overall picture. In New Zealand, similarly, the merging parties account for twice the number of editorial staff as are employed by the next three largest mainstream media organisations combined (draft determination para 891)

¹⁷ See e.g., R. Greenslade, 'How newspapers, despite decline, still influence the political process'. *The Guardian*, 21.6. 2011, <http://www.theguardian.com/media/greenslade/2011/jun/21/national-newspapers-newspapers> See also, J.Gapper, Financial Times, 22.6.2016. 'Fleet Street's European bite remains sharp', <https://www.ft.com/content/0ea29eac-379e-11e6-a780-b48ed7b6126f>

these providers are often a secondary source of news, with people relying most on local providers who concentrate on producing news about their country, for their main source of news.¹⁸

In the light of that when reviewing the degree of concentration in New Zealand before and after the proposed merger it is worth comparing New Zealand with other countries of a similar size and background. Given that the New Zealand population is c 4.5m, useful comparator countries might include Ireland (4.7m), Denmark (5.7m), and Norway (5.3m) as well as Australia, because of its proximity, even though its population at over 24 million is over five times that of New Zealand.

As noted in the draft determination (Para 943) In the Bertelsmann Foundation's Sustainable Governance Indicators¹⁹, under the rubric 'To what extent are the media characterised by an ownership structure that ensures a pluralism of opinions?', on the basis of their analysis New Zealand currently rates at 4 out of a 10 point scale compared to Australia at 5 and other similar sized countries, namely Finland, Denmark, Norway and Sweden at 9 and Ireland at 8.

And whereas the other comparator countries mentioned above have strong public service broadcasters that offer a diversity of viewpoints on radio and TV, alongside the commercial news provision, New Zealand does not have such an integrated PSB, nor such an extensive publicly funded broadcasting sector²⁰. It is worth noting here the conditions that the Bertelsmann Foundation summarises for four comparator countries, regarding media pluralism:

Finland: 9/10

Finland's media landscape is pluralistic and includes a large number and variety of newspapers and magazines. In addition, Finland still boasts an impressive newspaper readership, despite a definite decline in circulation numbers for the 10 largest printed newspapers in recent years.

Denmark: 9/10

The Danish media market maintains about a dozen national newspapers (including Berlingske Tidende, Politiken, Jyllands-Posten, B.T. and Ekstrabladet) as well as about 40 local newspapers.

Norway: 9/10

¹⁸ Reuters Institute Digital News Report, 2016 for top news brands used by respondents offline and online in Ireland, US, UK, Australia and Canada. Note that some UK publishers provide separate editions of their newspapers in the Republic of Ireland

¹⁹ http://www.sgi-network.org/2016/Democracy/Quality_of_Democracy/Access_to_Information/Media_Pluralism

²⁰ For example, annual public funding of broadcasting (TV and radio) in Australia is around NZ\$1.6bn; Canada NZ\$1.2bn; Sweden NZ\$1.3bn; Denmark NZ\$0.8bn; Finland NZ\$0.8bn; Ireland NZ\$0.3bn. All of these are higher than current public funding in New Zealand. On a per capita basis, New Zealand is also lower than all these comparator countries. In 2015 NZ On Air (the broadcasting funding agency) funded radio, tv, music, digital and film to the tune of NZ\$134.5m. In addition, there was a further NZ\$16.6m provided to Maori Television. Sources for New Zealand are <http://annualreport2015.nzonair.govt.nz/> and <http://www.maoritelevision.com/sites/default/files/attachments/M%C4%81ori%20Television%20Annual%20Report%20-%202015.pdf>. Other international figures are based on latest available published data assembled by the authors, using November 2016 NZ\$ exchange rates.

Newspapers operate independently and express a plurality of views. Norway has the highest per capita newspaper circulation in the world. The total daily newspaper circulation is around 2.8 million, of which media company Schibsted controls around 850,000; A-pressen around 485,000; and Edda Media around 250,000.

Ireland: 8/10

A wide range of newspapers – national and local – is published in Ireland and this is augmented by the circulation of the main UK newspapers and weeklies. In addition to the range of public-service state-owned radio and TV stations, a variety of privately owned stations also exist. Irish listeners and viewers also avail themselves of UK English-language stations, which are widely received in the country. As a result, Irish readers, listeners and viewers are exposed to a plurality of opinions.²¹

These comparisons suggest that whilst market size may be one factor that can influence the degree of diversity of ownership and news provision, and potentially plurality in a country, it is not always the determining factor. If countries such as Denmark and Norway can have a rich provision of diverse sources of commercially funded news, it implies that there is no automatic link between New Zealand's relatively small size and the diversity of provision²². And while, according to World Press Trends, New Zealand has lower levels of newspaper readership than some of the countries chosen for comparative purposes here, average circulation in New Zealand per 100,000 population in 2014 was higher than in Ireland and Australia, and the decline in press circulation from 2010 to 2014 was less pronounced than in either of those two countries²³.

Pre-merger, the current situation in New Zealand is different to any of these comparator countries. Judged by the number of major providers, the New Zealand news market is already more concentrated, there is relatively little routine use of news sources from outside New Zealand, certainly compared say to Ireland which as stated has widespread use of UK news sources, and as noted above the level of public service provision in New Zealand is relatively low.

In spite of having a much larger population than New Zealand, Australia is regarded as a country with an unusually high level of media concentration. The most recent international study of media concentration found that one owner, News Ltd., had a share of 57.5% of the Australian newspaper market, making it the highest share of any of the democratic countries studied²⁴

²¹ http://www.sgi-network.org/2016/Democracy/Quality_of_Democracy/Access_to_Information/Media_Pluralism

²² The European Pluralism Monitor referred to above has recently carried out a similar assessment of market plurality rankings in selected European countries (published in 2015). It found, for example, that Finland and Lithuania should be classified as "high risk", Netherlands, Ireland and Sweden as "medium risk", and Croatia and Slovakia as "low risk". Again there are variations in reported risk among countries with similar sized markets.

²³ <http://www.wptdatabase.org/>

²⁴ Eli Noam, 'Who Owns the World's Media?', OUP, 2016. Noam finds that in our other comparator countries mentioned above the leading Newspaper owner's market share was 52% in Ireland and 31% in Finland. The study does not include Denmark, Norway or New Zealand. In his graph 34.3 Noam calculates newspaper industry concentration against GDP (as an indicator that reflects wealth and population) and finds that whilst as might be expected there is a negative correlation between these two, there are still

If this merger was concluded, New Zealand would have an even higher degree of print media concentration than its nearest neighbour, or indeed any long established liberal democratic country of which we are aware. And, whereas Australia is also characterised by a high degree of media concentration it has a vigorous public broadcaster in ABC, with significant market share both in broadcast and online, that might be seen as offsetting to some extent the concentration in commercially owned media.

Finally, while some have argued that the rise of online news renders redundant approaches to plurality based on newspaper or broadcast sources, this is not currently the case in countries, such as New Zealand where the most regularly used news sources online are provided by the dominant providers offline. The argument that online news makes traditional concerns for plurality obsolete does not – at least at present - stand up to scrutiny given existing patterns of news provision, use and impact. We return to this point later.

The draft determination

We now turn to the detail of the draft determination. We have been asked to consider whether the Commission has taken an approach to assessing the impact of the merger on plurality and the quality of content produced that is robust and appropriate. In doing so, we examine three broad areas:

- Identification of the different dimensions of plurality
- Assessment of plurality before and after the proposed merger
- The changing nature of relevant markets.

The dimensions of plurality

The first question we have considered is whether the Commission in its draft determination has adequately identified the different dimensions of plurality consistent with a robust assessment.

As explained above, while there are different approaches taken to plurality and its measurement in different jurisdictions, we think that the approach proposed by Ofcom in the UK provides a sound and practical framework, with a dual focus on both the range and diversity of perspectives available to consumers, and the extent of influence that might be exerted by any one media owner. This is the approach taken by the Commission in its Investigation, and in our view provides a good basis for a robust and appropriate assessment.

Referring to Ofcom’s description of an “ideal plural outcome”, set out above, we would have expected the Commission to consider as part of its analysis the range of media voices across platforms, patterns of news consumption, extent of multi-sourcing, barriers to entry/degree of competition, sustainability, and concentration. All of these issues are covered in the draft determination, either as part of the assessment of competition in reader markets, or as part of the section on media plurality. Most are addressed in some detail.

outlier countries. Australia is one such, where its degree of concentration is much greater than might be expected from its GDP, and another is Finland where the degree of concentration is less than might be expected.

The Commission has additionally and usefully adapted and extended the basic Ofcom framework to include consideration of:

- the quality of journalism likely to be supplied after the merger (which goes beyond simple measures of range and diversity), and especially the impact on quality of any reduction in competition
- the overall media “ecology” or “eco-system”, and its future development, which might be affected by the merger.

Some of this analysis is set out in the Commission’s assessment of reader markets, but it is equally applicable to the plurality discussion. We agree that both these aspects are important in assessing plurality outcomes, and are consistent with the overall aims of securing a plural media system – namely a well-informed populace with access to high quality, well-resourced and diverse journalistic content.

Assessment of plurality before and after the merger

The Commission acknowledges correctly that plurality, by its nature, cannot be quantified, but also accepts that a range of indicators can be useful in constructing a picture of the extent of plurality both before and after the merger. Its assessment draws on the Ofcom framework to examine availability, consumption and impact. As discussed earlier, the context for this analysis is that the media market in New Zealand is already relatively concentrated compared with similar-sized overseas markets, so any reduction in plurality from this base point should call for careful consideration.

Availability

The draft determination contains a clear assessment of the availability and supply of news in New Zealand. It describes how the market is characterised by a small number of mainstream news providers, such as NZME, Fairfax, TVNZ, Mediaworks and RNZ, alongside a larger number of smaller niche players, such as NBR and Allied Press (para 444), some of whom provide digital services only.

For the purposes of assessing plurality, the Commission rightly considers news provision across all the main news platforms (TV, radio, online, print), although it points out that different news media and platforms have different characteristics, which make up a spectrum of news services – from breaking news to in-depth analysis. It argues, drawing on available consumer research²⁵, that – for the purposes of assessing plurality – the focus should be on New Zealand news (national, regional and local), and on New Zealand perspectives on international news. This must be right, and serves to underline the importance for plurality of those news providers who have invested in New Zealand-based newsgathering resources and well-known New Zealand news brands. Of these, there are currently five main providers: NZME, Fairfax, TVNZ, Mediaworks and RNZ.

Together, the Commission reports, the merging parties account for [] journalist/editorial staff (Table 7), compared with [] at TVNZ and Mediaworks.

The Commission argues that, although there are a larger number of smaller suppliers, these tend to cover specialist areas, for smaller niche audiences, or for specific local communities, and may be less well-resourced. Their contribution to plurality, it is suggested, is therefore much less significant.

We agree with this overall analysis. In the longer term, the aggregate impact on plurality of many smaller suppliers of news (especially in a world in which news stories are increasingly accessed via third party intermediaries or shared via social media) might grow. Likewise, although online bloggers may appear to

²⁵ For example, the draft determination refers to a Fairfax study of reader preferences at the Dominion Post and the Press, which highlights the importance of national and local news (para 419)

be of peripheral impact, they can in some circumstances create specific stories and prompt debates which become much more widely circulated. But we agree that the influence of the main players will be of a larger magnitude and perceived as such by most politicians and institutions as well as consumers for the immediate future and beyond. In particular, even if news stories originate among the smaller niche players and bloggers, it is the authority, reach and sustained, consistent and comprehensive activity of the larger established players which often gives those stories national prominence and currency.

The applicants have argued that competition from new digital platforms such as search or social media should be taken into account. It is true that in all developed countries the rise of mobile consumption in particular means that many more people are finding online news through search and social media and this is a very important way for news providers to extend their reach.²⁶ However, although such platforms alter the ways in which news is consumed, they do not, as yet, contribute materially to the supply of New Zealand news through their own investment.²⁷

Following the merger, the number of major news providers in New Zealand will be reduced from 5 to 4, and the merged parties will, as the draft determination sets out, account for nearly 90% of the daily circulation of newspapers, control the two largest suppliers of New Zealand online news, employ the largest number of editorial staff by a considerable factor, have an extensive regional presence, account for a substantial part of the radio sector, and face little competition from niche news providers. The 5 to 4 change, in our view, understates the impact of the merger on plurality of news supply, as the other established players currently have very different roles, reflecting their broadcasting origins, and do not yet offer the sort of comprehensive cross-platform news service provided by the applicants. Moreover, the regional news coverage of other providers is more limited in scope.

It is the case that not all of the applicants' print outlets compete directly with each other, being largely geographically distinct. An individual consumer living in say Wellington or Auckland would therefore not necessarily perceive there to be a reduction in his or her newspaper choice post the merger. However, this is to take a very narrow view of plurality which misunderstands the nature of journalism, how news stories circulate in the market, and the wider impact they can have. It seems clear to us, for example, that The NZ Herald and the Dominion Post contribute significantly to the plurality of perspectives available in New Zealand as a whole, even though they are primarily distributed (in hard copy) in different geographic areas. Their editorial coverage will influence opinion formers and help determine the agendas of other main news outlets. They will also, through their integrated newsrooms, supply news content across New Zealand via syndication and through their online sites. Indeed, their "digital first" strategy means that many articles will be found online before being released in their print publications. Their stories will be picked up by and discussed via social media.

A further potential risk to plurality of supply

[

],

²⁶ Reuters Institute Digital News Report, 2016

²⁷ While organisations such as Facebook and Google offer an ever more important route to news and in the case of Facebook Instant Articles also host news, neither show any sign of aspiring to become news creators themselves, although many have commented on the important role that Facebook, and in particular its Newsfeed, plays in democratic debate and most recently the US election. (See below) Within Europe Google has focused on creating a new partnership with and fund for news organisations, the Digital News Initiative, rather than seeking to create its own content. See:

<https://www.digitalnewsinitiative.com/>

which might have a disproportionate effect on the availability of a range of perspectives on key issues of the day.

Consumption

Availability of news tells only part of the story. We are also interested in how it is consumed and the extent to which it reaches all consumers. If consumption is disproportionately accounted for by one media owner, or if few consumers access more than a small number of news sources, then plurality is more at risk than if there is a more even distribution of consumption and significant multi-sourcing of news.

A key issue here is the extent to which data are available which allow a comparison of consumption across different media – often, statistics are collected for each platform (TV, radio, print, online etc.), which allow meaningful comparison within each platform, but are less illuminating when comparing usage across platforms.

The draft determination has focused its analysis here on data which are already available. It presents data on the overall consumption of news in New Zealand by platform, and by main media brand for each platform. It also presents “reach” data for the various platforms, brands and individual titles. As the Commission acknowledges, though, it has not always been possible to obtain data on a like for like basis across platforms – for example, consumption of newspapers is expressed in terms of daily circulation, while online is measured by monthly page views. TV news viewing figures capture exposure to the news bulletin only, while newspaper readership data include time spent reading features and doing crosswords etc. – which should arguably count for less in a plurality assessment. Likewise, some reach data are expressed daily, others weekly. In its assessment of the data, the draft determination points out where the data used might be under or over-stating the importance of different platforms and brands. - for example monthly usage data for online might overstate the relative importance of online news. Our sense overall is that the comparisons presented slightly understate the importance of TV news and overstate the current importance of online.

Ideally, it would have been helpful to have had the benefit of research which assessed consumption of news across all media in New Zealand, using a common currency²⁸. Nevertheless, it is possible to draw with confidence some key findings from the data presented, which show that:

- Online, TV and print media are all important for news consumption – many New Zealand consumers range across the different platforms for their news
- Online news is growing in importance, and is the most used platform for news. It provides the main national competition to TV news. The combined monthly reach of the two online sites is reported in the draft determination as 2.2m
- Daily newspaper readership remains steady at just over 1m people, while television news also attracts around 1m viewers each day
- As far as the main brands are concerned, as set out in Table 17 the applicants have the largest share of print and online consumption, while TV news consumption is dominated by TVNZ. Figure 12 in the draft determination underlines the high reach achieved by the applicants across their various news services.

Currently, therefore, the bulk of consumption of news in New Zealand is distributed across a limited number of major brands, the number of which will be even more limited should the merger take place.

²⁸ For example, Ofcom has developed a “share of references” approach, which attempts to standardise news consumption data across print, broadcast and online.

The draft determination also describes how, via their digital services, the applicants currently provide the only nationwide competition, for a comprehensive service of news, analysis and features, which is regularly updated and much greater in its scope and depth than that offered by the other established news providers. This puts the applicants in a good position to maintain their strong position in online news. Experience elsewhere suggests that established providers who leverage their strength offline to online early on are better placed to do that than those who only move online later. Given that the future of news provision will probably be increasingly orientated to digital, this is clearly a key issue, deserving of concern.

A final aspect of news consumption is the extent to which so-called “multi-sourcing” takes place (that is, the number of different news brands accessed regularly by consumers). In the UK, for example, recent data suggest that consumers on average use 3.5 news sources per week across all main platforms²⁹. We are interested in multi-sourcing for two reasons: first because a high level of multi-sourcing indicates that consumers are accessing a range of different perspectives, (a positive outcome) and second because if there is a lot of multi-sourcing across the applicants’ current titles, the merger will have a negative impact on that range of perspectives (a negative outcome). The draft determination presents data on cross-media and brand consumption patterns, which seem to show that there is a high level of multi-sourcing of news from the main providers in New Zealand. It also seems that a large contribution to that multi-sourcing is made by the two main online/digital news services offered by the applicants. Post-merger, therefore, the extent of multi-sourcing could be significantly reduced. The draft determination is right to focus on this risk to plurality.

Impact

The third aspect of consumption is the impact or influence that a particular news source has on its consumers. In-depth coverage in a Sunday newspaper, for example, will make a much bigger contribution to collective understanding of, and potentially political debate about, an issue than a short item on a radio news bulletin. Commentary published by a trusted established media brand may be much more influential than that of a little known blogger.

Impact is both hard to define and to measure. Other authorities are starting to develop consumer research and data which might help shed light on the relative importance of different media platforms and brands. We know from the UK, for example, that TV, in that country, is perceived by consumers to be their single “most important” source of news³⁰. Print is often some distance behind. Figures for Australia also show TV ahead cited by most as their ‘main source of news’ by 37.6% as against 27.4% naming online as their most important source of news³¹. Here, the draft determination presents data on how New Zealand users describe different media, which suggests newspapers are still highly valued for being trustworthy and reliable, but online scores highly on other quality attributes. (Figure 16)

²⁹ Ofcom’s “News Consumption in the UK, 2015”

³⁰ This is the figure for the population overall, and reflects a long established tradition of well-funded public broadcaster provision of news, within a tightly regulated framework requiring impartiality and balance. Even in the UK, however, patterns are quickly changing, and people aged 16-24 name websites/apps as their single most important source of news. Source. Ofcom, *ibid*.

³¹ NB figures for Australia cited here are taken from the online survey conducted for the Reuters Institute Digital News Report, 2016 so may tend to give relatively lower figures for TV and higher for online than in the Ofcom survey quoted above for the UK. See also Digital News Report, Australia, 2016 at http://apo.org.au/files/Resource/digital_news_report_australia_2016.pdf

In practice, it is likely that each news medium and provider is used in different ways by news consumers, and may be perceived as important for their different attributes. Indeed the draft determination makes this point well when discussing relevant markets for the competition analysis.

According to UK research:

- TV can show the news as it unfolds, lending realism, and which in turn drives trust and credibility
- Radio is a convenient medium for headline news that can be listened to while doing something else
- Newspapers provide space for in-depth analysis and reflection on events, helping readers understand the issues
- Online provides the ultimate in convenience and personalisation, and is a good source for breaking and sharing news.

The key point is that, given that the applicants have substantial newsgathering resources, national and regional brands, and operate across three of the four media platforms, they seem likely to have a significant impact across a range of these different dimensions and likely a much greater impact than smaller, less well-resourced rivals who have access to fewer distribution platforms. Increasingly, consumers will turn to news sources which offer not only depth of coverage, but also up to the minute and quickly updated news. The applicants will be well placed to provide the resources for such a service, increasing their positioning as an essential news source.

More broadly, as the draft determination argues, the applicants' news output has a wider impact on the agendas and coverage of other news providers – various parties have confirmed that this is the case, and this is in line with our own expectations from practice observed elsewhere.

Quality

While the draft determination makes a strong case that the merger will lead to a reduction in plurality of supply and consumption, it also indicates that there may be further detriments in the form of an adverse impact on the quality of news output and on the overall news ecology in New Zealand.

The draft determination sets out the views of journalists and other media providers that competition helps to drive quality of journalism. Other news providers in New Zealand have described an “ecosystem” of news, in which different media companies feed from and prompt each other into covering stories, and battle to win the race for breaking news or for the big issues. Businesses are reported to worry that they would not be able to secure a hearing for their concerns (while presumably an equally important concern would be that overly-close relationships could be struck between advertisers and news providers). Internal documents are referred to which show that the applicants use quality benchmarking to assess their relative performance.

In contrast, the applicants have suggested that there would be benefits to quality flowing from more effective use of resources, and the ability they would have to offer a more diverse range of services (across their online sites, for example). A paper from Professor Randal Picker³² makes the case that in certain circumstances a monopoly supplier might be incentivised to offer a more diverse range of content than two suppliers in competition with each other. It is also suggested that, given the two-sided nature of the news market, the merged parties would still have an incentive to maintain quality, given their continuing need to attract readers which in turn attract advertisers.

However, we can envisage many circumstances in which this would not be the case. As noted in the draft determination, there would be scope for the merged parties to reduce quality without necessarily

³² Randal Picker” Commentary on News Media Quality Issues in Fairfax/NZME Proposed Acquisition, October 2016

impacting on their net advertising revenues (for example, because consumers may not immediately recognise where cuts have been made, or because there is no close substitute for the service offered by the merged parties). While content diversity is an important attribute, there are many other dimensions of quality which deserve consideration, for example those which arise from variations in levels of investment and/or innovation.

The draft determination touches on the issue of paywalls, and concludes that it is more likely that the merged entity would introduce a paywall for at least some of its online news provision. While accepting that paywalls are not necessarily detrimental to consumers, concerns are raised that lack of competition might result in higher paywall charges to consumers (or lower quality). This is a complex issue. While it may be true that competition between the parties has prevented the introduction of paywalls to date, a compelling case can be made in consumer terms that the future of high quality news provision depends on the successful introduction of some form of direct consumer payment for digital news content, given the risk of further declines in advertising revenues. If this is the case, competition between the parties which holds back the introduction of a paywall could ultimately result in lower investment in news provision across the board, and less innovation in news services. While there may be concerns about lack of competition post-merger (which could affect price or quality or both), we do not think the prospect or otherwise of a paywall being introduced should be seen as a significant plurality concern in itself.

However if the introduction of a paywall were to reduce the number of people who regularly access high quality New Zealand news, while that could be beneficial for the providers of such a service, and to those who choose/can afford to pay for it, it might have a greater impact on New Zealand citizens in general than it would in a country with extensive alternative sources of high quality news made freely available through other policy interventions such as public service broadcasting.

Internal plurality

A further dimension of plurality, as mentioned above, is that which might be found within any media organisation. Although some news providers can be highly partisan in their editorial coverage, others have established a reputation for impartiality and balance. Some observers point to US metropolitan print titles as examples. The applicants have argued that this applies to their New Zealand news publications, noting that they have an incentive to provide a range of perspectives in their papers and online in order to attract the highest possible readership. They also point to internal practices which, they say, protect the independence of their editors.

The parties also argue that it would be possible to secure continuing editorial diversity and independence after the merger, as this would be a continuation of current editorial practice.

However, in the absence of any form of tough and independent behavioural regulation the delivery of such promises could not be guaranteed. Moreover, different concerns may arise – for example, the risk that a powerful news provider would be incentivised to avoid controversial issues for fear of upsetting one or more groups or readers, politicians or advertisers, or that – even if they are even-handed in their political coverage - they use their publications to promote their own or associated commercial interests.

The changing nature of media markets

Our discussion so far has largely focused on the established news providers. But we think it is also important to ask whether changes in the market could in the near term address any loss of plurality associated with the proposed merger. The applicants argue that they are already facing fierce competition for readers from a wide range of digital platforms and news providers. Providers such as Scoop and Spinoff are referenced, as are the many non-New Zealand providers such as the Guardian and

the BBC. A further question concerns the sustainability of the current level of plurality in New Zealand, for it could be argued that a merger will help secure a better funded New Zealand news supply for the future. In this section we examine whether the draft determination has correctly taken account of the rapidly changing nature of the relevant markets, and the impact that this change may have.

Emerging competition

Much has been written about the impact of digital technologies on the supply of and consumption of news. There are several contradictory trends. On the one hand, some aspects of plurality are clearly enhanced by these new developments. There is more scope for market entry, especially for those trading in opinions and arguments, and the opportunity for significant innovation in the reporting and presentation of news across different media. Consumers have more effective means of finding and accessing news, and sharing stories via social networks, which arguably should mean that everyone has access to a wider range of perspectives on the news than ever before. The draft determination recognises these trends.

However, the picture is more complex than first appears. The long term commercial viability of digital news providers remains uncertain. While providers of specialist and other high value news are developing viable paywall strategies, many consumers remain unwilling to pay for general news, seeing it as a freely available commodity. At the same time, news media are challenged by increased competition for advertising revenues from other digital services and intermediaries such as Google and Facebook who are benefiting from the lion's share of growth in digital advertising revenues.³³ Although digitisation has also meant that some costs of newsgathering have reduced, few new entrants can support the scale and scope of newsgathering typically provided today by established news providers. Inevitably, many new sources of news focus on less-costly options such as opinion and commentary, user-generated content or recycled news, rather than original in-depth reporting. The importance of achieving scale economies may require an international rather than a local editorial perspective. Moreover, recent evidence suggests that although online news and search tools may have increased the range of news sources accessed by users, the rise of mobile access and news apps might be acting in the opposite direction.

There are still significant barriers to entry which are likely to deter the emergence of new large scale news providers. These include the challenge of building a sizeable newsgathering capability, the need for investment in the technology which enables effective digital distribution, and the challenge of creating brand awareness and trust among consumers. The Commission is right (in paras 511 onwards) to point out that these barriers may prevent the emergence of significant new competitors to the merged parties in the foreseeable future. While international players such as the Huffington Post, BuzzFeed and others have made headway in some national markets it would be wrong to assume that their interest and relative success in Australia and elsewhere will be replicated in New Zealand, which because of its population size offers a much smaller advertising market for them to benefit from. In addition, the increased pressures of late on even the largest international advertising-funded online news providers make new and risky ventures in small markets seem even less likely.

Some have argued that highly successful digital intermediaries in search and social media offer a new source of news plurality. However, while it is the case that they can make it much easier for consumers

³³ See Matthew Garrahan, 'Facebook and Google build a duopoly': "In the US, 85 cents of every new dollar spent on digital [advertising] went to the two companies [Google and Facebook] in the first quarter of 2016" FT, 24.6.2016, <https://www.ft.com/content/6c6b74a4-3920-11e6-9a05-82a9b15a8ee7>

to access and share the news that they are interested in, as noted above these organisations as yet do not invest significantly in news content – they distribute rather than create. Moreover, through their disruptive effect on advertising market, they are making it more not less difficult for news providers to find viable digital business models for the future. Again, the Commission is right to conclude that the major digital intermediaries are unlikely to engage in the production of their own New Zealand news content, given the size of the market and their main strategic priorities.

The UNESCO report referred to earlier notes that although the trend around the world is to turn increasingly to online sources of news, traditional media institutions and traditional media platforms remain predominant in most regions. They conclude that “in some regions, the concentration of players in commercial news media has limited pluralism in the dominant mainstream media markets, while in other regions a decline in funding....has further compounded concentration”.

When the US FCC decided this August not to introduce major change in their ownership rules they commented:

“We recognize that broadband Internet and other technological advances have changed the ways in which many consumers access entertainment, news, and information programming. Traditional media outlets, however, are still of vital importance to their local communities and essential to achieving the Commission’s goals of competition, localism, and viewpoint diversity. This is particularly true with respect to local news and public interest programming, with traditional media outlets continuing to serve as the primary sources on which consumers rely”³⁴

It is worth noting that while the FCC review focused on local markets in the US, some of those markets include populations near to, if not greater than, that of New Zealand.

The concluding reflection by the authors of the chapter on ‘Media Ownership in Australia’ in the most recent major study of media concentration also merits consideration here:

“While convergence brought about by the development and rapid growth of online information services may have eroded traditional industry boundaries, the resultant impact on industry concentration does not appear to be significant. Traditional media not only continue to dominate in the domestic market via traditional distribution platforms, but they have also extended their presence into the online world. The most popular online news services are associated with traditional media, including daily newspapers and broadcasters. Among the “thousands of voices” accessible online, very few have the capacity to challenge the influence of traditional media on public opinion”.³⁵

If not new players, then what are the prospects for more investment from other established players? The draft determination argues that it would be risky to rely on the alternative established players (TVNZ, RNZ, Mediaworks) stepping up to the plate and filling any gaps left by the merged parties. It suggests that they would require significant further investment in a market with uncertain returns. Although it is hard to predict outcomes with certainty, we are sympathetic to the Commission’s concerns here. It is the case in general that established news providers are in a better position to respond to new opportunities than are new entrants. They benefit from established brands and existing investment in their own newsgathering. They will arguably need in any event to expand their online news services further in response to changing audience preferences. On the other hand, they would face a very powerful competitor in the form of the merged entity, and the future viability of commercially provided news is not guaranteed, even for experienced players. As yet, while each has its own strengths, none of the other

³⁴ https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-107A1.pdf

³⁵ F.Papandrea and R.Tiffen, in Noam 2016

established news providers has the range and depth of content across multiple platforms and the experience in offering comprehensive and regularly updated online news offered by the applicants.

As importantly for our discussion of plurality, the expansion of one or more existing players, even if it contributed eventually to increasing the range of news content provided in New Zealand, would not compensate for the reduction in the number of significant media voices available which results from the merger.

Any current discussion of media plurality must acknowledge the potential new sources of media power represented by the importance of new digital intermediaries as a route to news for many news consumers. In the US, according to the Pew Research Center, 62% of adults now use social media for their news and 18% do so often. Elsewhere, usage varies. The Reuters Institute found that 51% of those surveyed across 26 countries for its 2016 Digital News Report used social media as a source of news each week. Social media was the main source of news for 27% of respondents in Greece, 18% in Australia, and 15% in Ireland.³⁶ These new organisations clearly play a role in some of the things that have traditionally been seen as the prerogative of the Editor or proprietor, selecting the prominence of the news we are offered.

The question many have been grappling with is whether when these decisions are made by algorithms rather than editors they should count more or less in discussions of media policy and plurality.³⁷ One of the early discussions of this was produced in 2012 by one of the authors of this review who drew attention to the potential policy implications of these new players, calling for greater transparency about their selection criteria and their role in plurality to be kept under review.³⁸ In 2014 Emily Bell drew attention to the seemingly ever increasing power of the Facebook Algorithm in news selection³⁹ and in 2016 Martin Moore of Kings College, London published a lengthy study of the multiple forms of civic power exercised by what he termed “the new Tech Giants”⁴⁰.

There is general agreement that these new sources of power matter to democratic debate – and that awareness has only increased following the US election.⁴¹ But the issue in this merger decision is

³⁶ US data from. <http://www.journalism.org/2016/05/26/news-use-across-social-media-platforms-2016/>
Other figures Reuters Institute Digital News Report, 2016:

<http://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital-News-Report-2016.pdf>

³⁷ Ofcom’s 2015 document on a “Measurement Framework for Media Plurality” notes that “as the consumption of online content grows, the use of intermediaries will become an increasingly important area to understand” and “the use of such intermediaries should be captured separately from news sources themselves in order to understand the extent to which they are used in accessing online news”.
https://www.ofcom.org.uk/__data/assets/pdf_file/0024/84174/measurement_framework_for_media_plurality_statement.pdf

³⁸ R.Foster, News Plurality in a Digital World, Reuters Institute, 2012

³⁹ Emily Bell: Reuters Institute Lecture, 2014

http://reutersinstitute.politics.ox.ac.uk/sites/default/files/Speech%20-%20Silicon%20Valley%20%26%20Journalism%20-%20Make%20up%20or%20Break%20up_Emy%20Bell_Reuters%20Memorial%20Lecture%202014.pdf
and her 2015 essay ‘The Rise of Mobile and Social News – And what it means for Journalism’,
<http://www.digitalnewsreport.org/essays/2015/the-rise-of-mobile-and-social-news/>

⁴⁰ <https://www.kcl.ac.uk/sspp/policy-institute/CMCP/Tech-Giants-and-Civic-Power.pdf>

⁴¹ See Joshua Benton of Nieman Lab, <http://www.niemanlab.org/2016/11/the-forces-that-drove-this-elections-media-failure-are-likely-to-get-worse/> and report of Mark Zuckerberg’s response to criticisms

whether these new sources of power in the selection and filtering of stories, render redundant any concerns about plurality in the creation and provision of New Zealand news. To date, as noted above, their focus has been on managing the selection of news stories by their users, not on the creation of new content. We think it is therefore both possible to recognise the very significant new forces at work in the distribution of news and at the same time to share the Commission's concerns about the implications for plurality of one player having the kind of power in news creation in New Zealand on the scale implied by a merger of the two parties.

On balance, we think the draft determination's analysis of developing markets on plurality is sound for the short to medium term, although we note that longer term developments are difficult to predict. Scenarios in which digital developments promote greater plurality are certainly possible, but the risks of disappointment are also significant.

Sustainability

Finally, we think that a comprehensive assessment of plurality would be incomplete without some consideration of the sustainability of at least current levels of plurality and quality in the absence of the merger. The draft determination reports that there may be some closures of smaller community or regional papers, but assumes no other significant change. []

Experience elsewhere underlines the challenges faced by traditional news media companies in retaining readers and advertisers, while making a transition to new digital services (with uncertain business models). The cases for some mergers in other jurisdictions have been predicated on the alternative of reduced investment and title closures.

We have not been asked to examine the underlying economics of commercial news provision in New Zealand, but it is almost certain that similar challenges will be felt here. On the other hand, as discussed earlier, other similar sized markets do currently support a greater degree of competition, and media plurality, and the New Zealand market does appear to exhibit continued demand for print media, alongside a healthy growth in online. It is reasonable, therefore, to work on the assumption that a scenario without a merger is sustainable for the medium term, but on the understanding that markets are changing rapidly and could face further turbulence ahead.

Concluding observations

In this paper we have set out a broad approach to thinking about plurality, and why it is important, both to ensure everyone has access to a good range of news and perspectives and also to reduce the risk of any single media owner exercising undue influence over the political process. We have conveyed our

of Facebook's role in circulating false news during the election <https://techcrunch.com/2016/11/10/zuck-denies-facebook-news-feed-bubble-impacted-the-election/> and in the FT H.Kuhler "Facebook faces questions over role in Donald Trump's rise" <https://www.ft.com/content/e6b627ac-aa60-11e6-a0bb-97f42551dbf4> . Also see R. Waters, "Facebook and Google to restrict ads on fake news sites" FT, 15.11.16 <https://www.ft.com/content/545647b4-aad0-11e6-9cb3-bb8207902122>

impressions of the current level of plurality in New Zealand compared with selected similar jurisdictions. New Zealand already experiences a high level of media concentration, and has a weaker public provision of impartial news and analysis through its public broadcasting system than is the case in other comparable markets.

We have argued that a sound approach to assessing plurality both before and after the proposed merger might be based on the broad framework developed by the UK regulator Ofcom, adapted to take into account properly the particular characteristics of the New Zealand media sector and its regulatory environment.

We have observed that the Commission's draft determination adopts this approach and usefully extends it to include consideration of quality issues and the impact of the merger on the wider news ecosystem.

We have also examined the extent to which the draft determination has taken proper account of a changing media landscape, and concluded that it has made a fair assessment of the impact of key changes on prospects for plurality in the short to medium term.

Regarding the main assessment set out in the draft determination, we observe that it has examined the key dimensions of plurality that we would expect to see included in such an assessment. Although no single consistent measure of news consumption across media was available to the Commission, a number of relevant consumption and reach statistics have been assessed by main platform and brand. The overall message of these is sufficiently clear to support a robust assessment of plurality, although further insight might have been gained from bespoke recall research of the type carried out by Ofcom, which examines consumers' use of news platforms and providers across different media on a more consistent basis.

Likewise, the draft determination has assembled a range of data which is sufficient to confirm the likely impact of the merger, both in terms of its direct importance to consumers, and its influence on the wider media sector.

We therefore agree with the findings that the merger would result in a reduction in plurality in the supply of New Zealand news content, with the merged parties responsible for the largest newsgathering resource in New Zealand, well-known news brands, and the capacity to offer news across platforms and in all parts of the country. Alternative sources of supply would be unlikely to immediately appear to offset this effect, meaning that there would be fewer voices available offering comprehensive New Zealand news to consumers.

Although there may be some benefits in the form of more effective use of newsgathering resources which could enhance the quality of the overall news proposition on offer, there would be less competition among journalists and news outlets. As a result, it is likely that there would be a less diverse range of perspectives on the news available to New Zealand consumers, both directly and through the flow-through effect on other news providers and, on balance, potentially less innovation in content and delivery.

We finally note that, although the current plurality assessment is robust and appropriate, rapid changes in news markets could before long raise further questions around long term sustainability of high quality news in New Zealand, and the most effective structures and regulatory framework to secure it for the future.
