

## Statement of Preliminary Issues

### Bauer Media Group (NZ) LP / APN Specialist Publications NZ Limited

15 November 2013

#### Introduction

1. On 1 November 2013, the Commerce Commission received an application from Bauer Media Group (NZ) LP (Bauer), seeking clearance to acquire all of the assets used by APN Specialist Publications NZ Limited (APNSP) in the publication of the New Zealand editions of the following wholly-owned magazine titles:
  - 1.1 *New Zealand Woman's Weekly*;
  - 1.2 *Simply You*;
  - 1.3 *Simply You Living*;
  - 1.4 *NZ Listener*; and
  - 1.5 *Crème*.
2. The public version of the application is available on our website at: <http://www.comcom.govt.nz/business-competition/mergers-and-acquisitions/clearances/clearances-register/detail/792>
3. This Statement of Preliminary Issues outlines the key competition issues we currently consider will be important in deciding whether or not to grant clearance. The issues highlighted in this statement are based on the information available at the time of publication, and may change as our assessment of the application for clearance progresses. Therefore, the issues highlighted in this statement are not binding on us.
4. We invite interested parties to make comment on the likely competitive effects of the proposed merger and request that parties who wish to make a submission do so by Friday 29 November 2013.

#### The transaction

5. As set out above, the application relates to Bauer's proposed merger of all the assets in the publication of the specific magazine titles.
6. However, APNSP will retain the rights to publish the following licensed magazine titles:<sup>1</sup>
  - 6.1 *New Idea*;
  - 6.2 *That's Life!*; and

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<sup>1</sup> The licensed magazine titles are published by APNSP under a licensing agreement with Pacific Magazines, the publishing division of the Australian-owned Seven West Media Limited.

### 6.3 *Girlfriend.*

#### Relevant parties

##### The acquirer – Bauer Media Group (NZ) LP

7. Bauer is part of an international magazine publishing group which operates in 16 countries. In New Zealand, Bauer publishes a number of magazine titles, including *NZ Woman's Day*, *Australian Women's Weekly* (NZ edition), *NEXT*, *Metro*, *North and South* and *Your Home and Garden*. It also imports a number of titles (from Australia), including *Cosmopolitan*, *Harpers Bazaar* and *Australian House and Garden*. Through its Netlink Distribution division, Bauer distributes its own and independent third-party publications to retailers throughout New Zealand.

##### The target – APN Specialist Publications NZ Limited (APNSP)

8. APNSP, which is ultimately 100% owned by APN News & Media Limited, currently publishes eight magazine titles, including *New Zealand Woman's Weekly* and *NZ Listener*. Other operating companies within the APN group include APN New Zealand Limited, the publisher of the *New Zealand Herald* and various provincial newspapers,<sup>2</sup> and APN Online (New Zealand) Limited, which provides digital media services (eg, NZ Herald Online and GrabOne). APN, through its 50% shareholding in The Radio Network New Zealand, also operates radio stations throughout New Zealand.

#### Our framework

9. As required by the Commerce Act 1986, we assess whether a merger is likely to result in a substantial lessening of competition. How we assess this is set out in our Mergers and Acquisitions Guidelines.<sup>3</sup>
10. We ask whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).<sup>4</sup>
11. A tool used to assess competitive effects is market definition. Market definition provides a framework to help identify and assess the close competitive constraints the merged firm would likely face.<sup>5</sup> A market is defined in the Commerce Act as a

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<sup>2</sup> Included under APN's newspaper publishing activities is the publication of weekly lift-out magazines inserted into its newspapers, which are known as newspaper inserted magazines (NIMs).

<sup>3</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2013. Available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz)

<sup>4</sup> *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

<sup>5</sup> *Commerce Commission v New Zealand Bus Limited* (2006) 11 TCLR 679 (HC), at [123]. *Brambles New Zealand Ltd v Commerce Commission* (2003) TCLR 868 (HC) at [137].

market in New Zealand for goods or services as well as other goods or services that are substitutable for them as a matter of “fact and commercial common sense”.<sup>6</sup>

12. We define markets in the way that we consider best isolates the key competitive constraints on the merging parties. In many cases this may not require us to precisely define the boundaries of a market.
13. We analyse the extent of competition in each relevant market both with and without the merger to determine whether the merger would be likely to substantially lessen competition.
14. We assess the following three factors when considering whether this is likely to be the case.
  - 14.1 Existing competition – the degree to which existing competitors compete.
  - 14.2 Potential competition – the extent to which existing competitors would expand their sales or new competitors would enter and compete effectively if prices were increased.
  - 14.3 The countervailing market power of buyers – the potential for a business to be sufficiently constrained by purchaser’s ability to exert substantial influence on negotiations.
15. A comparison of the extent of competition both with and without the merger enables us to assess the degree by which the proposed merger might lessen competition. If the lessening is likely to be substantial, we may not give clearance to the proposed merger.

### **Preliminary issues**

16. We will investigate the prospect of the merger to substantially lessen competition in the relevant markets. We are currently focusing this investigation on the following areas.

#### **Market definition**

##### *Product dimension*

17. The proposed merger involves overlap in the production and supply of magazines, which may have an impact on the provision of advertising to advertisers and content to readers.
18. Magazine publishing involves a ‘multi-sided platform’, which facilitates interactions between advertisers and readers.

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<sup>6</sup> Similarly, the courts have said that “[t]he boundaries of the market are defined by substitution between one product and another and between one source of supply and another, in response to changing prices”. See *Commerce Commission v New Zealand Bus Limited* (HC), above n 5 at [123] citing *Re Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,247.

19. Bauer submits that, to secure readers and advertisers, it competes not only with other magazines, but a range of alternative media platforms. Therefore, Bauer contends that it is no longer appropriate to distinguish between print media and other forms of media (eg, websites and television), as we have done in previous decisions.<sup>7</sup>
20. Instead, Bauer considers that the merger's competitive effects should be considered within wider product markets, comprising the:
  - 20.1 supply of advertising services; and
  - 20.2 production and supply of media content to customers, in all forms.
21. However, Bauer acknowledges the differentiated product characteristics of these markets, which means that some competing content (eg, other magazine titles, websites and magazines inserted into newspapers) will be closer competitors to the merged firm than other platforms.
22. We will begin by focusing on the magazine titles in which there is overlap between the merging parties in terms of the provision of advertising and content and then assess the degree to which these titles compete. We will then consider the constraint likely to be provided by the titles produced by other magazine publishers which compete closely with those of the merged firm.
23. Bauer has proposed that the New Zealand Magazine Audit Report for the year ending June 2013 may be a useful starting point for classifying magazine segments.
24. We will also consider whether other media platforms, including newspapers, the internet, radio and television, should be considered in the same market, or whether we consider them as additional constraints outside of the market when we assess the proposed merger's competitive impact.

#### *Geographic dimension*

25. Bauer considers that the relevant geographic market is national in scope in respect of both content and advertising.

#### *Functional dimension*

26. Although the proposed merger involves overlap in the production and supply of magazines, we will also consider any potential impact on the distribution of magazines as Bauer distributes its own, as well third-party publications to retailers in New Zealand.

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For example in Fairfax NZ Limited and Times Media Group, (Commerce Commission Decision 561, 14 October 2005) which involved community newspapers, the Commission defined the relevant product markets separately as print advertising services and local print news and information.

## Existing competition

### *Advertising*

27. In regard to advertising, Bauer considers that if the merger proceeds it would continue to face strong competition from APNSP, Fairfax and a number of other magazine publishers. In addition, Bauer considers that advertisers would have a range of alternative options across a variety of print and non-print media platforms (eg, newspapers, online, radio and television).
28. Given these competitive constraints, Bauer considers that if it tried to increase advertising prices, advertisers would, or would credibly threaten, to switch a significant proportion of their advertising expenditure to other magazines and/or other media.

### *Content*

29. Bauer is of the view that if it were to significantly raise the price of any of its titles post-merger, consumers would have a range of options, including switching to other magazine titles with similar content, or reducing the purchase frequency and obtaining the same content online. Bauer also notes that if it raised prices to consumers, this would only reduce circulation, which in turn would lessen its advertising revenue.
30. Bauer has also identified other ways that competing publishers could respond in the event of a price increase, including launching a new magazine, importing similar overseas magazines, or re-positioning existing titles to more closely compete with Bauer's magazine titles.
31. On the basis of available information, we will focus initially on mass market weeklies, current affairs and women's interest magazines.
32. This will require us to assess the relative closeness of competition of Bauer's titles and the titles it proposes to acquire from APNSP compared to the closeness of those titles to other magazine publishers' titles. In particular, we will consider the closeness of competition between:
  - 32.1 Bauer's existing mass market weeklies/women's interest magazines, such as *New Zealand Woman's Day* (weekly), *Australian Women's Weekly* (monthly) and *Next* (monthly) with the titles to be acquired, such as *New Zealand Woman's Weekly* (weekly) and *Simply You* (bi-annual); and
  - 32.2 Bauer's existing current affairs magazines, such as *North and South* (monthly) and *Metro* (monthly), with the titles to be acquired, such as *NZ Listener* (weekly).
33. We will also consider:
  - 33.1 the closeness of competition from third-party magazines in their existing form;

- 33.2 the closeness of competition from alternative media platforms, including newspapers, online, radio and television;
- 33.3 the scope for existing magazine publishers to either reposition, or extend their magazine titles, or import overseas titles, so as to more closely compete with the titles produced by the merged firm; and
- 33.4 what, if any impact, the proposed merger is likely to have on the distribution of magazines.

### **Potential competition**

- 34. Bauer submits that a new entrant seeking to launch production of a magazine primarily needs content, printing and distribution, advertisers and promotion to attract readers.
- 35. Bauer estimates that the set up costs for a new magazine are relatively low (less than \$400,000 in operating costs in the first year), and that a new magazine could easily be launched within six months. To illustrate the relative ease of entry, Bauer referred to the entry of *MINDFOOD*, published by McHugh Media, which was launched in March 2008, and has subsequently grown its circulation to more than 36,000 copies.
- 36. Bauer also considers that a number of magazine titles have been imported from other countries, and a number of publishers in Australia and other countries could enter New Zealand, given the appropriate incentives.
- 37. We note that entry and expansion clearly takes place. Our inquiries will focus on whether the scope for this entry varies between segments or mainstream/niche and whether, if likely, entry is likely to be sufficient in extent to prevent a substantial lessening of competition (as well as being timely). Branding and reader loyalty may be further issues to consider. We will seek further information to establish the relative ease or otherwise of entry into the affected markets.

### **Countervailing power**

- 38. Bauer considers that advertisers will continue to exercise considerable countervailing power against Bauer post-merger. In particular, Bauer contends that if it were to increase magazine advertising prices, advertisers and advertising agencies would be able to punish Bauer by diverting sufficient advertising spend to other media or commit advertising spend to another publishers' new or repositioned title or encourage them to launch or reposition a title.
- 39. We will consider the extent of countervailing power held by advertisers and media buying agencies, including the scope for them to discipline the merged firm by, for example, switching or credibly threatening to switch to suppliers of advertising services in alternative media platforms, including in other geographic markets (eg, Australia).

## Vertical foreclosure

40. As discussed above, Bauer also distributes its own and other publishers' magazines to retailers throughout New Zealand.
41. When a merged firm also operates in a related market there could be the potential for a substantial lessening of competition if the merger gives the merged firm a greater ability or incentive to engage in conduct that prevents or hinders rivals from competing effectively.
42. We will investigate whether the merger alters Bauer's ability and incentive to foreclose rivals by increasing the cost of magazine distribution (either through increasing price or reducing quality).

## Next steps

43. We are currently aiming to make our final decision on 13 December 2013, which is the revised deadline agreed with Bauer.
44. To keep up to date with any changes to our deadline and to find relevant documents, visit our clearance register on our website at <http://www.comcom.govt.nz/clearances-register/>
45. As part of our investigation, we will identify the parties we believe will provide the best information to help us assess the preliminary issues identified above. We will be contacting those parties over the next few weeks.
46. We also invite submissions from any other parties who consider they have information relevant to our consideration of this matter. If you wish to make a submission, please send it to us at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) with the reference Bauer/APNSP in the subject line of your email, or The Registrar, PO Box 2351, Wellington 6140 by close of business **Friday 29 November 2013**. Please clearly identify any confidential information contained in the submission and provide contact details.