12 January 2017

The Commerce Commission
PO Box 2351
WELLINGTON 6140

Dear Sir/Madam,

Submission on Proposed Merger of Fairfax & NZME (APN) Businesses in New Zealand

It is requested that all of this submission be kept confidential.

Position statement: I strongly oppose this merger.

Interests statement: I do not own or have or represent any business or financial interest in any media, broadcasting, advertising, entertainment, sports or news service or business.

I want to make the following points in opposing the merger, to add to my earlier submissions.

Music Industry Has Recovery Via New Digital Business Model

1. The following has direct implications for the news and newspaper industry. The music industry provides a recent and very interesting example of a dramatic decline in the internet age that has recently been strongly reversed due the success of online streaming and payment for music on a song-by-song basis. It is another example of the *triumph of content over distribution channel*, something seen most clearly and early in the cinema film industry. In a previous submission I have noted how, in other industries, initially the new digital distribution channel took a lot control of content (content owners lost market power), but later new business models came along which restored the market power of content owners. It is my belief that it may only be a matter of time before the newspaper and news industry also find a more viable business model for the digital age and that a revival to a more profitable future will follow. This would parallel the experience of the music industry, which until recently many commentators thought might shrink away to almost nothing over the next 10 years.

2. A summary of one story on the revival of the music industry is attached as Appendix 1 (the story is originally reported in *The Guardian* newspaper site, UK, 29 Dec 2016). To respect the copyright of *The Guardian*, I have only included a summary, but recommend to anyone to read the entire story.

USA & NZ Newspaper Industry Share Similar History – 'Slash & Burn'

3. The experience of the USA newspaper industry from the 1970s and 1980s onward also happened to the NZ newspaper industry, but starting in the 1980s. In the USA many newspaper companies (especially some larger ones), decided to become public companies. This was for varying reasons but two were the main drivers of this. For some, it would financially enable further expansion via the buying of other newspapers or mergers. In some cases, it was because the dominant shareholders (sometimes descendants of what had been a single family owner many decades before) wanted to cash out. Also, specialist investors or financiers wanted some ownership of what was a highly

profitable industry with area monopolies achieving lucrative returns. However, the 1970s turned out to be a unique peak of super-profitability of US newspapers, primarily due to the 1970 ban on tobacco advertising on the electronic media (TV, radio) which moved huge swathes of tobacco advertising to the print media.

4. By the beginning of the internet era (eg, 1995), many US newspaper companies were substantially owned or controlled by financial investors, investment banks, or investment funds, most of whom had no particular expertise or experience in the media (or print media). This was a big change from the situation of 1960 when the majority of newspapers were owned or controlled by persons with decades of business experience in the print media, with some still controlled by descendants of the founder in the 19th century.

5. Media commentators in the USA have described the big change to new owners (typically financial investors), as the beginning of the 'slash and burn era' in which staff and budgets were often ruthlessly cut without the benefit of an intimate understanding of journalism or the print media industry. The end result was a noticeable fall in quality of output. For many newspaper companies this was the beginning of long term downward spiral of falling circulations, falling advertising revenues, falling quality. The financial owner-investors often were making a futile effort to restore or recover the era of super-profitability of the 1970's decade, but when the ban on tobacco advertising was applied to the print media from the 1990's onward, the newspapers had to bear the loss of that highly lucrative revenue just like the electronic media had from 1971.

> "(Profit margins of 20 to 30 percent in print media) are far, far above what the typical American business had. So to keep profit margins up and please Wall Street, newspapers began eating their seed corn. And they started cutting the space for news, and then the staff that gathered the news.
>
> At a very moment in time when newspapers should have been responding to a changing world, digitization, all of this, instead of giving the reader more, we ended up giving the reader significantly less."
>
> (Comments are from Gene Roberts, former executive editor of the 17 times Pulitzer Prize winning *Philadelphia Inquirer*, on page 172 of the book *935 Lies* by Charles Lewis. See also Appendix 2).

6. The New Zealand experience has been a direct parallel with what happened in the USA newspaper industry. For example, in the 1980's Brierley Investments (a financial investor) took an interest (later a controlling interest) in NZ News Ltd, which at the time was one the country's largest newspaper and publishing companies. Some years later, there was little left of NZ News, with the closure of many long-established reputable newspapers while under Brierley ownership. Some commentators considered the severity of the outcome as avoidable. It looked like an echo of the USA experience where the actions of impatient financial investors started a self-feeding downward spiral in content, quality, staff, circulation and revenue from which it was impossible to recover from.

7. Brierley Investments in 1994 also took a major holding in Wilson & Horton Ltd, one of NZ's largest newspaper companies and publisher of the *New Zealand Herald*. Brierley later sold out to other investors.

8. For the proposed merger today, the situation has many parallels with the USA situation over the last 30 years. As of November 2016, NZME's substantial shareholders (representing 85.6 % of shares) were all financial institutions according to AUT media analyst Merja Myllylahti in the following website http://briefingpapers.co.nz/2016/12/media-ownership-matters/ From the same source, the situation was similar for Fairfax in Australia following the 2015 sale of shares by Gina Reinhart. By 2016 the six largest shareholders in Fairfax were all financial institutions.

9. To sum up, the following question needs to be raised. Is the proposed merger really a matter of business survival? Or is it a group of impatient financial investors who want to either cash out or find

a convenient way (via elimination of competition) to reach again the high profit margins that the news media enjoyed in the past?

News Corporation is Part Owner of APN

10. It is important to note that News Corporation (Mr Rupert Murdoch) is a part owner of APN. This is a clear indication that APN does have a viable future, as News Corporation would not be investing in a business with poor or declining business prospects. The Commerce Commission must also consider the potential existence of proxy owners or business agreements among APN shareholders.

11. One has to wonder whether News Corporation would also be a part owner in NZME if it were not for the high level of scrutiny taking place because of this proposed merger.

New Auckland Offices Suggest a Prosperous Future

12. It is interesting to note that both merger parties NZME and Fairfax occupy glamorous new office premises in prestige (NZME) or fashionable (Fairfax) precincts of Auckland city (see photos in Appendix 3). The photos show their offices are clearly of 1st class standard. Does this indicate that each company's owners see a prosperous and profitable future for their respective businesses? If the businesses were truly facing a bleak and declining future, wouldn't their offices be located in 2nd or 3rd grade office accommodation in older office buildings in less glamorous precincts of Auckland?

Therefore, for the multiple reasons above, the Commerce Commission must prohibit this merger. To allow it will severely limit competition, in a situation where the merger parties already enjoy a privileged position because they were mostly created before New Zealand competition law became formalised.

Yours sincerely,

Enclosures

Appendix 1: New Digital Business Model Becomes Music Industry Saviour

Appendix 2: *935 Lies: The Future of Truth & the Decline of America's Moral Integrity*, a 2014 book by Charles Lewis

Appendix 3: New Auckland Offices of NZME & Fairfax (pictures)

Appendix 1

New Digital Business Model Becomes Music Industry Saviour

Summary of story reported in the UK newspaper *The Guardian* on 29 Dec 2016 about the dramatic recovery of the popular music industry following a decline lasting nearly 20 years.

The year 2016 has seen a reversal of fortune for the music industry. For many years, the industry has been shrinking, with years of consecutive falls of sales revenue. Falling CD sales combined with rampant piracy of music gave the industry a bleak future. The giant record labels (brands), once large and very wealthy companies, had shrunk to shadows of their former selves.

This dramatic change has occurred because of music streaming and digital sales. What was pioneered by Spotify has now been taken up by Apple and Amazon. Worldwide digital revenues have for the first time exceeded physical sales of music (mostly CD's), mostly because of streaming.

For the first half of 2016, music streaming revenue in the USA grew by 57% to $1.6 billion. Warner Music, one of the big three in the industry, announced its highest annual sales revenues in 8 years at $3.25 billion. There are now 90 million people signed-up for streaming services worldwide.

A music industry executive claimed that the "value of reliability, convenience and accessibility to an enormous catalogue of songs for a small cost now trumps illegally downloading a song for free".

The surge in streaming and its accompanying revenue rise is benefiting not only the big three in the industry (Sony, Warner and Universal), but also the many smaller and independent music labels.

Appendix 2

935 Lies*: *The Future of Truth & the Decline of America's Moral Integrity by Charles Lewis. Public Affairs, New York, 2014.

The author is a founder of the Center for Public Integrity and co-founder of the Investigative Reporting Workshop.

This 2014 book takes a very wide current and historical look at the war on truth in the USA, both in the private and public spheres. The importance of journalism and its central role in stopping abuses of power by individuals, companies or governments is examined. In chapter 6, the progressive decline in many newspapers in the USA was often matched by a switch to becoming public companies with ownership by financial investors and this started well before the internet era.

The long and difficult struggle for truth against the tobacco industry had many parallels, some of them decades before (see appendix A, page 249). In the following, the year given indicates from when industry executives or government officials knew there was a very serious problem or a very damaging truth to be covered up. For example, the lead industry (since 1923), asbestos (since 1934), agent orange (since 1965), disease from PVC (since 1966) and the drug Vioxx (since 2000). In the government sphere, they included non-consented nuclear radiation experiments on humans (since 1944), the Guatemala syphilis study (since 1946), the Gulf of Tonkin incident (since 1964), the Watergate scandal (since 1969), the secret war in Nicaragua (since 1981), the Iran-contra scandal (since 1985) and others.

In the USA, some tobacco companies had clauses in their advertising contracts with newspaper publishers that the tobacco industry (specifically the damage done by smoking) was a banned subject for news reporters. Or that if any news had to be reported, the full weight of the industry viewpoint was given, so as to create considerable doubt in the public mind that smoking was harmful.

Appendix 3

New Auckland Offices of NZME & Fairfax

The following are photos of the new Auckland office premises now occupied by NZME and Fairfax respectively. These do not give the impression of businesses on their last legs and about to disappear or shrink to nothing. They do give the impression of businesses with a prosperous outlook and future.

1. NZME

The new NZME office address is at a newly completed office building on Victoria Street West (with frontages to 3 other roads) near the headquarters of Spark New Zealand. This part of the city has become a newly desirable precinct due to the completion of various new office, hotel and apartment buildings and its walking distance proximity to the Wynyard Quarter (which has the headquarters of Air New Zealand and Fonterra, for example) featuring luxury marinas, luxury waterfront hotels, restaurants and apartments.


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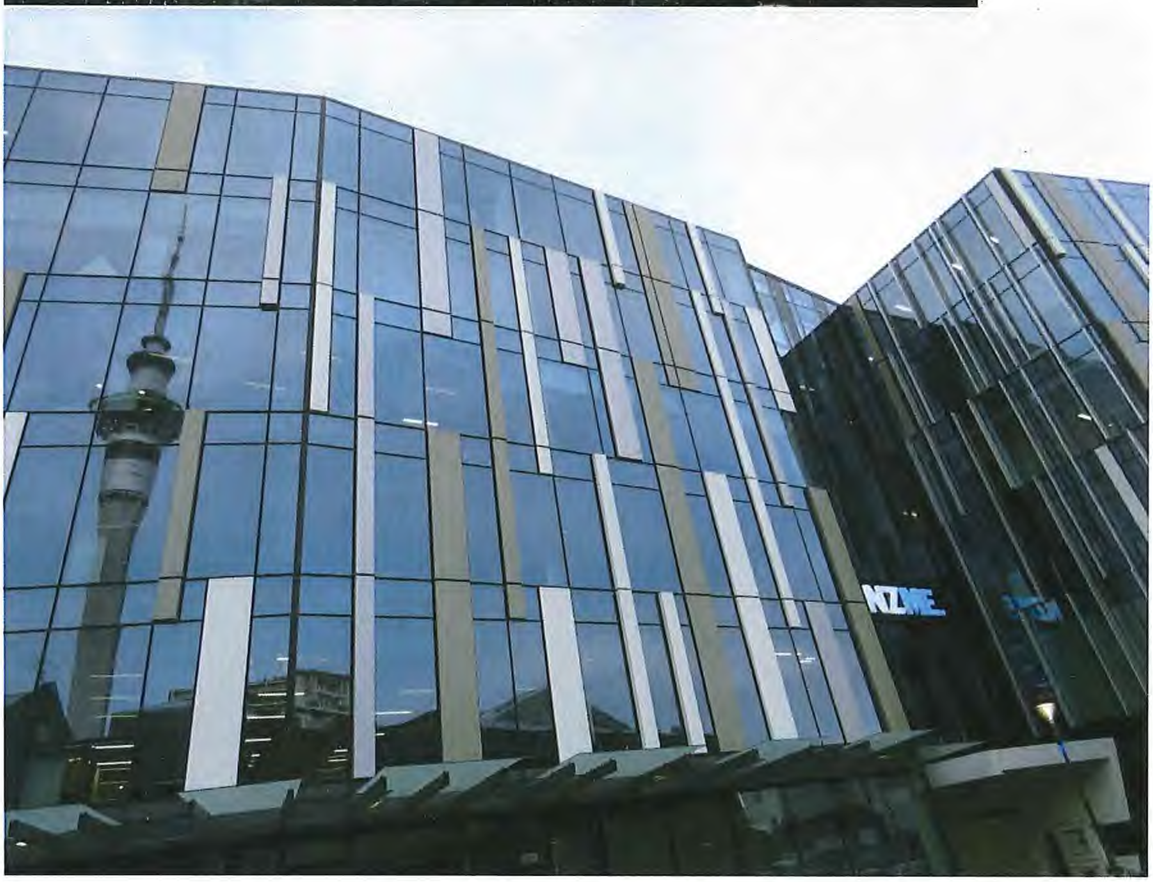


Coast
LOVE
THE
MUSIC
105.4
TOSHI
RETAIL FOR
LEASE


NZME.

2. Fairfax

The new Fairfax Auckland offices are in a recently completed office, retail and apartment complex near the junction of Ponsonby Road and Williamson Ave. This location and Ponsonby Road are a very fashionable precinct in a prestige city-fringe area well-known for its numerous restaurants, cafes, bars, and upmarket retail where nearby houses are in the $1.5m to $4m price range.


Fairfax Media
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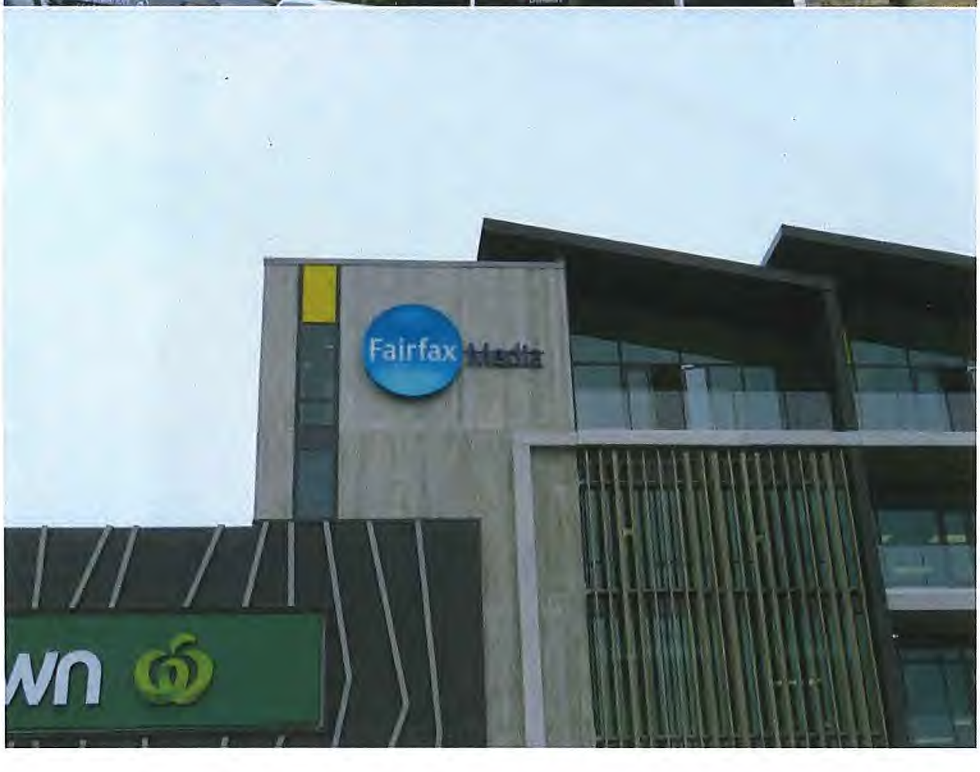
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