

## Determination

### **Bauer Media Group (NZ) LP and APN Specialist Publications NZ Limited [2014] NZCC 1**

**The Commission:**

Dr Mark Berry  
Anita Mazzoleni  
Pat Duignan

**Summary of application:**

Bauer Media Group (NZ) LP along with an interconnected body corporate, Bauer Consumer Media Limited (incorporated in the United Kingdom), seeks clearance to acquire all of the assets used by APN Specialist Publications NZ Limited in the publication of the New Zealand editions of the following magazine titles:

- *New Zealand Woman's Weekly;*
- *Simply You;*
- *Simply You Living;*
- *NZ Listener;* and
- *Crème.*

**Determination:**

Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission gives clearance for Bauer Media Group (NZ) LP, along with an interconnected body corporate, Bauer Consumer Media Limited (incorporated in the United Kingdom), to acquire all of the assets used by APN Specialist Publications NZ Limited in the publication of the New Zealand editions of the magazine titles specified above.

**Date of determination:**

23 January 2014

Confidential material in this report has been removed. Its location in the document is denoted by [ ].

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## The proposal

1. On 1 November 2013, Bauer Media Group (NZ) LP (Bauer), along with an interconnected body corporate, Bauer Consumer Media Limited (incorporated in the United Kingdom), applied for 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 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*.

## Our framework

2. Our approach to analysing the competition effects of the proposed acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.<sup>1</sup>

## The substantial lessening of competition test

3. As required by the Commerce Act 1986 (the Act), we assess whether the proposed merger is likely to result in a substantial lessening of competition.
4. We determine 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>2</sup>
5. A lessening of competition is generally the same as an increase in market power. Market power is the ability to raise price above the price that would exist in a competitive market (the 'competitive price'),<sup>3</sup> or reduce non-price factors such as quality or service below competitive levels.
6. Determining the scope of the relevant market or markets can be an important tool in determining whether a substantial lessening of competition is likely.
7. We define markets in the way that we consider best isolates the key competition issues that arise from the merger. In many cases this may not require us to precisely

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<sup>1</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2013.

<sup>2</sup> *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

<sup>3</sup> Or below competitive levels in a merger between buyers.

define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.<sup>4</sup>

### **When a lessening of competition is substantial**

8. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.<sup>5</sup> Some courts have used the word ‘material’ to describe a lessening of competition that is substantial.<sup>6</sup>
9. Consequently, there is no bright line that separates a lessening of competition that is substantial from one that is not. What is substantial is a matter of judgement and depends on the facts of each case. Ultimately, we assess whether competition will be substantially lessened by asking whether consumers in the relevant market(s) are likely to be adversely affected in a material way.

### **When a substantial lessening of competition is likely**

10. A substantial lessening of competition is ‘likely’ if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility, but does not mean that the effect needs to be more likely than not to occur.<sup>7</sup>

### **The clearance test**

11. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.<sup>8</sup> If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.<sup>9</sup>

## **Parties**

### **Publishers**

#### *Bauer*

12. 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* (New Zealand edition), *NEXT*, *Metro*, *North & South* and *Fashion Quarterly*. It also imports a number of titles from Australia, including *Cosmopolitan*, *Harper’s Bazaar* and *Australian House and Garden*.

<sup>4</sup> Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

<sup>5</sup> *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

<sup>6</sup> *Ibid* at [129].

<sup>7</sup> *Ibid* at [111].

<sup>8</sup> Section 66(1).

<sup>9</sup> In *Commerce Commission v Woolworths Limited (CA)*, above n 2 at [98], the Court held that “the existence of a ‘doubt’ corresponds to a failure to exclude a real chance of a substantial lessening of competition”. However, the Court also indicated at [97] that we should make factual assessments using the balance of probabilities.

### APNSP

13. APNSP is ultimately 100% owned by APN News & Media Limited. APNSP currently publishes eight magazine titles, including *NZ Woman's Weekly* and *NZ Listener*. Post-acquisition, it will continue to publish the New Zealand editions of *New Idea*, *That's Life!* and *Girlfriend* under a licence agreement with Pacific Magazines Pty Limited (Pacific Magazines).<sup>10</sup>
14. The APN group includes APN New Zealand Limited (APNNZ) and APN Online (New Zealand) Limited (APN Online).
  - 14.1 APNNZ publishes the *New Zealand Herald* and various provincial newspapers. Some of these publications include weekly lift-out magazines, which are known as newspaper-inserted magazines (NIMs).
  - 14.2 APN Online provides digital media services (eg, NZ Herald Online and GrabOne).
15. APN also operates radio stations throughout New Zealand through its 50% shareholding in The Radio Network New Zealand.

### Fairfax Media New Zealand Limited

16. Fairfax Media New Zealand Limited (Fairfax) is a wholly-owned subsidiary of Australian company John Fairfax Holdings limited. Relevantly, Fairfax:
  - 16.1 publishes around 20 mainly lifestyle and specialist magazines, including *The TV Guide* and *NZ House and Garden*;
  - 16.2 publishes two national weekly, nine daily, and 60 community newspapers;<sup>11</sup> and
  - 16.3 provides digital media services, including the stuff.co.nz website.

### Pacific Magazines

17. Pacific Magazines is an Australian-based magazine publisher. It is a wholly-owned subsidiary of Seven West Media Limited. As noted, it currently licenses APNSP to produce three New Zealand editions of its magazine titles. Pacific Magazines also exports a number of its other titles to New Zealand but none of these titles carry any New Zealand advertising.

### Other magazine publishers

18. Other magazine publishers operating in New Zealand are smaller scale and tend to publish single titles. These include:

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<sup>10</sup> These titles are produced by APNSP under an agreement entered into in [ ] for an initial term of [ ].

<sup>11</sup> Fairfax is also involved in the publication of NIMs in its weekly and daily newspapers.

- 18.1 McHugh Media Limited, which publishes *MiNDFOOD*, a monthly women's interest magazine; and
- 18.2 Tangible Media Limited, which publishes a number of mainly specialist magazines, including *Dish*, *Idealog*, *New Zealand Weddings* and *NZ Rugby World*.

### **Advertisers / media buying agencies**

- 19. Advertisers employ media buying agencies to advise on where advertisers should place advertising, negotiate the cost of the advertising with the media provider and then purchase the advertising. These agencies make their choice of media based on such factors as the reach, cost and effectiveness of the various platforms. In New Zealand there are a large number of such agencies, including several that form part of global buying groups (eg, OMD, Starcom, MediaCom and DraftFCB), and smaller overseas and local New Zealand agencies.

### **Distributors**

#### *Netlink*

- 20. Through its Netlink Distribution division, Bauer distributes its own and independent third-party publications to retailers throughout New Zealand.

#### *Gordon & Gotch (NZ) Limited*

- 21. Gordon & Gotch (NZ) Limited (Gordon & Gotch) distributes local and imported magazines on behalf of mainly independent publishers to supermarkets and other retailers throughout New Zealand. Gordon & Gotch is ultimately 100% owned by Australian company, PMP Limited.

### **Industry background**

- 22. There are around 3,000 magazine titles for sale in New Zealand,<sup>12</sup> of which 300 are published in New Zealand. These cover a wide range of general subjects and specialist subjects (such as pig hunting magazines), reflecting the variety of different consumer interests.
- 23. Publishers of magazines create editorial content, attract and sell advertising, produce and print titles, and distribute these to retailers and subscribers. Publishers may outsource some or all of these functions.
- 24. Consumers buy magazines for entertainment and/or information. Magazines are a discretionary purchase. In a wider context, similar entertainment and/or information can be available from a range of increasingly fragmented media, including traditional media, such as television, radio, and newspapers, and new media, such as digital magazines and other websites.
- 25. Many more people read magazines than buy magazines. For example, people share magazines and read them in doctors' surgeries.

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<sup>12</sup> Application at [9.1].





32.3 [ ].

32.4 [ ].

32.5 [ ].<sup>15</sup>

33. [ ],<sup>16</sup> [

].

34. [ ].<sup>17</sup> [

]. We

therefore consider that it is likely that APNSP will continue to sell magazines in the foreseeable future.

35. However, regardless of whether APNSP renews its licence, we do not consider it likely that *New Idea* will exit the market. This is because, even if APNSP did not continue to publish Pacific Magazines' titles, then it is likely that there are other publishers that could publish the title/s:

35.1 *New Idea* is a popular title with an aggregate annual circulation around 2 million;<sup>18</sup> and

35.2 there is evidence that magazine publishers can be profitable, vigorous competitors with only one, or a few titles.<sup>19</sup>

36. We do not need to reach a view on whether Pacific Magazines' other titles would exit the market with the acquisition and, consequently, have not done so. This is

<sup>15</sup> Letter from Pacific Magazines (6 December 2013).

<sup>16</sup> Letter from APNSP (5 November 2013) at [3]-[5].

<sup>17</sup> Interview with APNSP (13 November 2013).

<sup>18</sup> Source: Netlink, *Audit Report* (July 2012-June 2013) at 9.

<sup>19</sup> Such as MiNDFOOD.

because the other Pacific Magazines' titles are not particularly close competitors to Bauer's titles post-acquisition, as explained in more detail below.

### **Without the acquisition**

37. Without the acquisition, we consider that the status quo will prevail, or that the titles that are the subject of this application will be sold to another party.

### **Market definition**

38. Market definition is a tool that can provide a framework to help identify and assess the close competitive constraints a merged firm would likely face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.
39. However, in this case there is no bright line that separates products that are within a market from those that are outside the market. Individual magazine titles can face differing constraints from other magazines within their own category, from magazines in other categories, and from other media platforms. This is the case for both advertisers and purchasers of magazines, which are the two main sources of revenue for magazine publishers.
40. Assessing the competitive effects of the proposed acquisition is further complicated by the fact that magazines have two main sources of revenue:
- 40.1 the cover price paid by consumers for content; and
- 40.2 advertising sales.
41. The proportion of revenues earned from these sources varies between titles. In general, weekly magazines earn proportionally more revenue from the sale of magazines, while 'glossy' magazines, such as women's interest magazines, generally earn proportionally more from advertising.
42. The main complexity arising from having two sources of revenue is that the profitability of a price increase on consumers will be affected by the impact on revenue from advertisers.<sup>20</sup> Put another way, increased readership attracts advertisers and therefore allows magazine publishers to charge higher prices to advertisers. Similarly, any increased cover price that leads to a decrease in circulation would also have a knock-on effect of decreasing the publisher's advertising revenue.
43. The competition analysis below does not rely on an exact delineation of the relevant product market to identify the competitive constraints acting on Bauer post-acquisition. It is, therefore, unnecessary in this instance, for us to reach a conclusion on the precise product scope of the market.

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<sup>20</sup> This assumes that a fall in sales to consumers will lead to fewer readers. We consider this a reasonable assumption.

44. We consider it sufficient for the purposes of this decision to use the following product categories to frame our analysis:
  - 44.1 current affairs magazines;
  - 44.2 mass market women's weekly magazines;
  - 44.3 women's interest magazines; and
  - 44.4 magazine advertising.
45. For each category we assess the closeness of competition between the titles to be acquired and Bauer's current titles within the relevant category and then consider the closeness of competition from:
  - 45.1 magazines within that category;
  - 45.2 magazines from outside that category; and
  - 45.3 other media platforms, in particular online alternatives.
46. We assess all of the above categories on a national basis, as all publishers are active nationally.
47. The remainder of this section outlines the areas of overlap between the titles to be acquired and Bauer's current titles within magazine categories.<sup>21</sup>

#### **Areas of overlap**

48. The proposed acquisition involves overlap in the production and supply of magazines, which may impact on the sale of advertising to advertisers and content to purchasers of magazines. We set out below Bauer's existing titles, the titles that Bauer will acquire, and the titles APNSP is proposing to retain.
49. The categories used below are largely those of Netlink's *New Zealand Magazine Audit Report July 2012 – June 2013* (Audit Report).<sup>22</sup> The Audit Report includes most of the main magazine titles in New Zealand, but publishers of some titles choose not to include their titles in the audit process.
50. As Bauer submitted, "there is no precise science to categorisation given the substantial overlap between target groups of readers and the multitude of factors that influence different consumers to consume different content."<sup>23</sup> However, these industry categories provide a useful starting point when considering the areas of overlap from the proposed acquisition.

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<sup>21</sup> These categories are described below.

<sup>22</sup> Bauer describes the Audit Report as "an industry-wide publication containing the most comprehensive information on magazine circulation." The report is based on Audit Bureau of Circulations data.

<sup>23</sup> Application at [12.2].

51. Table 1 sets out the categories that we use in this decision to frame our analysis on the consumer side of the market. These categories differ from the Audit Report in one way. The Audit Report category of mass market weeklies includes *NZ Listener* and *TV Guide* (a Fairfax publication). These two magazines have quite different content and different reader profiles than other titles in the category, which are all mass market women’s weeklies. We have therefore decided to:
- 51.1 exclude these two titles from the category;
  - 51.2 describe the category as mass market women’s weekly magazines; and
  - 51.3 include *NZ Listener* in the current affairs category.
52. Excluding these titles for the mass market women’s weekly category is consistent with Nielsen’s categorisation,<sup>24</sup> Bauer’s internal documents,<sup>25</sup> and submissions from industry participants.<sup>26</sup>

**Table 1: Overlap between Bauer and APNSP’s magazines**

	<b>Bauer</b>	<b>Acquiring from APNSP</b>	<b>APNSP retaining</b>
<b>Current affairs</b>	<i>North &amp; South</i> <i>Metro</i>	<i>NZ Listener</i>	
<b>Mass market women’s weekly magazines</b>	<i>NZ Woman’s Day</i> <i>Lucky Break</i> <i>NW</i> <i>OK!</i>	<i>NZ Woman’s Weekly</i>	<i>New Idea</i> <i>That’s Life!</i>
<b>Women’s interest magazines</b>	<i>Australian Women’s Weekly</i> <i>Next</i> <i>Fashion Quarterly</i> <i>Good Health</i> <i>Cosmopolitan</i> <i>Cleo NZ</i> <i>Harper’s Bazaar</i> <i>Shop Til You Drop</i>	<i>Simply You</i>	
<b>Home and Gardening</b>	<i>Your Home and Garden</i> <i>Home NZ</i> <i>Australian House &amp; Garden</i> <i>Belle</i>	<i>Simply You - Living</i>	
<b>Youth interest</b>	<i>Dolly</i>	<i>Crème</i>	<i>Girlfriend</i>

<sup>24</sup> [ ]. The presentation is based on Nielsen’s Consumer and Media Insights (CMI) data. Nielsen, a market research company describes its CMI as “a rich and powerful database designed to profile markets, define target audiences, recognise trends, seek opportunities and plan media” ([http://nz.nielsen.com/products/nmr\\_Panorama.shtml](http://nz.nielsen.com/products/nmr_Panorama.shtml)). Nielsen’s CMI data is widely used across the industry by publishers and advertisers.

<sup>25</sup> For example, in an internal analysis Bauer [ ] rather than to other weekly titles; [ ].

<sup>26</sup> For example, call with [ ] (6 December 2013).

53. No parties raised any concerns in relation to the acquisition of titles in the categories of 'Home and Gardening' or 'Youth Interest' magazines. In the 'Home & Gardening' category, the acquisition slightly increases Bauer's share from [ ]% to [ ]%.<sup>27</sup> In the 'Youth Interest' category, the merger reduces the level of concentration: pre-acquisition, APN had [ ]% of the category and Bauer [ ]%; post-acquisition, APN would have [ ]% and Bauer [ ]%.<sup>28</sup> The level of overlap is not significant in these areas and the combined share of circulation for these categories is relatively low.<sup>29</sup> We therefore consider that the acquisition is unlikely to substantially lessen competition in respect of these titles and do not consider the impact of the acquisition of these titles further.

## Theories of harm

54. We have considered three theories of harm in assessing the competitive effects of the proposed acquisition. These theories are that the acquisition could substantially lessen competition through:

54.1 unilateral effects that could arise if Bauer acquires APNSP's magazine titles that would otherwise provide a significant competitive constraint such that Bauer can profitably increase price above the level or reduce quality below the level<sup>30</sup> that would prevail without the acquisition in the following categories:

54.1.1 the sale of current affairs magazines to readers;

54.1.2 the sale of mass market women's weekly magazines to readers;

54.1.3 the sale of women's interest magazines to readers; and

54.1.4 the sale of magazine advertising to advertisers;

54.2 vertical effects that could arise if the acquisition increases Bauer's ability and/or incentive to use Netlink (its distribution arm) to foreclose rival distributors either by increasing the cost of distribution or reducing the quality of distribution; and/or

54.3 conglomerate effects that could arise if the acquisition increases Bauer's ability and/or incentive to use its portfolio of magazines to supply bundled discounts to advertisers or exclusive deals, potentially foreclosing rivals of sufficient advertising revenues to compete effectively.

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<sup>27</sup> Based on Nielsen Audit Figures, July 2012 to June 2013.

<sup>28</sup> Ibid.

<sup>29</sup> Based on Nielsen Audit Figures, July 2012 to June 2013, the merged firm would account for [ ]% of youth interest magazines and [ ]% for home and gardening magazines (the home and gardening magazine figures exclude *Element*, a newspaper-inserted magazine that was included in the Applicant's category share table in the Application).

<sup>30</sup> For advertisers, quality could include editorials promoting products that sometimes supplement advertising. For consumers, quality could include any aspect of content valued by consumers, including the length of the magazines and the amount of particular types of content (such as NZ-specific content).

## Unilateral effects in the sale of current affairs magazines to consumers

55. This section assesses whether Bauer will likely be able to profitably increase the prices it charges to consumers for current affairs magazines above the level (or otherwise worsen its offering to consumers, eg, reduce quality below the level) that would prevail without the acquisition, as a result of removing the constraint imposed by APNSP's *NZ Listener*.
56. We have determined that the proposed acquisition is unlikely to substantially lessen competition in this way because:
- 56.1 the title to be acquired, the *NZ Listener*, is not a particularly close substitute for existing Bauer titles of *Metro* and *North & South* and so its acquisition is unlikely to enhance Bauer's unilateral market power; and
- 56.2 other constraints, including from other titles and the availability of current affairs content on other platforms such as television, radio, newspapers and the internet, will remain post-acquisition.
57. We consider that the *NZ Listener* is not a particularly close substitute for *Metro* and *North & South* for the following reasons.
- 57.1 Its readership is different.<sup>31</sup> For example, [ ] of *NZ Listener* readers do not read *North and South* or *Metro*.<sup>32</sup> [ ] of *Metro* readers and [ ] of *North & South* readers do not read the *NZ Listener*.<sup>33</sup> Data from the parties indicates that the titles have slightly different demographics: eg, *NZ Listener* and *North & South* have an [ ] readership than *Metro*.<sup>34</sup> Advertisers have submitted that the readership is different, with *Metro* having an Auckland slant.<sup>35</sup> *NZ Listener* has a proportionally [ ] amount of subscribers (about [ ]% of sales) compared to *North & South* ([ ]%) and *Metro* ([ ]%).
- 57.2 Its characteristics, in particular its mix of content, are different. *NZ Listener* is a national magazine which focuses on current affairs and entertainment.<sup>36</sup> In

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<sup>31</sup> As noted above, this is a different, wider group than those who bought the magazines. We have no evidence to suggest that these groups, however, have different demographics, so we proceeded on the basis that this evidence is reflective of the demographics of purchasers.

<sup>32</sup> See Bauer's response (20 December 2013). This compares to other closely competing titles, such as in the women's weekly category where only [ ]% of *NZ Woman's Weekly* readers do not read *NZ Woman's Day* (Nielsen CMI data (October 2012 - September 2013) received from Bauer on 12 December 2013).

<sup>33</sup> Ibid.

<sup>34</sup> Average ages of readers are [ ], [ ] and [ ] respectively. Nielsen CMI (October 2012 - September 2013) received from Bauer on 12 December 2013.

<sup>35</sup> For example, interview with [ ]. This is supported by the Nielsen CMI data cited above: [ ]% of *Metro* readers reside in Auckland.

<sup>36</sup> It covers politics, economics, culture, cuisine, photography, books, sport and health and nutrition, as well as television and radio programme listings for the main national broadcasters.

contrast, *Metro* is an Auckland-centric magazine<sup>37</sup> and *North & South* a national current affairs magazine.

- 57.3 *NZ Listener* is a weekly magazine, with a recommended retail price of \$4.30. *Metro* is a monthly magazine that sells for \$9.90 and *North & South*, also monthly, sells for \$8.90.
58. In addition, other constraints will remain post-acquisition from:
- 58.1 other magazine titles, such as *NZ Business* and *Idealog*;
- 58.2 newspapers, especially weekend papers that provide similar in-depth articles and entertainment articles to *NZ Listener*. This includes NIMs that provide a variety of content;<sup>38</sup> and
- 58.3 other media, in particular the provision of current affairs content on the internet and also television, radio and newspapers.<sup>39</sup>
59. In relation to the constraint from other media, current affairs magazine circulation, in particular the weekly *NZ Listener*, has declined in recent years (see Figure 1 below). *NZ Listener's* average circulation between July 2012 and June 2013 was [ ] lower than it was the year July 2011 to June 2012.<sup>40</sup> This appears to be consistent with the broad international trend of the declining sales for weekly news magazines.<sup>41</sup>

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<sup>37</sup> Bauer's website summarises *Metro* as follows: "The magazine's trademarks are its award-winning journalism, comprehensive restaurant reviews and incisive comment on city life".

<sup>38</sup> Evidence that may be indicative of this includes that, according to Nielsen's CMI data, *NZ Listener* readers are generally more likely to also read [ ].

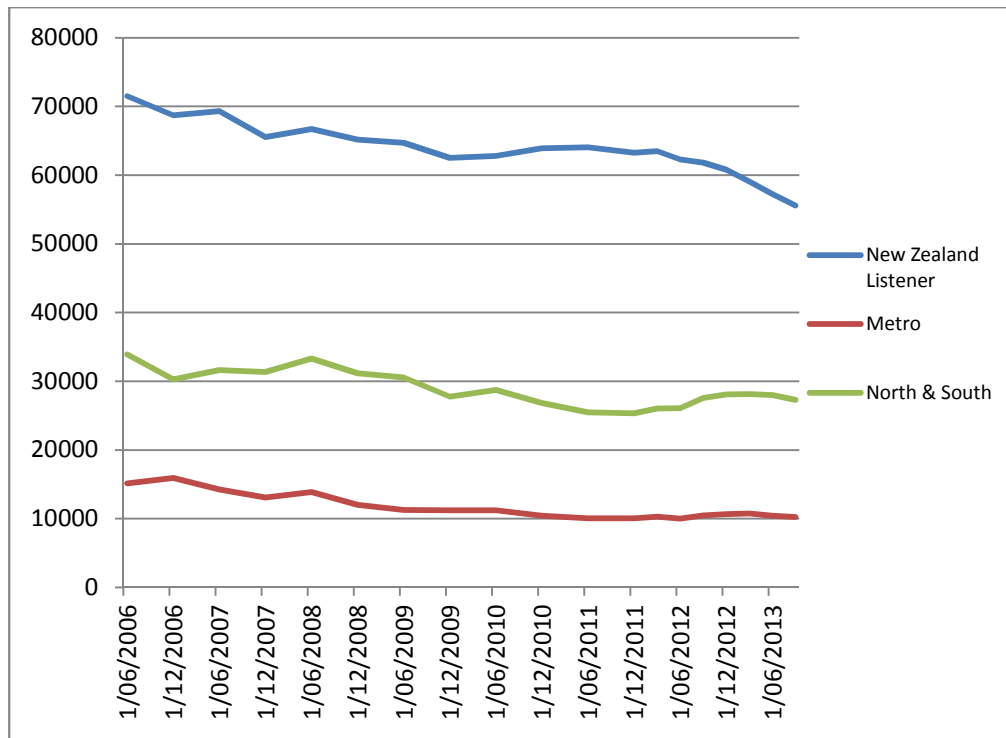
<sup>39</sup> For instance, see *News Magazines: Embracing Their Digital Future* on [stateofthemedias.org](http://stateofthemedias.org).

<sup>40</sup> APNSP's internal sales figures.

<sup>41</sup> For instance, see *News Magazines: Embracing Their Digital Future* on [stateofthemedias.org](http://stateofthemedias.org): "Amid the broad decline of the magazine industry in recent years, news magazines have been among the hardest hit. That trend continued in 2012 for the six publications analysed by the Pew Research Center, *Time* and *Newsweek*, as well as four smaller niche publications – *The Economist*, *The Atlantic*, *The Week* and *The New Yorker*. Ad pages for the group fell by an average of 10.4% in 2012, about 25% greater than the 8.2% slide experienced by magazines over all."



**Figure 1: Average quarterly circulation for current affairs titles<sup>42</sup>**



**Unilateral effects in the sale of mass market weekly women’s magazines to consumers**

- 60. This section assesses whether Bauer will likely be able to profitably increase the price it charges to consumers for mass market weekly women’s magazines above the level (or otherwise worsen its offering to consumers, eg, reduce quality below the level) that would prevail without the acquisition, as a result of removing the constraint imposed by APNSP’s *NZ Woman’s Weekly*.
- 61. We have determined that the proposed acquisition is unlikely to substantially lessen competition in this way because if, post-acquisition, Bauer attempted to increase prices, sufficient consumers would switch to other substitutes, including in particular online provision of similar content.
- 62. Bauer plans to [ ].<sup>43</sup> However, Bauer explained that [

].<sup>44</sup> We therefore consider that [ ] would have occurred without the acquisition.

<sup>42</sup> Source: New Zealand Audit Bureau of Circulation, quarterly average circulation per issue.

<sup>43</sup> [ ].

<sup>44</sup> Letters from Bell Gully (26 November 2013 and 20 December 2013).

63. Below we consider evidence of the closeness of competition between Bauer's existing titles and the title to be acquired, *NZ Woman's Weekly*. We then consider the on-going competitive constraints from:
- 63.1 magazines in the same category;
  - 63.2 magazines in other categories;
  - 63.3 other media platforms; and
  - 63.4 entry, expansion or repositioning of titles in response to any attempt by Bauer to increase prices.
64. First, however, we give an overview of the mass market weekly women's magazines category.

#### **Overview of mass market weekly women's magazines**

65. Mass market women's weeklies provide a mixture of celebrity news, true stories, food, fashion, beauty and lifestyle articles. As at June 2013, the price point was generally between \$3.10 to \$5 (from *That's Life* and *Lucky Break* at the cheapest end to *NW* at the most expensive), with most sales at either \$4.20 or \$4.30 price points which are used by *NZ Woman's Day*, *NZ Woman's Weekly* and *New Idea*.<sup>45</sup> The most popular titles are New Zealand publications, although there are some imported publications.
66. Table 2 lists and describes the mass market weekly women's magazine titles that Bauer will own after the acquisition.

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<sup>45</sup> New Zealand Magazine Audit Report, July 2012 to June 2013.

**Table 2: Relevant titles for mass market weekly women’s magazines**

<b>Title</b>	<b>Current publisher</b>	<b>Description</b>	<b>Category circulation rank<sup>46</sup></b>
<i>NZ Woman’s Day</i>	Bauer	“Woman’s Day provides content on the latest local and international celebrity news, fashion trends, beauty, health and fitness, home and relationships advice, recipes, puzzles and a lift-out TV listings guide.”	1
<i>NZ Woman’s Weekly</i>	APNSP	NZ Woman’s Weekly “contains a wide variety of news, stories, recipes and helpful hints for the home every week. It focuses on local celebrity and real story interest and home based activities – cooking, baking, craft and puzzles.”	2
<i>Lucky Break</i>	Bauer	Lucky Break “combines the intrigue of real life stories derived from readers’ contributions with the opportunity to win prizes through a 24-page pull-out puzzle book. Lucky Break is now produced by Bauer Australia with limited New Zealand content. It is then printed in New Zealand with a small number of New Zealand advertisements added.”	5
<i>NW</i>	Bauer	NW “focuses on the latest celebrity news and photos, including style and body tips.”	6
<i>OK!</i>	Bauer	OK! “takes readers ‘behind the velvet rope’ and inside the lives and homes of their favourite celebrities from Australia and around the world.”	7

Source: Audit Report (July 2012-June 2013), with titles outside of women’s titles disregarded; description from the Application, Schedule 3.

67. As with all magazines, women’s weekly magazines are discretionary purchases for consumers,<sup>47</sup> and demand is likely to be sensitive to changes in price and/or quality.

67.1 Bauer submitted that [

<sup>46</sup> These circulation figures are based on copies per issue, and therefore the competitive importance of less frequently published titles may be overemphasised by these rankings.

<sup>47</sup> Industry participants have described magazine purchases in these terms to us. For example, interview with [ ] (26 November).

].<sup>48</sup>

67.2 Most readers<sup>49</sup> do not read the majority of issues.<sup>50</sup> For example, [ ] of *NZ Woman's Weekly* and *NZ Woman's Day* readers read 50% or fewer of the last four issues of the magazine.<sup>51</sup>

67.3 The circulation of these magazines can vary significantly week to week. For example, for editions published between 1 January 2013 and 28 October 2013, *NZ Woman's Day* total paid weekly sales varied between [

].<sup>52</sup> This appears to be driven to a significant degree by the cover stories of the magazines<sup>53</sup> and consumers' own circumstances, including time<sup>54</sup> and money.

68. In addition, the evidence suggests that most consumers will not pay more than \$5.00 for a women's weekly magazine, and many will only pay less than that. [ ] submitted that "consumers are relatively price inelastic up to particular price points (\$4.50 being a softer price point, \$5.00 a harder one)."<sup>55</sup> It submitted that Bauer post-acquisition could increase prices by 15% profitably, as this was well under the \$5.00 price point.<sup>56</sup> [

]<sup>57</sup> *NZ Woman's Day* and *NZ Woman's Weekly* are currently priced at \$4.30 and \$4.20 respectively in retail stores; on subscription, they are available for about \$3 per issue on an annual basis or \$3.46 on a six monthly basis for the former<sup>58</sup> and \$3.35 per issue on a six monthly basis for the latter.<sup>59</sup>

69. We have sought to test the impact of a magazine increasing its cover price on its circulation and the circulation of potential competing titles. However, this analysis has been inconclusive, with no relationship demonstrated. This is likely to be because it is difficult to isolate the effect of prices on sales. Price is not the only

<sup>48</sup> Application at [10.4(c)] referring to Confidential Annex 4: Bauer, [ ] (2013).

<sup>49</sup> That is, people who have read the relevant title within the reference period.

<sup>50</sup> Although the Nielsen data in our possession does not explain purchasing decisions, we have no reason to expect this not to be congruent with this readership data.

<sup>51</sup> Nielsen CMI data (October 2012 – September 2013) received from Bauer on 12 December 2013.

<sup>52</sup> Bauer's internal sales data.

<sup>53</sup> For example, issues focus on royal weddings and births have typically had higher circulations than other issues.

<sup>54</sup> For example, sales of magazines are higher in December and January than many other months, as a result.

<sup>55</sup> [ ] agreed that \$5 was a hard cap for weekly magazines. Interview with [ ].

<sup>56</sup> Letter from [ ] (6 December 2013).

<sup>57</sup> [ ]

<sup>58</sup> Including delivery. See for example [isubscribe.co.nz](http://isubscribe.co.nz) and [magshop.co.nz](http://magshop.co.nz).

<sup>59</sup> \$87 for 6 months (26 issues). <http://www.nzmagazines.com/>

driver of sales and accounting for other explanatory variables, such as variations in content (or quality in some other way), was not straightforward.

### **Closeness of competition between Bauer's existing titles and the title to be acquired, *NZ Woman's Weekly***

70. The proposed acquisition would result in the aggregation of the two major women's mass market weekly publications, *NZ Woman's Day* and *NZ Woman's Weekly*, together with other smaller titles owned by Bauer, such as *Lucky Break* and imported titles such as *NW* and *OK!*.
71. *NZ Woman's Day* and *NZ Woman's Weekly* are likely to be each other's closest substitutes.
- 71.1 Their readerships are very similar in terms of tastes and demographics with the major difference being that *NZ Woman's Day* readers are more likely to be slightly younger<sup>60</sup> and marginally more likely to live in metropolitan areas.<sup>61</sup>
- 71.2 The content of the magazines are also alike. Several industry participants submitted that these two titles were indistinguishable from consumers' perspectives.<sup>62</sup> Both have a strong focus on celebrity gossip/news. *NZ Woman's Weekly* may focus more on traditional, local and royal news.<sup>63</sup> *NZ Woman's Day* may focus more on gossip and fashion.<sup>64</sup> The titles sell at similar price points as noted above.
72. [ ]<sup>65</sup> [ ] This data does not explain whether these magazines are substitutes or complements. This is because the data is consistent with consumers switching between these products, but is also consistent with readers regularly reading multiple weekly women's magazines.
73. Bauer also publishes some titles with smaller circulation in this category, such as *Lucky Break* and imported titles such as *NW* and *OK!*. These titles are somewhat

<sup>60</sup> The average age of readers of *NZ Woman's Day* is [ ] and of *NZ Woman's Weekly* is [ ]. Source: Nielsen data received from Bauer on 12 December 2013.

<sup>61</sup> [ ]% of *NZ Woman's Day* readers live in Auckland, Hamilton, Wellington, Christchurch or Dunedin. [ ]% of *NZ Woman's Weekly* readers live in these cities. Source: Nielsen data received from Bauer on 12 December 2013. See also [ ]. Also Nielsen, Magazine Publishers Association of New Zealand – Magazine Market Overview – Q3 2012 – Q2 2013 (the CMI Report) at 12. The latter states that *Australian Women's Weekly* reaches [ ]% of females 18-39 and [ ]% of females 40-64, while *Australian Woman's Day* reaches [ ]% and [ ]% respectively of the same audiences.

<sup>62</sup> For example, call with [ ] (20 November 2013).

<sup>63</sup> APN, Presentation entitled "APN Titles" at 5.

<sup>64</sup> Call with [ ](22 November 2013).

<sup>65</sup> [ ]

differentiated from *NZ Woman’s Day* and *NZ Woman’s Weekly* in terms of prices and content.<sup>66</sup>

73.1 *Lucky Break* (\$3.10) is cheaper than both *NZ Woman’s Day* (\$4.30) and *New Idea* and *NZ Woman’s Weekly* (\$4.20). *NW* (\$5.00) and *OK!* (\$4.80) are more expensive.

73.2 *Lucky Break* contains more real-life stories, and the demographics of its readership also differ. For example, the average household income of *Lucky Break* readers is lower than for *NZ Woman’s Day* and *NZ Woman’s Weekly*.

73.3 *NW* and *OK!* both focus predominantly on Australian and other overseas content (such as celebrity news) and do not contain New Zealand content in the same way as *NZ Woman’s Day* and *NZ Woman’s Weekly*.<sup>67</sup>

**Competition from other mass market weekly women’s magazines**

74. Post-acquisition, Bauer will face some competition in mass market weekly women’s magazines. However, Bauer will be the largest publisher by a significant margin. This is consistent with SWOT analysis undertaken by Bauer that states that one of the strengths of the acquisition would be to [ ].

75. Table 3 shows estimated shares for mass market women’s weeklies by average weekly circulation and retail sales revenue.<sup>68</sup> These figures are for audited titles only, so do not include imported titles such as *Hello, Chat* and *Pick Me Up!*.

**Table 3: Shares for mass market women’s weeklies**

	Average weekly circulation		Average weekly retail revenue <sup>69</sup>	
	Without	With	Without	With
Bauer	51%	73%	52%	75%
APNSP	46%	24%	44%	21%
Other	3%	3%	4%	4%

Source: NZ Magazine Audit Report June 2012 to July 2013; staff calculations

76. The next largest competitors would be APNSP’s *New Idea* and *That’s Life!*.

77. *New Idea* has similar characteristics to *NZ Woman’s Day* and *NZ Woman’s Weekly*, and its readership appears to be relatively similar.

<sup>66</sup> In addition, Bauer [ ]

<sup>67</sup> We have not sought detailed Nielsen data for these titles. Other documents we have received from Bauer only report demographics at a high-level, so any comparison for these titles would not be informative.

<sup>68</sup> Publishers make some sales at the retail level via subscriptions (although not necessarily at the recommended retail price), but most of their sales are at the wholesale level. We use retail level revenue because retail prices for all publishers are readily available.

<sup>69</sup> We have calculated this on the basis of circulation figures multiplied by the recommended retail price at the time of audit. It is unlikely that all magazines would be sold at the retail price; for example, some magazine titles give away numerous copies to places such as hotels and airport lounges.

- 77.1 *New Idea* has a relatively similar content mix to *NZ Woman's Day* and *NZ Woman's Weekly*. It sells at similar price point (\$4.20).
- 77.2 Its readership has similar demographics.<sup>70</sup>
78. [ ]<sup>71</sup> [ ]<sup>72</sup>
79. However, the circulation of *New Idea* is considerably less than either *NZ Woman's Day* or *NZ Woman's Weekly*, as captured by the share figures in Table 3 above.
80. *That's Life!* is not as close a competitor to *NZ Woman's Day* and *NZ Woman's Weekly*. It focuses more on real-life stories and has a cheaper price point of \$3.10.
81. The mass market women's weekly titles with the next largest circulation are Bauer titles *Lucky Break*, a relatively close competitor to *That's Life!*, and imported titles, *NW* and *OK!*, which are somewhat differentiated from *NZ Woman's Day* and *NZ Woman's Weekly* in terms of prices and content (they generally contain strictly overseas content as opposed to a mix of overseas and New Zealand content).
82. After this, there is a tail of other imported magazines with relatively low circulations, such as *Who* and *Famous*, both published by Pacific Magazines in Australia, whose content again is generally overseas gossip and so is not such a close substitute for *NZ Woman's Day* and *NZ Woman's Weekly*.
83. Post-acquisition, Bauer will face some competition in mass market weekly women's magazines. However, Bauer will be the largest publisher by a significant margin.

#### Competition with magazines including NIMs in other categories

84. The evidence we have collected does not suggest that publishers of magazines in other categories<sup>73</sup> (such as Food & Wine or Home & Gardening) are close competitors for *NZ Woman's Weekly* or *NZ Woman's Day* from consumers' perspectives.<sup>74</sup> While some other magazines contain some similar content (such as

<sup>70</sup> See Nielsen, Consumer and Media Insights – Magazine Top Line Results, Q4 2012 – Q3 2013.

<sup>71</sup> [ ].

<sup>72</sup> [ ].

<sup>73</sup> For example Fairfax Media NZ or Tangible Media.

<sup>74</sup> The magazine which is likely to be the closest competition for *NZ Woman's Day* and *NZ Woman's Weekly* is *Australian Women's Weekly*, which is also published by Bauer. This is because *Australian Women's Weekly*, a monthly magazine in the women's interest category, has relatively similar mix of content and its readership appears to have similar demographics. See Nielsen, Consumer and Media Insights – Magazine Top Line Results, Q4 2012 – Q3 2013. [ ].

lifestyle and food magazines), these magazines do not contain the same mix of content or cover the same celebrity and real-life stories as *NZ Woman's Weekly* and *NZ Woman's Day*.

85. Bauer submitted that NIMs, such as *Canvas Magazine* (Weekend Herald), *Sunday* (Sunday Star-Times), *Your Weekend* (Fairfax), *Timeout* (NZ Herald), *Weekend* and *Living/View*, would closely constrain Bauer post-acquisition.<sup>75</sup> However, the content mix and readership of these titles can be quite different.<sup>76</sup> Moreover, NIMs are substantially different products from consumers' perspectives as they are purchased as part of a weekend newspaper. We therefore consider NIMs do not compete strongly with the titles Bauer would own post-acquisition for consumers.

### Constraints from other media

86. Other media contains content that is a substitute for *NZ Woman's Weekly* and *NZ Woman's Day*. If Bauer attempted to increase prices (or otherwise negatively impact some other element of competition) post-acquisition, we consider sufficient consumers would switch to other substitutes, including in particular online provision of similar content, to make this unprofitable for Bauer.

### *Internet availability increasing and similar content available online*

87. The internet is likely to be a source of content which is a close substitute for many consumers of *NZ Woman's Weekly* and *NZ Woman's Day*. Some online magazines provide similar mixes of content: domestic sites, such as Chelsey and Gloss,<sup>77</sup> and international sites, such as okmagazine.com and usmagazine.com.<sup>78</sup> Many websites offer a specific type of content similar to part of *NZ Woman's Weekly* and *NZ Woman's Day's* offerings. In particular for celebrity gossip/news, relevant sites may include domestic sites, such as stuff.co.nz and 3news.co.nz, and international websites, such as dailymail.co.uk and perezhilton.com.<sup>79</sup> Much of this content is free to access to consumers (ie, is not behind a paywall).

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<sup>75</sup> Application at [12.27].

<sup>76</sup> NIMs contain a broad array of content: current affairs, entertainment and 'living'. While they provide some constraint on magazines generally, they are not generally targeted at the same audience as mass market women's weeklies.

<sup>77</sup> Chelsey.co.nz aims "to become New Zealand's premium online women's magazine" ([www.chelsey.co.nz/about](http://www.chelsey.co.nz/about)). It covers subjects including entertainment, life and style, health, love & sex and power & inspiration. Gloss.co.nz is "tailored to the interests and needs of women aged 15-50". It provides "the latest information about fashion, beauty, lifestyle, health, entertainment, downloads, news and gossip, competitions, classifieds and more". (Source: <http://www.gloss.co.nz/About-Us.html>)

<sup>78</sup> Both okmagazine.com and usmagazine.com provide international celebrity photos, news and videos and style and beauty articles.

<sup>79</sup> dailymail.co.uk is a popular UK website, which covers subjects including news, entertainment, fashion, beauty, food and health. Perezhilton.com provides celebrity news, gossip, photos and videos. Other examples include: fashion content is available through domestic sites, such as <http://www.fashionz.co.nz/>, and international sites, such as vogue.com.au.



88. Further, consumers have an ever increasing range of ways to access content on the internet, and these ways are becoming progressively easier and more rapid.<sup>80</sup> For example, smartphone and tablet usage is increasing swiftly.<sup>81</sup> Smartphones were used by at least 54% of the New Zealand population in the first quarter of 2013, and increased 10% in a year.<sup>82</sup> This is expected to grow to 90% by 2018.<sup>83</sup> Tablet penetration has reached 26% of New Zealanders aged between 15 and 65 and 42% of all households have at least one member who owns a tablet.<sup>84</sup><sup>85</sup> This increasingly allows consumers to access content while ‘on the go’ or in ‘casual moments’, in a way that is similar to magazines.<sup>86</sup>

*Magazine circulation declining*

89. The circulation of women’s weekly magazines has fallen considerably in recent years. This fall is more significant than for magazines generally.<sup>87</sup>

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<sup>80</sup> 82% of New Zealanders in 2012 had used the internet in the last twelve months. Source: Statistics NZ. See [http://www.stats.govt.nz/browse\\_for\\_stats/snapshots-of-nz/nz-social-indicators/Home/Social%20connections/phone-internet-access.aspx](http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Social%20connections/phone-internet-access.aspx)

<sup>81</sup> See PwC report at Annex 3 of the Application.

<sup>82</sup> Study conducted by Ipsos Media CT for Google in May 2013 (see <http://services.google.com/fh/files/misc/omp-2013-nz-en.pdf>).

<sup>83</sup> Study by Frost & Sullivan, *New Zealand Mobile Device Usage 2013*, <http://www.frost.com/prod/servlet/press-release.pag?docid=288249825>

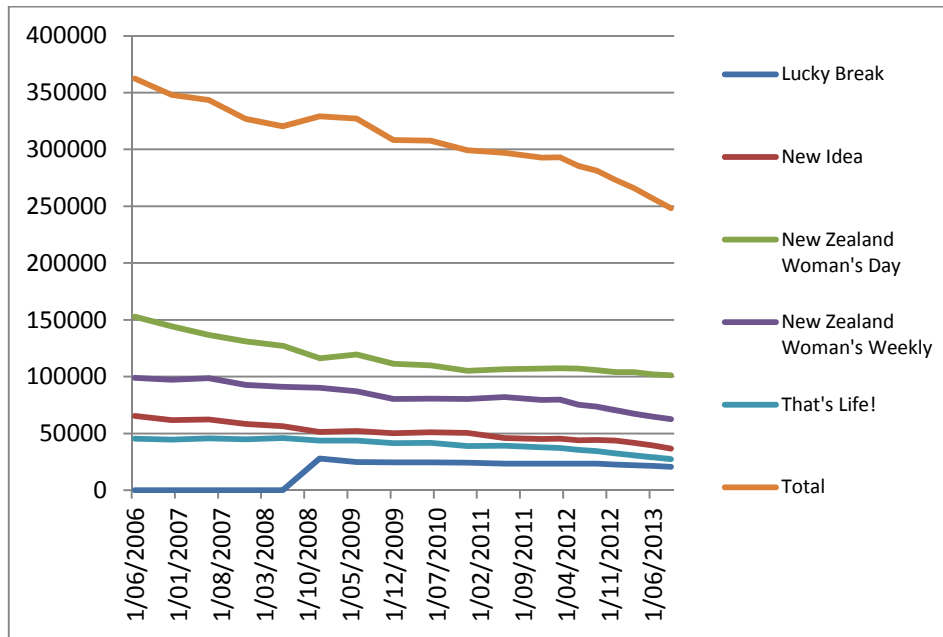
<sup>84</sup> Ibid. Frost & Sullivan also state: ‘62% of tablet users read a news article on an internet site / m-site or via an app at least once a month. However, a significant proportion of tablet users do not read newspaper articles at all online. Media publishers can boost readership by offering a more content optimised for the tablet. Within five to ten years, tablets and smartphones would have overtaken print as the most popular channel to access news content.’

<sup>85</sup> See the report by the Interactive Advertising Bureau and PwC at Annex 6 of the Application.

<sup>86</sup> This is consistent with evidence from Bauer about when consumers read magazines compared to the internet. Source: Nielsen CMI data (October 2012 – September 2013) received from Bauer on 12 December 2013.

<sup>87</sup> Interestingly, the largest decline in circulation by category between July 2012 and June 2013 according to the Audit Report was in Computing & Gaming (-69.3%), whose users might be thought to be particular willing to switch to the internet.

**Figure 2: Average circulation figures for New Zealand published women's weekly magazines<sup>88</sup>**



90. Some industry participants and commentators expect this decline to continue. For example:

90.1 [ ];<sup>89</sup> and

90.2 PWC has forecast that consumer spending on print magazines will fall by 2.5% per year between 2012 and 2016.<sup>90</sup>

91. Other submissions making this point included those from [ ]<sup>91</sup> and [ ].<sup>92</sup>

*Switching to the internet*

92. The decline in magazine circulation may be explained in a number of ways, in particular:

<sup>88</sup> Source: New Zealand Audit Bureau of Circulation. These figures do not include the figures for other audited imported titles – *OK! Who*, *NW* or *Famous* – as we do not have historical data for those titles. Those titles are, however, included in the market share tables in the competition assessment.

<sup>89</sup> Application at [10.2].

<sup>90</sup> PWC, *Mobility is reshaping the future* (August 2012) at 34.

<sup>91</sup> Call with [ ](26 November 2013).

<sup>92</sup> Call with [ ](29 November 2013).

- 92.1 Economic conditions – many consumers may have foregone purchasing magazines, as they cut back on discretionary spending.<sup>93</sup> However, as the decline has continued, it appears other factors are in play.
- 92.2 The switch to digital media (and potentially TV). This would be consistent with views of industry participants as explained above. This switching may either be ‘one-way’ (switching that would have happened whatever the pricing of magazines) or may reflect close competition between these different media. We have assessed the evidence to see which of the latter two explanations is most plausible.
93. Bauer submitted that other media is substitutable for magazines and online content is a particular threat.<sup>94</sup>
94. A PWC report states that “print consumer magazine sales are expected to continue to decline as the internet and the use of tablets increases.”<sup>95</sup> Comments from Fairfax CEO, Allen Williams, quoted in the same PWC report, support the idea that what matters for consumers is content, rather than the platform:
- Content comes first. Across all platforms, content is key. It can be a differentiator. Therefore it needs to be encouraged internally across all platforms not just, say, print, and also protected from use by other competitors.<sup>96</sup>
95. Other industry participants acknowledged that consumers were switching over time from magazines to the internet. For example, [ ] and [ ] submitted that research shows magazines are declining by 3% per year due to magazine consumers switching to online content. Weekly magazines have shown the biggest decline which [ ] attributed to the content (gossip etc) now being available on multiple alternative sites.<sup>97</sup>
96. Some of Bauer’s internal documents support the idea that the strongest competitive constraint post-merger on Bauer will be from the internet. [ ]<sup>98</sup> [ ]

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<sup>93</sup> Bauer provided a survey carried out in the ordinary course of business which supported this proposition. Confidential Annex 5 of the Application. Reasons given included [ ] and [ ].

<sup>94</sup> Application at [12.21(b)] and [12.27].

<sup>95</sup> PWC, Mobility in reshaping the future (August 2012) at 33.

<sup>96</sup> PWC, Mobility in reshaping the future (August 2012) at 68.

<sup>97</sup> Call with [ ] (20 November 2013) and call with [ ] (29 November 2013): Research shows magazines are declining by 3% to online. Weekly magazines have shown the biggest decline which [ ] attributed to the content (gossip etc) now being available on multiple alternative sites.

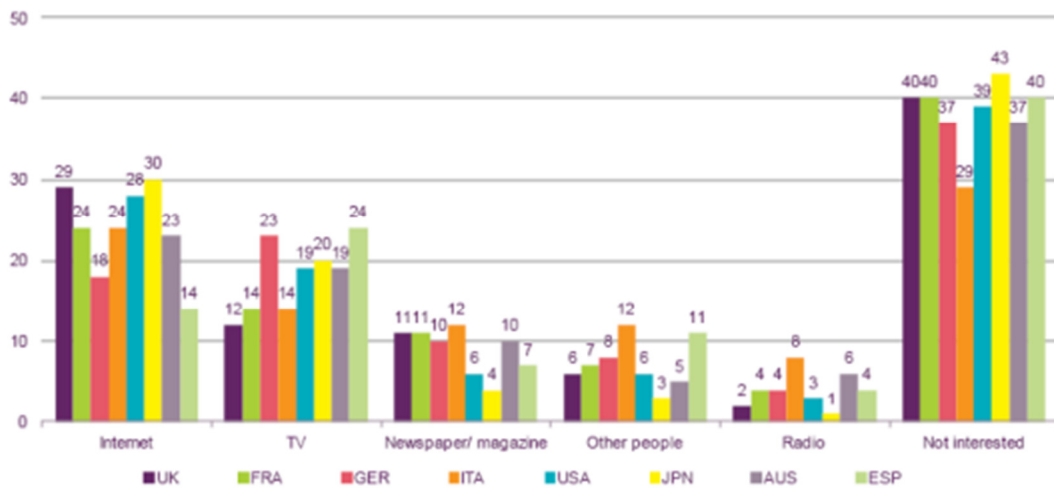
<sup>98</sup> Bauer, [ ] (2013).

] <sup>99</sup>

97. Overseas evidence is also consistent with the proposition that the internet is likely to be a source of content which is a close substitute. For example, a report<sup>100</sup> by OFCOM (the UK communications regulator) surveyed eight countries and found that the internet is the main source of gossip/celebrity news in six countries,<sup>101</sup> while TV is the main source in the other two (see Figure 3 below).<sup>102</sup> In particular, in Australia, 23% of consumers use the internet as their main source of celebrity gossip, 19% use television and 10% use newspapers or magazines.<sup>103</sup>

**Figure 3 – Overseas evidence of the main sources of celebrity news/gossip**

**Figure 1.64 Main sources of celebrity news/gossip**



Source: Ofcom consumer research September 2013

Base: All respondents, UK=1000, FRA=1007, GER=1010, ITA=1010, USA=1004, JPN=1005, AUS=1007, ESP=1020, CHN=1007.

Q.11 Which, if any, is your main source for the following information? Celebrity news/gossip

98. We consider, in light of the evidence summarised above, that generally, content available on the internet is likely to be a sufficiently close competitive constraint on *NZ Woman's Day* and *NZ Woman's Weekly*, such that Bauer will unlikely be able to

<sup>99</sup> Application at [10.4].

<sup>100</sup> See OFCOM, International Communications Market Report (12 December 2013) at Figure 1.64. Available at [http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr13/icmr/ICMR\\_2013\\_final.pdf](http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr13/icmr/ICMR_2013_final.pdf)

<sup>101</sup> The UK, France, Italy, USA, Japan and Australia.

<sup>102</sup> Germany and Spain.

<sup>103</sup> A survey has found that the internet is more important than other media for information in general in New Zealand: 81% of respondents said the internet was important for information compared to 47% for television, 37% for radio and 37% for newspapers. AUT, *World Internet Project – New Zealand* at 7.

profitably increase its prices as a result of the acquisition.<sup>104</sup> Other platforms, including television, may also provide an additional constraint.

### Conclusion

99. We conclude that it is unlikely that Bauer would profitably be able to increase prices (or otherwise negatively impact some other element of competition) post-acquisition. This is because, if it attempted to do so, sufficient consumers would switch to other substitutes, including in particular online provision of similar content, to make this unprofitable for Bauer. We therefore conclude that the proposed acquisition is unlikely to substantially lessen competition in this way.

### Unilateral effects in the sale of women’s interest magazines to consumers

100. This section assesses whether Bauer will likely be able to profitably increase the price it charges to consumers for women’s interest magazines above the level (or otherwise worsen its offering to consumers, eg reduce quality below the level) that would prevail without the acquisition as a result of removing the constraint imposed by APNSP’s *Simply You*.
101. We consider that the acquisition is unlikely to substantially lessen competition in this way because:
- 101.1 the title to be acquired by Bauer, *Simply You*, is a relatively small competitor in terms of sales revenue; and
- 101.2 other magazines will continue to provide a competitive constraint on Bauer.
102. Below we consider evidence of the closeness of competition between Bauer’s existing titles and the title to be acquired, *Simply You*. We then consider the on-going competitive constraints from:
- 102.1 magazines in the same category; and
- 102.2 magazines in other categories.
103. First, however, we give an overview of the women’s interest magazines category.

### Overview of women’s interest magazines

104. Compared to mass market women’s weeklies, women’s interest magazines are less frequent and tend to be longer, more expensive, printed on higher quality paper and more ‘aspirational’. Women’s interest titles generally contain a mix of celebrity, fashion, health beauty, home and design, travel and food, and other content. In general, the magazines in this category are highly differentiated, with varying mixes of content aimed at differing target audiences.

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<sup>104</sup> It is not necessary for the purposes of this analysis for us to assess the scope for entry, expansion or repositioning to respond to any attempt by Bauer to increase prices.

105. Revenue from women's interest magazines are typically skewed more to advertising than circulation compared to other magazine types. For example, [ ] revenue comes from advertising, where for [ ] of revenue comes from advertising.
106. Bauer already publishes many titles in the category, as outlined below. As part of the proposed acquisition, it will acquire *Simply You*, which is also in this category. While all of the titles in this category are differentiated across a variety of qualities, in terms of content, *Simply You* is closest to *Next* and *Fashion Quarterly*, as these titles focus more on fashion than other titles. As such, *Simply You* may be a close competitor to both *Next* and *Fashion Quarterly*.
107. Table 4 below sets out the list of women's interest titles that Bauer will own after the acquisition.

**Table 4: Relevant titles for women’s interest<sup>105</sup>**

<b>Title</b>	<b>Current publisher</b>	<b>Frequency</b>	<b>Description</b>	<b>Category circulation rank<sup>106</sup></b>
<i>Australian Women’s Weekly</i> (NZ edition)	Bauer	Monthly	Contains stories about local and international celebrities and real-life reads, fashion, practical beauty solutions, home design, puzzles and recipes aimed at family meals.	1
<i>NEXT</i>	Bauer	Monthly	Focuses on the portrayal of “real women” and contains a mix of beauty, fashion, home design, health and recipes.	2
<i>Simply You</i>	APNSP	Bi-annual	Follows the season’s hottest trends and key looks from international collections. It contains fashion and beauty advice and is aimed at affluent 40+ New Zealand women.	5
<i>Fashion Quarterly</i>	Bauer	Quarterly, plus two special issues	A fashion and beauty guide which showcases the best each season has to offer locally, as well providing practical guidance on how to make the most of trends in readers’ own wardrobes.	6
<i>Good Health Choices</i>	Bauer	Monthly	A guide to healthy living in a positive, practical package.	8
<i>Cosmopolitan</i>	Bauer	Monthly	Contains information on relationships and romance, fashion and beauty, women’s health and wellbeing, as well as what’s happening in pop culture and entertainment.	9
<i>CLEO</i>	Bauer	Monthly	Cleo is aimed at young women and contains fashion and make-up tips, celebrities, relationship advice and music news.	11

### Shares of circulation and revenue in supply of women’s interest magazines

108. As women’s interest magazines are differentiated by price point and frequency, we have estimated publishers’ shares by annual revenue of women’s interest magazines at the retail level<sup>107</sup> and by annual circulation (Table 5).<sup>108</sup> These estimates show that Bauer acquiring *Simply You* would result in little additional aggregation.

<sup>105</sup> Bauer also publishes *Harper’s Bazaar* and *Shop Til You Drop*, but these have much lower circulation figures and are not within the top 20 of the audited women’s interest magazine category.

<sup>106</sup> These circulation figures are based on copies per issue, and therefore the competitive importance of less frequently published titles may be overemphasised by these rankings.

<sup>107</sup> Publishers make some sales at the retail level via subscriptions (although not necessarily at the recommended retail price), but most of their sales are at the wholesale level. We use retail level revenue because retail prices for all publishers are readily available.

<sup>108</sup> These estimates differ from those in the Application. This is mainly because the shares in the Application considered circulation per issue rather than total yearly circulation. Different titles are published with

**Table 5: Estimated category share for women’s interest magazines**

	Annual retail revenue <sup>109</sup>		Annual circulation	
	Without	With	Without	With
Bauer	57%	60%	61%	63%
APNSP	3%	0%	2%	0%
Other	40%	40%	37%	37%

Source: NZ Magazine Audit Report June 2012 to July 2013; staff calculations

### Competitive constraints

109. We received a variety of views on the proposed acquisition’s likely competitive effect. Two smaller magazine publishers, including [ ], have expressed strong concerns in relation to conglomerate effects and vertical effects, which are discussed in separate sections below. [ ] supplied a Nielsen report that identifies [ ] major competitors as [ ].
110. There do, however, appear to be numerous other magazines that would continue to compete with Bauer’s titles. These include the following magazines which have varying degrees of content dedicated to fashion: *MINDFOOD* (women’s interest category circulation ranking of 3), *M2Woman* (7), *Frankie* (15), *Marie Claire* (16), *Vogue Australia* (19) and *Instyle* (20).<sup>110</sup>
111. As well as magazines from within the women’s interest audit category, Bauer’s titles in this category would also likely compete with titles from other categories.
112. These include Fairfax publications *House and Garden* and *Cuisine* (which have the 9<sup>th</sup> and 12<sup>th</sup> largest circulations out of all magazines, respectively) and titles from smaller publishers like *Healthy Food Guide* (published by Healthy Life Media, 11<sup>th</sup> largest circulation) and *Good*<sup>111</sup> (published by Tangible Media, 39<sup>th</sup> largest circulation). These magazines’ customer demographics, frequency, length, paper quality and price point are generally similar to magazines in the women’s interest category, although many of these magazines have more specialised content.
113. The Nielsen CMI survey data includes information on what other magazines readers of particular titles also read. For instance, of readers of *Simply You* during the last issue period:

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differing yearly frequency. *Simply You* is published bi-annually which therefore diminishes its annual share of circulation. We have also excluded *VIVA*, a newspaper-inserted magazine, that the applicant had included, which is not included in the Nielsen audit figures.

<sup>109</sup> We have calculated this on the basis of circulation figures multiplied by the recommended retail price at the time of audit. It is unlikely that all magazines would be sold at the retail price, for example some magazine titles give away numerous copies to places such as hotels and airport lounges.

<sup>110</sup> *NZ Life and Leisure* (women’s interest circulation rank 4) and *Women’s Health Australia* (13) are also audited titles in this category, although they are less fashion focused.

<sup>111</sup> *Good’s* publisher describes it as a “magazine about living simply and living well, covering home, style, food, craft, garden, health and beauty”.



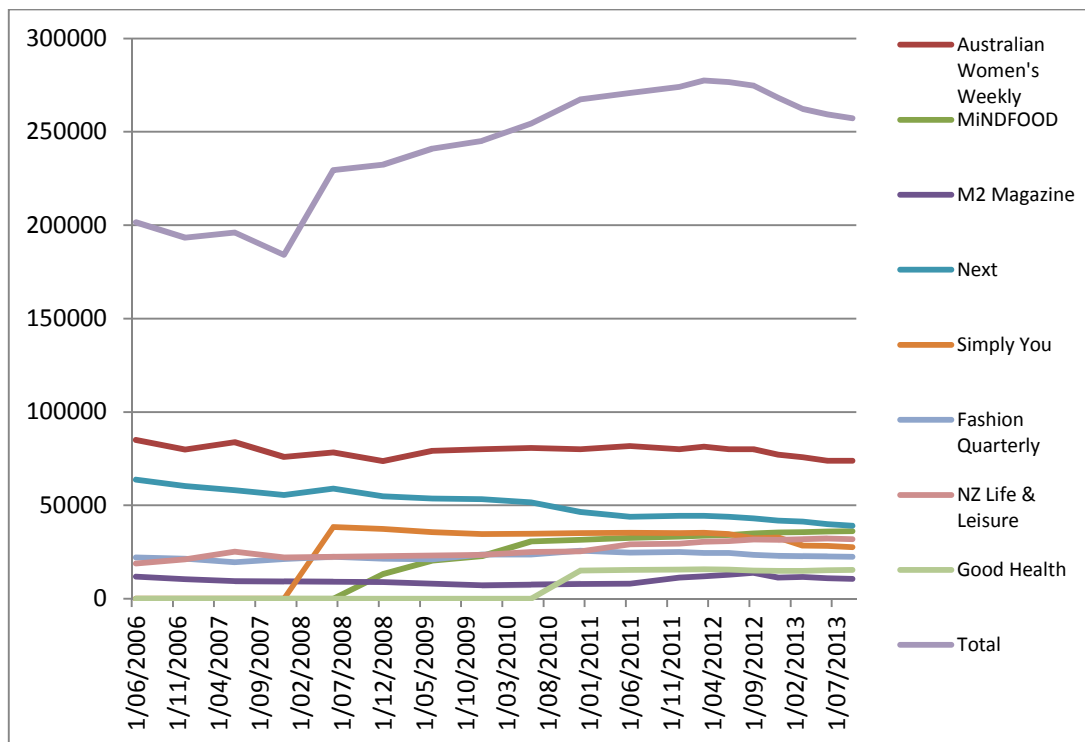
- 113.1 [ ]% read *NZ House and Garden*;
- 113.2 [ ]% read *Cuisine*;
- 113.3 [ ]% read *Healthy Food Guide*; and
- 113.4 [ ]% read *New Idea*.<sup>112</sup>
114. The fact that consumers read multiple magazine titles does not necessarily mean that those titles are substitutes. However, as many of these above titles provide some similar content to the *Australian Women's Weekly*, it is likely that they are substitutes for at least some customers.
115. Other magazines are not included in the audit or survey data, but likely impose a competitive constraint. These include imported titles like *UK Vogue*, *Elle*, *Vanity Fair* and *O The Oprah Magazine* and New Zealand titles such as *Remix Magazine*.
116. While other platforms are available for accessing similar content to women's interest magazines, such as online and television, we have not found any evidence to show that these alternative platforms currently constrain publishers of women's interest magazines. Women's interest magazines have not experienced the decline in sales that other magazine categories have (Figure 4).<sup>113</sup>

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<sup>112</sup> *Good* is not included in the Nielsen CMI survey data.

<sup>113</sup> Also note that, as advertising revenue is linked to circulation and readership, advertising revenues are also unlikely to have experienced as severe declines as mass market women's weekly magazines.

Figure 4: Women's interest magazine circulation figures over time<sup>114</sup>



117. Some industry participants submitted that women's 'glossy' magazines are more 'aspirational' and 'engaging',<sup>115</sup> and therefore consumers are less likely to switch away from these magazines to other media platforms.
118. In any case, we consider that any lessening of competition from the acquisition of *Simply You* is unlikely to be substantial given that:
- 118.1 the title to be acquired by Bauer, *Simply You*, is a relatively small competitor in terms of sales revenue; and
- 118.2 other magazines will continue to provide a competitive constraint on Bauer.
119. We therefore do not need to further consider the possible constraint from other media platforms.

### Unilateral effects in magazine advertising

120. This section assesses whether Bauer will likely be able to profitably increase the price it charges for magazine advertising above the level (or otherwise worsen its offering to advertisers or media buyers, eg reduce quality below the level) that would prevail without the acquisition as a result of removing the constraint imposed by the titles to be acquired.

<sup>114</sup> Source: New Zealand Audit Bureau of Circulation. These figures include the top eight ranked audited titles in the category. We do not have historical data for ninth-ranked *Cosmopolitan* and tenth-ranked *Parenting Magazine* is unlikely to be a close substitute for Bauer titles and *Simply You*.

<sup>115</sup> For example, interview with [ ].

121. Based on the evidence obtained during our investigation, we are satisfied that post-acquisition Bauer is unlikely to have the ability to profitably increase prices to advertisers. This is because, as discussed below, advertisers:
- 121.1 use a range of media to reach their target audience; and
  - 121.2 can effectively switch their advertising spend to other magazine titles, NIMs or alternative advertising platforms, such as online advertising and television.
122. In particular, the range of media buyers and advertisers we consulted were themselves largely of the view that the acquisition would be unlikely to have the effect of increasing advertising prices, given the range of advertising options that media buyers and advertisers would continue to have post-acquisition. The only exceptions to this were some concerns expressed in relation to advertising health and beauty products, which are discussed below.<sup>116</sup>

### Advertising industry background

123. Advertisers want their campaigns to obtain the widest reach and target the appropriate audience in the most cost effective manner. They generally use a mix of media platforms on which to advertise, substituting as necessary to extract maximum value from their advertising budget.
124. Therefore advertisers, and the media buyers acting on their behalf, base their decisions on where to place advertisements on factors such as the following.
- 124.1 The nature of the product (including the brand associated with the product). Media buyers submitted that weekly publications are frequently used to promote products with a “quick to market” focus and monthly magazines are often employed to advertise branded products, such as health and beauty products [ ].<sup>117 118</sup> Some products, such as health and beauty products are more suited to magazine advertising as opposed to other platforms. In particular, magazine advertising allows buyers to read product information and endorsements. Conversely, other fast moving products, work better on television and online than in magazines.
  - 124.2 The demographics of the audience they want to target (eg, women in a certain age group, and/or a socio-economic group earning a certain income). When deciding which platform to use, advertisers submitted that they consider who the target audience is, the media consumption of that audience

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<sup>116</sup> Interview with [ ].

<sup>117</sup> For example, interview with [ ]: “Titles such as *NEXT* or *Simply You* are monthly, long-duration titles that don’t have an ‘immediate call to action’ and are trying to build a more continuous relationship with the consumer. So such titles are suited to advertising [ ]. In contrast the mass women’s weeklies, such as *NZ Woman’s Weekly* and *Woman’s Day*, are more retail oriented. So a Glassons advertisement is more likely to be in weekly publications.”

<sup>118</sup> For example, [ ] stated that there is quite a difference between a weekly and a monthly magazine, and they are a different type of purchase from a media agency’s perspective. Monthly magazines are longer reads (readers will generally put it down and return to it several times) whereas a weekly is a “flick read,” retail focused and works well with TV campaigns.

and the nature of the product.<sup>119</sup> One media buyer, [ ] submitted that “magazines are more likely to be used to target female audiences because females have a tendency to be higher magazine readers than males.”<sup>120</sup>

### 124.3 The cost to target the audience of interest.

#### *Switching is straightforward for advertisers and media buyers*

125. Advertisers and media buyers submitted that it was straightforward to switch advertising spending between different firms and, generally, media.<sup>121</sup> Such switching appears, from the evidence we have gathered, to be routine. For example, in response to problems with lead times with Bauer titles, one media buyer switched to online advertising.<sup>122</sup>
126. Advertisers and media buyers may decide to switch all or part of their budget if one medium becomes less attractive than other media (eg, if the relative price of a medium increases). For example, Bauer submitted that [ ]<sup>123</sup>

#### *Magazines are a small portion of overall advertising*

127. Bauer submitted that among its top twenty advertisers magazines accounted for only [ ]% of their total advertising spend. Advertisers and media buyers we spoke to agreed that magazine advertising made up only a small proportion of their overall spend. Some spent 50% of their clients’ advertising budget on television, 20-30% on digital<sup>124</sup> and 5% to 30% on magazines, but the proportion spent on online is slowly increasing and the proportion spent on magazines is decreasing.
128. Bauer submitted that its top 20 advertisers spent a significantly smaller proportion of their total advertising spend on magazines between 2008 and 2012: specifically, this proportion decreased [ ]%. Of those businesses that advertise with it, [ ]% of their advertising spend is on competing platforms.<sup>125</sup>
129. However, industry participants submitted that for health and beauty products, magazines can be a more important advertising means than for other products as magazines allow the reader to grasp more detailed product information which is important for health and beauty products.<sup>126</sup> Consequently some health and beauty products mainly advertise in magazines, in particular women’s weekly and women’s

<sup>119</sup> Interviews with [ ], [ ], and [ ].

<sup>120</sup> Interview with [ ].

<sup>121</sup> For example, interviews with [ ], [ ], [ ] and [ ].

<sup>122</sup> Interview with [ ].

<sup>123</sup> Application at [12.9].

<sup>124</sup> Interviews with [ ] and [ ].

<sup>125</sup> Application at [9.3].

<sup>126</sup> See, for example, interviews with [ ] and [ ].

interest magazines: in some cases 50-60% of the advertising spend for health and beauty products and related fast moving consumer goods is on magazines.<sup>127</sup>

#### *Declining magazine advertising spend*

130. A PWC report<sup>128</sup> estimated that magazine advertising had decreased from \$258m in 2007 to \$207m in 2011. PWC also forecasted that print magazine advertising is expected to decline around 2.5% per annum between 2012 and 2016, while digital magazine advertising was forecast to increase, meaning total magazine advertising spend over that period is steady. This compares to TV advertising which is forecast to increase by 4.3% per annum between 2012 and 2016, and internet advertising that is forecast to increase by 13.7% during the same period. Therefore, the proportion of advertising spending on magazines is likely to continue to decrease in the future.

#### **Focus of our analysis**

131. While in general media buyers and advertisers were of the view that the acquisition was unlikely to result in increased prices/reduced quality, some concerns were raised with us in relation to advertising health and beauty products. We therefore focus our analysis on health and beauty products.
132. Our focus is also on magazines published in New Zealand. Advertisers and media agencies do not generally consider imported titles<sup>129</sup> to be an alternative to magazines published in New Zealand. This is because imported titles generally carry advertising from their countries of origin.<sup>130</sup> Therefore, they contain little or no New Zealand advertising content.
133. Under the headings below, we set out our assessment of whether the acquisition substantially lessens competition for magazine advertising (with a focus on the advertising of health and beauty products). We consider the:
- 133.1 closeness of competition between Bauer's titles and titles to be acquired;
  - 133.2 competition from other magazines;
  - 133.3 competition from NIMs; and
  - 133.4 competition from other advertising platforms.
134. This assessment is informed by our assessment on the consumer side. However, the assessment of competition in these two cases is different, as the choices of advertisers and consumers can diverge. While each may switch from magazines to different media, customers may use different media, but not switch between those media, or may use media in a complementary fashion. This may result in the

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<sup>127</sup> Interview with [ ].

<sup>128</sup> PWC, *Mobility is reshaping the future: Five year forecasts on the entertainment and media industry in New Zealand*, August 2012.

<sup>129</sup> Such as HELLO!, Famous, Who etc.

<sup>130</sup> Submission from [ ] (6 December 2013).

competitive dynamic being different on the consumer and advertising sides of the market.

### Closeness of competition between Bauer's titles and titles to be acquired

135. Industry participants generally were of the view that some of Bauer's titles and some of the titles to be acquired were close substitutes for advertising health and beauty products.<sup>131</sup> In particular:

135.1 *NZ Woman's Day* and *NZ Woman's Weekly* are close substitutes, due to the similarity in readers' demographics and similarity of the characteristics of the titles; and

135.2 *Simply You* is a fairly close substitute to Bauer's women's interest titles<sup>132</sup> and *MINDFOOD* was also recognised as an option to some degree.

### Competition from other magazines

136. While there was a mix of advertiser and media buyer views on the extent of competition from *New Idea*, it was widely regarded as the next closest substitute for *NZ Woman's Day* and *NZ Woman's Weekly*.<sup>133</sup> Advertisers were in general dismissive of other titles in the mass market women's weekly magazines category as being a significant constraint.<sup>134</sup>

137. In regard to *New Idea*, [ ], for example, described *New Idea* as a "poor cousin" and did not view that title as an attractive alternative to *NZ Woman's Day* and *NZ Woman's Weekly*.<sup>135</sup> However, another media buyer said that, while *New Idea* has a much smaller circulation and therefore cannot compete with *NZ Woman's Day* and *NZ Woman's Weekly* in terms of numbers, it is still a cost effective option.<sup>136</sup>

138. In regard to other magazine titles, some advertisers submitted that because of the extent of Bauer's magazine portfolio and the reach of its titles, ie, readership and circulation, they preferred to advertise their products in Bauer's titles.<sup>137</sup> For example, [ ] submitted that if Bauer increased its advertising rates post-acquisition by up to 5%, [ ] would have no other magazine titles in which to advertise its products. Instead, it would be forced to dilute its total spend with Bauer (ie, obtain less advertising for its spend). [ ] identified *MINDFOOD* as the only effective option in the monthly category but since *MINDFOOD* targets a different audience, [ ] considered that it could only divert a limited proportion of its advertising spend to that title.

<sup>131</sup> For example, interview with [ ].

<sup>132</sup> However, [ ] thought the addition of *Simply You* to Bauer's portfolio was too small an increment to lead to price increases to advertisers and media buyers. Interview with [ ] (20 November 2013).

<sup>133</sup> For example, interviews with [ ] and [ ].

<sup>134</sup> For example, interview with [ ].

<sup>135</sup> See also interview with [ ], who described *New Idea* as a "poor third". It did however believe that it was an option, and it hadn't the attention it deserves.

<sup>136</sup> Interview with [ ].

<sup>137</sup> Interview with [ ].

139. However, [ ]<sup>138</sup> submitted that while not particularly in relation to health and beauty products, certain other Fairfax titles, such as *NZ House & Garden*, were alternatives to Bauer’s monthly titles.
140. On this basis, we consider that *New Idea* is likely to continue to provide some competition to *NZ Woman’s Day* and *NZ Woman’s Weekly*. Of particular relevance is the fact that advertisers do not have to switch the entirety of their *NZ Woman’s Day/NZ Woman’s Weekly* advertising to *New Idea* to potentially have a price-disciplining effect. Other titles may also provide some lesser constraint.

### Competition from NIMs

141. Bauer submitted that:

NIMs were established by newspaper publishers to compete for readership and advertising dollars with mass market weeklies. In this sense they have been successful, with NIMs attracting advertisers that previously did not advertise in newspapers.<sup>139</sup>

142. Bauer submitted that “seven of the top 20 most read magazines in the country (based on readership data in 2012) are NIMs.”<sup>140</sup>
143. Bauer provided examples of where advertisers had switched spending from Bauer to NIMs either for specific advertising campaigns or more generally.<sup>141</sup> This included an instance when despite a pitch from Bauer and a recommendation from [ ]<sup>142</sup>
144. Media buyers agreed that NIMs are an option for advertisers.<sup>143</sup> The extent of the constraint depends on the nature of the product and demographic targeted. Some regarded NIMs as a lesser constraint on those products advertised in women’s weekly magazines, such as health and beauty products.<sup>144</sup>
145. In relation to health and beauty, Bauer has submitted that:

[ ]<sup>145</sup>

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<sup>138</sup> Interview with [ ].

<sup>139</sup> Application at [10.7].

<sup>140</sup> Ibid at [10.8].

<sup>141</sup> Letter from Bauer to the Commission (26 November 2013) at [6.5].

<sup>142</sup> Ibid at [6.5a].

<sup>143</sup> For example, see interviews with [ ], [ ] and [ ].

<sup>144</sup> Interview with [ ].

<sup>145</sup> Letter from Bauer to the Commission (26 November 2013) at [6.5]. It also provided an example of [ ].

146. On this basis, we consider that NIMs may provide some competition to Bauer post-acquisition, including to some degree for health and beauty products.

### Competition from other advertising platforms

147. Bauer submitted that if it attempted to increase advertising prices in any of its existing or newly acquired titles, advertisers would, or would credibly threaten to, switch a significant proportion of their advertising budgets away from Bauer to media other than magazines to defeat the profitability of any attempted price rise.<sup>146</sup> Other media include television, online/digital (websites such as stuff.co.nz and the *New Zealand Herald* that provide access to entertainment news, interviews, fashion and beauty), radio, outdoor and cinema.
148. Advertisers and media buyers in general agreed that print is in competition with online, television, radio and out-of-home for the media dollar.<sup>147</sup> [ ] was one exception to this: it said that decisions on which media to use were determined before pricing was negotiated.<sup>148</sup> However [ ]<sup>149</sup>.
149. Further, in general, media buyers and other advertisers submitted that switching, or threatening to switch, spending from magazines to other media would make it unlikely that Bauer would increase price post-acquisition.<sup>150</sup> These include the media buyer for health and beauty firm, [ ]. This media buyer said that it would be quite easy to switch, for example, 10% of [ ]'s magazine spend to either TV or digital, and this could be achieved instantly.<sup>151</sup>
150. The extent of competition from other media platforms is also evidenced by [ ]<sup>152</sup> [ ]<sup>153</sup>.
151. We separately consider below evidence of the constraints from each of online and TV advertising on advertising in Bauer's magazine titles post-acquisition.

<sup>146</sup> Application at [18.14].

<sup>147</sup> Interview with [ ].

<sup>148</sup> Interview with [ ]. This was the case as at least for a 5% price increase.

<sup>149</sup> [ ].

<sup>150</sup> For example, interviews with [ ] and [ ].

<sup>151</sup> Interview with [ ].

<sup>152</sup> [ ].

<sup>153</sup> Ibid at [11] and [45].



### Online

152. Bauer submitted that advertisers switching some or all of their spend online would constrain its decision-making post-acquisition.<sup>154</sup>
153. Media buyers agreed that if Bauer tried to increase prices, they would likely shift spending online.<sup>155</sup> These included the media buyer for health and beauty firm, [ ].<sup>156</sup> As noted above, this media buyer said that it had switched spending from Bauer to online advertising in response to issues with Bauer's lead times.
154. Further, Bauer submitted that online advertising has made, and is expected to continue to make, significant inroads into traditional media platforms' revenue.
155. Media buyers agreed that spend from magazines has increasingly switched to digital over the last five years.<sup>157</sup> For example, one media buyer submitted that, compared to five years ago, the percentage of magazine spend has plummeted as more advertisers, in particular those that advertise fast-moving consumer goods, have moved advertising spend out of magazines and into other areas.<sup>158</sup>
156. In addition, these advertisers have spent an increasing proportion of their budgets on online advertising in recent years, albeit from a low base.<sup>159</sup> For example, in relation to health and beauty, [ ] roughly doubled the percentage of the advertising spend they allocated to online advertising from 2012 to 2013. The increase for [ ] was from 7% to 15%, while for [ ], the increase was from 7% to 11%.<sup>160</sup>

### Television

157. Bauer also submitted that the constraint imposed by television has also substantially increased in the last five years or so. It attributes this in part to falling television advertising rates and to television becoming more targeted, which allows advertisers to more accurately target their intended demographics.<sup>161</sup>
158. Most advertisers agreed that television advertising is now far more cost competitive than it was, given rates have fallen.<sup>162</sup> If magazines are not competitive, advertisers will likely switch to other media, such as television (as well as online).<sup>163</sup>
159. Television appears in particular, to provide some level of constraint for health and beauty products. For example, [ ], which handles the [ ] account, submitted that in 2012 when launching a new product [ ] decided to switch to television to

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<sup>154</sup> Application at [10.25]-[10.27].

<sup>155</sup> Interview with [ ].

<sup>156</sup> Interview with [ ].

<sup>157</sup> Interview with [ ]. See also interview with [ ].

<sup>158</sup> Interview with [ ].

<sup>159</sup> See, for example, interview with [ ].

<sup>160</sup> Email from [ ] (20 December 2013) and email from [ ] (13 December 2013).

<sup>161</sup> Application at [10.28].

<sup>162</sup> However, [ ] advised us that television advertising rates are currently on the rise.

<sup>163</sup> Interview with [ ].

obtain the maximum impact.<sup>164</sup> In addition, many health and beauty advertisers spend a majority of their advertising budget on television, for example:

159.1 [ ] and [ ] each spends more than 80% of its spend on television; and

159.2 [ ] spends more than 50% of its spend on television.<sup>165</sup>

### **Conclusion on unilateral effects in advertising**

160. We therefore consider that, if prices increased, post-acquisition Bauer is unlikely to have the ability to profitably increase prices to advertisers, given advertisers' ability to switch their advertising spend to other magazine titles, NIMs and alternative advertising platforms.

### **Vertical effects**

161. Concerns have been raised that the proposed acquisition may increase the ability and/or incentive for Bauer to use its distribution arm, Netlink, to foreclose rival publishers and/or distributors, and that this may substantially lessen competition.

162. In particular, concerns have been raised that:

162.1 Netlink could significantly influence which magazine titles are stocked by retailers and how they are displayed, and this could potentially foreclose rival publishers' titles; and

162.2 Gordon & Gotch, the main alternative distributor, will be denied sufficient scale and reach post-acquisition to effectively compete with Netlink, potentially leading to a substantial lessening of competition in magazine distribution.

163. We do not consider either such possibilities are likely to happen. We therefore consider the proposed acquisition is unlikely to increase the ability and/or incentive for Bauer to use its distribution arm, Netlink, to foreclose rival publishers and/or distributors, and substantially lessen competition.

### **Overview of distribution**

164. Bauer distributes its own and other publishers' magazines to retailers throughout New Zealand via its Netlink Distribution division. Gordon & Gotch, a subsidiary of PMP, is the only other distributor of magazines. Both also provide recommendations to supermarkets and other retailers about the placement of retail products on shelves (the 'planogram').<sup>166</sup>

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<sup>164</sup> Email from [ ] (20 December 2013).

<sup>165</sup> [ ].

<sup>166</sup> A planogram is a diagram or model that indicates the placement of retail products on shelves in order to maximize sales.

165. Gordon & Gotch has about a [ ]% share of the distribution of magazines and Netlink has the remaining [ ]%.<sup>167</sup>
166. Gordon & Gotch distributes on behalf of around 230-250 mainly independent magazine publishers.<sup>168</sup> Netlink distributes for 33 different publishers, including Bauer. Gordon & Gotch currently has the APNSP contract and Bauer has the Fairfax contract.

### Magazine display

167. Access to shelf space and premium display areas in supermarkets are key requirement for publishers.
168. [ ] submitted that:

With such a significant portfolio Bauer would be in a position to dictate retail terms in relation particularly to space and margin with NZ retailers through its Netlink entity. With such an extensive share of the market it would be difficult for retailers to negotiate or seek an alternative because Bauer's market power would be too great, and potential new entrants would be unable to obtain the shelf positioning necessary to promote their titles. Ultimately, there is unlikely to be significant resistance from retailers to only stocking the Bauer portfolio, because they would see an opportunity to achieve higher margins if Bauer increases average cover prices.<sup>169</sup>

169. [ ]

].<sup>170</sup>

170. The two supermarket chains, Progressive Enterprises Limited (Progressive) and Foodstuffs,<sup>171</sup> account for over 50% of magazine sales.
171. We consider that it is unlikely that Bauer could impede other magazines from securing appropriate retail display and shelf space.
172. [ ]

]<sup>172</sup> [ ]

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<sup>167</sup> Interview with Gordon & Gotch; interview with Foodstuffs; interview with Progressive.

<sup>168</sup> And over 2,800 titles.

<sup>169</sup> Letter from [ ] (6 December 2013).

<sup>170</sup> Email from [ ] (14 November 2013).

<sup>171</sup> Including Foodstuffs North Island Limited and Foodstuffs South Island Limited.

<sup>172</sup> Interviews with [ ] and [ ].

].

173. The supermarkets (and other retailers) base their stocking decisions on customer demand. Generally this is based on magazine circulation, but the supermarkets also make allowance for new magazines and customer preferences by geographic region. [ ] submitted that ability to get magazines into stores and into prime display locations rests on the strength of the title: “good magazines will always sell”.<sup>173</sup> For example, [ ]<sup>174</sup> [ ]

].

174. [ ] In particular, supermarkets can:

174.1 give additional shelf space or greater prominence to Gordon & Gotch titles; or

174.2 refuse to stock lower selling Bauer titles.

175. Therefore, we consider that the proposed acquisition is unlikely to lead to the foreclosure of rival publishers by influencing retailers’ magazine stocking and placement choices. Retail stores have the incentive to stock magazines corresponding to consumer demand.

#### Lack of scale

176. We have also received concerns that if the proposed titles for acquisition, which are currently distributed by Gordon & Gotch, move to Netlink, then Gordon & Gotch may lack the scale to compete effectively.

177. [ ] submitted that:

Gordon & Gotch will in the short term remain a competitor to the Bauer group in distribution. However, to be a viable distributor, it is essential to have a high turnover weekly title. If, [ ] then Gordon & Gotch is unlikely to remain viable in the New Zealand market. Certainly the volumes that would be generated by [ ] are unlikely to be sufficient for it to remain competitive.<sup>175</sup>

178. [ ]<sup>176</sup> [ ]

<sup>173</sup> Interview with [ ]

<sup>174</sup> Interview with [ ]

<sup>175</sup> Letter from [ ] (6 December 2013).

<sup>176</sup> Interview with [ ](29 November 2013).

179. [ ]

180. Therefore, we are of the view that the proposed acquisition is unlikely to lead to the foreclosure of Gordon & Gotch by the denial of sufficient scale.

### **Conglomerate effects**

181. This section assesses whether the proposed acquisition would increase Bauer's ability and/or incentive to use its portfolio of magazines to supply bundled discounts to advertisers or exclusive deals, potentially foreclosing rivals of sufficient advertising revenues to compete effectively, and so substantially lessen competition.

182. Two smaller magazine publishers, [ ], raised concerns that:

182.1 smaller magazine publishers' ability to compete is being harmed by Bauer using the unmatched range of magazines at its disposal to:

182.1.1 exclusively contract with advertisers/media buyers; and/or

182.1.2 offer discounts to advertisers/media buyers advertising in bundles of magazines; and

182.2 the proposed acquisition would make Bauer's practices more harmful to competitors, as Bauer's range would extend.<sup>177</sup>

183. Like vertical mergers, a conglomerate merger may increase a merged firm's ability and/or incentive to foreclose competitors. We consider whether there is likely to be foreclosure and whether that foreclosure is likely to have the effect of substantially lessening competition in a market in light of the remaining competitive constraints.

184. In this case, we consider that the proposed acquisition is unlikely to substantially lessen competition through conglomerate effects. The acquisition is unlikely to change Bauer's ability or incentive to foreclose competition and advertisers would retain significant alternative options to Bauer (see above).

### **Determination on notice of clearance**

185. Pursuant to section 66(3)(a) of the Act, the Commerce Commission determines to give clearance for Bauer, along with an interconnected body corporate, Bauer Consumer Media Limited (incorporated in the United Kingdom) to acquire all of the assets used by APNSP in the publication of the New Zealand editions of the following magazine titles:

185.1 *New Zealand Woman's Weekly*;

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<sup>177</sup> See interview with [ ] and email from [ ] (6 November 2013).

185.2 *Simply You*;

185.3 *Simply You Living*;

185.4 *NZ Listener*; and

185.5 *Crème*.

Dated this 23rd day of January 2014

Dr Mark Berry  
Chairman